POLICY Quarterly

FOCUS ON
Family wellbeing

Editorial

In October 2017, the Labour party formed a coalition government with a mandate to address child poverty and with aspirations to make New Zealand the best place in the world to be a child. Towards this aim, the ensuing Child Poverty Reduction Act (2018) legislated that current and future governments set child poverty rate targets and report on their progress, and a corresponding amendment to the Children's Act (2014) required governments to devise and publish periodic child wellbeing strategies.

In their article in this issue of *Policy Quarterly*, Kelsey Brown and Donna Provoost of the Office of the Children's Commissioner and Luke Fitzmaurice and Kiri Milne of Oranga Tamariki discuss the process by which children were included in the process of developing the nation's first child and youth wellbeing strategy. Importantly, throughout this engagement process they discovered that children's ideas around their own wellbeing and the role of the government in supporting them, rest on the wellbeing and support of their family and whānau.

A conundrum exists, however. Addressing child poverty is more publicly (and hence likely more politically) acceptable than supporting family wellbeing. While a large majority (80%) of citizens agree that child poverty is a problem in New Zealand, opinions on the causes are split. An equal portion of New Zealanders (40%) believe that child poverty is due to bad parenting and choices versus structural factors, such as poor jobs, unaffordable housing, and inequality (Child Poverty Action Group, 2014). A perceived tension arises, then, when children stress that their wellbeing rests on the support their family receives, yet supporting families (vs. children directly) may be less palatable to the general public. Given this context, policies and programmes that are child-centred, yet empower and benefit families and whānau, may be particularly important in the policy toolkit.

Polly Atatoa Carr and colleagues demonstrate one such child-centred initiative that can lead to greater family and whānau wellbeing. The Hamilton Children's Team was established to support early intervention among families at-risk of involvement with Oranga Tamariki. This cross-sector approach displayed the power of constructing a multi-faceted response to children's needs in ways that empowered families and has potential to enhance their independence and wellbeing. Importantly, this programme was targeted at families with multiple, complex and oft-thought intractable challenges.

A closely connected challenge for policy-makers and programmes aimed at supporting families and children centres around who constitutes family, and the role the state plays in influencing both family formation and disruption. Rhonda Shaw challenges policy-makers to think carefully around how and when to legislate about family matters. She does so through the lens of surrogacy laws and a rich description of women's motivations to become surrogate or egg donors. On the one hand, legislation should protect both the surrogates and future parents in a surrogacy arrangement. On the other, the reasons why women volunteer to be surrogates or donate eggs may result in unintended consequences from well-meaning policy.

In terms of family disruption, the conversation over the role of the State in family reached a deafening level in 2019. As whānau and families released shocking videos of their babies being removed from maternity wards within hours and days of birth, Oranga Tamariki was undergoing another burst of change through amendments passed under the Children's and Young People's Well-being Act (1989)/Oranga Tamariki Act (1989). These changes mandated Oranga Tamariki to 'recognise and provide a practical commitment to the principles of The Treaty of Waitangi' and placed whānau, hapū, and iwi considerations at the centre of tamariki Māori wellbeing. These two factors shed light on the historical roots and current patterns of ethnic inequity within the child welfare system and the legislative mandate aimed at addressing them.

To that end, Len Cook discusses the crisis of Māori perception of the legitimacy of Oranga Tamariki as a state actor and adjudicator of child risk. He does so with an historical and current statistical portrait of inequities in the child welfare system, offering a pathway forward through greater data transparency, state accountability, and whānau partnership.

Continuing the discussion and building off a seminar series hosted by Victoria University of Wellington's School of Government in 2019, seminar speakers Emily Keddell, Ian Hyslop, David Hanna, and Claire Achmad offer their reflections on the state of the child welfare system. While each brings their unique perspective from academic disciplines, practice, and advocacy, a current thread points to the historical roots of ethnic inequities prevalent today, and a call for structural, systems-wide reform that involves a whānau-centred approach to caring for and supporting children at risk of harm.

The articles in this special issue, while heavily focused on some of the most vulnerable tamariki in Aotearoa New Zealand, highlight the centrality of family and whānau wellbeing in stemming the systemic inequities in child poverty and state care. Supporting children involves shifting the public and policy discourse in ways that recognises the primacy of family wellbeing.

Kate Prickett *Guest Editor*
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Reference

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Engaging Children and Young People in the Policy Process

lessons learned from the development of the Child and Youth Wellbeing Strategy

Abstract

Policy is improved when those most affected are involved in the policy development process. This article describes the approach taken by the Office of the Children's Commissioner and Oranga Tamariki – Ministry for Children to engaging children and young people in the development of the Child and Youth Wellbeing Strategy, a cross-government initiative designed to drive action on child and youth wellbeing. It outlines key findings from the engagements and describes the impacts those insights had. It also identifies critical enablers of the project and key lessons learned.

We found the legislative changes which required children to be consulted and broader attitudinal changes towards involving children and young people in policymaking processes were key enablers. We found the project had a tangible impact not only on the Child and Youth Wellbeing Strategy itself, but also for the children and young people involved and their communities, and on attitudes towards children and young people's voices in general. We hope successive governments will continue to engage with children and young people to measure progress on child and youth wellbeing against what they have said matters most to them.

Keywords children's participation, youth participation, voice, wellbeing, engagement, children

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Policy is improved when those most affected are involved in the policy development process. For the Child and Youth Wellbeing Strategy, this means listening to the views of children and reflecting those views in the design of a system that is focused on improving their outcomes.

The concept of wellbeing is a popular issue in policy conversations at present, but it is an intangible concept and can be difficult to precisely define. When staff at the Office of the Children's Commissioner reviewed existing literature and heard from children and young people to come up with a working definition of child wellbeing in 2017, they concluded that child wellbeing is dependent on the wellbeing of the child's family and whānau, that it is equally important for children's lives in the present as it is for their development into future adults, and, critically, that it needs to be considered in discussion with children and young people themselves (Office of the Children's Commissioner, 2017). From the moment the New Zealand government signalled its intent to develop a strategy to promote the wellbeing of children and young people, it was clear that detailed engagement with children and young people would be required.

This article describes the project that came about when the Department of the Prime Minister and Cabinet partnered with the Office of the Children's Commissioner and Oranga Tamariki to enable children and young people's views and experiences to inform the development of the Child and Youth Wellbeing Strategy, a new cross-government policy initiative designed to drive action on child and youth wellbeing. In late 2018 more than 6,000 children and young people were asked for their views on what a good life means to them. These views were summarised in the report *What Makes a Good Life? Children and young people's views on wellbeing*, released in February 2019 (Office of the Children's Commissioner and Oranga Tamariki, 2019). This article describes the approach taken to engaging with children and young people, key findings from the engagement, and the impacts it had on policy, children and young people and their communities. It also identifies critical enablers of the project and key lessons learned.

> For the first time in New Zealand law, amendments in 2018 to the Children's Act 2014 introduced a requirement for children and young people to be consulted in the development and ongoing implementation of a child and youth wellbeing strategy ...

Factors that led to children and young people's views being included in the development of the strategy

Two key shifts were significant in enabling children and young people's voices to shape the strategy.

Increased political support for listening to children

Attitudes towards children and young people's involvement in policymaking processes have shifted significantly in recent years. The voices of children and young people in care were a central part of the review of Child, Youth and Family and the creation of Oranga Tamariki (Fitzmaurice, 2017). A youth advisory group was established by the minister of education, Chris Hipkins, in 2017 to inform the reform of the education system (Ministry of Education 2017). The prime minister, Jacinda Ardern, has spoken at length about the importance of children and young people having a voice in decisions that affect them (Ardern, 2018a,

2018b) and both the previous minister for children, Anne Tolley, and the current minister, Tracey Martin, have shown a commitment to listening to children and young people.

This shift in political support was influenced by ongoing international pressure from the United Nations Committee on the Rights of the Child as well as advocacy within Aotearoa New Zealand. The committee noted in its concluding observations in both 2011 and 2016 that the views of children in New Zealand are not adequately respected, that children do not have the means to express their views in the public domain and that their views are not systematically considered in the formulation of laws and policies (United Nations Committee on the Rights of the Child, 2011, paras 26–7, 2016, para 18). The committee had repeatedly urged New Zealand to pass a national strategy for children, incorporating children's views.

In New Zealand, the children's commissioner's Expert Advisory Group on Solutions to Child Poverty included children's views within its 2012 report, and one of the key messages was that children and young people want to be involved in the solutions to child poverty and can provide unique perspectives (Expert Advisory Group on Solutions to Child Poverty, 2012). The Office of the Children's Commissioner, in its submission on the Child Poverty Reduction Bill, advocated strongly for children's voices to be included in the policy development process (Office of the Children's Commissioner, 2018).

The combination of direct advocacy to decision makers, the sharing of children's views in public submissions and international pressure led to increased support for children's voices from decision makers, and an environment supportive of children's views being included in the development of the strategy.

Legislative change required consultation with children

The second key shift was a change in legislation. For the first time in New Zealand law, amendments in 2018 to the Children's Act 2014 introduced a requirement for children and young people to be consulted in the development

and ongoing implementation of a child and youth wellbeing strategy (s6D(1)(a)). This provision, along with the requirement that the responsible minister consult the Children's Commissioner (s6D(1) (b)), were the initial legislative impetus for this engagement project. As with the shift in attitudes towards children's voices, this legislative change was influenced by increased political support and sustained advocacy efforts by children's rights advocates, both internationally and within New Zealand.

The combination of these factors created the environment where a project like this was possible. The shift in attitudes towards children's voices may not, on its own, have been enough to ensure children's views were meaningfully included within the policy process. Similarly, legislative change may not have been possible without the concurrent shift in attitudes. It was the combination of these factors, more than one of them alone, which influenced the shape, scope and impact of this project.

Engagement approach

A mixed-methods research approach was used to engage with more than 6,000 children and young people across the country. An online survey was completed by 5,631 children and young people in primary, intermediate and secondary schools, as well as alternative education providers. These schools were all part of the Office of the Children's Commissioner's Mai World network, a network of schools whose students regularly complete similar surveys. The survey was also made available on the Department of the Prime Minister and Cabinet website. Overall, the survey reached a diverse group of children and young people across New Zealand, with a mix of urban/rural, socio-economic, ethnicity and age characteristics.

The survey included closed-ended questions with defined choices (age, ethnicity etc.), open-ended free text questions, questions that asked participants to rank from a list, and questions that required participants to indicate their level of agreement with statements. It asked children and young people what having a good life means to them, whether they are experiencing a good life right now, and what can be done to help all children and

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young people in New Zealand to have a good life. Children were also able to share their 'big ideas' directly with the prime minister by sending her a postcard. More than 1,000 children, young people and adults sent postcards to the prime minister.

In addition to the survey, 423 children and young people were spoken with face to face through a series of focus groups and one-on-one and paired interviews. The face-to-face conversations explored in more depth what it means to have a good life, what gets in the way and what helps. Prompting questions and appropriate activities encouraged children and young people to think about what having a good life means to them personally, what it means for the people around them, and what it means in relation to the places and communities they are part of. All were asked what they thought would make things better for children and young people now, and for their future.

The face-to-face conversations were targeted to ensure that the participants included those likely to be experiencing challenges in their lives. This included children and young people living in poverty, living in state care, with a disability, from rural and isolated areas, with refugee backgrounds, who identify as LGBTIQ+,

who are recent migrants, or who have received a mental health diagnosis. The majority of children and young people we spoke with in focus groups and interviews were Māori.

Overall, 6,053 children and young people participated in the project: 53% identified as female and 41% as male; 1% identified as gender diverse and a further 5% preferred not to list their gender. Ages for survey respondents ranged from seven to 18 years, while face-to-face participants included babies (with their parent(s)) and pre-school children right through to young adults. Further details on participant characteristics, including ethnicity and locations, are included in the full report.

Conversations with children and young people were organised through the Office of the Children's Commissioner's community partners (mostly NGOs, including alternative education providers and iwi social services) and Oranga Tamariki sites. Community partners and Oranga Tamariki sites were involved from the outset, supporting us to engage with children and young people in a way that would work for them. The project was jointly resourced by the Office of the Children's Commissioner, Oranga Tamariki and the Department of the Prime Minister and Cabinet.

Key findings from the engagement

Through the online surveys we heard that most children and young people are doing well, but some are facing challenges

The survey asked children and young people to respond to a series of 17 statements relating to their wellbeing, such as 'I have a warm, dry place to live', 'I feel safe in my neighbourhood' and 'I can cope when life gets hard'. The majority of responses to all 17 statements were positive, indicating that most children and young people are doing okay.

However, some children and young people indicated that they were facing challenges. Around 10% responded negatively to four or more of the 17 statements and around 2% responded negatively to ten or more statements. This group is growing up in very challenging circumstances.

When asked an open-ended question about what a good life means, the most common responses related to having fun and feeling contented, having supportive family and friends and having basic needs met. Other responses related to being healthy (including mentally healthy), feeling safe, having a good education and feeling valued and respected.[1]

Being with your family, even if they're annoying the heck out of you. They are immediate, speed dial no.1. – Rangatahi from Matamata

Being surrounded by loved ones and friends that support me and provide me with opportunities. – 17-year-old New Zealand European, Māori

Money may not be the key to happiness but it is the key to living and I know many people who struggle. – 17-year-old girl

When asked what they saw as the top three most important things for children and young people to have a good life, the items most frequently selected (from a defined list) were:
- parents or caregivers have enough money for basic stuff like food, clothes and a good house to live in;
- children and young people have good relationships with family and friends;
- children and young people are kept safe from bullying, violence or accidents;
- children and young people are valued and respected for who they are.

There were five key messages from the focus groups and interviews
From the children and young people we met with in person we heard five key messages:

Accept us for who we are and who we want to be
Children and young people told us that they want to be accepted, valued and believed in and they want people to support their hopes for the future.

To be accepted. To be understood and taken seriously. It's important because it gives you confidence in your uniqueness. – young person from Whangārei

Whānau are a critical factor in children and young people's wellbeing.

Life is really hard for some of us
Many children and young people face significant challenges, such as racism, bullying, discrimination, judgement, violence, drugs and a feeling of continually being let down.

At our school people find mocking Māori culture to be a joke. 'Māoris go to prison', or 'Māoris do drugs'. – Rangatahi from Auckland

Something I always have to deal with at school is the stigma. When people find out you're a foster kid they're like 'oh you're an orphan, whose house did you burn down'. – 16-year-old girl living in state care

To help us, help our whānau and our support crew
Whānau are a critical factor in children and young people's wellbeing. In general, for children and young people to be well, their whānau, friends and communities must also be well. Wellbeing is about relationships, not just about having things.

If the parents are good then the kids are good. – Rangatahi from Rotorua

We all deserve more than just the basics
Children and young people want 'the basics', such as a home, an education and a safe community. But they want more than just a minimum standard of living, and they want the systems that support them to be inclusive, accessible and affordable.

Enough for the basics, plus a little bit more. – young person from Dunedin

How you support us matters just as much as what you do
Efforts to support children and young people will not be effective if the sole focus is on what needs to be delivered. How supports are delivered matters just as much. Services must accept children and young people for who they are and respect their critical relationships with their whānau and communities.

Having a good life isn't necessarily about the materialistic things. I think having strong friendships/relationships with people who genuinely care about you contributes better to a good life. – Rangatahi from Taumarunui

Impacts of the engagement
The project had a tangible impact not only on the Child and Youth Wellbeing Strategy itself, but also for the children and young people we engaged with and their communities, and on broader attitudes towards inclusion of children and young people in policymaking processes.

Children and young people's voices influenced the strategy
The impact of children and young people's views on the Child and Youth Wellbeing Strategy can be traced by comparing the outcomes proposed in the May 2018 draft version of the strategy (Office of the Minister for Child Poverty Reduction and Office of the Minister for Children, 2018, appendix B) with the final outcomes for the strategy confirmed in the August 2019 strategy framework (Child and Youth Wellbeing, 2019b). For example, the final version of the strategy has an additional domain relating to children and young people being accepted, respected and connected, reflecting the insight that was heard from children, 'Accept us for who we are and who we want to be'.

Key concepts within the strategy were also broadened, or the language used to describe those concepts modified, to better reflect children and young people's views. For example, in the draft framework one of the indicators under the 'Safety' domain was that 'Whānau and homes are safe and nurturing'. In comparison, the equivalent indicator within the final strategy refers to 'family/whānau wellbeing'. This better

reflects what children and young people said was important, as it was not just that they wanted to be safe within their whānau, but that they wanted their whānau to be well also. The wording of this domain also shifted from 'Safety' in the draft version to 'Children and young people are loved, safe and nurtured' in the final version, reflecting the message from children and young people that feeling safe is not just about physical safety, and cannot be separated from being loved and feeling emotionally safe and supported.

The processes used to engage with children and young people influenced the development of the strategy more broadly. The approach taken to consultation with adults as part of the broader strategy development was influenced by the approach taken to engagement with children and young people, and the insights from children and young people influenced the questions asked of adults in later parts of the consultation (Department of the Prime Minister and Cabinet, 2019). The influence of the child and youth engagement process on the subsequent adult engagement process gave weight and credibility to the former and positioned children and young people's voices at the centre of the process.

Children and young people benefitted from the opportunity to participate
Previous research has identified that the benefits for children and young people of involving them in decisions can include increased self-esteem and pride (Thomas and Percy Smith, 2012) as well as enhanced sense of agency and self-advocacy skills (Thomas et al., 2017). This would appear to be the case for children and young people who participated in this research, some of whom told us that this was the first time they had been asked for their opinion on these sorts of issues by a group of adults. They appreciated the opportunity to share what they thought and said it should happen more often. From the children and young people's perspectives, the opportunity to share their views directly with the prime minister was unique and valued. Knowing that children and young people's views would be taken seriously by decision makers

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meant that the project team were able to assure children and young people that taking the time to share their opinions would be worthwhile.

For some children and young people, the focus groups organised as part of this project provided an impetus for ongoing advocacy focused on effecting change in their communities. For example, one group of young people in Taupō decided to continue meeting after the initial engagement event. They now meet regularly and have advocated for issues such as awareness of mental health challenges and suicide prevention initiatives.

Some young people appreciated the opportunity to come together with other young people in similar circumstances, many for the first time. For example, a group of young people in care whom we met with in Dunedin shared that they enjoyed meeting other young people facing similar challenges.

National engagement prompted community-led conversations and actions
The project prompted ongoing conversations within communities in some of the areas we visited. In Kaitaia, a group called Amazing Engagers was established after our visit, supported by the Kaitaia REAP (Rural Education Activities Programme) organisation.[2] The Amazing Engagers group put together a programme inviting people into the classroom to hear young people's stories. In Tairāwhiti the community groups we partnered with have recognised the need to listen to the voices of the young people they work with, and ensure that those voices are heard by local decision makers. They are now in the process of establishing processes and mechanisms to support this. These are just small examples of initiatives prompted by the project. Each is locally focused and locally led, but a national engagement project provided the impetus for their creation.

Children and young people are increasingly seen as key stakeholders in the policy process
In addition to the impacts for the children and young people who took part in the project, the community groups we partnered with and the strategy itself, there were also impacts on broader attitudes to children and young people's voices. Research has found that involving children and young people in decision making can contribute to a culture shift which can legitimise children and young people's participation and change the way they are viewed (Thomas et al., 2017). Projects such as this one can also have impacts on children as a consumer group. This can include demonstrated evidence of the value of hearing from children in policy development and future changes to legislation to better enable children's participation (Kilkelly, 2019).

Across government, children and young people are increasingly seen as key stakeholders whose views are an important aspect of policy development. This is evidenced by 'a marked increase in the interest of agencies in seeking out views of children' (Children's Convention Monitoring Group, 2019, p.19). It has been suggested that a 'participation ecosystem'

is required to make children's participation in decision making meaningful (Fitzmaurice, 2017), and it is encouraging that elements of this ecosystem seem to be developing in New Zealand. It is hoped that the experiences and outcomes of this project will contribute to this participatory ecosystem, providing support for similar projects and initiatives in the future.

Lessons for engaging children and young people in the policy process

Based on our experience, we have distilled three key lessons for others interested in engaging children and young people in the policy process in the future.

Children and young people's views often challenge adult assumptions and ongoing engagement is required to measure progress against what matters most to children and young people

The children and young people we spoke with offered views that challenged policymakers' understandings and articulations of wellbeing. For example, young people consistently talked about their wellbeing being closely linked to that of their family and whānau. Young people also identified the importance of being accepted and respected for their overall wellbeing, indicating that this was a necessary condition to achieve progress in other areas. This wider view of relational wellbeing and the high level of importance attached to acceptance and respect did not always align with the narrow parameters initially proposed by policymakers.

Children and young people's different views and understandings of key concepts such as wellbeing can present a challenge to policymaking processes, as these broader understandings are not always easy to articulate and measure (particularly where there hasn't been previous policy work). While it is positive to note changes made to the strategy in response to children and young people's feedback, challenges remain for government in terms of how progress against these more holistic concepts of wellbeing can be monitored. Some of the current indicators identified in the strategy to measure progress on outcomes fall short of capturing the nature of wellbeing described by the children and young people who took part in this project. For

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example, the use of the percentage of young people enrolled to vote and voting in the general election as a proxy for measuring how well children and young people's voices, perspectives and opinions are listened to and taken into account (Child and Youth Wellbeing, 2019a) provides a limited view of this 'voice' outcome, given that most of the children and young people for whom the strategy is intended aren't old enough to vote and voting is only one way for young people to share their views and opinions.

In one sense this is understandable, as the strategy must use the best measures currently available. However, it is also a reminder of the importance of ongoing engagement with children and young people in order to develop policy that truly reflects their views. Successive governments will need to continue to engage with children and young people in order to measure progress in the area of child and youth wellbeing against what children and

young people have said matters most to them.

Community relationships are an essential part of seeking children and young people's views

Perhaps the most crucial factor in the extent to which we were able to engage with a wide range of children and young people was the involvement of community partners and Oranga Tamariki sites. Community partners and sites helped organise the workshops and focus groups, enabling the project to engage with those who might not otherwise have been able to participate and ensuring tailored engagement approaches that worked well for the young people. In particular, the engagements through community partners were community led, which made a significant difference to who we were able to speak with, how we were able to engage and the impact that the process had afterwards. Reciprocity is key in these relationships, and it was important to report back to the children, young people and communities we engaged with about what we heard and the strategy itself.

Buy-in at the highest level makes a big difference to both successful engagements and the impact of children and young people's voices on policy decisions

In many projects seeking children and young people's views it can be hard to guarantee exactly how their views will be taken into account. For those engaging with them, we can always promise that we will do everything within our power to ensure their voices are heard, but we can never guarantee what other factors will influence final decisions. However, in this case we knew that children and young people's views would be heard directly by the prime minister and the minister for children, as well as other senior decision makers.

Being able to guarantee that children and young people's voices would be heard at the highest level added to the legitimacy of the project and created an enthusiasm for children and young people to share views with us. It also created buy-in from the community partners who helped us deliver the engagements, where the high profile of the strategy meant that the

opportunity to support young people to be involved in this project was well received in communities. Interestingly, it was the assurance that children and young people's views would be shared with the prime minister that appeared to drive enthusiasm to be part of the project, rather than any specific assurance about exactly how children and young people's views would affect the final decisions.

Conclusion

The Child and Youth Wellbeing Strategy is expected to have a long-term impact on government policy for children, young people and their families. Encouragingly, the legislation that initiated the strategy includes an ongoing obligation to consult

with children and young people. This means that large-scale engagements seeking children and young people's views may become increasingly common in future. Policymakers may wish to utilise the methods and tools used in this project for similar processes in the future.

The anecdotal examples we provide suggest that including children and young people's views in policymaking can have impacts not just on policy but also on children and young people themselves, on their communities and on broader attitudes towards children and young people's voices. Future projects of this type could attempt to measure these suggested impacts more systematically. Future engagements should consider building on

the success of this project by taking a more explicitly rights-based approach to including children's views in policymaking (Byrne and Lundy, 2019). This will help enable children and young people to meaningfully influence policy and help policymakers ensure that their views are taken into account. Future iterations of the strategy will provide opportunities to test, refine and build on what we've learned.

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1   All quotations in this section are from the 'Findings' section of the What Makes a Good Life? report (Office of the Children's Commissioner and Oranga Tamariki, 2019).
2   REAP organisations are non-governmental organisations which deliver educational and family support programmes in rural areas across the country.

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Supporting Child Wellbeing

a health assessment tool for the Hamilton Children's Team

Abstract

The Hamilton Children's Team received its first referral in 2015, with dedicated lead professionals appointed for each child referred. The role of these lead professionals is to assess need, develop a plan for each child, and coordinate a cross-sector Child Action Network to improve care and wellbeing. Challenges were identified in Hamilton for the assessment, identification and coordination of health need within the Children's Team, particularly for lead professionals from outside the health sector. Therefore, a health assessment package was developed in partnership with the Hamilton Children's Team, the Waikato District Health Board and other relevant agencies. The use of a standardised and systematic approach, with training and relationship development, resources and referral pathways, resulted in identification of significant unmet need. A number of referrals to the health sector resulted from this assessment and there are implications that such a process can support ongoing attendance at health appointments, monitoring of outcomes from the Children's Team process, and improvements to physical, emotional and mental wellbeing for families. This approach was well received by lead professionals and families, and future use is likely to enhance the Children's Team programme and service delivery, and improve wellbeing outcomes.

Keywords child health, child wellbeing, health, health assessment, social sector support

Around 230,000 children under the age of 18 in Aotearoa New Zealand at some point during their childhood may experience harm as a consequence of their family environment and/or complex contexts and needs (Expert Advisory Panel on Modernising Child, Youth and Family, 2015a). The Children, Young Persons and Their Families Act (now Oranga Tamariki Act) 1989 governs child protection in Aotearoa New Zealand and is noted for its emphasis on family orientation and family participation (Connolly, 1994). Since this act was passed, however, several social policy changes have occurred, with detrimental influence on family environments and support structures for children and youth. These have included the scaling back of social and economic supports, a reduction of non-governmental organisation funding for preventative child welfare services, and increasingly unaffordable housing leading to high child poverty rates (Hyslop, 2017; Keddell, 2018). Additional pressures on the child and youth protection system have resulted from: increased costs for children in out-of-home care; inability to continue care for those beyond the age of 18; criticism of structural disadvantage for Māori; workforce concerns, including capacity and professional tensions; poor collaboration between government agencies; unequal distribution of responsibility between government and non-government sectors; and attention to data for evidence-informed practice and evaluation (Katz et al., 2016; Keddell, 2018; Rouland et al., 2019).

Reforms of the child welfare system in Aotearoa New Zealand have attempted to address such challenges, and most recent reforms have been wide-ranging. The green and white papers for vulnerable children (Ministry of Social Development, 2011, 2012) and reports of the Expert Advisory Panel on Modernising Child, Youth and Family (Expert Panel Advisory on Modernising Child, Youth and Family, 2015a, 2015b) were key components of three recent reforms: the Children's Action

> One key component of the Oranga Tamariki reform process has been the development of Children's Teams in order to support early intervention or secondary prevention of Oranga Tamariki involvement …

Plan 2012, the Vulnerable Children's Act 2014, and the review of the Child, Youth and Family Service (now Oranga Tamariki – Ministry for Children) (Keddell, 2018).

Children's Teams
One key component of the Oranga Tamariki reform process has been the development of Children's Teams in order to support early intervention or secondary prevention of Oranga Tamariki involvement (Oranga Tamariki, 2019a). The aim of Children's Teams is to work with children and youth (up to 18 years old) who are at significant risk of harm to their wellbeing, but who do not meet the statutory intervention threshold.

Children's Teams are designed to identify early risk and assess the cross-sectoral needs of children and their families, as well as their strengths, and support the receipt of services to achieve improved outcomes. The Children's Team approach is intended to involve strengthened regional (and national) governance with joint responsibility and prioritisation; cross-sector practitioners and professionals operating together to address the needs of children; and improved capability of the children's workforce to work in a child-centred way, in partnership with families (Oranga Tamariki, 2019b).

Ten Children's Teams were established from 2013, including in Rotorua, Whangārei, Counties Manukau, Hamilton, Tairāwhiti, Eastern Bay of Plenty, Horowhenua/Ōtaki, Marlborough and Canterbury. Hamilton was announced as a Children's Team site in 2014, and the first referrals (which come from across agencies, including from Oranga Tamariki, education services and health services) to the Hamilton Children's Team were received in September 2015. When a Children's Team referral is accepted, a 'lead professional' is appointed as the main point of contact for the child. The core roles of the Children's Team lead professional are to engage with children and families, assess the current needs of the referred child, and develop a single multi-service plan for children and families that consent to the process. All the community services and agencies that are needed to provide support (described as the Child Action Network or CAN) are then coordinated to respond and deliver on the plan by the lead professional.

Health assessment in Children's Teams
The current tool utilised by lead professionals to assess need, and to demonstrate improvement within the Children's Team process, is the Tuituia Assessment Framework (Oranga Tamariki, 2013), which records the areas of need, strength and risk for a child or young person, their parents

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Supporting Child Wellbeing: a health assessment tool for the Hamilton Children's Team

Table 1: Areas of health need included in the pilot assessment with the Hamilton Children's Team

Domain:	Healthcare	Housing	Education and development	Broader whānau experience
Health need area	General Practice access and engage-ment; Well Child Tamariki Ora (WCTO) access; Before School Check access Oral health; Vision; Hearing Immunisation Cigarette smoking Pregnancy support Other specific, common health issues	Whare ora* eligibility Housing tenure Perception of housing quality Perception of housing security Experience(s) of residential mobility Safe sleep Home safety	Developmental and behavioural concerns Early childhood education and care – access and enrolment School attendance Education support services and funding – access	Community services card – eligibility and access Material resources – NZiDep** Financial support – eligibility and access

*Whare Ora is Waikato District Health Board's programme to support whānau to create healthier, warmer, drier, and safer homes.
**NZiDep is an index of socio-economic deprivation for individuals (Salmond et al., 2005).

Table 2: Levels of individual deprivation among children referred to the Hamilton Children's Team

NZiDep Index	Number of HCT children	Percentage of HCT children
No NZiDep characteristics described	2	4.3
One NZiDep characteristics described	2	4.3
Two NZiDep characteristics described	6	12.8
Three or four NZiDep characteristics described	13	27.7
Five or more NZiDep characteristics described	17	36.2
Missing data	7	14.9

and/or caregivers across three dimensions: Mokopuna Ora, Kaitiaki Mokopuna, Te Ao Hurihuri (Oranga Tamariki, 2019c). This assessment framework is broad, with little specific information gathered or recorded regarding health, and no opportunity to monitor access to eligible health services. In the Hamilton Children's Team, the majority of lead professionals are employed in social sector organisations without specific health assessment competencies, or health sector connections. A recent evaluation of the role of lead professionals within the Hamilton Children's Team (Atatoa Carr, 2017) found that Hamilton lead professionals were requesting a specific, standardised health needs assessment as an add-on to the Tuituia framework that could be completed and monitored consistently. Without this specific and standardised assessment of health need, lead professionals in Hamilton described difficulties with determining the service and resource requirements for their families, challenges with advocacy and CAN engagement in the health sector, and

ultimately barriers to improving child and family outcomes.

The current study

Through the establishment and evaluation of the Hamilton Children's Team, partnerships were established between the University of Waikato, Oranga Tamariki and the Hamilton Children's Team, the Waikato District Health Board, and community agencies involved in supporting children and families. Having identified the gaps in health assessment competencies and health sector connections for lead professionals, this project intended to develop and pilot a standardised tool for non-health-sector lead professionals to assess the health need of children within the Hamilton Children's Team. The objectives of this project were to:

- build lead professional capability to assess unmet health need, and support health system access for Children's Team children and families;
- identify specific areas of health, and broader wellbeing, that are likely

priorities to improve outcomes for vulnerable children and families in Hamilton; and

- establish whether a standardised tool for health need assessment improves lead professional capacity and supports the Children's Team model of care.

This article describes the health needs assessment tool which was piloted with selected lead professionals involved in the Hamilton Children's Team in 2018-19. Descriptive analysis of the health need that was identified during the piloting of this needs assessment is also provided. Finally, recommendations for the future use of health assessment tools within a Children's Team approach are outlined, and the policy implications of this research are discussed.

Methods

The pilot health assessment tool was developed in August 2018 in partnership with the Hamilton Children's Team director, Children's Team support staff, lead professionals, and key experts at Waikato District Health Board. The lead professionals involved in this pilot were those from agencies outside the health sector (such as Kirikiriroa Family Services Trust). These lead professionals were predominantly full-time, and they represented approximately 40-50% of the full-time equivalent capacity of the Hamilton Children's Team lead professionals, providing the opportunity to involve up to 50 children in the health assessment pilot.

This tool was developed through an iterative process involving subject matter experts in child health and child development, and was built from the Harti Hauora Assessment Tool – a Whānau Ora-based assessment instrument designed to reduce health inequities for inpatient children and families at Waikato hospital (Masters-Awatere and Graham, 2019). Criteria for the inclusion of assessment questions were determined in the development of the pilot assessment tool. These criteria included: a suitable question can be asked by lead professionals of children and families to gain information about the particular health need; the area of health need is known to have an important impact on child and

whānau health outcomes; there are appropriate services available that can address the need identified. The tool included questions to identify areas of potential need across four domains (see Table 1): healthcare access; housing; education and development; and broader whānau experience (including aspects of the Tuituia assessment which are not further discussed in this article).

The tool was developed as a paper-based questionnaire so that lead professionals could complete it over several visits with the children and their families, and during the pilot period it replaced the Tuituia assessment for those lead professionals involved in this project. Immunisation information for children was also confirmed using the National Immunisation Register, where available.

Children's demographic information and household composition were also collected and recorded, and the following additional resources were developed for the Hamilton Children's Team to support the assessment tool:

- a two-day training package for the lead professionals, involving relevant local agencies;
- referral pathways for each aspect of the assessment tool, including forms for referral to further health services;
- lead professional resources and information about health need and health services in the Hamilton area; and
- resource kits for families.

All the caregivers/parents of the children who were referred to the lead professionals during this health assessment pilot period provided their written informed consent to undertake this health assessment, and consent was also requested for their anonymous information on health need to be collated for research purposes. Throughout the duration of this pilot (including during training), the lead researcher met regularly with the lead professionals and Children's Team staff to discuss the utility of the tool, challenges and barriers, and opportunities for improvement.

Ethical approval for this research was obtained from the University of Waikato Human Research Ethics Committee (Health) in January 2018.

> Taking a systematic and standardised approach allowed lead professionals without specific health sector knowledge to identify unrealised gaps in service delivery ('we don't know what we don't know'). This was particularly evident in areas of health need that had typically not been identified utilising the broader Tuituia approach, such as oral health, housing safety and health service access.

Results

Training

The two-day training programme was an important component of the support for the lead professionals involved in this pilot. It was attended by the lead professionals, the Hamilton Children's Team director and support staff. The training focused on each specific aspect of the assessment tool, and was delivered by the referral partners from within the health sector. This provided the lead professionals with not only an improved understanding of the measurement of health need, but also an understanding of the services in Hamilton where they would be able to refer children, young people and their families, as well as an opportunity to foster relationships with people in those services. Complexities of the eligibility criteria for each service and the relevant referral paths were described, in addition to aspects of child development and health across the early years.

Pilot assessment of health need

The standard processes were followed regarding referral of children to the Hamilton Children's Team in 2018. Of the children referred and accepted, 59 children were assigned to one of the lead professionals involved in this pilot and were therefore eligible for an adapted assessment utilising the health assessment tool. All caregivers consented to the use of the health assessment tool to identify specific health need, and consent for researchers to access anonymous data from this assessment was obtained for 47 children (80% of eligible children) from 29 households.

Sociodemographic information

Most households (66%) had a single child referred to the Hamilton Children's Team, with the remaining households having up to six children referred. At the time of the study, 17% of children were five years old or younger, 38% were aged 6–10 years and 45% were aged 11–18 years. Sixty per cent of children were male. Thirty-eight per cent of children identified as Māori, 34% as European/New Zealand European and 13% as Middle Eastern. Other ethnic groups represented include Columbian, Afghani and Cook Islands. English was the most common first language spoken

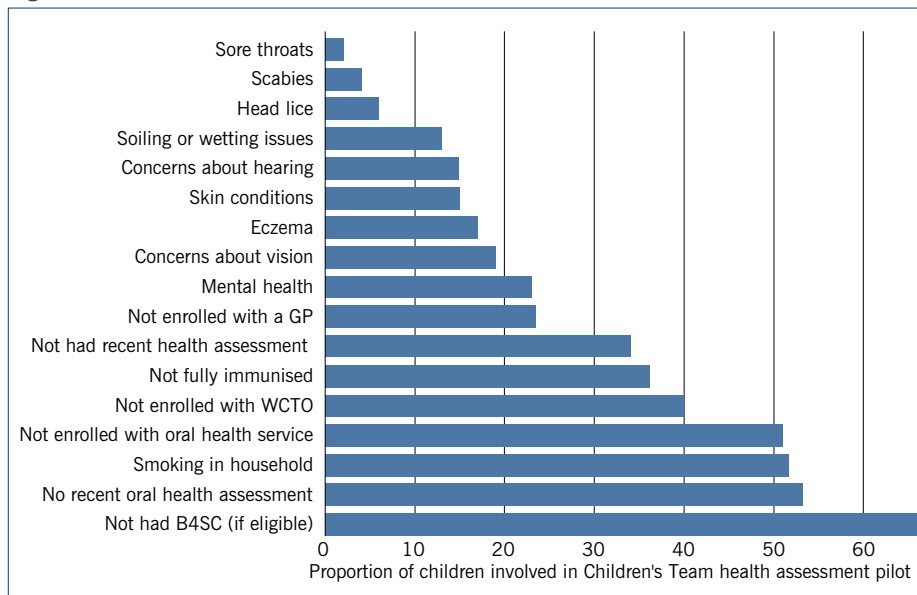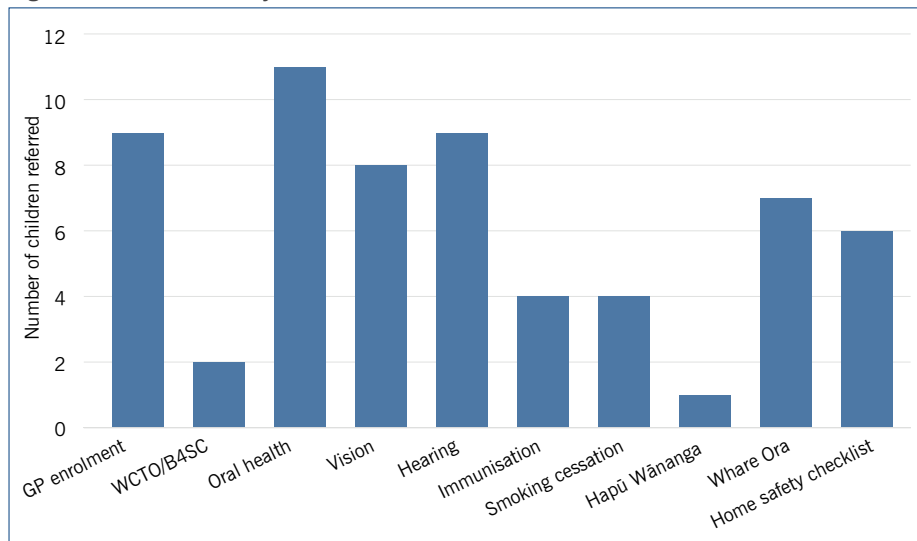**Figure 1: The health needs of children referred to the Hamilton Children's Team**

Proportion of children involved in Children's Team health assessment pilot

Figure 2: Child and family health outcomes and referrals

partially immunised. Just over half of all households (52%) contained smokers. Other health issues among the children raised by their caregivers with their lead professional included mental health issues (23%), eczema (17%), other skin conditions (15%), issues with soiling or wetting (13%), head lice (6%), scabies (4%) and sore throats (2%) (Figure 1).

Health outcomes
As a result of this assessment tool pilot, lead professionals made several referrals to health services for the families involved (Figure 2), representing various proportions of the health need identified (Figure 3).

Two-thirds (65%) of children in need of oral health assessments were referred for enrolment and treatment. Other services with high levels of referrals included GP, vision and hearing services. These referrals also addressed a very high proportion (more than 80%) of the need identified.

Referrals were made for all children not yet enrolled with a WCTO provider, and one of the two children aged 4–5 years old who had not yet received the B4SC. There were two homes with pregnant household members, and one was referred to the Waikato-based kaupapa Māori antenatal programme, Hapū Wānanga.

Although non-immunisation and smoking were relatively common health issues, the number of referrals to address these needs was low. Referrals were made for 27% of unimmunised children, and 27% of caregivers in smoking households were given advice or referrals. The majority of smoking caregivers and household members of the Children's Team children indicated that they were not interested in or yet ready to engage with smoking cessation services.

Over half of households (55%) were eligible for the Waikato District Health Board's housing assessment and management programme, Whare Ora, and 43% of eligible households were referred. Home safety checklists were completed by the lead professionals for all houses that were not eligible for referral to Whare Ora.

Housing
Twenty-eight per cent of households had been living in their current accommodation

(64%), followed by Arabic (13%) and Spanish (6%).

The majority of children referred to the Hamilton Children's Team experienced one or more indicators of individual socio-economic deprivation as measured by the NZiDep Index (Salmond et al., 2005) (see Table 2). Nearly two-thirds of children (64%) experienced high levels of material deprivation (i.e., answering 'yes' to three or more NZiDep questions), and a third of children had very high levels of material deprivation (answering 'yes' to five or more NZiDep questions).

Health need, enrolment and access to health services
Most children (77%) involved in the Hamilton Children's Team health assessment pilot were already enrolled

with a primary care practice or general practitioner (GP), and 66% had recently had an assessment with their GP. Sixty per cent of children eligible (by age) for Well Child Tamariki Ora (WCTO) services were enrolled with a WCTO provider and had completed their WCTO checks, up to (but not including) the Before School Check (B4SC). One child aged four or five years of age (out of three in this age group) had received their B4SC. More than half (55%) of children were enrolled with oral health services, and only 47% had received an oral health assessment or treatment in the last year. Caregivers described concerns regarding their child/young person's vision and/or hearing in 19% and 15% of children respectively. Nearly two-thirds of children (64%) were fully immunised, with an additional 4%

for less than 12 months or were moving between homes, and 48% of households were in private rental accommodation, with a further 31% in social housing. Most families (59%) rated the condition of their accommodation as excellent; considered their accommodation to be either very, or quite stable and secure (79%); and thought that their current housing met their needs (75%). However, 24% of families considered their accommodation to be in an average, poor or very poor state of repair, and 10% of housing had obviously hazardous physical conditions noted by the lead professional.

Education and development
More than 60% of caregivers highlighted developmental or behavioural concerns for their children. Common concerns were described as educational (32%), related to disorders (32%) or intellectual disabilities (16%), and behavioural (21%). Almost half (43%) of 0–5-year-olds were enrolled with an early childhood education provider, and most children (84%) aged over five years were attending school, with one child stood down from school at the time of the study.

Many children were already engaged with services to support educational and developmental needs, and a further nine referrals were made by the lead professionals as a result of this assessment. The most commonly used educational and developmental service was resource teachers learning and behaviour (RTLB) support, for eight children, followed by Ministry of Education behavioural specialists, English as a second language support, teacher aides, speech and language therapy and educational support for high health needs, each of which had two children using their services.

Discussion and implications
The opportunity for lead professionals from outside the health sector to assess and support health needs for families referred to the Hamilton Children's Team was well received. Families engaged in the pilot were happy to work through the process with the lead professionals, and lead professionals described the assessment as a very useful 'conversation starter' to ask about key health needs in early life and adolescence.

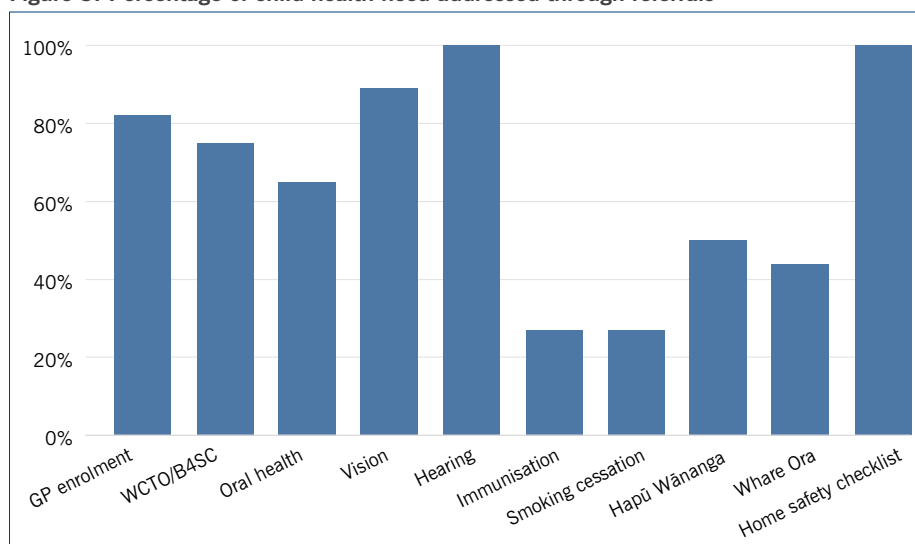**Figure 3: Percentage of child health need addressed through referrals**

Taking a systematic and standardised approach allowed lead professionals without specific health sector knowledge to identify unrealised gaps in service delivery ('we don't know what we don't know'). This was particularly evident in areas of health need that had typically not been identified utilising the broader Tuituia approach, such as oral health, housing safety and health service access. Simple referral pathway information facilitated better understanding of health service eligibility and access opportunities. Health needs in the families were indeed found to be common, and many of these needs would have potentially remained unaddressed without the opportunity for lead professionals to ask specific and standardised questions, and refer families to health services that they had engaged with through the training process of this study.

While it was not unexpected that the families engaged with the Hamilton

Children's Team would have complex needs, including in the health sector, the level of need and the prioritisation of services required has not previously been documented. Prior research nationally and internationally is uncommon, and, when conducted, has typically focused on the health needs of children in 'out-of-home' or state care (Duncanson, 2017; Szilagyi et al., 2015). The four most common health needs found in this pilot assessment of vulnerable children still in the care of their families were each present in more than half of referred children: no B4SC (for those eligible by age); non-enrolment in oral health services; smoking in the household; and no recent oral health assessment or treatment. Noting the different age ranges and eligibility, where it is possible to compare this level of need to the total child population in the Waikato District Health Board region (Ministry of Health, 2018; Waikato District Health Board, 2017), it is clear that the Children's

Table 3: Health needs of Hamilton Children's Team children compared to children in the Waikato DHB region

Health need	HCT	Waikato DHB
Not had B4SC (eligible age)	66%	8%
No recent oral health assessment or treatment*	53%	14%
Not enrolled with oral health service**	51%	25%
Not fully immunised at five years old	36%	16%
No recent health assessment*	34%	24%
Not enrolled with a GP***	23%	30%

*Waikato DHB indicator is for 0–14-year-olds, while HCT includes all children aged 0–18 years
** Waikato DHB indicator is for 4–5-year-olds, while HCT includes all children aged 0–18 years
***Waikato DHB indicator is for newborn children, while HCT includes all children aged 0–18 years

Team families are significantly underserved (see Table 3).

Other healthcare needs were highlighted in the free text quotes collected on the assessment questionnaire from families. For example, while enrolment with GP services was common, many described poor engagement with GPs, inconsistent care provision, and a lack of preventative care opportunities. Many families relied on a secondary care provider (rather than a GP service) for the coordination of healthcare, such as child development services, paediatric services or mental health services. This poor engagement with GP services was also a challenge for lead professionals and there were a number of families where needs identified, such as immunisation, could be better addressed through comprehensive and preventative primary care. Previous collation of assessments conducted for children in the care of Child, Youth and Family Services also found a high level of health need, particularly with respect to learning support needs, emotional needs, developmental support, mental health and oral health (Duncanson, 2017). Ongoing engagement and support of the health sector throughout service delivery within the Children's Team is important to ensure sustained improved outcomes for children and effective early intervention.

The significant inequities in access to healthcare experienced by families engaged with the Hamilton Children's Team is also in part a consequence of the inequities in the determinants of wellbeing. Families were more likely to have experienced high levels of long-term disadvantage, such as unemployment, low income, caregiver health needs and constrained environments, as previously described for children in New Zealand in out-of-home care (Duncanson, 2017). Socio-economic strains on family stability and resources were significant, and in turn these would have an impact on the ability to access and engage with health services. Approximately 77% of the children in this pilot experienced two or more deprivation characteristics according to the NZiDep index, while Gunasekara and Carter (2012) found the same level of material deprivation in 17.6% of the child population in New Zealand. Further, 64% of the children in this pilot had experienced

> Every contact with a supportive professional should be an opportunity to enhance the health system so that we can deliver equitable and appropriate care, and ultimately improve family wellbeing.

three or more NZiDep characteristics, compared to 8.7% of children in the New Zealand population (Gunasekara and Carter, 2012). Over one third of children in this pilot experienced severe material hardship, and insecure housing (including emergency and motel accommodation) was common.

An important success of this pilot was the ability of this assessment tool to provide specific networks for the lead professionals, knowledge of local services and their eligibility criteria, and key clinical and service relationships. This success was described by the lead professionals and also demonstrated through the high proportion of need that was able to be addressed through referrals to health and wellbeing services. While the role of the lead professionals is intended to focus on the coordination of care through the Child Action Network, in reality this pilot demonstrated the need for the lead professionals themselves to be able to engage with and navigate the health sector in order to get concerns met. Challenges were found relating to access criteria for different services, and lead professionals

needed to support attendance at services (such as clinics) and remain family advocates throughout service delivery. The poor health sector engagement in the Children's Team process is also reflected in the low proportion of referrals to the Children's Team from the health sector, and has been previously described for other work with Child, Youth and Family services (Rankin, 2011).

This pilot demonstrated that a comprehensive assessment tool, with prescribed referral pathways, resources and training processes, provided an improved approach to vulnerable children and families involved with the Hamilton Children's Team, particularly for health need. Understanding and recognising the health need of these children and their families is important in order to ensure that appropriate care is received and that our health services are reviewed for their accessibility and appropriate service delivery. The tool provided an opportunity to highlight some of the challenges in the health sector (such as appointment arrangements and eligibility criteria) for complex children and families needing to engage and access resources. The tool also supported lead professionals to have increased knowledge and trust in the health sector and develop clear and specific action points to remove barriers and improve health outcomes. Health need for these families are also cross-sectoral, and managing needs across the education, housing, health and welfare sectors requires a complex local understanding of eligibility criteria, access systems and siloed structural approaches. The funding framework for Children's Team work needs to recognise the continuous involvement and commitment of lead professionals in child advocacy and service engagement, over and above coordination, and the future use of a similar approach, with enhanced health sector engagement in the Children's Team work, is recommended.

Ongoing development of the tool includes the possibility of support for monitoring health outcomes of families involved with the Children's Team, such as ongoing healthcare delivery (including any waiting list delays and barriers that arise) and improvements to child and family physical, emotional and mental wellbeing.

Further recommended modifications include: opportunities to better address the needs of the adolescent population engaged with the Hamilton Children's Team; addressing specific gaps identified (such as mental health, kaupapa Māori support and services for new migrants); online supports for e-referrals and pathway management; better integration with other services and approaches such as Whānau Ora and the Tuituia assessment; and a more 'living' document, particularly to document (and share) information to support families who have ongoing complex needs that may require a lengthy intervention. Every contact with a supportive professional should be an opportunity to enhance the health system so that we can deliver equitable and appropriate care, and ultimately improve family wellbeing.

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Rhonda M. Shaw

Should Surrogate Pregnancy Arrangements
be Enforceable in Aotearoa New Zealand?

Abstract

Aotearoa New Zealand has no unified regulatory system governing the ethical and legal issues that arise with surrogate pregnancy arrangements. Accordingly, legal scholars and moral philosophers have recently called for revision to parentage and payment around surrogacy. Several academics have additionally suggested making surrogate pregnancy arrangements enforceable under New Zealand law. This discussion combines empirical research with key informants and experts working in the field of assisted reproduction with interview data from surrogate mothers and ovarian egg donors about their experiences of donating reproductive materials and services. The aim of the article is to expand the conceptual toolkit of assisted human reproduction to better understand the donative acts of women who share their reproductive materials and services, and to critically examine calls to introduce a regulatory model that makes surrogacy enforceable in light of concerns about the relational complexities of these arrangements.

Keywords surrogacy, relational gifting, adoption, reproductive legislation

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Non-commercial surrogate pregnancy is at one and the same time prohibited in numerous jurisdictions around the world (Allan, 2017) and regarded as a legitimate pathway to family formation for people experiencing medical or social infertility (Berend, 2016; Imrie and Jadva, 2014; Teman, 2009). As a pathway, surrogacy may be the last option for heterosexual couples when other forms of fertility treatment have failed or a first step to creating a family for gay couples and single men.

Surrogate pregnancy encompasses two types of arrangement. In traditional surrogate pregnancy, a woman carries a foetus, as well as providing genetic material, for intended parents. These arrangements can occur without fertility clinic intervention and ethical review. In cases of gestational surrogacy, the birth mother provides the gestational services, but the gametes are provided by others (usually, but not always, the intended parents) through in-vitro fertilisation techniques. In Aotearoa New Zealand, gestational or clinic-assisted surrogacy is a regulated procedure under the Human Assisted Reproductive Technology Act 2004 (HART Act) and must be approved via a process of ethical review by the Ethics Committee on Assisted Reproductive Technology (ECART).

The body of legal and bioethical research on surrogacy in New Zealand is substantial and growing (Alawi, 2015; Anderson, Snelling and Tomlins-Jahnke, 2012; Ceballos, 2019; Powell, 2017; Walker and Van Zyl, 2017; Wilson, 2018, 2019; Van Zyl and Walker, 2015), but with very few social science studies of the lived experience of surrogate pregnancy. This article presents empirical data from two qualitative studies discussing the motivations of surrogate mothers and ovarian egg donors. The aim of the article is to expand the conceptual toolkit of assisted human reproduction (AHR) to better understand the donative acts of women who share their reproductive materials and services. A corollary aim of the discussion is to examine the call to enforce surrogate pregnancy arrangements under New Zealand law.

New Zealand legislation
New Zealand legal scholars and ethicists have recently called for amendment to

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the HART Act and supporting legislation, in relation to the enforceability of surrogate pregnancy arrangements. A key concern for these commentators is that the HART Act provisions say very little about surrogate pregnancy arrangements and leave several issues unresolved. This criticism is not new. In 1999, Anne Else referred to the legislation around AHR at the time as 'confused' and 'piecemeal', saying, 'a comprehensive new approach is urgently needed' (Coney and Else, 1999, p.56). More recently, Powell and Masselot have commented that 'New Zealand law, as it currently stands, fails to adequately address the complex issues around commercial surrogacy, and surrogacy generally' (Powell and Masselot, 2019, p.vii). The point these commentators make is that the legislation, which is a blend of the HART Act, Adoption Act 1955 and Status of Children Act 1969, creates unnecessary stress for those involved, is not purpose-built, and requires overhaul.

A key recommendation for change pertains to section 14(1) of the HART Act, which states: 'A surrogacy arrangement is not of itself illegal, but is not enforceable by or against any person.' Commentators who advocate reform want to enforce surrogacy arrangements to protect surrogates should the intended parents decide, for whatever reason, that they do

not want the baby. Conversely, enforceability of the arrangement would protect the intended parents if the surrogate decided they did not want to relinquish the baby upon birth.

A second recommendation concerns legal parentage and calls to amend the Status of Children Act so that intended parents are automatically parents upon the baby's birth. Under current law, the woman who becomes pregnant is the legal mother of the baby to whom she gives birth. Her partner, if she has one and they have consented to the donative procedure, is the other legal parent of the child. The intended parents, who may or may not have genetic links to the baby via gametes, have no legal relationship to the child until it is transferred to them through New Zealand adoption legislation.

Under section 10 of the Adoption Act, which is used to transfer parentage from the surrogate (and her partner) to the intended parents, the latter must apply for and obtain an adoption order from the Family Court. The surrogate must sign a consent statement in the form of an affidavit to relinquish the baby, and a social worker is required to provide a report for the court regarding the suitability of the intended parents in respect of the application (Casey, 2014).

AHR vocabulary
These issues have attracted a range of recommendations for reform from legal scholars, such as pre- or post-birth parenting orders, the creation of a new Surrogacy Act, and amendment to the Status of Children Act. My concern with enforcing surrogacy arrangements is that it is out of step with the local and institutional moralities that underpin the promotion of donative acts and practices in New Zealand. A central problem is the term altruism, which is used in recruitment and promotional literature around AHR.

Altruistic procurement of reproductive materials and services is legally mandated under the HART Act. Although the term altruism is not used in the act, it has been used in the Advisory Committee on Assisted Reproductive Technology (ACART) guidelines and Oranga Tamariki website information (Oranga Tamariki, 2019). The word altruism is also used by

the fertility clinic Repromed on their website. Fertility Associates, which has 18 clinics across New Zealand, does not use the term on its website, but does refer to egg donors giving 'the ultimate gift'. The link to 'Becoming a donor' says: 'Being a donor is about giving the most amazing gift to a family in need. A chance to have a baby' (Fertility Associates, 2019). Unsurprisingly, the same phrase is not used in the link to 'Sperm donors needed – more info'. This may be due to the gendered labour required of sperm donors, which does not conjure an image of selflessness or sacrifice in the same way as egg donation.

I have argued elsewhere that the conflation of altruism with gift is misleading when used in relation to contemporary moral economies that promote the donation of bodily cells, tissue and organs, since the term gift is deployed by stakeholders, donors and recipients alike in a variety of different ways (Shaw, 2015). Rather than relying solely on altruism, I suggest expanding the conceptual toolkit of AHR to help explain why surrogate pregnancy arrangements should not be enforceable.

To do so, I draw on two studies. The first study was designed to investigate the motives of women who donate reproductive materials and services, the kinds of relationship (if any) that resulted from their actions, and the relationship between the moral experience of donors and the vocabulary available to describe and articulate their experiences (see Shaw, 2008). This research involved fieldwork and in-depth interviews with 14 women about their experiences of egg donation and surrogate pregnancy. Of the 14 women in the study who donated ovarian eggs, three had also been involved in traditional surrogate pregnancy arrangements, and one had been a gestational surrogate.

The second study draws on qualitative research undertaken from 2017 to 2020 with key informants and experts about their views on AHR.[1] This project includes in-depth interviews with 45 New Zealand and Australian legal scholars, lawyers, ethicists, social scientists, fertility clinic specialists, counsellors, ethics committee members and representatives of stakeholder groups. The participants in this study were

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recruited by convenience sampling and snowballing. The data was analysed thematically (Braun and Clarke, 2013) and documented participants' views on policy and legislation around AHR, compensation and payment for surrogate mothers and gamete donors, information disclosure around donor conception, donor–recipient relationships, and access to fertility treatment.

Framing donative motivations
To frame the experiences and social-psychological motivations of surrogate mothers and egg donors, I draw on four concepts that I have used in previous research (Shaw, 2015) to talk about bodily donation: unconditional gift; relational gifting; gift exchange; and body project.

The image of an unconditional gift is the concept that often comes to mind when people think of surrogate pregnancy and egg donation as an altruistic, other-oriented, selfless act. This kind of altruism refers to a gift that is given freely (voluntarily), without remuneration or external reward. It is regarded as unidirectional (one-way) and disinterested (offered without regard to the quality of the recipient). One of the requirements of the unconditional gift is that the donor surrenders or 'relinquishes' any idea of property rights or control over their bodily donation.

All the surrogate mothers and egg donors in study 1 regarded their acts as altruistic in some way, envisaging their donations as symbolic of human connection and empathy with people experiencing infertility. Additionally, as a New Zealand fertility counsellor in study 2 commented, attitudes about the importance of refusing payment for surrogacy persist among the group of surrogate mothers and donors she sees. As she put it:

> It is perfectly reasonable if somebody is giving up their time and energy to carry a pregnancy for someone else that they be given reasonable compensation, but I also think that it in some way diminishes the altruistic nature of doing something incredibly generous and meaningful for other people. … People who are being surrogates often say 'oh no, I wouldn't [take money], you know that would tarnish what I'm doing' … and egg donors. So, not everybody receives the expenses payment, they refuse it, they do.

Several other experts in study 2 corroborated the existence of this attitude. A New Zealand lawyer remarked that the positions people take on surrogacy and payment are variable, saying: 'There are people who want [a compensation] model and there's people who say they'd be insulted to be paid, as it would have discouraged them from being a surrogate.'

Relational gifting refers to dyadic relationships – of which the parent–child relationship is paradigmatic – between intimates or people who are familiar to or become known to one another. Importantly, the term 'relational' emphasises how people's sense of self is constructed in their relationships with others and in terms of their social roles. In relational gifting, the donor presents their donation as a personalised gift which symbolically connects them to their recipients (Gilman, 2018).

This notion of the gift relation tends to underpin the gendered practice of donating ovarian eggs and surrogacy and is institutionally sanctioned in relation to AHR. For example, in New Zealand, fertility clinic egg donors and recipients meet for

joint counselling sessions in line with ACART guidelines and the current Fertility Services Standard; in surrogacy arrangements in which the relevant parties are strangers, ECART expects them to form a relationship over six months before making an application; and in online surrogacy support groups, the social etiquette guiding prospective surrogates and intended parents' interactions requires that they get to know one another before broaching a surrogacy arrangement. The same approach to counselling and the establishment of a relationship between a surrogate mother and intended parent(s) is taken by the Patient Review Panel and fertility clinics in Victoria, Australia.

Gift exchange is an anthropological concept that emphasises the social significance of giving, receiving, *and* reciprocating. The notion of gift exchange draws on Mauss's (1990) view that the giver's identity, essence or spirit is inserted or invested in the gift or donative act, and consequently requires reciprocation. Again, like the gift relation, this is a relational ontology. However, gift exchange goes further: sharing biological matter such as body parts and substances not only creates relationship responsibilities between donors and recipients; for some cultural groups, such as Māori, gift exchange implicates entire kin networks (Mead, 2003; Salmond, 2012). Where gift exchange relationships exist, donors do not construe bodily gifts as alienable, and may not see themselves as ever relinquishing control over the gift.

The idea that kinship is fixed by biological relatedness is a powerful motivation for people to assist one another's reproductive journeys. One of the surrogate mothers interviewed in study 1 said that she agreed to be a traditional surrogate for her sister because they valued keeping genetics and reproductive matters within the family, as did several egg donors. Likewise, Glover and Rousseau's (2007) qualitative research shows that for Māori who subscribe to traditional views, what is given in the process of third-party reproduction is not simply the generous gift of shared body tissue, but a different kind of futurity for the individual concerned and the groups to which they belong. It is not just bodily matter that gets

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transferred between donors, recipients and the larger group, but also rights and responsibilities, and, with that, the importance of information sharing about donor conception.

Another key motivation for giving reproductive gifts or services is to establish people's moral identities as pro-social. In these cases, surrogate pregnancy objectifies a person's sense of self as good, kind or civic-minded and can be conceptualised as a process of identity-construction that involves a body project. Sociologists have talked about people engaging in body projects by altering their bodies as part of make-over culture and consumption practices (Shilling, 1993), but body projects are undertaken not simply by the self, for the self; some people also deliberately transform their bodies for the benefit of others, to objectify themselves as a particular kind of subject (Shaw, 2008). For instance, in addition to displaying maternal affect and care, some of the women in study 1 wanted

to donate ova and become surrogate mothers as an assertion of individual agency and a way to exercise autonomy and independence. Aside from symbolising moral connection with the donor, they donated reproductive services and materials as projects of the self, or as events that marked new beginnings in their lives. One woman in study 1 had been left at the altar by her fiancé; one had experienced a string of deaths in rapid succession and, recognising the inherent vulnerability of human beings, felt compelled to reaffirm life; another woman had a pregnancy termination. While these women did not give the impression that they acted directly to resolve feelings of grief or assuage guilt at having lost a loved one or a child, such life events were not discounted as irrelevant to their decision making.

Additionally, some studies indicate that women elect to be surrogate mothers because they like being pregnant (Imrie and Jadva, 2014). This was not a stated motivation for the women I interviewed. However, although it is uncommon, there are anecdotal accounts of childless/child-free women in New Zealand becoming traditional surrogates because they want to experience pregnancy. Additionally, several fertility clinics reported seeing surrogates who have not been pregnant before being approved by ECART. Some of these women donate their services to family members; others may find themselves 'childless by circumstance' rather than design (Cannold, 2005), and consider a surrogacy arrangement as an opportunity to 'try' pregnancy.

Ragoné suggests that women who become surrogate mothers may also want to 'transcend the limitations of their domestic and motherhood roles' (Ragoné, 1994, p.65). As an extreme example, some surrogates enjoy the public attention their acts elicit. In study 1, two surrogate mothers were equally generous about disclosing their identities and stories as surrogate mothers to the media, and later came to occupy roles as mentors in the New Zealand surrogacy community. A more subtle example of this class of motivation is about doing something 'special', which may be related to surrogate mothers' view of themselves as exceptional because not everyone can be a surrogate (Berend, 2016).

An Australian psychologist from study 2, who has counselled over 200 surrogates, said that she found surrogate mothers tended to score slightly lower on the median grandiosity scale in psychology tests than non-surrogates. She thought this stemmed from, 'a sense of having achieved and stuff; it's that sense of "I want to be more than just a mum", you know, "I want to do something … for my children to be proud of me."' Likewise, several New Zealand counsellors talked about egg donors and surrogate mothers wanting to be 'special'. One commented:

Sometimes I think with surrogates it is an attention thing – they like to be put on a pedestal and thanked and made to feel special. I wonder sometimes whether money is changing hands in some cases. … Maybe you get a trip somewhere or you get a holiday, or you get a voucher.

One participant from study 1 described her decision to become a surrogate mother explicitly as a project. She was first an egg donor, and when that was unsuccessful she decided to offer her services as a gestational surrogate. This participant explained that she liked the idea of surrogacy as a project because it was 'different', enabling her to be 'part of the technology of my day'. Unlike egg donation, which has ongoing social implications for genetic continuity, gestational surrogacy represented a project with a finite end. Another AHR project was reported to me by a key informant in study 2 who said that one of their participants had set a goal of doing the most surrogate pregnancies in New Zealand (undertaking three thus far).

It is clear from the discussion of participants' motivations that there are multiple reasons why women might be interested in becoming surrogate mothers and/or egg donors. Most of the women I spoke with were not hard altruists, in that they did not view their donative acts as unconditional, one-way and with no strings attached. They typically wanted their generosity to be recognised (and not necessarily in terms of payment). Most – except for the gestational surrogate in study 1 – were interested in ongoing relationships with the intended parents.

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The question of enforcing surrogacy

The emphasis by ACART and fertility clinics on surrogate pregnancy arrangements as relational, and the fact that parties are already encouraged by fertility counsellors and lawyers to think through and formalise agreements (Wilson, 2019), raises questions about the rationale for enforcing surrogacy arrangements. Although advocates frame their argument as protecting both parties should either renege on the agreement, enforcement creates an imagined contractual environment of competition and fear and could be construed as a lack of trust rather than cooperation.

Wilson's online survey of 185 child and family lawyers asked participants whether surrogacy contracts should be enforceable. Of those who responded to this question, 54 favoured the status quo as determined by the HART Act, and 75 thought surrogacy arrangements should be enforceable (Wilson, 2018, p.72). Ethicists Walker and Van Zyl likewise want to enforce surrogacy and advocate radical reform of the current system. It is worth outlining their approach, as it has been influential in academia and the New Zealand media.

Walker and Van Zyl support a centrally controlled regulatory model to monitor surrogacy. They present what they call their 'professional model' as an alternative to both commercial and altruistic surrogacy (Walker and Van Zyl, 2017, p.12). The model is predicated on the idea of a professional, multi-disciplinary body tasked with facilitating surrogacy arrangements. This body would offer a range of services, one of which would be registering and licensing prospective surrogates. The concept of licensing prospective surrogates is novel and would involve a regulatory body to oversee the screening and 'selection' of surrogate mothers, who are paid a fee for service. This would mean that surrogates could not put themselves forward without being vetted for approval (Walker and Van Zyl, 2017).

Licensing would also involve training surrogates in the care of their bodies and pregnancies. There would be additional training in the assessment of values and ethical standards, which Van Zyl and Walker claim is not sufficiently provided by current models in New Zealand. In their model, the authors understandably emphasise the reproductive vulnerability of the intended parents, who go to great lengths to get a baby and must rely on the surrogate's trustworthiness and generosity. They comment that concern about the surrogate relinquishing the baby causes uncertainty for the intended parents.

Van Zyl and Walker discuss their position regarding the enforceability of surrogacy in several texts, stating that in their model intended parents would be unconditionally recognised as 'the legal parents from birth' (Van Zyl and Walker, 2015, p.384). Their view is that 'if a

surrogate cannot make a promise in advance to relinquish the baby, she cannot enter a surrogacy contract' (Walker and Van Zyl, 2017, p.9). For them, 'the intended parents are automatically the baby's legal parents and no transfer is necessary. The surrogate does not make a promise to relinquish the baby because it is not hers to relinquish' (ibid., p.18). They go on to say that this is 'the most significant benefit of the professional model' in 'that it removes the prolonged uncertainty that intended parents have to endure' (ibid., p.21). Additionally, they do not advocate that the surrogate has a 'parent-like voice' in the new family formation, but do permit some presence of the surrogate in the story of the family, and some level of contact if the surrogate so wishes (ibid., p.22). In short, Walker and Van Zyl argue for the intended parents to possess the rights and obligations of legal parentage from the birth of the baby, despite empirical evidence that 'a large majority of surrogates relinquish the babies without difficulty and have no regrets later on, regardless of whether they were gestational or genetic surrogates' (ibid., p.2).

In my empirical research, participants discussed whether they experienced bonding and emotional attachment with the baby, and if they found it difficult to relinquish the baby after the birth. The gestational surrogate I spoke with expressed no connection to the baby when it was born, saying that 'it helped that it looked so unlike [her]'. A traditional surrogate mother remarked:

> I felt like I was babysitting a friend's child. I didn't look at her and think, 'Wow, that's, that's my daughter'. I've never ever looked at [baby X] and thought, 'Wow, she's my daughter', and I've never looked at [baby Y] and thought, 'Wow, he's my son'. Because the whole intent of the surrogate is to have a baby, have a child, for somebody else, so that child is never yours. And I think that's why it's quite hard for a lot of people to understand.

These comments convey that surrogate mothers are often clear in their own minds about what they are doing. At the same time, these women enter relationships with

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intended parents, which evolve and change over time. A stakeholder from study 2, who was also a traditional surrogate mother, was mindful to represent both sides of the surrogate–intended parent story in a recent interview with me. At the end of her account she commented:

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Confirming the significance of the surrogate–intended parent relationship, an Australian stakeholder from study 2 stated: 'the key motivation for surrogates … in the absence of payment is a relationship. Not

a relationship with the child, but a relationship with the parents.'

Critiquing the professional model
Elsewhere I have argued that framing bodily donation in terms of a hard altruism/commodity distinction stymies conversation around the social meaning of money and reciprocity for donors' body work and affective labour (Shaw, 2015). This perspective broadly concurs with Walker and Van Zyl's position on compensation. That said, I do have reservations about other aspects of their model.

The first concern is that, as part of the licensing of surrogates which Walker and Van Zyl suggest, surrogates would be screened and trained so that their values are aligned with those of the intended parents (2017, p.17). I take this to mean that surrogates' motives must be compatible with the values that underpin the professional model Van Zyl and Walker propose. While the authors are concerned to ensure that surrogates act according to the right motivation to relinquish the baby, the idea of schooling surrogate mothers in line with the values of the professional model derogates their autonomy and would remove surrogates' right to rebut the presumption of parentage in favour of the intended parents should the arrangement be enforced (see Ceballos, 2019). In a pluralistic context such as New Zealand, where people have a range of (cross-cutting and sometimes contradictory) motivations for donating reproductive materials and services, Walker and Van Zyl's proposal seems out of step with the way ordinary, albeit generous, people make real-life moral decisions.

Walker and Van Zyl stress the pregnant surrogate's right to self-determination and bodily integrity (2017, p.147), yet they gloss over the corporeal investment involved in 'hosting' a child for the intended parent(s), discussing this dimension of generosity in seven lines of their book (ibid., pp.72–3). They claim that they do not support the commercial system in Israel, in which the intended mother, not the surrogate, is positioned as the primary obstetrics patient (ibid., p.148). However, the unintended effects of the professional model may result in similar circumstances

to those they denounce in Israel. That is, one of the reasons the Israeli system appears to work is because the surrogate mother induces dissociation (called 'distancing' by fertility psychologists) from her body in order to collaboratively project the pregnancy onto the intended mother, thereby facilitating easy relinquishment of the baby (Teman, 2009). If New Zealand is to adopt a similar system, a much greater emphasis on counselling support and therapy will be a necessary component of the model.

A third criticism relates to the language of enforceability, which is contrary to the notion of relational gifting that governs institutional ideas and conduct about altruistic surrogacy that influence the surrogate mother's desire to elevate her relationship with intended parents beyond the contractual (Berend, 2016). Enforceability is based on a model of social relations that pivots around the concept of 'relinquishment'. This involves 'giving up' and signing away a relationship with the baby in the interests of the intended parents. The idea of relinquishing the baby, as an individuated entity, does not account for the surrogate mother's guardianship of the baby at birth, her relationship with the intended parents, or different cultural views of bodily donation in relation to social identity (Glover and Rousseau, 2007).

Furthermore, the introduction of an enforceability clause does not align with the HART Act section 4, principles e, f, and g. These principles state that: (e) donor offspring should be made aware of their genetic origins and be able to access information about those origins; (f) the needs, values, and beliefs of Māori should

be considered and treated with respect; and (g) the different ethical, spiritual, and cultural perspectives in society should be considered and treated with respect.

While Māori views are not homogeneous, a child born from a surrogate pregnancy arrangement could still have ties to the whānau. They would retain their whakapapa and social identity and would be included in the iwi. Not only is this spiritually significant; it may have social and economic implications under the Waitangi Tribunal settlement process, as one fertility counsellor in study 2 commented:

> For some Māori who are, you know into their culture, or immersed in their culture, it's a difficult thing because it's like well, okay, so if you go down blunt lines, this baby then whakapapa's to these people, but if you're talking socially well, then they whakapapa to these people, and then you know, the strange things that you end up talking about, like well, what if they want a scholarship? … You've got to have at least, I guess, two generations, you've got to know your parents, and you've got to know your grandparents to be able to do it, and then it's like, oh well, what about … you know, what about land claims?

In line with the concept of gift exchange, relinquishment of the baby could not only symbolically sever the child's relation to its birth mother, it could potentially break the child's relationship to the kinship network. While policy around donor registration is enormously helpful in enabling offspring to contact their donor 'progenitors', this only works if a person knows they are

donor-conceived. That may or may not happen, as the HART Act does not impose a statutory duty on parents to disclose this information to donor-conceived children. Suggestions by legal scholars that birth certificates be annotated to include the child's genetic and birth history (donors' and surrogates' identities) could be of benefit here, but Van Zyl and Walker are not advocating this as part of the professional model.

Conclusion

This article offers a conceptual toolkit based on sociological analysis of research findings to frame the motivations of surrogate mothers and the perspectives of various professionals who interact with them. If New Zealand legislation and policy around assisted human reproduction in relation to surrogacy is updated, this should be more than a legal (and philosophical) matter, as one of Wilson's lawyer participants points out (Wilson, 2018, p.73). More empirical research, documenting qualitative information from participants and service users occupying different perspectives in this domain, needs to be undertaken. Alongside surrogates and intended parents, the voices of donor-conceived persons, counsellors, psychologists and social scientists need to be heard in these debates. And any envisaged changes to legislation need to be flexible enough to accommodate multiple pathways to family formation without jeopardising cultural and situational diversity.

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Len Cook

Lessons from Child Welfare

why accountability to ministers cannot meet the needs of public legitimacy.

Abstract

It is an historical fact that tamariki Māori are over-represented in Aotearoa New Zealand's child welfare system, with a recent disproportionate increase in that over-representation. The recent spotlight on the removal of babies and, in particular, several highly visible examples in the media of attempted removals of babies, however, has once again raised the issue of the legitimacy of state involvement in ensuring the care and protection of children among Māori. Increased accountability and transparency is one vital step towards restoring the public legitimacy of the child welfare system.

This article examines the factors that led to and exacerbated the most recent crisis in Māori views of the legitimacy of the child welfare system, and details contextual factors both common among state actors and unique to New Zealand's child welfare system that influence systems of accountability. I conclude by providing a set of key factors that are imperative when moving towards increased systemic accountability of the child welfare system – factors that acknowledge and incorporate the historical legacy, current socio-economic position, and the significance of whānau and family.

Keywords child welfare, Māori, families, public sector, legitimacy

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I say: take no thought of the harvest, but only of proper sowing. — T.S. Eliot

Māori reaction to the recent disproportionate increase in the share of Māori children in state care has again put a spotlight on the legitimacy to Māori of how the state is involved in the care and protection of children. Specifically, this recent spotlight has been firmly fixed on the number of – and ways in which – babies are removed from their parents and whānau. There were attempts by whānau and healthcare professionals to prevent some of the nearly 300 forced baby removals in 2018, and a small share of these attempts have been become highly visible to the public through first-hand videos and accounts (Kaiwai et al., 2020; Oranga Tamariki, 2019).

In part, then, because of these two trends – the historical legacy of over-representation and recent publicly visible trauma when babies are taken from new mothers – the legitimacy of the child welfare system and fundamental elements of these services have come into question among Māori. Thus, understanding the role and restoration of public legitimacy for public services has taken on greater importance, particularly in the context of New Zealand's child welfare system. In this article, the term legitimacy is used in the sense of public acceptance, rather than statutory compliance. Where there is tension between these two aspects, or of meeting te Tiriti o Waitangi obligations, enforcing statutory obligations requires either strong forms of accountability, or further authority.

This article will explore the current system complexities and historical legacies that complicate restoring the public legitimacy of the child welfare system, provide a statistical portrait of tamariki Māori in care and their providers, and point to aspects and conditions of the child welfare system that can move towards a restoration of accountability and public legitimacy.

Systemic and institutional legacy complicates current public legitimacy

The issues in disentangling the factors that are behind the most recent questioning of the legitimacy of the child welfare system in protecting and caring for tamariki Māori are multifaceted and complex. Compounding this complexity is the difficulty the state encounters in understanding and engaging with whānau,

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and the implications of its obligations to the Treaty of Waitangi with respect to tamariki Māori. Systemic, policy and institutional change is voiced by Māori as the way of bringing legitimacy and transparency to the way Māori view the state's role in ensuring the care and protection of children.

Systemic context

The historical legacy of a child protection system which has now seen multiple generations within families come in contact with it has conditioned actors within the system to see these families as more 'at risk'. For example, it is not clear how far practice today is informed by the long reach of historical experience and its disparate influence on communities, particularly Māori. As the focus of child welfare has shifted from the perceived delinquency of children to the perceived inadequacy of parents, practices need to be challenged to ensure that come-at-ability[1] and redress fit new obligations of legitimacy. Political legitimacy needs to include openness of the contemporary context within which the child welfare system as a whole operates to care for children and connect with family and whānau. When this openness is not provided institutionally by the state, then the state by default demands that its front-line staff provide resolution of the doubts of those who question the absence of political legitimacy in some of the communities in which they work. This is the role of the system, and this cannot be substituted for by individuals.

As another example, a much larger share of Māori adults have been through state custody compared with any other ethnic group. Because whānau Māori involve a much larger 'family circle', historical contact by whānau members with the state's childcare and justice systems increases the possibility that young Māori who wish to be mothers will be more likely

Table 1: State removal of babies from mothers, Māori and total, 2012–18

Year ended June	Removals			Removals per 1,000 births		
	Total	Māori	Non-Māori	Total	Māori	Non-Māori
2012	225			3.7		
2013	216			3.6		
2014	227			3.9		
2015	211	110	101	3.5	6.7	2.3
2016	247	147	100	4.2	8.9	2.4
2017	275	178	97	4.7	10.9	2.3
2018	281	179	102	4.7	10.3	2.4

Source: Oranga Tamariki Official Information Act response 24/10/2017 and 19/10/2018: population rates calculated by the writer

Table 2: Number of children taken into care (0–17 years) and deaths by intentional injury among children (0–9 years)

Year	2007	2008	2009	2010	2011	2012
Children (0–17 years) in care	5,044	6,136	5,689	5,446	5,020	4,979
Deaths of children (0–9 years)	3	4	11	4	6	4

Source: Children in care of CYF: Oranga Tamariki; deaths of children: Health Quality and Safety Commission child mortality reports of children, including death resulting from intentional injury

to appear as a risk, even if the tests themselves that focus on previous contact with the justice or child protection services were designed to be administered without bias. The culmination of historical factors, demographic and social structures and prearranged monitoring strengthen the shadow cast by past bias and predetermine the outcome of selection criteria. Additions to the selection criteria by the statutory child protection and care system widen the gap between the opportunities of motherhood faced by Māori and by other women even when they have the same likelihood of being a good mother.

Systemically, then, these dual factors have potentially established a structure that both undervalues Māori views of a just system and reinforces existing inequalities in system contact that self-perpetuate in practice.

Institutional context
Child welfare services are extensive in reach, are diverse in organisational forms and beliefs, and involve fundamental contributions by citizens (rather than the state). The characteristics that are needed to make any such complex system work are a common focus, mutual trust and respect, strong collaboration, shared knowledge and continuous improvement. A good number of case studies report that too few of these characteristics are seen across child welfare services at present (Kaiwai et

al., 2020; Keddell, 2019). It raises issues of accountability and legitimacy when the accountabilities placed on public service agencies become focused on the efficiency of the agency rather than their impact on the wider communities they were set up to serve.

The Family Court provides independent oversight through the need for its approval of the most critical decisions involving individual cases, particularly regarding custody. The Office of the Children's Commissioner has an oversight role that is systemic. We know little about how and when the parts of the state's childcare and protection system interact where it includes social workers, police, midwives, hospitals, obstetricians, lawyers and non-governmental organisations. Measuring agency efficiency is not an effective means of assurance of system accountability. This means that critical components of the statutory childcare and protection system can escape effective scrutiny because of the weak accountability for some other part.

Moreover, the state child protection system comprises different professional and institutional structures and cultures. Each of these have embedded in them attitudes to risk and these differ across medical, legal and welfare cultures, police, different civil service groups, community sector organisations and iwi Māori, as well as judges and politicians. Thresholds of risk can become volatile after sentinel events,

resource shifts or shifts in policy direction. Conflicting views on practice or philosophical matters that are not properly confronted can affect trust within the wider family and whānau welfare system. As an example, and pertinent to the current crisis in legitimacy, resolution appears necessary on whether or not there are very different views held by midwives and social workers on the way a mother should connect with her baby immediately after birth in the event that a forcible removal of a baby has been planned.

With this systemic and institutional context in mind, I next provide a statistical portrait of tamariki Māori in child protection, and identify key features of public services that should be in focus for a child welfare system concerned about Māori public legitimacy.

A brief statistical overview of Māori and child protection
The 2015 report *Investing in New Zealand's Children and their Families* estimated that during their childhood, one in five children overall would have had some experience of the care and protection system by the time they reached 17 years (Expert Advisory Panel on Modernising Child, Youth and Family, 2015, p.41). Since 2015 the number of babies removed from mothers by the state has increased by one third, with all except one of those 70 more babies being Māori (see Table 1).

The past has a long reach, affecting trust and attitudes to state custody today among older generations of Māori men and women. The grandparents and even great-grandparents of some of today's tamariki Māori will have been subject to the closed adoptions enabled by the 1955 Adoption Act, as teenage mothers, fathers or babies. It is estimated that during the peak period between 1944 and 1980 some 87,000 babies of mainly teenage unmarried mothers and fathers were placed in adoption, with many of those mothers placed under duress. The father was often not recorded on the birth certificate (Haenga-Collins, 2017).

Table 2 shows the most recent glaring example of escalation in removal into state care occurring during 2008, following the highly publicised deaths of the Kahui twins (2006) and Nia Glassy (August 2007). Deaths by intentional injury over the same

period are presented as well. During 2008 the number of children aged under 17 years taken into the care and protection of Child, Youth and Family increased by 1,092, a 21.6% jump from 2007. In the following three years the number in care fell back to below its previous level, and it did not exceed the 2007 level again until 2014.

Ethnic inequality in rates of care entries and in care
Although these numbers provide an illustrative picture of the historical role of the child welfare system, they do not speak directly to how these patterns either exacerbate or narrow ethnic inequalities in the system. Complicating this picture is a lack of regular and consistent statistical reporting over the long term.[2] Furthermore, knowing what is being counted and what the relationship of each statistic is to the others is critical in understanding trends in disproportionate treatment of tamariki Māori by the state. Counts of the number in care, of the number who enter care and of the number who exit care all provide different insights into the system.

Since July 2017, information provided by Oranga Tamariki on child care and protection has been dominated by entry to care counts (Figure 1), whereas almost all counts published up to June 2017 by the Ministry of Social Development are of those in the custody of the state (Figure 2). The different counts are neither proxies nor substitutes for each other in deriving measures of disparity. Unless trends in entry to care are seen in the context of both exits from care and the counts of those who remain in the care of the state, it is not possible to adequately examine trends in the disproportionate number of tamariki Māori being taken into care. For short-term trend comparisons, having the three counts is essential, especially because they can easily move in different ways, as is happening at present.

Between 2001 and 2011, tamariki Māori were 3.4 times more likely than non-Māori to enter state care. Since 2012, the disproportionate entry of tamariki Māori into care has averaged 4.6 times that of non-Māori. The disproportionate increase in the number held in care has been similar to that of entries, with the comparable average level of disproportionality between Māori and

Figure 1: Entry into care of MSD/Oranga Tamariki: number and incidence rate by ethnicity
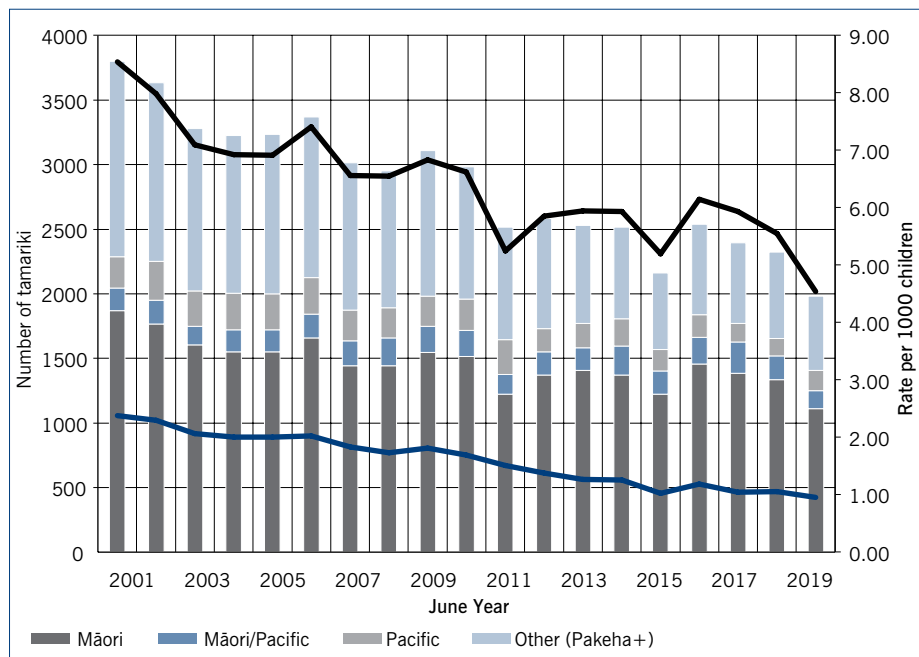
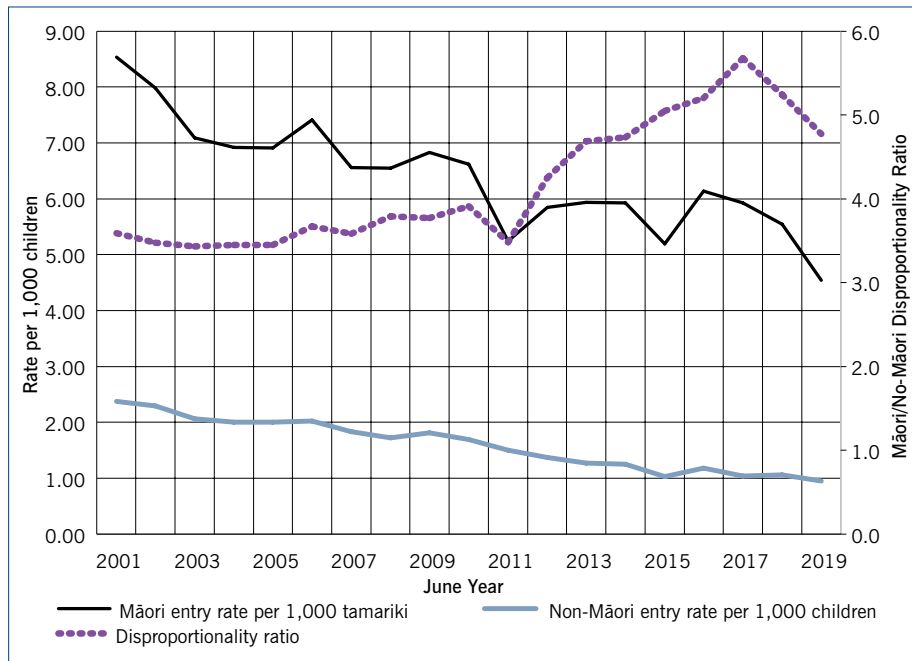Figure 2: Children in state care: number and incidence rate by ethnicity
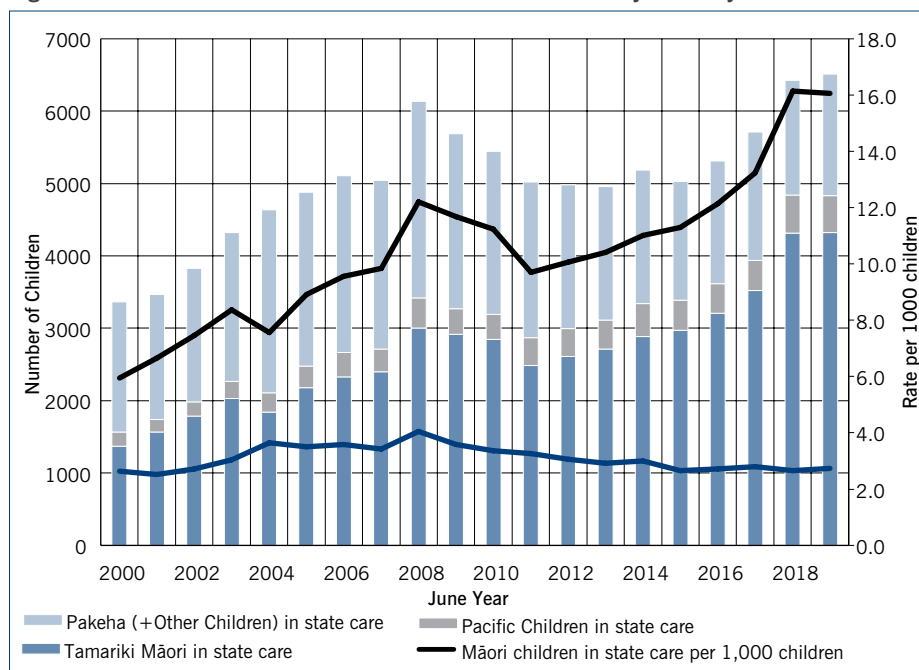
non-Māori over the same periods changing from 2.8 to 4.0 times. After several years of relative stability near those around year 2000, from 2005 there has been a continuing expansion in the disproportionate rate with which tamariki Māori compared to non-Māori are in state care. Although the actual counts of care entries have declined over the past decade, this provides no indication of current trends in disproportionality in either entry to care or the number now in the custody of the state for care and protection. A shift upward[3] in the disproportionate removal of tamariki Māori

(Figure 3) occurred from 2012 and this has been sustained since. The trend increase in disproportionality as estimated by comparing the rate ratios has occurred despite the fall in incidence of removals for both tamariki Māori and non-Māori children over the period from 2000 to 2018, because the incidence of state care for non-Māori declined faster than that for Māori.

State care accounts for one in 65[4] of all Māori children aged 17 and under in New Zealand, compared with one in 400 of all other children. State custody of children has disproportionately affected Māori for

Figure 3: Entry to care of children/tamariki: incidence rate by ethnicity and ethnic disproportionality ratio

Māori which has long had a disproportionate effect on Māori children. It is the personal experiences with the agencies of the state which deal with children of today's mothers, grandmothers and great-grandmothers, or their relatives and friends, that have the most relevance at a local level in how the legitimacy of the state is judged. Current practices cannot ignore the way that past racism and colonialism will determine the response of many to the child welfare services of the state. That history is also embedded in the evidence base that determines the nature and operation of the selection criteria now and into the future.

Accountability

In New Zealand, giving an agency of the state the power to break up families and to remove children in order to protect a child from continuing or anticipated harm is a dimension of family policy that is embedded in statute. Where it has reason, the state can choose to enforce its legal authority, systems and resources on any individual family or whānau, usually subject to the approval of the Family Court. Overseeing the nature of this authority, its reach and the potential for disempowerment of families by the way the authority is applied cannot be met by any general means of accountability intended by Parliament for the oversight of the executive. The place of retrospective as well as prospective testing of the trustworthiness of the means used to act on this exceptional and potentially severe use of a statutory authority has yet to be established by the Ministry of Social Development. Despite the absence of such testing, it is a necessary basis for community acceptance of the legitimacy of how such authority is applied.

There are few means by which the state is held to account once the Family Court gives approval. Transparency is not enough, as the self-reporting of the practices of operational activity limits scrutiny of decision-making processes, as well as of how underlying models of care and protection are evaluated and applied in practice. In New Zealand, the Independent Police Complaints Authority originated from how police responded to the Bastion Point and Springbok tour protests of 1978

some 70 years, most particularly in the decade after 1972/73 but also since that period. Between the late 1980s and 2000 the disproportionality was lower than before and after this period. During the period which lasted through to 1986, Māori girls experienced a similar rise in being placed in custody at about one third the rate of Māori boys.

The state and whānau

The wider family or whānau is the dominant means by which children are cared for when the state removes them from the care of their parents. Whānau and families care for more than twice as many (nearly 30,000) children in the child welfare system as do statutory services (Angus, 2014). These carers often give up jobs to do this through personal choice and obligation. In such situations there can be support from the child welfare system, including families and whānau. Iwi and Māori health and social service providers also work alongside whānau to support the directions they set (for example, the Whānau Ora model).

Seeking a whānau voice in the child welfare services of the state has been obligatory in law since the Children, Young Persons and Their Families Act (now Oranga Tamariki Act) 1989. Up until now, however, this voice has been weakly heard or avoided, so that whānau have had few

means or resources by which to hold the childcare and protection system of the state to account for how whānau members enter this statutory system or are treated in it. Child welfare services have operated in the past in a wider environment where whānau characteristics are not recognised in regular statistics; nor has much of the history of research and scholarship played a part in policy or practice. When whānau are recognised they are most often seen through an extended nuclear family lens. There has been little place for their resourcefulness or distinctiveness to be recognised or valued, bringing a poorly recognised bias in service delivery. VOYCE – Whakarongo Mai is a start to reversing this. The Puao-te-Ata-Tu report of 1988 (Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare, 1988) remains a major point of reference for assessing how significant challenges by Māori to the legitimacy of state action need to be addressed. The expert review of 2015 (Expert Advisory Panel on Modernising Child, Youth and Family, 2015) was the most recent of many to report on progress.

The formalised processes by which families and whānau can hold to account the statutory childcare and protection services have been shown to be weak. Weakness in accountability is a consequence of and contributes to a cultural bias against

and 1981. The Independent Taxation Review Authority and the Health and Disability Commissioner both originated from a similar need to reinforce trust not in policy, but in how public servants put it into practice. British philosopher Onora O'Neill has noted:

> To be accountable is not merely to carry a range of tasks or obligations, for example to provide medical treatment to those in need, to make benefit payments to those entitled to them, or to keep proper accounts. It is also to carry a further range of second-order tasks and obligations to provide an account of or evidence of the standard to which those primary tasks and obligations are discharged, typically to third parties, and often to prescribed third parties. (O'Neill, 2009)

Because of the different institutional cultures and incentives of those who may play a part in determining the outcomes for any individual child, oversight needs to be able to open a unique window on bodies that have varying degrees of independence in how they meet their statutory obligations. This includes those to whānau. The oversight of the state's childcare and protection system has to extend beyond agency performance measures and strategic plans by bringing a genuine understanding of the workings of the whole child welfare system. It must recognise the importance of parents, family and whānau in the usual independent resolution of short-term or longer breakdown in the care of children.

The science that influences thinking about child protection has seen major changes and significant reversals over the past 70 years since the professionalisation of social work began to evolve. The transparency and validation of the application of science should be a matter of periodic scrutiny. In particular, this concerns theories of child removal and adoption, trauma, social work training and methods of quality assurance. Early research by the Department of Social Welfare into the experiences of birth mothers following adoption pointed to a high need for understanding and ensuring ways of managing the impact on the

> In practice, in whatever way the tensions between responsiveness and the sufficiency of evidence are balanced when forming judgements, there are personal costs. On one hand, death can result from failure to respond when circumstances justify extreme actions. On the other, the process of removal itself has harmful consequences for the mothers, family and whānau that are left behind, in addition to the trauma children experience from separation.

mother's physical and mental health of any such loss of a child (Dominick, 1988).

Multiplicity of agents

The mix of bodies that have an increased statutory responsibility for the welfare of children is now quite extensive. Child protection and care involves a mix of entities with a high degree of operational independence, varied oversight and weak connections. The focus on the child cannot escape consideration of its family

and whānau, mothers and the science of child development. The disproportionate intensity of state action on Māori collectively would be expected to challenge the fundamentals of the system and needs ongoing vindication.

In deciding when the immediate safety of children determines outcomes, it is Oranga Tamariki which chooses to seek approval from the Family Court for a child to be removed, but the court has little or no retrospective oversight of how the child was removed and placed for their future life course. It remains important that the resources of whānau and families have a place in informing decisions by all players, especially the Family Court.

Even when the legitimacy of actions based on state authority is generally accepted, retaining that trust can necessitate transparency in how compliance with the rule of law has been ensured, with such actions being properly overseen or reviewable by a judicial body independent of executive government. For iwi Māori, the state has long used its authority to take custody of Māori children at a high rate and this has periodically led to Māori challenging the legitimacy of this state action. When they have reason to challenge the legitimacy of state actions, individuals and groups in civil society will find ways to withdraw trust in any or subsequent actions by the state. Institutions and roles outside executive government such as parliamentary officers, appeal courts and parliamentary petitions are vehicles provided by the state for this, but individuals need to have common access to them. The children's commissioner reported five years ago that what we have now does not provide citizens with an informed basis for granting or withdrawing trust (Office of the Children's Commissioner, 2015).[5] There are damaging and perverse effects on the welfare of parents and their children (including the unborn) when they individually withdraw their trust in institutions that exist primarily for their care, through avoiding the help they exist to give.

Accounting for the distinct characteristics of Māori

The common rules, obligations and tests of eligibility that are being applied to Māori

have been based on analysis and knowledge dominated by the characteristics generally measured and modelled for Pākehā, because of the limited scale of Māori-specific statistical sources. In the application of policies developed in this way, this ethnic bias inevitably leads to parts of the Māori population often being systematically identified and treated as outliers in most sectors, rather than as a community whose distinct characteristics need to be measured and reliably accounted for. A failure to account for, measure and treat as distinct the differences from cultural, social and demographic structures remains, as does ignorance of the effect of the pathways experienced by earlier generations of Māori. The rules that bring mothers to the attention of the state's childcare and protection system need to be regularly audited by relevant professionals, including those with deep knowledge of whānau, to identify whether they are potential sources of systemic bias against Māori. For each case, how whānau were involved in the process should be reported on by each of the key agencies and the whānau. These reports should be summarised in an annual report that is independently audited by Te Puni Kōkiri or another appropriate entity unaffiliated with the primary child welfare system actors.

Reacting to uncertainty, risk and rare events
The childcare and protection system of the state will make a difference between life and death for a small number of children, while for many others it may bring the only means of redress and response to situations of abuse. In the face of complexity in the system in its rules, practices and powers, for most people knowledge of what the state does comes from rare, highly visible cases. These cases can involve the death of a baby by the intentional violence of a caregiver, or the contested removal of a baby at birth from its mother. By how the public responds to such sentinel events, those who manage the operations of the state, in public administration as well as politicians, can predetermine their effect. There are a multiplicity of participants who could seek to minimise the potential for their association with a sentinel event. It is the children and their whānau who bear the consequences when state responses have

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shown a predisposition towards lowering the threshold for child removal.

In practice, in whatever way the tensions between responsiveness and the sufficiency of evidence are balanced when forming judgements, there are personal costs. On one hand, death can result from failure to respond when circumstances justify extreme actions. On the other, the process of removal itself has harmful consequences for the mothers, family and whānau that are left behind, in addition to the trauma children experience from separation. The future life of the child, its mother, family or whānau must be a demonstrable part of consideration for removal and consequent placement. In a fully functioning system, how the system as a whole can manage risk is critical if its legitimacy is to be properly defended in difficult situations.

The evidence that informs judgements in complex cases will not always be strong

or able to be independently substantiated. Knowing what makes up the family, whānau or other most relevant relationship group has become a statutory obligation that requires cultural understanding and sensitivity that is likely to challenge the norms that were embedded in public policy in the past. This is even more important at this time of change when the threshold for harm has become more loosely defined and case law around applying new law is limited or absent.

The greater the chance that rare events can determine policy, the more vital it is that responses to a rare event are seen in the context of a strong, well-established evidence base, practices that are demonstrably up to the task, and the existence of wide-ranging approaches that enable trust. In the justice sector or child protection, rare events can influence law changes. In the healthcare sector this occurs too, but with lower frequency. The power of a single event to influence public policy and practice can be stronger the more horrific the case and greater the attention associated with it. Since 1994, no noticeable trends exist in recorded incidents of infant death by intentional injury. These deaths involved an annual average of five–six deaths of a child under ten years old between 2003 and 2017, and ranging between two and 13 during those years. Annual care and protection notifications, however, have risen dramatically since 2004.

Conclusion
Child welfare services are wide-ranging, and they do not readily make up a coherent system. Yet without understanding their many parts and complexity we can undermine the protection of the rights of any child to the care and support of kin. Strengthening accountability is just one step in this. Moving towards strengthening this accountability and hopefully, in turn, increasing public legitimacy means acknowledging and incorporating the following key factors.
•   The care of children who are in situations of concern is overwhelmingly provided by families and whānau. This reality needs to be reflected in policy and practice, and the application of the

powers of the state must support rather than endanger this.

- Accountability needs to be comprehensive, have independent elements and be focused on the outcome for the child and their kin, as well as the quality of the processes with which they engage.
- There needs to be good understanding of what each type of administrative count tells us, whether it be of entry to care, exit from care or the number in custody.
- Disparity can increase if the rate ratios of Māori are unchanged but those of Pākehā improve, or simply improve faster than those of Māori.
- Having wide-ranging accountability will not prevent harm, but lacking adequate means to hold the state to account leads to further harm.
- What happens to all children once in the care of the state brings different risks of neglect and harm to their continuing welfare and life chances that need overseeing.

- The disproportionate impact of state custody on Māori children, alongside that for Pacific children, requires much more transparency than exists at present, to facilitate ongoing scrutiny and inform the development and support of alternative approaches.
- The nature of accountability should depend on the impact when citizens withdraw trust.
- Māori who are great-grandparents, grandparents and parents today were part of cohorts that experienced forms of discrimination and disproportionate involvement in earlier versions of the current state institutions. Proper accountability makes it possible for the legitimacy of state action to be earned, rather than just asserted.
- For Māori and Pākehā, their different histories and pathways not only require different processes, but also should shape the nature of accountability.
- The independent oversight function in the Office of Children's Commissioner needs more teeth. Given that the

regulation and monitoring of child protection has been in place since the Child Welfare Act of 1925, putting in place this new oversight function ought to be accelerated before Oranga Tamariki ends its third year.

1 Come-at-ability is a concept developed by British constitutional writer Anthony King to describe the ability of a citizen to challenge the state.
2 Because Oranga Tamariki has yet to establish a regular statistical reporting process, this article was written using historical information drawn from the Ministry of Social Development website and answers to Official Information Act enquiries made of Oranga Tamariki. Ethnic definitions used by Oranga Tamariki are not those in common use and breaks in series have been pragmatically adjusted for by the author.
3 The excess number of tamariki Māori removed into the care of the state has changed little from 2002 to 2019, although the excess has become a larger share of the number of tamariki Māori removed since 2013.
4 Calculation made using Statistics New Zealand population estimates.
5 Specifically, the children's commissioner report states: 'In our view, CYF and MSD's systems are not set up to measure and record the information that matters, and the integration of data between MSD and other government agencies is poor. Better collection and analysis of data is essential for CYF to improve its services and for the Government and the public to have confidence that CYF and other state agencies are improving outcomes for vulnerable children. We don't have enough information to say conclusively whether children are better off as a result of state intervention, but the limited data we do have about health, education, and justice outcomes is concerning.'

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Four essays on the child welfare system

The year 2019 represented a watershed moment for Aotearoa New Zealand's child welfare system, as a public spotlight was shone on systemic ethnic inequities during ongoing legislative changes aimed at centering Te Tiriti o Waitangi and whānau, hapū, and iwi considerations in policy and practice.

In the midst of this dialogue, Victoria University of Wellington's School of Government hosted the "Children, Families, and the State"– a seminar series focused on the historical, current, and future role of the state in the lives of families and children. The seminars, and the discussion it generated, was due to the calls to action from speakers across the system, including leadership at Oranga Tamariki, within the family court, non-profit providers, commissioners and advocates, and academics.

The following essays in this edition of *Policy Quarterly* capture viewpoints from several of the seminar speakers. Despite their different perspectives, common threads unite them. A greater recognition of the structural causes of the historical and current patterns of ethnic inequities in child welfare system contact, a commitment to whānau, hapū, and iwi-centred policy, practice, and partnership, the authors argue, are vital for a more just and empowering system.

Ian Hyslop

Child protection, capitalism and the settler state: rethinking the social contract

Child protection is an emotive and complex field which is constructed within a conflicted milieu: it does not sit outside the context of capitalist economics, the orthodox liberal political rubric, and our history of colonial oppression (Stanley and de Froideville, 2020). The following is a necessarily broad-brush analysis which aims to name some of the elephants – the uncomfortable reality of discriminatory outcomes in a society divided by inequalities structured by relations of domination – that are skirted around in policies targeted at the imaginary 'good Kiwi' electorate of a mythical middle New Zealand.

History, inequality and racism

The policy and practice of child protection social work has followed the twists and turns of the political policy roller coaster that has careened across Aotearoa New Zealand over the last 30 years. A focus on the contested nature of policy prescriptions and practice development, however, risks masking some of the underlying realities of liberal capitalist societies such as ours. Child maltreatment is a social problem which is linked with structurally reproduced inequality – with class, race and relative poverty (Parton, 2019). The children who come into the care of the state are disproportionately poor and Māori. In recent history, state welfare systems have visited a painful legacy of institutional abuses upon these children, often culminating in incarceration and wider social damage, particularly for whānau Māori (Stanley, 2017).

The germinal report *Puao-te-Ata-Tu (day-break)* (Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare, 1988) brought these concerns into the light, explicitly naming racism as the key obstacle to the advancement of Māori people. It was this message which fundamentally shaped

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the design of the Children, Young Persons, and Their Families Act 1989 (now the Oranga Tamariki Act). The legal framework of the act pivoted around the belief that whānau, hapū and iwi could provide adequate care for their children if furnished with respect, authority, information and support in terms of financial and social service assistance. This vision was never adequately resourced and by 2015 the Expert Advisory Panel on Modernising Child, Youth and Family had inverted this narrative, focusing on the cost visited upon the state and wider society by dangerous families rather than the damage done to Māori by state violence (Hyslop, 2017).

There is a deep whakapapa to this discursive shift. The 1990s blitzkrieg of public sector readjustment essentially moved the focus from whānau empowerment to whānau responsibility with minimal state assistance. The below-subsistence-level benefit cuts devised by Ruth Richardson echo the less-eligibility framework of the 19th-century poor laws (Hyslop, 2016). The avalanche of neo-liberal reform was stabilised by the social development agenda of the 2000s Labour-led governments, with an overriding policy emphasis on employment as the antidote to social exclusion (Lunt, 2010). This economic prescription was closely aligned with the soft neo-liberal 'hand-up' ideology of Tony Blair's New Labour in the United Kingdom (justified in part by the individuated social mobility sociology of Anthony Giddens). Benefit levels were not raised in the Labour-led years, but a Working for Families tax relief package was introduced to incentivise low-wage work, consistent with the demands of globalised capitalist economics.

The social investment agenda of the recent three-term National-led governments ratcheted the policy needle a little further to the right with the adoption of an actuarial accounting focus on the future cost generated by failing citizens (Baker and Cooper, 2018). The 2015 Expert Advisory Panel report posted a target of reducing forward liability associated with poor outcomes for Māori by 25–30% within five years (Modernising Child, Youth and Family Panel, 2016, p.22). There is, frankly, more than a hint of eugenics in this prescription: the perception of the

threat of a feral underclass which animated Victorian social science (Jensen and Tyler, 2015). Effectively, the National-led government proposed a watering down of the commitment to whānau decision making, a clearer focus on child-centric/trauma-informed care and early calls on out-of-home permanency to stop the intergenerational transmission of social disadvantage: safe and loving homes at the earliest opportunity. The extremely narrow view of causation evident in this analysis is consistent with the neo-liberal imagination. Responsibility is individualised and neatly divorced from

the deep structural inequalities which presently characterise social life in Aotearoa New Zealand (Hyslop and Keddell, 2019).

Resistant narratives

This neo-liberal construction of child maltreatment as a product of deviant, irresponsible individuals, divorced from the wider context of austerity, poverty, inequality, racism and postcolonial history, has not gone uncontested. The final shape of the Oranga Tamariki Act reflects conflicted agendas and interests, specifically Māori voices, and includes principles related to whakapapa, whanaungatanga, mana tamaiti and te Tiriti o Waitangi alongside the injunction to ensure that: 'where children and young persons require care under the Act, they have – (i) a safe, stable, and loving home from the earliest opportunity; and (ii) support to address their needs' (Oranga Tamariki Act 1989, s4(1)(e)). The writing was clearly on the wall from 2014 for more small children (disproportionately Māori) to be brought into the permanent care system. Although most informed commentators predicted this outcome, the state agency Oranga Tamariki

acted surprised when it came to pass (Hyslop, 2019).

The now infamous Hawke's Bay uplift video brought muscular child protection – state violence directed against a specific section of the population – into our living rooms. In addition to the internal Oranga Tamariki review and the promise of procedural reform, we have four inquiries in progress at the time of drafting this commentary piece. The fairground ride has, of course, come full circle. The over-representation of tamariki Māori in the state child protection system is, as it always has been, a product of how the historic

> The over-representation of tamariki Māori in the state child protection system is, as it always has been, a product of how the historic legacy of colonisation, structural inequality and institutional racism plays out in the lives of children and families.

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Rethinking the social contract

Much needs to be done. Real change requires a radical redistribution of power and resources. Social workers need to get closer to the lived realities of whānau living in hard times. We need to rediscover discretion and compassion, hear survivor voices and engineer local responses. We need to transfer authority, means and mana to Māori, not just responsibility. And beyond this we need to confront the deficiencies of the capitalist social form. The market functions to perpetuate and intensify uneven accumulation. Call me old-fashioned, but if we are to live in an egalitarian society where a semblance of real freedom is possible, people need decent housing, income security, education and health services as part of the universal social contract. Social protection is the pathway to child protection. The current social wellbeing agenda falls well short of this objective.

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Emily Keddell

The case for an inequalities perspective in child protection

In 2014, children living in the most deprived 10% of neighbourhoods in Aotearoa New Zealand had 21 times the chance of having a substantiated finding of child abuse than children living in the least deprived 10%, were 35 times more likely to have a family group conference held about them, and over nine times more likely to enter foster care (Keddell, Davie and Barson, 2019). Each step increase in deprivation resulted in a sequentially higher chance of child protection system contact, clearly illustrating the systematic relationship between living in high deprivation areas and contact with the child protection system.

An inequalities perspective on the child protection system

This pattern can be usefully understood using an inequalities perspective (Bywaters, 2015; Bywaters, Brady et al., 2016; Bywaters et al., 2019). Where there appear historical and seemingly intractable patterns of disproportionate representation, social inequalities are considered the underlying contributor. Specifically, in child protection, 'child welfare inequalities can be defined as unequal *chances, experiences and outcomes* of child welfare that are systematically associated with social advantage/disadvantage' (Bywaters, 2015, p.9, emphasis added). An inequalities perspective on the child protection system draws attention away from individual and family-level causes of system contact to consider structural contributors and their underlying inequities (Bywaters, 2015). This perspective highlights – similarly to a health inequities approach – the inherently political nature of the fundamental inequities contributing to the expression of inequalities in system contact; disparities

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in people's experiences once in the child protection system; and differences in the outcomes of it. In doing so, an inequalities perspective draws attention to the policy, community, systems, cultural, institutional and historical contexts, and service-access related elements that mediate the relationships between macro political contexts and family life.

An inequalities perspective focuses on several key concepts. First, the concept of social gradients as opposed to discrete differences or 'gaps' shows how differences between groups are graded, social position-sensitive changes rather than dichotomised categories (ibid.). If there is an angled line of increasing interventions in any system relating to an axis of inequity, this is suggestive of a systematic relationship with that factor. The opening example above describes a social gradient based on deprivation, with the relative differences between each end of the gradient described (Keddell and Davie, 2018).

Second, an inequalities perspective takes a strongly intersectional approach, recognising the interrelated nature of dimensions of inequality such as class, ethnicity, gender, age, location, disability and others (Bywaters, Kwhali et al., 2016). A social gradient might exist based on a single type of inequity, but add another and it becomes more complicated, suggesting interrelated structural or system factors. For example, adding the intersectional element of ethnicity to deprivation shows that increasing deprivation increases the rates for all ethnic groups, but not equally, and nor is the effect equal due to differences in population share in different deprivation quintiles. For example, the Māori rate increases to the highest rate in the most deprived quintile. Population share for Māori also increases as deprivation increases, while the Pākehā population declines. Together, high deprivation and high population share together lead to high Māori rates overall. However, beneath this broad-level finding, the gradient for non-Māori groups – especially Pākehā – is steeper across deprivation levels than for Māori, meaning that disparities between Māori and other groups reduce as deprivation increases, nearly equalising between Māori and Pākehā in the most deprived quintile (Keddell, Davie and

Barson, 2018). This resonates with findings in other countries that show a reduction in ethnic disparities as deprivation increases. In some studies, ethnic group rates equalise or even reverse in high deprivation areas – that is, the majority (white) ethnic group has higher rates than minority groups (Wulzcyn et al., 2013; Putnam-Horstein et al., 2013; Bywaters, Kwhali et al., 2016).

Third, the concept of demand and supply of services helps understand the system-related factors that can operate in tandem with demographic inequities to shape contact in nuanced ways (Bywaters et al., 2018). For example, does greater supply of child protection services result in more

children in care? Similarly to UK findings, there is some evidence of an 'inverse intervention' rule in Aotearoa, as children in highly deprived small neighbourhoods in less deprived larger regions have a higher rate of placement than equally deprived children in high or mid-deprived regions (Keddell, Davie and Barson, 2019). There are more subtle regional differences, as well. Northland has similar rates of substantiations as Gisborne, but double the placement rate. In Gisborne, placement rates are only 10% of substantiations, but they are over two times higher in Wellington (23%), Hawkes Bay (28%) and Canterbury (35%) (ibid.). These location differences, even among areas with comparable demographics, suggest that contact rate disparities are potentially associated, in part, with demand and supply factors, such as child protection services supplied per population, access to prevention services, and differences in notification norms and processes, site cultures and processes, and court responses to applications (Keddell and Hyslop, 2019a).

Finally, the concepts of the risk-bias debate provide a useful conceptual tool in the Aotearoa New Zealand context to

further understand disproportionality related to class and ethnicity (Cram et al., 2015; Drake et al., 2011). Increases in true risk may be due to over-exposure to family stressors, especially poverty, the detrimental effects of colonisation, and lack of access to culturally responsive and well-matched services (Love, 2017). Interacting with this risk is the effect of multiple types of bias, including exposure bias (poorer neighbourhoods with higher Māori populations are more exposed to notifiers to the child protection system), surveillance bias (heavier surveillance and reporting of families), instrumental bias (differential institutional responses that ratchet Māori

Lack of adoption of an inequalities perspective, and action on structural factors, is in part due to the policy framing of the last four years.

into the system more than other groups) and direct bias (referrers and practitioners within the child protection system perceive risk for Māori to be higher than for non-Māori despite similar circumstances) (Keddell and Hyslop, 2019b). These biases are similar to those reported in health settings, affecting pathways into and out of services (Harris et al., 2018).

New 'child-focused' legislation obscures structural determinants

Lack of adoption of an inequalities perspective, and action on structural factors, is in part due to the policy framing of the last four years. This framing drew on highly individualised 'child-focused' discourses, and, while well-intentioned, it made structural determinants invisible. For example, the policy direction emanating from the 'modernising child protection reforms' were laden with the language of child trauma, being child focused, ensuring children have 'safe and loving homes at the earliest opportunity', and increasing resources for children in the permanent care system. These features are not bad per se, but as a package of policy

framings together they lead resource distribution and the nature of intervention in a direction that reinforces a focus on individual children, not the causes of their contact with the system, leading to an 'ambulance at the bottom of the hill' approach. Without an understanding of the structural contributors, responses become targeted at children in a narrow and circumscribed way, excising children from their social and familial contexts both in services and in practice. The reality is, however, that most children are reliant on their family and whānau well-being to ensure their own. The increasing emphasis on psychological harm (trauma) to children within a 'child-focused' discourse makes invisible the causes of poor outcomes as significantly related to social inequities affecting families and whānau, as much as individual trauma inflicted on a child.

Integrating an inequalities perspective amplifies the importance of social policies that prevent child protection contact upstream

The politics of those reforms clearly promoted a view that the child protection system should be residual in nature, acting to assess risk and intervene once a certain threshold has been reached, but not address the known causes of contact: poverty, institutional racism, and lack of access to support services that promote community, social cohesion and humane, relationship-based responses. They disconnected the child protection project from the policy drivers of inequities. An inequalities approach shows their deep interconnections. Overall, an acceptance of the social conditions and structures shaping family life requires a government to enact policy that addresses those factors.

This kind of political reorientation involves a commitment to a meaningful politics of redistribution and the re-building of family-centred social services … Struggling families have an equal social right to meet their children's needs. Policies that provide for adequate basic income, housing and affordable quality child-care facilities are required. A lack of integrated social policy and accessible community support services means that poorer families are funnelled into the child protection system; effectively as a social service of last resort. (Hyslop and Keddell, 2018, p.10)

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David Hanna

Child welfare system: a perfect storm?

The child welfare system: a canary in society's coal mine?

A 'child welfare' system is the canary in the mine of society. All the failings and stresses of our nation end up being concentrated and reflected in this system. The compound effects of punitive policies, colonising practice, underinvestment, poor housing, poverty, hyper-consumerism and relational deserts have all fuelled trauma in stress-saturated households. This trauma and abuse is passed down through generations and the family pecking order, with the child becoming the final 'dumping ground'. A child welfare system has to respond to the accumulated systemic failure. To say that the work is tough is an understatement of epic proportions.

I have worked for over 15 years as part of the Wesley Community Action team to support and sustain a stable and vibrant service that works with the 'hard' end of tamariki and their whānau in this system (the top 3% in relation to complexity and need). Wesley also works, outside of government contracts, alongside marginalised communities, many of whom are 'products' of the state welfare and justice systems and who understandably fear it.

Restructuring: the answer to complex issues?

This experience shapes my view of the current state of our child welfare system. Like the families and whānau we work with, we see the Wellington-centric linear policy solutions as another Groundhog Day. Restructuring is almost always the preferred change lever for ministers wanting to leave a legacy. Consultants are engaged, experts are gathered and people

are processed through 'co-design' Post-it forums. This results in a 'new' agency, new logo, new leadership, new approach, all with a stated desire to be very different from the old. But are they?

This very expensive process could unintentionally be fuelling a perfect storm for an already stressed system. In addition to the issues mentioned above around poverty, colonisation and the resulting toxic stress, a major restructuring can amplify this storm, as we have seen with:

- an exodus of dedicated and skilled staff who had hung on in very challenging situations (this knowledge is not quickly or easily replaced);
- lack of historical understanding of the factors that led to the situation;
- lack of learning from past initiatives: for example, a royal commission set up after a new system;
- over-reliance on external consultants who lacked understanding of the issues and a long-term commitment to change;
- an expert panel which lacked in-depth understanding of sound social work practice and which adopted dangerous assumptions (e.g., in removing babies and children as a long-term solution);
- the disestablishment of the NGO (non-governmental organisation) and iwi advisory forum;
- imposition of a managerial regime that lacked knowledge of New Zealand cultural context and social work practice; and
- an under-resourced NGO sector through years of chronic underfunding.

Enter the new Labour-led government, which inherited a key department midway

through a major change process. They wanted to 'do better' for children. This worthy aim led to more changes to the system: in particular, a revision of the child wellbeing and welfare legislation and creation of a child and youth wellbeing entity. While these initiatives do have the potential to lift the game, they also risk bringing more confusion into an already overcomplicated and struggling system. As a simple example, removing the word 'vulnerable' from the Ministry of Children's name raises confusion about which children Oranga Tamariki serves.

It is a common view of people experienced in working in child welfare that much of this new system is not new at all. We are witnessing the same old mistakes being made by a central state agency that is largely flying blind in many areas. This is happening at a time when the compounding effect of negative social statistics is moving whole communities dangerously close to tipping points. Given how we have endured years of underfunding, seeing much of the precious new investment being wasted by a Wellington-centric system is highly frustrating. To handle this pressured situation, the highly managed corporate culture expands. This happens despite the rhetoric of partnership and at the expense of growing trusting and robust collective relationships across the sector. These relationships are the foundation of effective practice.

Solutions: is it all about relationships?

Ironically, the key to improving our system – from an NGO perspective – isn't new either. We are all actors in the one system and, as such, interdependent. The NGO sector has valuable insights and wants to contribute to improvements, challenging the assumption that we are mere 'providers of services' to the government agency.

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A key starting point is understanding how we adjust to working with complexity. To quote from a recent report on working with complexity:

We are not lone rangers, and we shouldn't seek to be. Our strength lies in positive collaboration, in honesty, openness and generosity in sharing what does and doesn't work – and in hearing, acknowledging and responding to others' views on this, too. (Davidson Knight et al., 2017)

In short, this means relationships are the lifeblood of the system. There are four principal domains where healthy relationships are essential to sustain a vibrant system. Valuing the intervention logic between these domains in critical. Primary are the relationships within the whānau (encompassing connections between tamariki, whānau, hapū/extended family), and next is the relationship with the key 'professional' worker (state or NGO/iwi), then the network of relationships at a community/regional level. Encompassing these is the national framework of legislation, policies and resources. The intervention logic of each dimension is to enhance wellbeing within the prior domain.

First and foremost, I have learnt over the years that whānau-led is more effective than and very different from whānau-centred. Any change, to be sustainable, has to be owned by the person/group seeking change. Given the power imbalance in the relationship between a paid social worker and whānau, unless the relationship is whānau-led, then the power remains with the professional. Successful solutions are seldom imposed.

The next dimension of relationships is a community and local one. This involves mana whenua, neighbourhood actors, businesses, sports clubs, community organisations – the range of agencies that have something to offer whānau under stress. The Child Rich Communities initiative supported by Barnardos, Plunket,[1] UNICEF and Inspiring Communities is highlighting the value of recognising and mobilising these community assets to support positive outcomes for children under stress.

Holding all these relationships is the national domain. This entails monitoring, researching, resourcing and generally supporting a healthy flow of relevant information across the whole system and helping maintain healthy relationships

between all key players. Equally important is linking with other national policy fields such as housing, income support and the like that have an impact on family stress.

Weaving through all these levels, we need to give life to te Tiriti o Waitangi. The whole system needs to appreciate that the indigenous culture of Aotearoa holds profound insight and strengths for how we sustain positive relationships between peoples and our natural world. Instead of being viewed simply as something to be adhered to, te Tiriti is a potent, unique strength of our communities and child welfare system in Aotearoa. A Tiriti o Waitangi informed-approach would cease mining and remove the need for canaries to acts as beacons of risk.

1.   https://www.youtube.com/watch?v=pG5pUkePNLg&t=4s

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Claire Achmad

Realising treaty-based protection in Aotearoa's child welfare system

In 2020 in Aotearoa New Zealand it is clear that a significant opportunity exists to strengthen our child welfare system. Embracing this opportunity is imperative. Not only are the numbers of children in state care at an all-time high,

but official statistics show that Māori tamariki are disproportionately more likely to enter state care, and to experience abuse in state care. We must strengthen the system in ways that prioritise the needs and rights of children and tamariki. Moreover,

this must be done in ways that strengthen the system to be holistic in its engagement with families and whānau. After all, it is children and their families and whānau who are the people that the system exists to serve.

The child welfare system is there to protect the welfare of children and tamariki and to prevent harm in the short term. We must never lose sight of the fact, however, that the system can and should enable

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Figure 1: The child welfare system and associated underpinning framework and structural forces
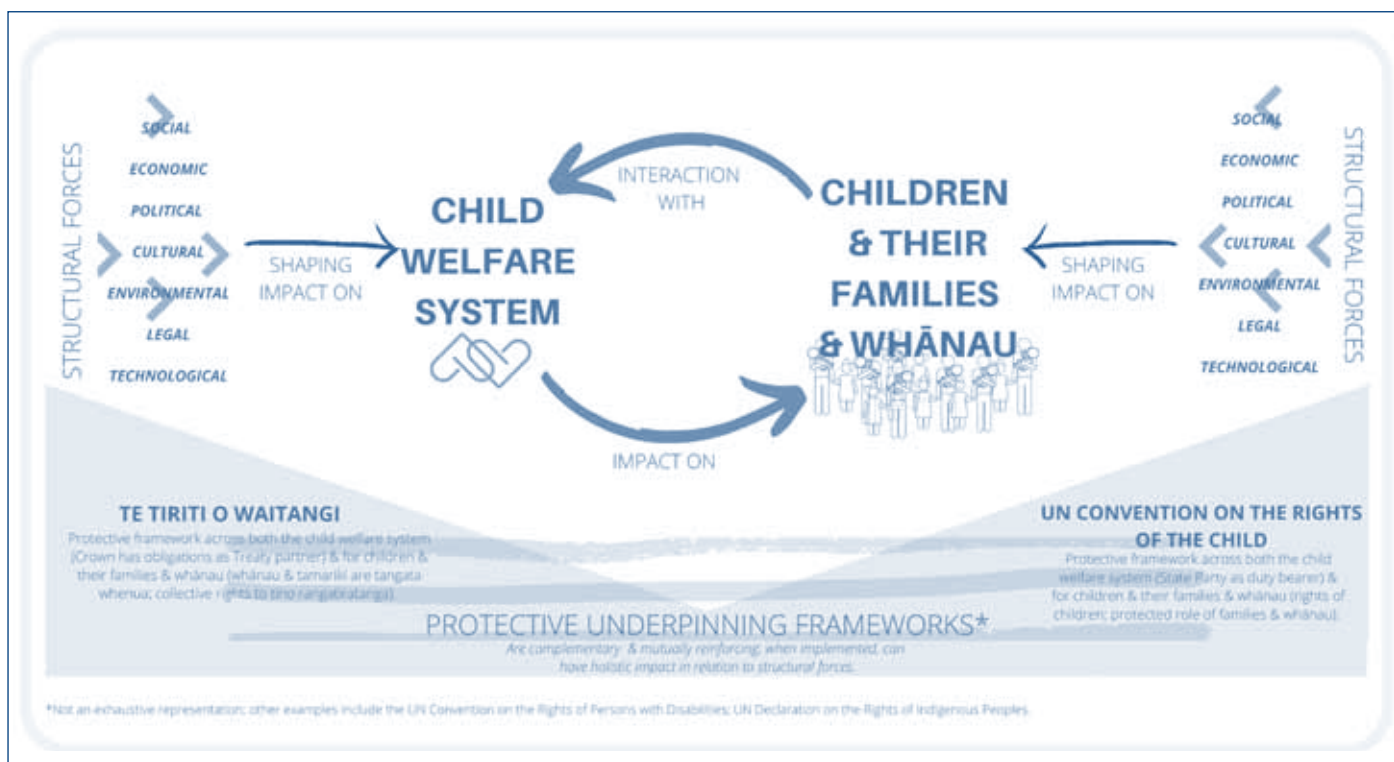
C. I. Achmad, 2020

positive long-term outcomes in children's lives, and the lives of their families and whānau. For example, the child welfare system can help families and whānau to effectively process and manage the impacts of intergenerational trauma, supporting family and whānau hauora. This is especially powerful if coupled together with preventative approaches. A rich evidence base illustrates that when families and whānau are thriving, it is more than likely that their children and tamariki are thriving too.

Our efforts to strengthen Aotearoa's child welfare system so it effectively serves children, tamariki and their families and whānau need to pay attention to the structural forces that shape our system. These structural forces also have a shaping impact on the lives of children, tamariki, families and whānau at the day-to-day level. These forces can be cultural, economic, environmental, legal, political, social and technological. They can, of course, be shaping forces with positive and/ or negative effects. In today's context, the negative effects of some of these structural forces are significant: inequality and poverty, abuse, neglect and family violence, mental distress among families and whānau, and restrictions on availability of

Te Tiriti and the UN Convention … make … clear that all children and tamariki have inherent dignity and mana, are taonga who must receive appropriate protection, and that family and whānau are the bedrock of children's and tamariki hauora and holistic wellbeing.

resources are among those with a day-to-day impact. The layering of such structural stressors on children, families and whānau flows on to impact the child welfare system, triggering broader system-level

repercussions too. Without intentional and comprehensive counter-actions, this can end up creating a looping effect of structural stressors. This leads to negative shaping impacts coming from multiple directions, leading to outcomes inconsistent with children's rights and positive family and whānau outcomes.

Te Tiriti and the United Nations Convention on the Rights of the Child: complementary protective frameworks that can provide solutions

An opportunity exists, however, to make real the promise of the existing underpinning protective frameworks in the lives of children and tamariki and their families and whānau in Aotearoa New Zealand. Te Tiriti o Waitangi and the United Nations Convention on the Rights of the Child are two integral protective frameworks in the context of Aotearoa New Zealand's child welfare system. They are complementary instruments: both have at their heart the notion of collective wellbeing. The texts of both te Tiriti and the convention are protective of the concept of children thriving best as part of a collective – namely, a family or whānau. The convention takes a holistic view of the child and their connections to family, and

te Tiriti makes clear the essential nature of connections among tangata whenua to the wider collective – including hapū, iwi and innate whakapapa connections – and the central importance of self-determination.
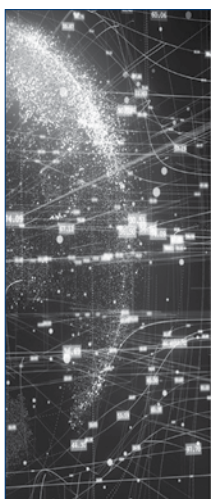
The potential of both te Tiriti and the UN Convention to have a greater protective effect in the lives of children and tamariki and in the functioning of our child welfare system is huge. The strengthening effect of these frameworks within the child welfare system remains untapped. To date, we cannot say that either of these treaties has been implemented in a manner that fulfils their true potential in the lives of Aotearoa's children and tamariki, including in the context of the child welfare system. There are, however, some notable recent signals that we are finally on the precipice of an age of implementation. This is observed in developments such as new sections 5(1)(b)(i) and 7AA of the Oranga Tamariki Act 1989; the Child and Youth Wellbeing Strategy with its principles reflecting the Convention and te Tiriti; and the government's pledge of recommitment to the Convention in November 2019.

To work, solutions need to be mana-enhancing

Taken together, te Tiriti and the UN Convention on the Rights of the Child make clear that all children and tamariki have inherent dignity and mana, that they are taonga who must receive appropriate protection, and that family and whānau are the bedrock of children's and tamariki hauora and holistic wellbeing. This is a strong foundation for Aotearoa New Zealand's child protection system to centre upon and build from. If implemented, these protective frameworks can help to address the structural forces influencing the lives of children, families and whānau and shaping the child welfare system. Such implementation can also help to ensure that the child welfare system itself takes consideration of the holisitc rights and needs of children and their families and whānau, to better prevent harm and to be more responsive in protecting and promoting their rights and needs in enduring ways (see Figure 1).

At its heart, taking an approach to Aotearoa New Zealand's child welfare system that seeks to uphold and give life to te Tiriti and the Convention on the Rights of the Child should lead to a system that holds the inherent dignity of each child, family and whānau central. This should create an approach that is mana-enhancing for all who engage with it. The experience can be one that enables children, families and whānau to experience a child welfare system where children's rights are protected and respected, families' and whānau's specific needs and experiences are central in decision making, and all involved can participate in ways in which their views are meaningfully heard. A system where help is provided early to prevent child harm, and where this is done in collaboration across the system, working proactively with families and whānau. To fulfil the promise of te Tiriti and the Convention in the child welfare system would be to make real the rights and obligations of these fundamental underpinning frameworks, for the benefit of Aoteroa's children, tamariki, families and whānau.

Jonathan Boston,
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Enhancing long-term governance Parliament's vital oversight role

Abstract

This article explores how the New Zealand Parliament scrutinises the quality of long-term governance and considers how such scrutiny could be made more systematic, proactive and rigorous. The analysis is based, among other things, on extensive interviews with current and former MPs and other active participants in the policy process. Interviewees were generally critical of the existing system of parliamentary scrutiny: it was variously described as 'weak', 'inadequate', 'cursory', 'patchy' and 'unduly partisan'. Scrutiny of long-term matters – such as governments' strategies, foresight, planning and risk management – was seen as inferior, on average, to other forms of scrutiny, especially the scrutiny of legislation. Drawing on the suggestions of interviewees and the experience of legislatures in several other parliamentary democracies, we outline and assess various options for parliamentary reform.

Keywords Parliament, accountability, scrutiny, long-term governance, reform

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Parliament stands at the apex of New Zealand's system of government (Geddis, 2016; Harris and Wilson, 2017). It performs four vital functions: representing citizens, enacting legislation, providing governments, and holding governments to account. This article focuses on the last one of these functions – variously referred to as parliamentary oversight, scrutiny and accountability. Effective scrutiny of the executive branch of government by the legislature is critically important. It serves to incentivise good governance, enhance public trust in governmental institutions, and underwrite the legitimacy of the democratic political system.

Much has been written over the years about how legislatures, both in New Zealand and in other parliamentary democracies, scrutinise the performance of ministers and public agencies (i.e. departments, Crown entities, state-owned enterprises, etc.), the specific parliamentary mechanisms that enable such scrutiny (e.g. oral and written questions of ministers, select committee inquiries and formal debates) and the strengths and weaknesses of these mechanisms (Office of the Auditor-General, 2019; White, 2015). To date, however, most assessments of the quality of parliamentary scrutiny have adopted a backward-looking, rather than a forward-looking, perspective. That is to say, the primary focus has been on how well legislatures hold ministers and public agencies to account for their *past* performance. By contrast, little attention has been given to how legislatures hold ministers and public agencies to account for the quality of their *long-term* governance – or what can be termed 'anticipatory governance' (Boston, 2016; Fuerth and Faber, 2013). For instance, how well are governments planning for the future? Are ministers and their officials exercising sufficient foresight and prudent stewardship (Menzies, 2018)? Are important societal and environmental trends being actively monitored, reported and investigated (Parliamentary Commissioner for the Environment, 2019)? Are known risks and looming problems being effectively mitigated and managed? Is vital public infrastructure sufficiently resilient (e.g. in the face of

Any analysis of how legislatures scrutinise the quality of long-term governance raises the question of what the 'long term' means and what constitutes a 'long-term policy matter'.

climate change and cascading risks) (Frieling and Warren, 2018)? Is there sufficient public investment in cost-effective preventative measures? More generally, are the interests of future citizens being adequately protected and are governments giving proper consideration to well-established principles of intergenerational justice (Brown Weiss, 1989)? Finally, are such matters being properly monitored and investigated by legislators? If not, what reforms might be needed?

To date, these questions, particularly when viewed through a parliamentary lens, have received remarkably little attention in the relevant international literature. For instance, while the literature on fiscal and environmental sustainability is vast, assessments of how – and the effectiveness with which – legislatures hold governments to account for the sustainability of their strategies and policies are few and far between. The situation in New Zealand is no exception.

The purpose of this article is to help redress the balance. It is a timely exercise, not least because Parliament's Standing Orders Committee is currently undertaking its triennial review of the standing orders, which provides an opportunity for Parliament to update its rules and practices. Similarly, both the State Sector Act 1988 and the Public Finance Act 1989 have been under review (State Services Commission, 2018; Treasury, 2018) and some of the proposed changes have implications for Parliament's role in scrutinising the quality of long-term governance. These include requirements for:

- Budget policy statements to explain the nature of the 'wellbeing objectives that will guide the Government's Budget decisions' and how those 'objectives are intended to support long-term wellbeing in New Zealand';
- the Treasury to produce periodic reports that provide a comprehensive, balanced and accessible assessment of the state of wellbeing in New Zealand, with indicators being selected and the reports prepared using the Treasury's 'best professional judgements';
- departments to prepare periodic 'long-term insights briefings';
- the public service to support 'the Government to pursue the long-term public interest'; and
- departmental chief executives to support their minister 'to act as a good steward of the public interest', including by 'providing advice on the long-term implications of policies' (see Public Finance (Wellbeing) Amendment Bill and Public Service Legislation Bill).

Our analysis proceeds as follows. First, we briefly outline the research on which our analysis is based. Second, we comment briefly on the politics of time, noting especially the presentist bias that characterises democratic systems of governance and its implications for parliamentary oversight. Third, we discuss the current methods, and assess the quality, of parliamentary scrutiny in New Zealand, with particular reference to long-term matters of policy and governance. Fourth, we briefly survey how legislatures in several other parliamentary systems scrutinise the quality of long-term governance. Finally, based on our research, we outline how our Parliament's systems, structures and procedures might be amended to ensure better scrutiny of long-term matters and that intergenerational issues are embedded

firmly within Parliament's day-to-day operations.

Research methods

This article draws primarily on the findings of a report published in mid-2019 by the Institute for Governance and Policy Studies at Victoria University of Wellington (Boston, Bagnall and Barry, 2019). The report, in turn, was based on a partnership between the Office of the Clerk of the House of Representatives and the institute during 2018–19. In preparing our report, we undertook a thorough review of the relevant international and domestic literature on long-term governance, parliamentary scrutiny and related issues, and conducted close to 60 semi-structured interviews with current and former MPs, government officials, parliamentary staff and other researchers, both in New Zealand and overseas (ibid., pp.28–32). Those interviewed in New Zealand included 14 current MPs (five National, five Labour, three Green and two New Zealand First MPs), and six former MPs from a range of parties, including former ministers and backbenchers. A particular effort was made to secure the views of a representative sample of MPs at different stages of their parliamentary careers, from different ethnic and professional backgrounds, and with experience on a range of select committees. Additionally, we hosted a workshop with government officials and other relevant stakeholders, undertook exploratory case studies, conducted a survey of legislatures in Commonwealth jurisdictions, and received detailed feedback on our initial findings and proposals from numerous people.

The politics of time

Any analysis of how legislatures scrutinise the quality of long-term governance raises the question of what the 'long term' means and what constitutes a 'long-term policy matter'. In practice, it is hard to draw tidy lines between different time periods (e.g. short-term, medium-term and long-term). Similarly, it is difficult to divide policy issues neatly according to their temporal relevance or impacts. After all, many policy issues – and their effects – are enduring: think of crime, substance abuse, family

> It is no surprise that governments prioritise matters of immediate public concern, as this reflects the structure of political incentives in contemporary democracies.

violence, illnesses and accidents. In other cases, policy problems come and go, or their impacts wax and wane; in some cases their scale or seriousness may diminish, perhaps because policy interventions have become more effective (e.g. due to better treatments for chronic diseases). In yet other cases, policy problems increase over time: so-called 'creeping problems', like climate change, ocean acidification, micro-plastic pollution, and the increasing threats to privacy from public and private surveillance fall into this category. Such problems tend to emerge slowly, incrementally and often imperceptibly; they are thus largely 'out of sight and out of mind' until certain 'tipping points' are reached.
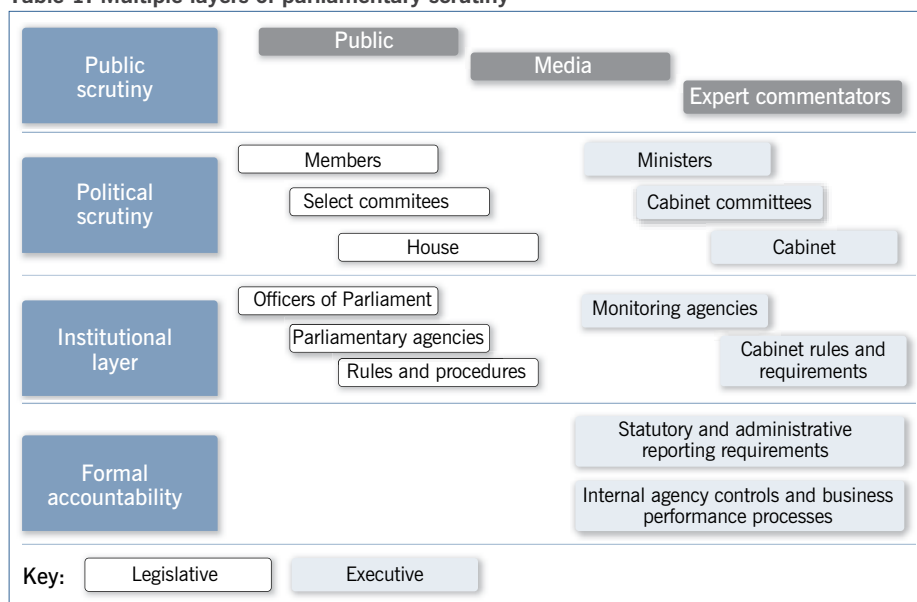
While dividing time into neat bundles or defining 'long term' presents problems, several matters are relatively uncontroversial. To start with, there are strong political pressures for governments and legislatures to focus on urgent issues, notably those which generate significant public concern (e.g. because of their serious near-term economic, social or environmental effects) (Jacobs, 2011, 2016). As a result, policy issues where the main

societal or environmental impacts are relatively hidden or distant (e.g. a decade or more in the future) tend to receive a low political priority. Indeed, sometimes they are ignored altogether until their impacts become so widespread and visible that a governmental response is politically unavoidable.

It is no surprise that governments prioritise matters of immediate public concern, as this reflects the structure of political incentives in contemporary democracies. Human temporal horizons are often limited: voters tend to be impatient, and governments want to be re-elected. Hence, democracies display a short-termist or presentist bias (Healy and Malhorta, 2009; Thompson, 2005, 2010). Democratically elected legislatures are naturally and inescapably influenced by such forces. In seeking to hold governments to account, parliamentarians have strong incentives to focus on governments' recent mistakes and misdemeanours rather than the rigour or adequacy of their strategising, foresight, forward planning or risk assessments. Likewise, MPs have powerful reasons to concentrate on the politically salient matters of today, rather than the critical, but seemingly distant, challenges of tomorrow.

Fortunately, these myopic propensities in democratic processes, along with their causes, are well understood. Knowing of the risks, governments have not been inactive. Indeed, across the OECD multiple remedies have been proposed and many implemented (Boston, 2017a, 2017b; González-Ricoy and Gosseries, 2016). For instance, in some cases important decisions have been deliberately delegated to independent bodies – ones that are expected to be less influenced than elected officials by short-term political pressures. The transfer of key decisions on the implementation of monetary policy to central banks in most OECD countries is a good example. Alternatively, governments have instituted substantive and procedural 'commitment devices' (Reeves, 2015): these aim to protect long-term interests by requiring governments to make decisions that they might otherwise prefer to avoid (e.g. setting long-term targets) or making it harder politically for them to abandon prudent policy settings (e.g. by embodying

Table 1: Multiple layers of parliamentary scrutiny

Public scrutiny	Public	
		Media
		Expert commentators
Political scrutiny	Members	Ministers
	Select commitees	Cabinet committees
	House	Cabinet
Institutional layer	Officers of Parliament	Monitoring agencies
	Parliamentary agencies	Cabinet rules and requirements
	Rules and procedures	
Formal accountability		Statutory and administrative reporting requirements
		Internal agency controls and business performance processes
Key:	Legislative	Executive

Source: Boston et al., 2019, p.63.

principles of fiscal responsibility or ecological sustainability within legislation).

These efforts are based on a crucial and not unreasonable assumption, namely that political incentives are not immutable; they can be tweaked and redirected. Hence, myopia need not be triumphant: the long term can be brought into sharper political focus and the temporal horizon of decision makers can be stretched. Bear in mind, too, that most citizens and those who represent them care deeply about the future – among other things, they desire a safe prospect for themselves and their offspring. The challenge is how to design our political institutions so that these ethical norms receive the attention they deserve. Our focus in what follows is on the parliamentary dimension of this challenge.

Parliamentary scrutiny in New Zealand: a brief assessment

Accountability, in the sense of being answerable to someone for something, takes many forms (Mulgan, 2000; Office of the Auditor-General, 2019). For instance, useful distinctions can be made between political (electoral or democratic) accountability, administrative (bureaucratic or organisational) accountability, legal accountability, financial accountability and professional accountability. In the political arena all these forms of accountability are operative to one degree or another, and with varying levels of effectiveness. Invariably, they overlap and interact, often

reinforcing each other. Collectively, within a parliamentary democracy, they generate multiple layers of scrutiny. In other words, the performance of ministers and their officials is scrutinised through a range of mechanisms. At least four distinct layers can be delineated (see Table 1).

First, governments face ongoing, and often intense, *public scrutiny*. This includes the activities of interest groups, businesses, researchers, think tanks, the courts, the media and social media. Second, there is the *political layer* of scrutiny. This is the persistent – and sometimes merciless – questioning of ministers and their officials by MPs, whether through questions and debate in the House, select committee processes or other forums. Much of this political scrutiny is driven by constant inter-party competition for electoral success. Third, there is an *institutional layer* of scrutiny. This complements and assists the political scrutiny conducted by MPs. It includes the work of: a) the three officers of Parliament (i.e., the Office of the Auditor-General, the parliamentary commissioner for the environment and the ombudsman; b) the two parliamentary agencies (i.e., the Parliamentary Service, which includes the Parliamentary Library, and the Office of the Clerk, which includes Select Committee Services and the Parliamentary Law and Practice team); and c) the formal rules and procedures of the House, which trigger and facilitate scrutiny processes. Finally, there is the *formal*

accountability system, which is mandated through the statutory framework for public sector management and provides the vital supply of information that makes scrutiny possible. This includes the various regimes of financial management and performance management, and the related monitoring and reporting requirements, and internal controls within public agencies. The parliamentary commissioner for the environment's recent (2019) report on New Zealand's environmental reporting regime has highlighted the critical importance of such mechanisms for good long-term governance.

All four layers of scrutiny are vital for a healthy parliamentary democracy. Overall, our research indicated that while most of these layers in New Zealand are relatively effective, the scrutiny provided by the political layer is generally regarded as superficial or lacking in impact, and rarely engages with long-term matters. Certainly this was the assessment of many, if not most, interviewees. And their views were largely confirmed through our case studies and other investigations. Our findings can be summarised as follows.

First, many interviewees maintained that parliamentary scrutiny in New Zealand compares unfavourably with that in other advanced democracies. The scrutiny of legislation was regarded as a notable exception. Interviewees variously described existing oversight arrangements as 'weak', 'inadequate', 'cursory', 'patchy' and 'unduly partisan'. Such assessments were shared by both current and former MPs, and by MPs from across the House. Their views were also consistent with the evaluations of numerous officials and outside observers. This is not to suggest that the scrutiny activities of select committees (e.g. via their review of the Estimates or the conduct of inquiries) are generally poor. But by comparison with their counterparts in many other jurisdictions (e.g. Australia and Britain), our select committees undertake relatively few substantial inquiries. Landmark investigations which generate strong public interest or significant policy reforms are few and far between.

Second, and related to this, we undertook a review of 30 select committee inquiries conducted between late 2011 and late 2018. A key aim was to investigate the

extent to which such inquiries gave substantive consideration to *long-term* policy issues, including assessments of major government strategies, significant societal or environmental trends, or the mitigation and management of risks. The results were unambiguous: consideration of such matters was limited, ad hoc and unsystematic. Equally, the use of foresight techniques (e.g. horizon scanning and scenario analyses) by select committees has been rare, and questions of inter-generational fairness typically receive little attention.

Third, we undertook several case studies to investigate how much attention select committees give to major long-term government strategies (e.g. protecting biodiversity) and future-focused reports (e.g. dealing with fiscal, demographic and environmental trends). Again, the results indicated a lack of ongoing and rigorous parliamentary scrutiny of ministerial decisions and agency performance. Matters are not helped by the fact that, unlike in some other jurisdictions, governments are not legally obliged to produce regular reports on future societal trends (see Welsh Government, 2018), national risk assessments or social outcomes. Significant long-term strategies, such as the Sustainable Development Goals, receive only perfunctory attention by Parliament.

Overall, the incentives for, and capacity of, our parliamentarians to undertake systematic, rigorous and effective oversight of the executive branch are significantly constrained. Notable limitations include:
- the relatively small size of the House of Representatives by comparison with legislatures in most other OECD countries, which restricts the availability of MPs to sit on select committees and encourages strong party discipline;
- the absence of a second chamber, such as the Australian Senate or the British House of Lords, with a particular focus on scrutiny activities;
- the relatively short parliamentary term (among the shortest in the democratic world, where the average electoral cycle for unicameral and lower houses is 4.7 years);
- the political dominance of the House by the executive, even in the context of minority governments;

> It is no surprise that governments prioritise matters of immediate public concern, as this reflects the structure of political incentives in contemporary democracies.

- the high workload of select committees and the tendency for urgent and higher-priority business, most notably the scrutiny of legislation, to crowd out other scrutiny functions, such as the conduct of in-depth inquiries into the performance of government agencies and the effectiveness of current policies;
- the lack of procedural triggers to ensure that systematic scrutiny of long-term matters takes place;
- the absence of one or more permanent select committees with a primary mandate to scrutinise governmental performance, including in relation to long-term matters; and
- select committees' modest use of independent expert advice, including that available via the officers of Parliament and the academic community.

These limitations signal that several approaches can be taken to improve parliamentary scrutiny. It would be misguided to try to moderate the political nature of parliamentary life directly, because political motivations are inherent in representative democracy and provide its fundamental driving force. Instead, the approach should be to shape the institutional layer that provides opportunities for and supports political scrutiny, so that expectations of good scrutiny can influence and improve governance.

In all likelihood, the political layer of scrutiny in our governmental system would be stronger if there were significantly more MPs (e.g. 150+ rather than 120), an influential upper house, and a longer parliamentary term (e.g. four or five years). But constitutional reforms of this nature are not possible without the support of the majority of voters (e.g. via a referendum). Currently, the prospects of such support are low. Realistically, therefore, any reforms to improve parliamentary scrutiny of the quality of long-term governance must occur within the bounds of existing constitutional arrangements.

Lessons from other parliamentary systems
With that in mind, how do other parliaments scrutinise the quality of long-term governance within their respective jurisdictions and what lessons are there for New Zealand?

To investigate such questions we conducted a survey of parliaments in other Commonwealth countries and reviewed the available academic and other literature on scrutiny arrangements. The results were not unexpected: overall, parliamentary systems do not address matters of long-term governance in a comprehensive, systematic and rigorous manner. While scrutiny arrangements differ across the Commonwealth (and beyond), it is hard to identify what might be called 'best practice', particularly in relation to long-term matters. Equally important, the evidence suggests that many factors affect the quality of parliamentary scrutiny that have little to do with specific legislative structures, procedures or support services. These include the nature of a country's party system, political culture, civil society institutions, quasi-governmental institutions, public management systems and regulatory frameworks.

Be that as it may, various parliamentary systems have sought over the years to improve the institutional settings that underpin political scrutiny, including in relation to long-term governance. Four

Table 2: Indicators for evaluating parliamentary scrutiny of long-term governance

Type of indicator	Indicator	Example of measure
Political and public engagement *Connection of MPs and the public with long-term issues*	1. Active committee scrutiny of long-term issues	Select committee meeting hours spent on long-term scrutiny Number of substantive select committee reports
	2. Inquiries into long-term issues	Number of inquiries initiated
	3. Regular plenary debate of long-term issues	Number of debates
	4. Public awareness of parliamentary scrutiny of long-term issues	Parliamentary engagement data
	5. Public participation in framing long-term issues and outcomes	Number of participation opportunities
Robustness *Empowerment of effective scrutiny through opportunities and capability*	6. Parliamentary rules embedding procedural triggers for scrutiny of long-term issues	Parliamentary rules adopted
	7. Parliamentary rules requiring regular cycles for scrutiny of progress against long-term objectives	Parliamentary rules adopted
	8. Work programmes of committees include in-depth inquiry into long-term issues	Committee work programmes
	9. Adequate workload capacity of committees or other scrutiny bodies	Overall committee meeting hours
	10. Use of criteria for assessing anticipatory governance	Accessible set of criteria for parliamentary use
	11. Dedicated research and advisory support for MPs and committees	Data about support provided by Officers of Parliament and parliamentary agencies
	12. Ready access to, or ongoing partnership with, independent expert advice about long-term issues	Availability of independent advisors Established partnerships
Impact *Effect on quality of long-term governance*	13. Strong government expectation of parliamentary scrutiny	Parliamentary rules adopted
	14. Coherent statutory commitment devices	Statutory commitment devices in place
	15. Measurable long-term policy objectives, targets and monitoring, reported to House	Framework adopted for setting objectives and targets, and reporting
	16. Clear accountability for stewardship	Identifiable accountability mechanism
	17. Impact on policy outcomes	Evidence of impact
	18. Follow-up mechanisms as part of scrutiny model	Follow-up mechanisms in place
Durability *Continued effectiveness of scrutiny model*	19. Broad political support for scrutiny model	Explicit cross-party support for scrutiny model
	20. Scrutiny without frustration of governance	Analysis of parliamentary rules
	21. Public confidence in scrutiny model	Public engagement data
	22. Certainty of resources for scrutiny model	Funding decision-making process
	23. Ongoing relevance of scrutiny model	Mechanism to review and update scrutiny model

main approaches are evident, none of which are mutually exclusive:

- the implementation of new procedural triggers (and other kinds of commitment devices) that require legislatures to undertake specific forms of long-term scrutiny;
- the establishment of permanent or ad hoc parliamentary committees with a mandate to address long-term matters;
- the establishment of future-focused bodies that include parliamentary representation; and
- efforts to enhance the independent analytical resources available to MPs and parliamentary committees.

Examples of such approaches include:

- requirements for legislatures to review governmental reports on long-term policy issues (e.g. in Finland) or for legislatures to approve the long-term plans and strategies of governments;
- the creation of permanent parliamentary committees to conduct major policy inquiries, some of which have significant long-term implications;
- the creation of parliamentary committees specifically dedicated to exploring long-term or future-focused matters, including the conduct of foresight exercises or the scrutiny of governments' long-term strategies (e.g. the Committee for the Future in Finland and the House of Lords ad hoc Committee on Intergenerational Fairness and Provision);
- the creation of future-focused bodies bringing together legislators and representatives of major civil society organisations and research institutions, such as Scotland's Futures Forum (Wilson, 2016); and
- the creation or strengthening of independent institutional arrangements to provide advice to legislators on major policy issues or help legislators to undertake their long-term scrutiny functions. These arrangements include providing additional analytical and research support for parliamentary committees (e.g. via the Parliamentary Office for Science and Technology in the UK Parliament) and establishing new parliamentary institutions dedicated to future-oriented issues (e.g. the Office

of Budget Responsibility at Westminster and the Commissioner for Future Generations in Wales) (Davies, 2016).

It is difficult to assess the relative merits of these different approaches. For one thing, detailed independent analyses of the various approaches are few and far between, and the methodological issues surrounding attribution and causality are formidable. For another, while a specific approach might be relatively effective in a particular parliamentary system, its applicability elsewhere might be limited by contextual factors.

For instance, the creation of the Committee for the Future in the Finnish Parliament in the early 1990s is often cited as an example of a successful reform. It is claimed, among other things, to have enhanced the quality of debate in Finland on major long-term policy issues, encouraged the use of foresight in governmental policymaking, and ensured that the Finnish government's periodic reports on the future are properly scrutinised (Boston, 2017a, pp.401–17; Groombridge, 2006; Tiihonen, 2011). But to the extent that the committee has been effective, part of the reason probably lies in a strong multiparty commitment to evidence-informed decision making and a political culture that values scientific inquiry and the exercise of foresight. Without these ingredients, the committee may well have struggled to gain traction.

Nevertheless, based on the available international evidence, several conclusions can be proffered. First, there are no 'silver bullets' for improving the quality of scrutiny provided by the political layer. This applies equally to scrutiny in general and to the scrutiny of long-term governance. Second, and related to this, an integrated package of reforms is likely to be best. Ideally, this should include structural changes, new procedural triggers (i.e. commitment devices), and the provision of additional analytical resources and independent advice for select committees (i.e. advice that is independent of the executive branch). Third, a key goal must be to integrate and embed long-term matters in normal day-to-day parliamentary routines and practices. Intergenerational issues, creeping problems and long-term risks must be constantly and

… New Zealand Parliament lacks select committees that are dedicated primarily or exclusively to the scrutiny of governmental policies, activities and performance.

automatically brought to the fore; they must no longer be treated as optional extras, or nice-to-have, but non-essential, appendages.

Finally, there is merit in devising criteria to assess any new framework for parliamentary scrutiny of long-term governance. Table 2 outlines four such criteria – political and public engagement, robustness, impact and durability – together with a series of performance indicators and possible ways to measure impacts. Plainly, some of the suggested indicators will be difficult to evaluate, partly because of data gaps. Nonetheless, the proposed framework represents a good place to start.

Bringing the long term into short-term parliamentary focus

Given these considerations, what reforms should our Parliament consider in the interests of better scrutiny, and especially better oversight of long-term matters? Our report canvassed a wide range of options. Most, but not all, were concerned with the structure, role, conduct and resourcing of select committees, and most of our suggestions will entail changes to the standing orders – some minor, but others more significant.

Select committee structures

By comparison with many other legislatures, the New Zealand Parliament lacks select committees that are dedicated primarily or exclusively to the scrutiny of governmental policies, activities and performance. There is, for instance, no Public Accounts Committee or specialist Governance Committee. Instead, most committees have multiple roles and spend much of their time on scrutinising government bills. Without creating one or more specialist committees with a strong focus on non-legislative scrutiny (or allocating specialist scrutiny functions to particular committees), it will be difficult to enhance the quality of non-legislative scrutiny.

Our report outlines various options for establishing one or more committees with the specialist function of scrutinising long-term governance. One of these would be to create a Committee for the Future – fashioned, at least in part, on the Finnish model. Other options would involve creating a specialist function of long-term governance and/or requiring select committees to undertake designated tasks, such as outcome reviews, wellbeing reviews, stewardship reviews or sustainability reviews in their specific areas of responsibility.

Creating new committees poses a problem. As it stands, there are barely enough MPs to service the existing structure of select committees. The current system can only operate because some MPs (especially government backbenchers) serve on two or even three committees. On the other hand, most select committees are now larger than was envisaged when the Parliament first adapted to the MMP electoral system. In 1996, the rules indicated that committees should have eight members. But in the present term of Parliament the committees generally have between eight and 11 members, with one (the Finance and Expenditure Committee) that has 13 members. There is scope for reducing the average size of select committees, thereby freeing up capacity for a specialist-function committee dedicated to governmental and/or long-term scrutiny.

A further issue with the current structure and functions of select committees is that, while the subject select

committee structure was designed in 1985 to enable the robust examination of government policies and performance through inquiries, this has not been a strong feature of committee work in recent times. This is partly because committees are generally preoccupied with considering legislation, annual financial cycles and petitions, and also perhaps because committees no longer place great priority on inquiry work. A rejig of the committee structure to reduce competing demands on the time and attention of subject select committees could provide renewed impetus to carry out inquiries into long-term matters.

Select committee processes and procedural triggers

Aside from issues of structure, long-term matters will receive systematic parliamentary attention only if specific requirements to this effect are incorporated into the standing orders. Rules that trigger specific procedures are already dotted throughout the standing orders in respect of, say, financial scrutiny, and these could be augmented with provisions that generate examinations of long-term governance. There are two such triggers already – the presentation of the government's statement on the long-term fiscal position and the investment statement – but each of these is activated very infrequently: only once every four years. Effective scrutiny requires a more regular regimen of reporting and parliamentary examination.

Our report therefore suggested introducing new procedural triggers to ensure that select committees give greater attention to particular oversight functions, such as the scrutiny of government strategies and issues with major long-term implications. Ideally, such procedures would be based on formal accountability requirements set out in statutes. A proposed requirement along these lines has been included in the recently introduced Public Service Legislation Bill, in the form of long-term insights briefings prepared by departmental chief executives (see schedule 6, clause 8). Clearly, if the bill were passed with the provision for long-term insights briefings retained, then the House's procedures should be updated to

> Given the many serious global and local threats to the wellbeing of future generations, better parliamentary scrutiny of long-term matters is vital.

take advantage of this new mechanism by placing the briefings before select committees for consideration. The proposal is for the briefings to be relatively intermittent – that is, at least once every three years – but they could provide a valuable basis for select committees to consider possible forward-looking inquiries. This would especially be the case if the briefings were available during the first year of each term of Parliament. A further potential statutory mechanism could be the proposed provision for four-yearly wellbeing reports to be prepared by the Treasury, under the Public Finance (Wellbeing) Amendment Bill.

The House can adopt scrutiny procedures without needing them to be based on statutory reports. For example, a new specialist-function committee could be given an explicit remit to examine the government's progress in relation to long-term strategies, plans and targets. Objectives for long-term outcomes are signalled in a number of laws and public undertakings – for example, targets relating to child poverty reduction, the protection of biodiversity and the Sustainable Development Goals. The specialist-function committee could be given responsibility for examining such

commitments, and progress towards them, and generally for reviewing the government's approach to the prudent management of the country's long-term interests.

While a specialist-function select committee would be a useful addition to the House's capacity for examining long-term issues, other options are available. For instance, existing financial scrutiny procedures could be adjusted to include specific reference to the alignment of government spending and performance with long-term outcomes. Committees could also be given the task of reviewing the stewardship of the public service as a whole, and of particular departments, based on the proposed stewardship responsibilities set out in the Public Service Legislation Bill (see clauses 10 and 50).

Finally, committees could find ways to improve the effectiveness of their practices aside from making changes to the standing orders. Committees could focus the terms of reference for inquiries on long-term matters, and could form a strong convention of following up on the recommendations in their reports. Another mechanism would be to ensure that long-term issues raised in reports of officers of Parliament – that is, the Office of the Auditor-General, parliamentary commissioner for the environment and the ombudsman – are vigorously pursued and, where appropriate, result in committee recommendations to the government. Other changes to practice could include the allocation of more time for financial scrutiny hearings, to enable more in-depth exploration of targets and performance. Committees could combine for joint consideration of cross-sector programmes. And when considering legislation, committees could make a point of reviewing the long-term implications of bills. These are just a few ways committees could more actively scrutinise the detail and outcomes of the government's actions, especially in relation to long-term matters.

Select committee resources

Select committees have ready access to advice from the officers of Parliament, especially the Office of the Auditor-General and parliamentary commissioner for the environment, but do not seek this

very frequently, except during the financial scrutiny procedures. Also, committees can seek advice from other independent experts, which would usually be funded by the Office of the Clerk on request; again, this avenue of support is underutilised. There is undoubtedly scope for select committees to make greater use of such independent advice, and it would be useful to find ways to facilitate such input.

Another issue relates to scientific advice. A high proportion of policy issues, especially those of a long-term nature, have a scientific dimension and thus require a good understanding of the latest scientific evidence. Currently, few staff in the Office of the Clerk, Parliamentary Library or Office of the Auditor-General have scientific training. Likewise, relatively few MPs have postgraduate qualifications (or even undergraduate degrees) in a scientific discipline, and at any rate the robustness of scrutiny should not depend on the technical qualifications that happen to be held by people elected to Parliament. There is no equivalent in the New Zealand Parliament of the Parliamentary Office of Science and Technology (POST) in the UK (Clark and Morton, 2008; Kenny et al., 2017; Kumar and Cope, 2008). For such reasons, our MPs and select committees are heavily dependent for their scientific advice on scientists employed by government departments and agencies. While there is no reason to question the capability, expertise or professionalism of such staff, the fact that they are employed to serve the elected government is bound to affect the nature, range and independence of the advice they offer to MPs, not to mention their being made available to committees in the first place. Our report notes that the prime minister and many government departments now have their own designated chief science advisors. Arguably, there is a case for the appointment of a chief *parliamentary* science advisor, as well as fostering much stronger links between Parliament and the wider scientific community (e.g. via the Royal Society of New Zealand) (Jeffares et al., 2019). Our report offers a number of options for progressing such arrangements.

Enhancing consideration of long-term matters by the House

Aside from changes to the structure, operations and resourcing of select committees, there are various ways to ensure that long-term matters are considered more systematically by the House. One option would be to require the prime minister's statement on the first sitting day of each calendar year (except at the beginning of a term of Parliament) to include information about long-term matters (e.g., the government's strategies for addressing major long-term challenges). Additionally, standing order 354 could be amended so that the statements are referred to the Governance and Administration Committee (or a Governance Committee) for consideration of the long-term aspects.

Another option would be to revise the current arrangements for oral questions in the House to provide for periodic, additional question sessions focusing on long-term matters. Potentially, this question session could be followed by a debate on an issue with significant long-term implications. Yet another possibility would be to require additional debates on government reports that focus on long-term matters. Currently, standing order 336(5) requires a debate on the statement on the long-term fiscal position and on the investment statement, each of which occurs at four-yearly intervals. Other current or future documents, such as the proposed long-term insights briefings and wellbeing reports, could be added to this list.

Establishing a procedure for regular debates on major issues would provide a mechanism for matters of long-term importance to be discussed in the House.

Such special debates would be similar to adjournment debates in the British House of Commons. The timing of these special debates could be stipulated in the standing orders, as occurring on a periodic basis, or left to the discretion of the Business Committee. While it is already within the gift of the Business Committee to arrange such debates, this does not happen often because there is no expectation that such debates will be held with any regularity.

Conclusion

Robust and systematic parliamentary scrutiny of the executive is critically important for ensuring good governance and protecting the public interest. But current arrangements in New Zealand are unsatisfactory. This applies particularly to the scrutiny of *long-term* governance: oversight of such matters is generally ad hoc, limited, reactive and unsystematic. Given the many serious global and local threats to the wellbeing of future generations, better parliamentary scrutiny of long-term matters is vital. The quest, in other words, must be for more forward-looking, systematic and proactive legislative oversight. This article has outlined some of the ways that such oversight might be secured. A wider range of options is canvassed in our report.

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Matt Boyd and Nick Wilson

Catastrophic Risk from Rapid Developments in Artificial Intelligence

what is yet to be addressed and how might New Zealand policymakers respond?

Abstract

This article describes important possible scenarios in which rapid advances in artificial intelligence (AI) pose multiple risks, including to democracy and for inter-state conflict. In parallel with other countries, New Zealand needs policies to monitor, anticipate and mitigate global catastrophic and existential risks from advanced new technologies. A dedicated policy capacity could translate emerging research and policy options into the New Zealand context. It could also identify how New Zealand could best contribute to global solutions. It is desirable that the potential benefits of AI are realised, while the risks are also mitigated to the greatest extent possible.

Keywords artificial intelligence, catastrophe, governance, international cooperation, risk analysis, risk mitigation

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Artificial intelligence (AI) is not one technology but many and includes machine learning applications and a number of types of advanced algorithms. The development and deployment of these technologies promises to advance economies, wellbeing and sustainability (AI Forum New Zealand, 2019). However, AI is both a general purpose technology, and a dual use technology of concern. This means that AI has a diverse set of uses both beneficial and harmful. This technology is now widely distributed in a world full of complex interacting threats. In the longer term, AI could plausibly even pose an existential threat to humanity.

In a previous issue of *Policy Quarterly* we outlined the emerging risks posed by AI and presented broad options for a New Zealand policy response (Boyd and Wilson, 2017). In the two years since that publication a lot has changed. Many of the developments are summarised in a major report by the Australian Council of Learned Academies (ACOLA), which notes that AI has global impact and that an international

response is needed (Walsh et al., 2019). Cédric O, the secretary of state for the digital sector of France, highlighted this shared international concern when he said, 'An international platform will be necessary in order to ensure a sustainable development of artificial intelligence and serve humanity as a whole' (Marrs, 2019).

In what follows we resurvey the emerging AI landscape from a New Zealand perspective, identify potential catastrophic risks from AI, and argue for policies and

data and the importance of transparency, explainable algorithms and the right to review are helpful early steps.

Employment prospects and economic stability in an automated world are the focus of work by the New Zealand Productivity Commission (Productivity Commission, 2019) and the Prime Minister's Business Advisory Council (Business Advisory Council, 2019). There is a Future of Work Tripartite Forum, and also a New Zealand Digital Skills Forum.

New Zealand focus. In addition to those mentioned above, the Royal Society of New Zealand's report *The Age of Artificial Intelligence in Aotearoa* (Royal Society of New Zealand, 2019) accompanied the major report by ACOLA.

Most national AI strategies focus on research, talent and industrial strategies (Dutton, 2018). Finland and the Netherlands have started to systematically educate their populace on AI (Delcker, 2019; University of Amsterdam, 2019). The United States and China also have a substantial focus on developing AI (Future of Life Institute, 2019; Select Committee on Artificial Intelligence, 2019).

Although many of these publications mention well-known and near-term risks (such as job displacement, bias and injustice), other reports have an explicitly upbeat tone. Economic analyses by PricewaterhouseCoopers (PwC, 2018) and McKinsey (McKinsey Global Institute, 2018) trumpet the boon AI will bring to profit and productivity.

> The AI Forum identifies risks due to the domination of AI technology by a handful of advanced corporations and the potential for an economy enabled by AI that results in wider inequality.

action to anticipate and mitigate these risks in order that AI might predominantly benefit New Zealand society.

Recent advances in AI and the policy response

Our previous article outlined four AI risk domains: bias and injustice; economic chaos and the transformation of work; AI dominance of media discourse; and security and existential risks. Public sector work (internationally and in New Zealand) has focused on addressing some of these issues over the last two years.

For example, the risk of algorithmic injustice due to biased data, explicit or implicit algorithmic rules, and even unjustifiably neutral algorithms (Susskind, 2018) has entered mainstream thought. The AI Forum of New Zealand's report *Towards Our Intelligent Future* (AI Forum New Zealand, 2019) discusses these; an Algorithm Assessment Report (Statistics New Zealand, 2018) assesses government algorithm use; and there is a forthcoming Digital Government Strategy currently (as of late 2019) at consultation stage. Statistics New Zealand has also released a draft *Algorithm Charter* for consultation (Statistics New Zealand, 2019). Related work on the safe and appropriate use of

Ensuring growth in a world enabled by AI is being taken seriously and policy approaches are proposed.

With respect to AI and media discourse, the threat that recommendation algorithms are serving up harmful content has reached global awareness through such initiatives as the New Zealand-initiated 'Christchurch Call' (Ministry of Foreign Affairs and Trade, 2019).

The risks of physical harm, use of technology as a weapon, and risks of accidental technological catastrophe are probably growing. A number of international researchers see the catastrophic risks of AI as the most likely near-term threat to humanity (Turchin and Denkeberger, 2018b). This is especially so when use of AI might enhance the threats posed by nuclear weapons and advanced biotechnology. While many measures of human wellbeing, such as life expectancy, infant mortality, murder rates and tolerance, have all been trending for the better (Pinker, 2011), the risk that we cause great harm to ourselves with advanced technology is probably growing (Bostrom, 2019).

The AI discussion takes centre stage

There has been an explosion of AI-related publications, including reports with a

Towards Our Intelligent Future is the most comprehensive report on AI in New Zealand to date. The AI Forum identifies risks due to the domination of AI technology by a handful of advanced corporations and the potential for an economy enabled by AI that results in wider inequality. Issues of algorithmic bias, injustice, transparency, fairness, autonomy, privacy, inclusiveness and safety are all touched on. So too are the risks of citizen manipulation, cyber-attack and totalitarian practices. Some of these risks may have an impact on only a small proportion of the population, but others could be the seeds of greater problems. The AI Forum provides a policy map, but in what follows we move beyond these day-to-day policy needs and focus on the larger-scale risks of AI.

The growing AI risk

AI could cause large-scale harm if it is programmed to do something devastating, or if it develops a destructive method to achieve its goals (Bostrom, 2014). Deployment of AI could also create structural risks that might lead to, or exacerbate, other threats (Zwetsloot and DaFoe, 2019). Structural threats will often require collective action to counter.

Risks from AI have been outlined in a number of recent papers (Brundage et al., 2018; The Workshop, 2019; Turchin and Denkeberger, 2018a; Yampolskiy and Spellchecker, 2016). The *Malicious Uses of AI* report catalogues these as threats to digital security, physical security and political security (Brundage et al., 2018). The probability and seriousness of catastrophic AI failures will likely increase with time (Yampolskiy and Spellchecker, 2016).

Recent technical developments underscore this growing risk. For example, Google DeepMind has made very rapid progress in mastering strategic games (AlphaStar Team, 2019). The significance of this is that DeepMind's AI applications are now exhibiting strategic capability that was until recently considered an engineering challenge. DeepMind also developed AlphaFold to predict the three-dimensional structure of biological proteins from their primary amino acid sequence. This is a very difficult problem in biology, and AlphaFold won the annual protein-folding prediction contest on its first attempt (Evans et al., 2018).

Open AI has developed an application for generating text content, which was deemed 'too dangerous to make public' and so only a partial version as open source has been released (Radford et al., 2019; Whittaker, 2019). Deepfake technology can now produce realistic video content depicting events that never occurred with convincing resemblance to actual subjects. This technology is now easily accessible and widely deployed (Barnes and Barraclough, 2019): for example, the video of Mark Zuckerberg describing how he was influenced by fictional villainous entity Spectre (O'Neill, 2019). Deepfake technology was also used to impersonate the voice of a CEO for economic gain (Stupp, 2019).

In sum, the ability of AI to produce synthetic text and multimedia, generate insights in domains such as biotechnology, and engage in strategic activity is rapidly progressing.

Even this present AI technology gives reason to be concerned. Allan DaFoe of the Centre for the Governance of AI at the Future of Humanity Institute has argued that even if we stopped scientific improvement in AI now, there are extreme systemic risks, including: mass labour displacement, unemployment and inequality; of AI as a key strategic industry, with monopolistic frontrunners; that surveillance could empower suppressive regimes and robotic repression could circumvent any human reluctance to fire upon protestors; of AI undermining global strategic stability by allowing for a successful pre-emptive nuclear strike (for example, if satellite image analysis and ocean sensors could reliably reveal the location of the nuclear-capable submarines necessary for a retaliatory strike) (DaFoe, 2018).

Global catastrophic risks

Global catastrophic risks are those which would bring crippling damage to human wellbeing on a global scale (Bostrom and Cirkovic, 2008). Such events may currently be of low probability, but they are potentially high impact and warrant attention because even a small decrease in the probability of their occurring has large pay-offs. Some of the risks from AI fall within this category. In addition, several scenarios show that AI could pose an existential threat to the survival of humanity or to the continuation of a flourishing technological civilisation. Such threats are identified in the work of Nick Bostrom (Bostrom, 2014), and have been catalogued (Turchin and Denkeberger, 2018a). We now examine six persisting risks associated with AI for which there does not yet appear to be an adequate policy response.

The risk that democratic processes erode

Access to clean information and tracking actual states of affairs in the real world underpins all well-functioning democratic processes. AI is emerging as a threat to the functioning of democracy, which may result in a broken system that produces erratic, non-representative outcomes. In the wake of the Cambridge Analytica scandal, the concept of 'weaponised advertising' emerged, where big data helps to target individuals and sway opinions. Non-legitimate powers are using AI and campaigns of disinformation in strategic efforts to bypass the democratic process (Mazarr et al., 2019; Polyakova, 2018). The ACOLA report on AI in Australia and New Zealand notes that platforms have been hijacked and websites, social media accounts and links created and inserted in connection with the Brexit referendum and the 2016 United States presidential election (Walsh et al., 2019).

There is some evidence that it is difficult to convince people to change their minds. However, clouding the argument with misinformation can inhibit political discourse, thereby advancing strategic ends (Bridle, 2018). Synthetic text and deepfake media are likely to increase the cloudiness. Algorithmic content recommendations amplify these effects. Also, modelling studies demonstrate that these algorithms can prevent populations converging on agreed beliefs (Sirbu et al., 2019). In this increasingly chaotic information environment, it is almost impossible to distinguish actors, motives, fake news, paranoid fiction and state propaganda (Bridle, 2018).

A New Zealand perspective on digital threats to democracy has been taken by one group, The Workshop, which has identified three core problems: platform monopolies, opaqueness of the algorithms, and business models that reward amplification of engagement without regard for wellbeing (The Workshop, 2019). The *Perception Inception* report on synthetic media (Barnes and Barraclough, 2019) examines these threats but recommends that no new law is needed in New Zealand at present. However, even if laws were to be changed,

> AI is emerging as a threat to the functioning of democracy, which may result in a broken system that produces erratic, non-representative outcomes.

this won't prevent illegal activities. Better content moderation might be a step in the right direction, but the scale of the problem demands a wider and more effective response (The Workshop, 2019).

New Zealand society will need to decide to what degree we accept machines inferring psychological information about us in order to manipulate our beliefs (Burr and Cristianini, 2019), and whether content targeting interferes with the human right to free belief formation (UN Special Rapporteur, 2018). We may need to act to avoid a future political sphere where intelligent algorithmic code enables

society beyond those of the individual. For example, when privacy is absent, dissenting thought is suppressed. This has implications for the ability of individuals to form activist groups and hold employers, or public institutions, to account (for example, through whistle-blowing).

Erosion of civil liberties through automated censorship or manipulation could slowly emerge as the new normal. Monopolistic corporates could squeeze morality into their products, such as an in-home digital device such as Alexa that could 'snitch' to parents (or authorities) about adolescents' drug use, for example.

across the military (Department of Defense, 2018); and China has a very ambitious AI development plan with a focus on civil–military fusion (Johnson, 2019).

Among the catastrophic risks from AI identified in one review is the 'wrong command sent to a robot army' (Turchin and Denkenberger, 2018a). But a wrong command is not necessary. A significant threat is not that lethal systems obey commands, but that they run amok. In 2010 financial algorithms caused a flash crash of the US stock market, wiping 9% off the Dow Jones in 30 minutes (Bridle, 2018). A 'flash crash' event involving autonomous weapons, such as a massive AI-coordinated swarm of drones or 'slaughter bots', could be catastrophic. The European Parliament has called for a ban on LAWS (European Parliament, 2018), but at the September 2019 meeting on the Convention on Certain Conventional Weapons, Russia and the US continued to resist the requirement for 'human control' of weapon systems.

New forms of attack do not just steal information, but aim to shut down public infrastructure, cause physical damage and erase data.

those with vested interests to exert power through ubiquitous surveillance and the control of perception (Susskind, 2018).

The risk of totalitarianism
It is one thing for democracy to degrade and cease functioning as intended; it is another for surveillance and control systems to incrementally push a functioning democracy towards totalitarianism.

The increasing business use of intelligent surveillance systems, such as facial recognition, coupled with state surveillance approaches, including the array of Chinese social credit scoring systems (Kobie, 2019), along with rogue apps harvesting massive caches of user data means there may be very little that remains private in the 'age of surveillance capitalism' (Zuboff, 2019). Especially concerning is the ability of AI systems to detect emotions, identified by the World Economic Forum as a tool by which 'oppressive governments could … exert control or whip up angry divisions' (World Economic Forum, 2019, p.73). These trends will potentially change human behaviour on a mass scale.

Privacy can be waived by an informed individual, but privacy has benefits for

Digital code can force us to act a certain way and transgressions can be instantly logged and punished. Taken to the limit, increasing surveillance could become a societal panopticon where everyone is surveilled all the time, without the ability to watch the watchers. Imbalances in power such as this are easily entrenched and, without vigilance, human societies could sleepwalk into AI-facilitated totalitarianism.

Differential adoption of such technologies by powerful regimes and corporations could lead to profound disruptions in the world order, which New Zealand policymakers should be concerned about. This is particularly so given this country's extreme dependence on the rest of the world for trade, tourism and the exchange of new ideas and technologies.

The risk of violence and conflict
Fully autonomous vehicles and drones raise the possibility of a wide range of near-future lethal autonomous weapon systems (LAWS). Russia has opened a 'technopolis' hub to pursue advanced military technologies, including AI (Bendett, 2019); the 2018 US Department of Defense strategy calls for AI to be pushed

AI could also be harnessed for a digital attack by states or by terrorists. The World Economic Forum sees the threat of AI-enabled cyber-attack as a major concern (World Economic Forum, 2019). Cyber-attacks posing a catastrophic threat include ransomware attacks on cloud-computing providers, attacks on electricity suppliers, and attacks directed at weapons systems. New forms of terrorism could attempt to disrupt automated global markets by manipulating algorithmic processes (Bridle, 2018).

New forms of attack do not just steal information, but aim to shut down public infrastructure, cause physical damage and erase data (Greenberg, 2019). The stakes are high when attacks have successfully penetrated nuclear power stations that are not connected to the internet. Often, witting or unwitting humans are used as attack vectors. A worrying risk would be cyber-attacks escalating to real-world attacks (Das, 2019). New Zealand will need to ensure that robust cyber security is a priority moving forward.

The risk of AI in combination with other threats
As a general purpose technology, like the steam engine, electricity or the internet, AI has the potential to enhance other

catastrophic risks. For example, AI is integral to many advances in genetic technologies and other biotechnologies. Building on AlphaFold, AI could be used in ways that increase the risk of a biotechnological catastrophe, such as an accidental or intentional extreme pandemic (from genetically-engineered biological agents), or catastrophic disruption to critical ecosystems or food supplies. One survey estimates a 2% probability of human extinction from engineered pandemics by the year 2100 (Sandberg and Bostrom, 2008).

AI is also a concern for nuclear weapons and fissile materials safety. A 2019 report on the impact of AI on nuclear threats and strategic stability finds that AI could amplify risks (Boulanin, 2019). Key vulnerabilities include brittle nuclear systems, the threat of AI-driven cyber-attack, and misperceptions about the activities and intent of rival states with respect to AI and nuclear capability.

Quantum computing in conjunction with AI could plausibly pose new risks. Google has recently published a paper claiming that its quantum computers can outperform standard computers on a particular problem (Arute et al., 2019). Known as 'quantum supremacy', this new advance could be the first step towards vulnerabilities in encryption and other high-stakes systems.

Bostrom has advanced a 'vulnerable world hypothesis', which contemplates technological discoveries that could threaten humanity (Bostrom, 2019). It is possible that five scientists tinkering in a lab for a year, with the aid of machine learning and a digital–biological converter (Boles et al., 2017), could accidentally or intentionally bring about Bostrom's 'moderately easy bio doom', thereby proving his vulnerable world hypothesis correct (Bostrom, 2019). Potential strategies have been advanced to mitigate some of these combination threats, and New Zealand policymakers should become familiar with them.

The risks of artificial general intelligence
Artificial general intelligence (AGI) that possesses human-level capability, or superintelligence that vastly outperforms humans in all tasks, are as yet only

theoretical. However, if successfully developed, AGI would pose additional risks, in part because it could be used by one organisation or state to achieve an unassailable strategic advantage. But AGI could also be problematic if its goals are poorly specified or not aligned with those of human wellbeing. This is a serious risk in part because of the technical difficulties in designing risk-free systems (Amodei et al., 2016; Bostrom, 2014). Concerns about AGI are not particularly pressing now, but estimates for the arrival of human-level intelligence, which might then exhibit an

explosion of very rapid self-improvement, sit at 50% by 2040 (Muller and Bostrom, 2016). Policymakers therefore need to at least agree on a timetable for when we start to think about this issue, and what signals would trigger earlier action.

Unknown risks
Rapid technological progress, and the associated interactions between technology, society and the environment, could lead to dynamic, difficult-to-predict threats – 'technological wildcards' (Ó hÉigeartaigh, 2017). We know that the history of the world is partly driven by 'black swans', rare and hard-to-predict events that change everything (Taleb, 2007). Without further analysis we don't know which risks from AI will become most salient, and we don't know if AI is the most salient risk (it could well be) in the near term or at later stages of AI maturity. The large number of failure modes described above, and elsewhere, suggests that we haven't yet contemplated all of them (Turchin and Denkeberger, 2018a). In light of these unknowns, an agile, broad and adaptable policy response to the future of AI appears warranted.

Potential New Zealand policy response options
AI is a diverse technology touching every branch of government and society. We therefore reason that AI risk mitigation should be seen as one component of a general catastrophic risk mitigation strategy. The scale of global catastrophic risks, their uncertain probability, and the long time frame across which risks may emerge mean that individual governments and groups of like-minded ones contributing to global governance is really the only place from which to mount an effective response.

> Increased multilateralism may be a productive response to a range of threats and New Zealand diplomats should join and advance New Zealand and other initiatives.

The Cambridge Centre for the Study of Existential Risk (CSER) has published a list of policy options for governments to consider with regard to global catastrophic risks (CSER, 2019). This identifies five barriers to effectively dealing with catastrophic risks such as those posed by AI. These are:

- lack of incentives for long-termism in national policy;
- lack of government agility to respond to new perspectives on risk;
- insufficient risk management culture in government;
- lack of technical expertise; and
- failure of imagination.

We believe that these problems all apply in New Zealand and see five key areas – described below – where New Zealand policy could help mitigate the catastrophic risks from AI. A key obstacle, as Tom Barraclough, co-author of the *Perception Inception* report, notes, is that 'It's not clear who is responsible in government for anticipating these issues' (Kenny and Livingston, 2019).

It is true that there are many immediately pressing demands on the public sector, but there is enormous value in the

future which may be put at risk if we do not take time for big-picture thinking (Boyd and Wilson, 2018). For this reason, an imperative first step is to designate responsibility for investigating and advocating on these issues. Some mechanism for distilling the information and advising various key decision makers is necessary to ensure comprehensive coverage and avoid redundant analysis (or omission). Furthermore, risks need to be evaluated as a portfolio so that prioritisation can occur. We should focus on the *most* important, not the *merely* important, risks.

nations, including Australia, Finland and the United Kingdom, met in Ireland in November 2019 (Houses of the Oireachtas Communications Unit, 2019). Increased multilateralism may be a productive response to a range of threats and New Zealand diplomats should join and advance New Zealand and other initiatives.

In a number of precedents New Zealand has taken a key role in global coordination around threat, such as the anti-nuclear stance. The country's recent lead role in the Christchurch Call shows that the Ministry of Foreign Affairs and Trade is

policy and safety, a dedicated unit is required to evaluate risks and possible responses. This necessarily ongoing process (for AI and other technologies) should be institutionalised through the creation of enabling structures in the New Zealand public sector. 'Small government' thinking is inappropriate when a nation faces major threats and needs to support getting global governance working.

Whatever form this specialist unit takes, it could logically reside in the Department of the Prime Minister and Cabinet, or the Ministry for Foreign Affairs and Trade, or even the Ministry of Business, Innovation and Employment. The unit will need some level of independence, and a broad mandate for long-term thinking across a range of AI risks (and opportunities). This would allow the catastrophic risks from AI to be studied and managed with input from NGOs and academic institutions not constrained by legacy and near-horizon political thinking.

> Given the specialist nature of and rapidly growing international literature on AI policy and safety, a dedicated unit is required to evaluate risks and possible responses.

Advocate for international cooperation
It is clear that the threats described above could have global impact and that a global response is needed. There have been some steps in this direction. In July 2018 the United Nations secretary general appointed a High-level Panel on Digital Cooperation to support 'cooperative and interdisciplinary approaches to ensure a safe inclusive digital future for all taking into account relevant human rights norms' (Walsh et al., 2019). With respect to AI, the Canadian and French governments have instigated an International Panel on Artificial Intelligence. This body is modelled on the Intergovernmental Panel on Climate Change and aims to bring together policy experts and researchers in AI, the humanities and social sciences to ensure that AI development is grounded in human rights (Marrs, 2019). At meetings associated with the G7 summit in 2019, New Zealand expressed interest in joining this panel, and this would seem highly desirable. There also exists an International Grand Committee on Disinformation and 'Fake News': representatives from 12

well placed to progress such initiatives.

There are currently insufficient coordinating and monitoring mechanisms to prevent an AI catastrophe should it arise. A general ability to stabilise a world vulnerable to technological risk might require greater capacities for preventive policing and global governance (Bostrom, 2019). Ironically, some degree of intrusive surveillance (for example, in certain risk domains around AI such as military applications and biotechnology) might be required to effectively monitor risks and eliminate serious threats. As well as advocating for international cooperation, New Zealand could take action beyond the Christchurch Call and set a standard for other nations to follow.

The need to structure and resource public institutions so that solutions are possible
Any diplomatic response by New Zealand must be well informed. It is important to be clear who is responsible for this advice and to ensure they are well resourced, or quality advice will not be forthcoming. Given the specialist nature of (and rapidly growing international literature on) AI

Given the rapidly advancing risks in the field, this unit must be formed now, and be flexible and agile. Its success will depend on the quality of thinking it harbours. This means that a competent multidisciplinary team must be involved, including exceptional AI technical experts and engineers, experts from other dual-use technology disciplines, such as biotechnology, and historians, social scientists and ethicists with knowledge of social and political transformations underpinned by technology. The personnel recruited will be key to determining the success of this task.

The future value of free and flourishing New Zealand lives justifies at least a modest investment in protection (Boyd and Wilson, 2018), and even more so if New Zealand is particularly well placed as an island nation to survive some existential threats (Boyd and Wilson, 2019). In the context of catastrophic risks, it seems reasonable to apportion perhaps 0.01% of GDP (approximately $25 million in the first year) to analysing the threats of AI and other potential catastrophic risks to New Zealand. This kind of approach provides something of an insurance policy against future risks. After the initial scoping, future investment needs, and options, will be clearer.

Understand the risks and take a risk management approach

A number of global research institutes have examined the risks posed by AI: these include the Future of Humanity Institute, the Machine Intelligence Research Institute, Open AI and CSER, among others. However, research publications are not effective unless used to inform policy. The initial investment outlined above must ensure that the outputs of these global institutions are digested to inform local policy; the investment could also fund secondments of government staff (and from New Zealand-based NGOs and universities) to centres such as the Future of Humanity Institute, Open AI and CSER in order to bolster local capability to think productively in this space.

When managing risks, the priority of action depends on the likelihood that the risk will transpire, the magnitude of the resulting harm, and the ability to mitigate the risk. Even if the probability is low, if the potential harm is very great, and a solution possible, then some resources should rationally be allocated (even if this is a collective action problem requiring coordination of multiple countries). Initial work could focus on deducing the probabilities and magnitudes of the risks we have outlined. Monitoring needs to occur so that these values can be updated regularly over time. A scenario-based approach along with signal monitoring could determine which scenarios are eventuating. Table-top simulation exercises would help identify legislative and policy gaps requiring closer examination.

Implement mitigation strategies

Government inaction and the hope that the 'ethics policies' of the developers of technology will mitigate risk is not sufficient (Nemitz, 2018). Humans may now have the power to rapidly destabilise and destroy institutions and assets that we have built incrementally over centuries. Sustaining life and civilisation are inherently valuable projects and therefore essential. When any issue is 'essential', the principle of essentialism dictates that this issue must be dealt with by law (ibid.). We already have a set of agreed law that must be adhered to globally: the International Declaration of Human Rights, and other associated principles. Preserving human rights should be the benchmark for all risk mitigation pertaining to AI.

Beyond ensuring that human rights obligations are met, mitigation strategies should ensure that we can benefit from AI without suffering the harms. Strategies might include regulating certain technologies, certifying developers, banning some practices (such as impersonating humans), monitoring developments in AI, performing safety research, and other activities specific to particular threats. AI itself might form part of the solution to some of the risks posed by AI. This could be the case for the risk of cyber-attack, or the dissemination of dangerous information.

Overall, a focus on risk and reliability is important. 'Concrete problems in AI safety' are already known (Amodei et al., 2016) and guidelines for responsible AI systems are being produced, such as the Alan Turing Institute's 'responsible design of AI systems in the public sector' (Leslie, 2019). The aim should be to accelerate this safety research.

Consider the longer term

Although there is a need to move quickly to address AI risks, we note that AI risks are situated within a suite of emerging global catastrophic risks and there is also need for this work to feed into an aggregating mechanism that can prioritise risk response across a range of threats. We therefore argue that the New Zealand government should invest in futures analysis and horizon scanning, to increase its capability for foresight and shed light on the possible consequences of the choices humans make today. We agree with sociologist Elise Boulding that modern society is suffering from 'temporal exhaustion': because we are 'mentally out of breath all the time from dealing with the present, there is no energy left for imagining the future' (Boulding, 1978). Government has a deep responsibility to future generations and for long-term incentives that transcend individual interests. Even if some risks are far distant, our experience with climate change is telling. It takes a long time to mount a coordinated national and international response. It is helpful to remember that the Kyoto Protocol was signed in 1997, yet the threat posed by climate change is still very far from being solved.

> Government has a deep responsibility to future generations and for long-term incentives that transcend individual interests.

This call for futures thinking has come from a number of quarters. NZ Tech has called for a 'Ministry for the Future' (Muller, Carter and Matthews, 2017). The Environmental Defence Society suggests a Futures Commission (Environmental Defence Society, 2019). Boston, Bagnall and Barry have argued at length for improved foresight and oversight to make government more accountable to Parliament for the quality of its long-term decision making. While noting that there is no obvious single best approach, these authors list a number of specific options for reform (Boston, Bagnall and Barry, 2019). Some futures ideas are not new in New Zealand or overseas. Indeed, the Muldoon government disestablished a Commission for the Future in the early 1980s. Sweden created a Ministry for the Future in 2014 (Ma-Dupont, 2016).

AI is a heterogeneous package of technologies that pose risks unequal in probability and scale, and which do not stand alone. But we also need to place AI in a coordinated portfolio of interdependent global catastrophic risks. Institutionalised systematic assessment and response to all major catastrophic risks will be needed in New Zealand to ensure a thriving future.

Conclusion

New Zealand has a number of important assets, including people, culture and the environment, to protect over the very longest time horizons. This is particularly true when one takes a perspective of guardianship consistent with a te ao Māori world view. Such a perspective mandates that we understand the possible catastrophic risks of AI, which include threats to democracy, the risk of totalitarianism, threats to physical and digital safety, and as yet unknown risks. These risks need to be evaluated within the set of related global catastrophic risks. One way to achieve this is to advocate for a coordinated international response and to designate responsibility for evaluating the risks from AI and planning for their mitigation within the New Zealand public sector. Mitigation of catastrophic risks should be a critical component of public policy, and is an undertaking that only governments are positioned to perform, in conjunction with other like-minded governments.

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Vanessa James, Catherine Iorns
and Patrick Gerard

Sea Level Rise and Local Government

policy gaps and opportunities

Abstract

Local authorities in New Zealand have a significant responsibility to their communities for managing the effects of sea level rise due to climate change. However, while most local authorities are well engaged and have a clear understanding of issues arising from sea level rise, 73% report that their organisations do not receive enough direction from central government on how to respond. Territorial authorities in particular are seeking a stronger lead, such as legislative reform, clearer and more directive policy, clarification of responsibilities, or a national environmental standard on coastal hazard management. Central government direction is seen as critical to achieve a nationally consistent and equitable approach for coastal communities. This article summarises how this could be addressed, and identifies key challenges facing local government in adapting to sea level rise and climate change.

Keywords sea level rise, local authorities, New Zealand, policy challenges

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New Zealand is already the third-most vulnerable country to natural disasters as a percentage of GDP (Earthquake Commission, 2017, p.16) before climate change impacts are taken into account. Sea level rise due to climate change will increase this vulnerability: even a small amount of sea level rise will substantially increase damage from flooding, storm surges and landslips (Parliamentary Commissioner for the Environment, 2015). Some locations have already become uninhabitable, due to either sudden-onset disasters, or a series of smaller events that accumulate to large losses, with coastal residents forced to relocate.

Responding to climate change is a new and evolving area for local government. Our work has demonstrated that managing the broad range of complex issues required to respond to the effects of sea level rise can be incredibly challenging, and high-level direction on key issues would support local authorities to make the significant decisions they face.

Work undertaken to inform this article includes research, engagement and policy analysis commissioned by the Deep South National Science Challenge Impacts and Implications research programme which was undertaken over a two-year period, with findings tested in a survey of local authorities with coastal interface (territorial authorities) or whose authority included coastal marine area (regional and unitary councils).[1] The survey identified differing

levels of preparedness between regional and unitary councils and territorial authorities, with the former generally having more targeted resourcing and specific expertise.[2] While regional and unitary councils have a primarily regional planning and environmental role, territorial authorities own most of the assets that will be affected, manage building and development at the coast, and are generally more closely connected to their communities of interest.

Central government direction

The most prominent message from our work is the desire of local authorities for more direction and leadership from central government to support local government to respond to the effects of climate change and sea level rise, and in particular:

- clear directives from central government to improve national consistency and legal certainty; and
- regularly updated and authoritative scientific information to inform development of appropriate coastal zoning policies and plans.

Guidance provided by the Ministry for the Environment (Ministry for the Environment, 2018) and by the Department of Conservation (Department of Conservation, 2017) is utilised and valued by local government; the perceived gap is in relation to clearer and more directive policy to improve national consistency and clarify responsibilities, potentially through legislative reform, a national environmental standard on coastal hazard management, and/or other policy levers. Most of our survey respondents considered that central government intervention should be already happening and should at least begin immediately. One said:[3]

> [T]he apparent absence, to date, of central government in leading a vital discussion around the cost shares – or in this context, the broader issue of how responsibility for addressing the issue should be shared – associated with [how] climate change will play out, in practice, is a critical failure on the part of the government.

While rights of appeal are a fundamental check and balance on local authorities in the

> *The most common adaptation mechanisms identified in our research were those which seek to reduce future risk by avoiding further development in areas of coastal hazard risk.*

exercise of decision-making powers, in Australia it has been found that fear of liability is a principal reason for local authorities avoiding action on climate change (see Peel and Osofsky, 2015; Australian Productivity Commission, 2012, pp.166–9; Iorns and Watts, 2019, pp.37–40). National direction in key areas would address this, if only by clarifying best practice and thus the standards that councils should be upholding, thereby leaving less room for uncertainty and challenge.

Community engagement

Sea level rise and its impacts create a significant additional engagement burden for councils. One council commented:

> Staff and elected members [are in the] process of deciding how to have courageous conversations about retreat options with vulnerable communities once appropriate risk assessments and mapping has been completed.

Determining how to respond to sea level rise and working alongside communities that are directly affected requires more, and different, engagement

than local authorities may be used to undertaking; it is resource intensive and requires a different skill set from a local authority's 'business as usual' consultation and information dissemination. Territorial authorities are not currently resourced or equipped to undertake this engagement.

Local authorities reported undertaking active consultation (rather than engagement) through public meetings, submissions and education, along with passive consultation (social media, newspapers, mail drops, online databases, mapping and public reports). Only a small number reported being in the process of designing and implementing strategic community adaptation/management plans, which will involve targeted consultation with stakeholders (James, Gerard and Iorns, 2019).

Local authorities reported that the most common requests from their communities were for hard protection structures and provision of hazard information (ibid., p.22). The expectation for hard protection structures puts local authorities in a difficult position. On the one hand, the New Zealand Coastal Policy Statement directs local authorities to avoid hard protection structures. On the other, public expectations are defensive of private property rights and uses.

Although many local authorities are operating on a reactive basis, some have strategies or plan provisions in place which assist with responding to community demands, such as policies to only protect public assets and not private land. The most common adaptation mechanisms identified in our research were those which seek to reduce future risk by avoiding further development in areas of coastal hazard risk (ibid., p.23).

Funding for increased costs

All local authorities involved in our research had coastal land within their boundaries, and it is anticipated that all will face increased infrastructure costs due to sea level rise. However, only 73% reported that their organisations were facing increased costs (ibid., p.25). While some participants considered they could meet these costs through general and/ or targeted rates, and others had disaster relief funds or had already budgeted for increased infrastructure costs, many participants were unsure of what the costs

would be and how they would be met, and a significant proportion called for a national climate change adaptation fund that they could draw on to meet these costs (ibid., p.8). A territorial authority responded to the question of how they would meet increased costs as follows:

> We currently have no idea … we are doing our best with current budgets, and … working closely with [the regional council] to help get the information we require to accurately assess risks to communities and large rural areas which are the economic backbone of this district … Unless there is a central government fund or subsidy we will have to prioritise projects and communities [and as] we are a district of mainly lower socio economic areas … we will be facing a mass exodus of low-lying at-risk communities to other locations which the council cannot afford to help financially.

Clearer cost apportionment

There are significant differences as to what local authorities consider to be the most effective and equitable methods of allocating costs relating to the effects of sea level rise. While most agreed that the owner/operator should take responsibility for infrastructure costs, a third of the organisations we surveyed considered that central government should assist with infrastructure funding (James, Gerard and Iorns, 2019, p.25); for example:

> New Zealand's cities and towns have traditionally been built on government subsidies for infrastructure. It is unlikely that local government and local communities will have the financial capacity to fund future infrastructure changes required because of sea-level rise and other climate change-related factors and continue to provide current levels of service.

> Similar views were held for the costs of coastal protection works, which were seen as primarily the responsibility of the beneficiaries of the works, but with assistance from local and central government depending on the level of

… legal barriers make it more difficult for [councils] to respond to the effects of sea level rise …

public benefit (ibid., p.26). Managed retreat was more divisive, with some local authorities considering that the entire cost should be met by property owners and insurance companies, and others suggesting the costs should be shared between owners and local and central government (ibid.).

Lack of a consistent approach to cost allocation could lead to inconsistencies between districts, lack of clarity for communities, and an inability to plan ahead effectively due to the need to assess each situation as it arises. At a national level, this could also lead to inequities for communities, and increased risk of opposition and legal pressure. National direction on the options and responses available in different situations, and preferably on the most suitable for particular situations, would assist local government adaptation by decreasing challenges that are due to uncertainty.

Consistent processes for climate adaptation decision making for Māori land

There are significant differences in approach to climate adaptation decision making for Māori land. While 55% of respondents to our survey were aware of specific loss or damage to Māori coastal land occurring in their district (ibid., p.9), they did not identify any targeted guidelines, processes or policies for climate adaptation measures appropriate for that land either in place or under development. For example:

> We focus on the risk and options to manage/mitigate in a particular area, and Iwi are part of those conversations.

This is consistent with a lack of awareness of wider Treaty of Waitangi duties, as discussed in another of our reports (Iorns, 2019).

Specialist knowledge

A high level of specialist knowledge and scientific expertise is required to manage the effects of sea level rise. At least some of this may be employed or contained within larger councils, but the level of specialisation more often requires outside consultants. For example:

> We have in-house flood modelling expertise and have engaged external consultant support for sea water inundation, coastal erosion and ground water changes in relation to sea level rise. We have also recently engaged some external planning support with a special interest in natural hazards management. We are currently seeking a more detailed level of analysis for sea water inundation to provide a better basis for planning provisions.

Territorial authorities are not all readily able to access the level of specialist knowledge and advice required. Resourcing emerged as a significant issue from different perspectives: staffing structures in smaller local authorities do not support specialised resourcing; and while access to scientific knowledge and expertise can be addressed through partnerships between territorial authorities and regional councils (as the latter often provide specialised support and advice to the former), the expertise required by territorial authorities with significant coastline to appropriately manage the effects of sea level rise warrants more targeted resourcing (James, Gerard and Iorns, 2019, p.9).

Preventing new development

Councils have a range of tools to prevent and control new development in coastal hazard zones. These exist under both the Resource Management Act 1991 (RMA) (in relation to planning and to subdivision and resource consents) and the Building Act 2004 (in relation to the issuance of building consents).[4]

There is a need for better guidance for councils to enable them to justify restrictions being adopted in their areas:

Planning tools are considered by officers to be a core mechanism for responding to climate change by limiting new risks from new developments, and starting to provide the basis for managing staged retreat over the longer period. The district planning process (and other similar mechanisms) needs to be able to carefully consider what areas are suitable for development through the lens of what science is suggesting is likely to happen in the long term. We are some way away from this and as a result our current planning strategies … arguably don't give enough consideration for climate change.

Such guidance could be by way of national environmental standards and/or the type of non-binding guidance currently provided by the Ministry for the Environment (2018) and the Department of Conservation (2017).

Some law reform could also help, such as by making it easier to adopt prohibited activity status for certain developments on the coast (e.g., section 32 of the RMA). A national policy statement on hazards and risk could help by providing higher-level rules and standards for decision making. There should also be law reform work done on compensation provisions, including section 85 of the RMA. This would help local authorities to avoid being subject to compensation litigation.

There is room for national guidance on specific topics, such as how local authorities should best identify relevant risks to be placed on LIMs and/or PIMs (land/project information memorandums), and how to better utilise particular tools, such as consent conditions and liability covenants. Local authorities are currently left to figure it out on their own, which is a more expensive and time-consuming process than if they were provided with more comprehensive decision-making guidance. Mandatory spatial planning for the future has been suggested, but this would also be unfair to impose without more guidance on how to implement it (i.e. more than the

There is currently no legal mechanism specifically designed to allow managed retreat from coastal hazards

Ministry for the Environment DAPP guidance that already exists).

Managed retreat and existing use rights
The option of managed retreat requires a more coordinated approach, ideally supported by legislation, to enable this to be utilised by local authorities where appropriate. There is currently no legal mechanism specifically designed to allow managed retreat from coastal hazards (Iorns and Watts, 2019, p.182).

[I]n the long term there are likely to be few viable adaptation responses in some areas other than managed retreat – this will be extremely disturbing to many in these areas and funding such responses will be beyond the community's ability to pay. Local government will be in the invidious position of having to present such scenarios to their constituents without necessarily having a palatable or even practicable solution.

The lack of ability for local authorities to effectively extinguish existing use rights is a key barrier to implementing managed retreat. At a territorial level, the general rule is that lawfully established land uses continue to be lawful, even if the activities contravene subsequently modified plan rules (Resource Management Act 1991, s10).[5] This rule also allows the land users to re-establish activities that have been discontinued for 12 months or less if they do not increase the degree to which they

offend the plan rules (consistent with the classic conception of real property rights) (Resource Management Act 1991, s10(2)). The starting point, therefore, is that a high threshold is required to justify an infringement of landowner rights.

In the context of proactive adaptation to sea level rise, 'perpetual' land use rights are problematic. Sea level rise is an inherently dynamic phenomenon. Retreating shorelines and associated coastal hazard risks are forcing local authorities to reconsider the appropriateness of in situ development.

Although territorial authorities cannot extinguish existing use rights, section 10(4)(a) of the RMA appears to allow a regional council to do so through changing regional plan rules. This may be a possible mechanism to facilitate managed retreat. However, it is noted that this may not be a valid interpretation of the law, and legal clarity on how councils may better undertake this is essential (Iorns and Watts, 2019, pp.185–91).

Section 128 of the RMA allows a consent authority to review conditions of an existing consent in a variety of circumstances. We considered if this could be used to support managed retreat, and while this may be possible in theory, it is unlikely to be available in practice (ibid., pp.191–3).

We therefore suggest that legal methods to achieve managed retreat be given more attention by central government. Our other reports provide more information on the existing legal methods, gaps and barriers in relation to adaptation, and possible law reform needed (see Iorns and Watts, 2019; Iorns, 2018, 2019; James, Gerard and Iorns, 2019).

Adaptive response ability
Two-thirds of local authorities in our survey considered that legal barriers make it more difficult for their organisation to respond to the effects of sea level rise (James, Gerard and Iorns, 2019, p.30). This included the issues of preventing new development, facilitating managed retreat and dealing with existing use rights, as discussed above. Local authorities also consider that the Building Act 2004 and the RMA create two sets of inconsistent standards, with the Building Act allowing

landowners to develop in high-risk areas of existing titles with minimal deterrence, and the RMA creating overly litigious processes by conferring rights of appeal (ibid., p.31). The Local Government Act 2002 was also cited as making service withdrawal difficult, even when it is required for the purposes of adaptation to sea level rise (ibid., p.32).

These issues led to a call for stronger decision-making powers for local authorities, such as the ability to establish red zones and make non-contestable decisions in certain circumstances (ibid., p.29).

These legal barriers add to the political barriers and result in desires to leave the hard decisions to someone else, later:

> Our political cycle makes it very easy for decision makers to kick the can down the road. Although the trend (climate change) seems apparent, the likelihood of something cataclysmic occurring in the next three years remains small, so [they] can avoid and ignore the need for a tough decision.

Conclusion

While local government responsiveness to the effects of sea level rise is improving, there is still considerable variability between organisations, particularly in assessment of risk exposure, level of expertise and maturity of thinking within organisations, and practical responses.

> We recognise the ongoing effects of climate change will vary considerably across New Zealand, as will different communities' levels of understanding,

attitudes towards the climate change and preferred courses of action. … For any traction to be achieved central government must provide guidance, incentives, and tangible resources for local government to start implementing climate change adaptation.

A key finding in our larger paper, *Adaptation to Sea-level Rise: local government liability issues*, is that central government ought to cover a greater share of the costs of information creation and dissemination because of the clear resource constraints upon local government (Iorns and Watts, 2019, p.9). We also propose specific solutions for additional guidance on precise mechanisms for adaptation, such as the use of activity status, consent conditions and hazard information provision on LIMs. Our suggested amendments to better enable the adoption of adaptation policies are:

- amendment of section 32 of the RMA to provide an explicit direction to apply the precautionary principle, and to consider altering the 'most appropriate' standard for evaluating activity status;
- amendment of section 128 of the RMA to better enable review of consent conditions;
- greater clarity on potential council liability and/or on their obligations, whether in relation to the use of consent conditions, or via a liability shield akin to that in the Building Act 2004;
- clarification of compensation for the extinguishment of existing use rights in the adaptation context;
- a fundamental rethink of the protections given to existing use rights

and compensation for their impairment and extinguishment.

Other amendments needed are to the Building Act 2004 and standards relating to natural hazards. And further research is needed on mechanisms for managed retreat, on the meaning of 'significant risks' in section 6(h) of the RMA, and on liability under the Building Act.

If the key issues of community engagement, funding, specialist resourcing, climate adaptation decision making for Māori land, cost apportionment and managed retreat are addressed at a national level, local authorities would be much better placed to manage the effects of sea level rise at a local level.

1 Sixty-three regional and unitary councils and territorial authorities with authority adjoining or including the coastal marine area were invited to be part of the survey. Eleven opted out or did not respond, and of the remaining 52, 33 responses were received, from seven regional and three unitary councils and 23 territorial authorities.
2 For a description of the survey and its findings, see James, Gerard and Iorns, 2019.
3 The quotes in this article are obtained from the survey responses. They are not attributed to individual councils for reasons of confidentiality.
4 These are discussed in detail in one of the other reports undertaken for this Deep South National Science Challenge work: see Iorns and Watts, 2019.
5 See Iorns and Watts, 2019, pp.182–93 for a discussion of the legal implications of this section.

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Kirsten Jensen and
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VALUING IMPACTS
the contribution of CBAx to improved policy practices

Abstract

Policymaking involves trade-offs to ensure the best possible use of limited resources. Identifying and measuring the impacts – for example, health gains – of different policy alternatives helps decision makers with these trade-offs, and is a key component of policy analysis. The New Zealand Treasury's approach to cost-benefit analysis includes CBAx, which is a toolkit for estimating the societal value of alternative policy options. A 2018 review showed increased quality of cost-benefit analysis in budget proposals following the introduction of CBAx. In this article, we provide some context to CBAx developments and share insights from agencies' practical experiences. We focus on the perspective of policy advisors using CBAx to undertake cost-benefit analysis, and touch on the application of the results to decision making. We conclude by outlining potential developments and inviting colleagues to make use of the CBAx toolkit to enhance cost-benefit analysis practices to better value policy impacts for New Zealanders.

Keywords cost-benefit analysis, CBAx, policy impacts, wellbeing, value, ethics

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Figure 1: Trends in mean score by CBAx status, Budgets 2015 - 2018
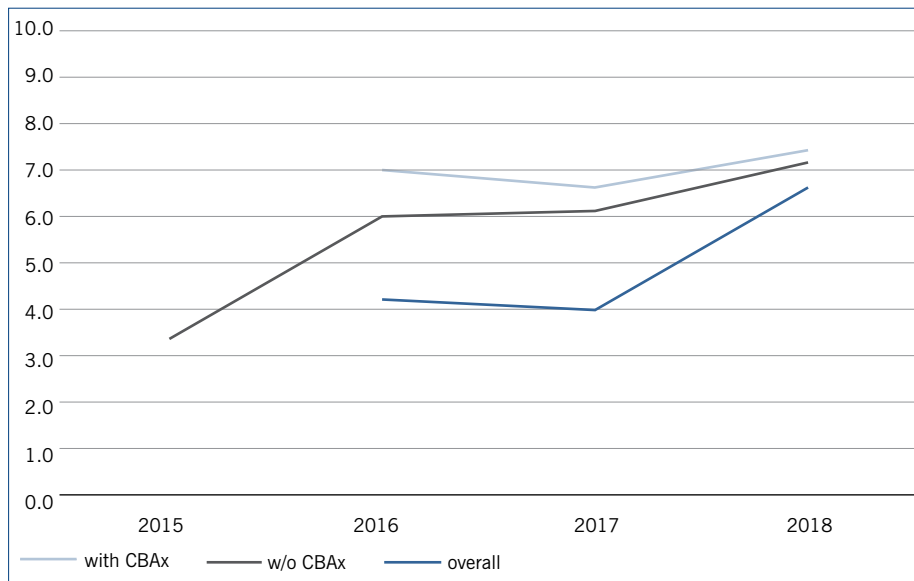
Source: NZIER, 2018

Cost–benefit analysis in New Zealand improved with CBAx

Cost–benefit analysis is a standard economic technique used internationally for assessing policy options (see Weimer and Vining, 2005; Boardman et al., 2018). In essence, cost-benefit analysis involves comparing alternative courses of action by identifying the expected societal impacts of the alternatives over time, and estimating the value of these impacts. In the New Zealand public sector, agencies are expected to undertake ex ante cost-benefit analysis in a regulatory impact assessment for legislative change, a business case, a budget funding proposal, and as required by governing legislation (such as for resource management policies).

Views vary about the usefulness of doing cost-benefit analysis, and there are many challenges, as outlined in this article. Reasons in favour of undertaking cost-benefit analysis include that it 'forces the decision-maker to look at who the beneficiaries and losers are in both the spatial and temporal dimensions … and [insists] on all gains and losses of "utility" or "well-being" being counted [which] means that it forces the wider view on decision-makers' (OECD, 2018 p.32).

Cost–benefit analysis in New Zealand is not new. But, as with overseas experience, the lack of consistent usage, capability and standardisation are challenges (Dobes, Argyrous and Leung, 2015). Some agencies have undertaken cost-benefit analysis for many years (for example, in the transport

sector). For other agencies, their practice in recent years has changed with the introduction in 2015 of CBAx, a toolkit for estimating the societal value of policy options. A 2018 review showed that the quality of cost-benefit analysis in Budget initiatives increased following the introduction of CBAx (NZIER, 2018). The review investigated the quality of the cost-benefit analysis in a stratified random sample of 50 Budget initiatives over four Budgets, 2015–18, giving each analysis a score out of 10 (see Figure 1).

The review showed that the main contribution of CBAx is not the modelling and monetisation in and of itself, but that CBAx requires agencies to be more systematic and robust in their policy thinking. The review saw improvements in the initial cost-benefit analysis steps, such as identifying a broader range of impacts, better problem definition, better quantification and more transparent assumptions. The review also raised a number of challenges, such as a need to improve the quality of the evidence provided for impacts and to not over-focus on the summary metrics.

Agencies doubled the quality of their cost-benefit analysis advice over just a few years – a remarkable achievement (though admittedly this comes from a low base). This improvement in agency practice deserves acknowledgement. And it is encouraging, given the political context in which ministers increasingly seek policy advice that covers multidimensional

impacts, long-term implications and cross-sector solutions, and which is based on better use of data and evidence on what difference interventions make to New Zealanders' lives. Measurement capability within agencies is weak (Productivity Commission, 2018); we are not underestimating the challenges that agencies face.

Ethical assumptions

Before introducing CBAx, we set out here three of the major ethical assumptions underlying cost-benefit analysis. We do so to provide some context. Cost–benefit analysis is not ethically neutral or value free. This is not a criticism; the ethical assumptions underlying cost-benefit analysis should be considered as 'features', not 'bugs'. But appreciating this context helps with interpreting the results of cost-benefit analysis.
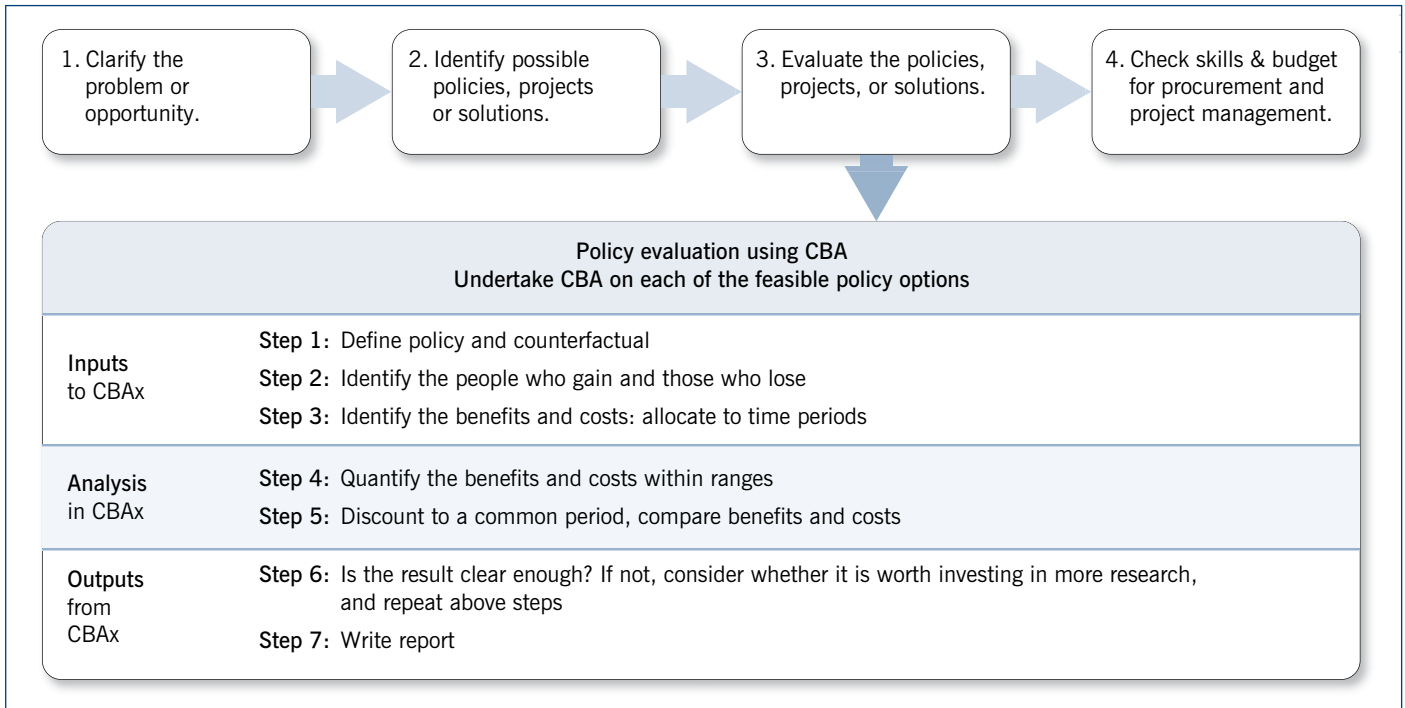
First, cost-benefit analysis is necessarily *normative* in the sense that it addresses the issue of what course of action we should take. In particular, cost-benefit analysis is *consequentialist*: it assumes that the course of action we should take depends on the consequences (or outcomes or impacts) of that course of action.

Second, evidence and data have a central role in cost-benefit analysis, given the importance of outcomes for determining the recommended course of action. But gathering this evidence and data is not a purely empirical or positive exercise. The decision over what to measure, and what metrics to use, implies a particular view of 'good' and 'bad', or more generally a particular view of *value*.

Third, cost-benefit analysis is often silent on the issue of *distribution*. To infer from this that the best alternative is the one that maximises the aggregate benefits over costs would be to take a substantive position on justice in distribution.

Again, bringing attention to these three particular underlying ethical assumptions should not be interpreted as a criticism. There are, however, alternative ethical assumptions that could be made. For example, it may seem obvious that the correct course of action depends on the impacts of that action. Consequentialism is certainly a prominent normative ethical theory, but it is by no means the only view.

Figure 2: CBAx cost-benefit analysis steps

1. Clarify the problem or opportunity. →	2. Identify possible policies, projects or solutions. → 3. Evaluate the policies, projects, or solutions. → 4. Check skills & budget for procurement and project management.

Policy evaluation using CBA
Undertake CBA on each of the feasible policy options

Inputs to CBAx	Step 1: Define policy and counterfactual
	Step 2: Identify the people who gain and those who lose
	Step 3: Identify the benefits and costs: allocate to time periods
Analysis in CBAx	Step 4: Quantify the benefits and costs within ranges
	Step 5: Discount to a common period, compare benefits and costs
Outputs from CBAx	Step 6: Is the result clear enough? If not, consider whether it is worth investing in more research, and repeat above steps
	Step 7: Write report

Source: The Treasury (2015), and with CBAx additions in The Treasury (2019)

Consequentialism's most prominent rival is *deontology*. Deontological normative ethical theories claim that we can determine what course of action we should take directly, independently of the expected consequences of our action. According to deontology, the correct course of action is the one that conforms to certain norms, and often these norms are couched in terms of the rights and duties of individuals. For example, a proposal for compulsory organ donation might have more benefits than costs, but we might reject the proposal on the grounds that it violates a fundamental right to bodily integrity (and so rule out a proposal before we even begin to consider the impacts). Such reasoning involves deontological normative ethical theories.

We revisit some of these underlying ethical assumptions of cost-benefit analysis later in this article. A lot of attention is given to the second ethical assumption noted above – the issue of value – and the challenge of capturing it. We turn to that issue in the next section.

What is CBAx?

CBAx is a cost-benefit analysis toolkit developed by the New Zealand Treasury for considering a wide range of impacts across time and multiple dimensions. It is designed to improve cost-benefit analysis practice. In principle, cost-benefit analysis is simply a matter of providing an evaluation of policy alternatives. However, in practice, estimating the value of impacts can be challenging.

CBAx is distinctive in that CBAx provides policy practitioners with a database of some New Zealand values, and standardises modelling – for example, standardising discounting of impacts over time. CBAx makes it easier and faster to do a cost-benefit analysis of options, and makes analysis more consistent, transparent and comparable for decision makers.

At the core of CBAx is a spreadsheet to model benefits and costs: i.e., the positive and negative societal impacts, such as income and loneliness. But CBAx is more than a cost-benefit analysis spreadsheet. The CBAx approach involves the Treasury working alongside agencies to build capability and improve cost-benefit analysis practice – for example, through the CBAx community of practice. In addition to the spreadsheet model, the CBAx toolkit[1] includes:

- the *CBAx Tool User Guidance*, with tips for measuring fiscal and wider societal impacts based on agencies' practical experiences (Treasury, 2019);
- the Treasury's *Guide to Social Cost Benefit Analysis* (Treasury, 2015). This was assessed, alongside Australian and international guidelines, to 'provide high quality, readable and practical guidance' (Abelson, forthcoming, p.27);
- the CBAx wellbeing domains template, to set out a wide range of societal impacts of policy alternatives, whether these impacts can be monetised or not; and
- additional resources, including applied CBAx examples and the Australian Social Value Bank (Social Value International, 2019).

Evaluating impacts

CBAx provides a systematic approach to cost-benefit analysis, with defined steps that can be applied in a fit-for-purpose way for a specific policy decision (see Figure 2). However, CBAx is not intended to be a comprehensive toolkit to cover all of the steps in the policy cycle, from agenda setting to monitoring and evaluation. Cost–benefit analysis can be used alongside other policy tools, such as multi-criteria decision analysis and distributional analysis.[2] CBAx is particularly relevant when appraising the impacts of policy alternatives. (Thinking about impacts is also useful when identifying policy problems and potential policy options for intervening.) Policy advisors choose the analytical approaches, including whether to undertake cost-benefit analysis, and, if

doing this, whether to use CBAx.

The Treasury expects agencies to provide fit-for-purpose cost-benefit analysis to support policy proposals. We think of this as 'pragmatic rigour'. So, what does a fit-for-purpose cost-benefit analysis cover? We start with dispelling potential misconceptions and set out what it is *not.*

- It is not about monetising all the impacts. Ideally, all significant impacts are monetised, but that may not be possible. Indeed, only a subset of the impacts are expected to be monetised. A reverse analysis, to identify the assumptions needed to break even, may be the best that can be done; for example, due to weak evidence (covered later in the article).
- It is not a one-size-fits-all approach. The CBAx steps are adaptable. The approach can be varied to reflect the nature and significance of the options as well as the available policy resources, including common constraints of time and information. Also, in some cases, simpler cost-effectiveness analysis may be sufficient, or more complex modelling may be warranted.
- It is not just for economists or consultants. CBAx aims to empower agency policy advisors and make cost-benefit analysis practicable. Agencies can use the comparable CBAx model for free, rather than pay for bespoke models.

A simple way to approach CBAx is to work through the 'IQM' steps (Jensen, 2019):

- *Identify* impacts widely. At a minimum, this involves developing the intervention logic, establishing a clear counterfactual[3] and identifying the main impacts. Many different people may be involved in identifying a range of impacts, including external stakeholders. Taking a longer-term perspective brings into view preventive and intergenerational impacts. Thinking broadly about the impacts and interconnections can include consideration of path dependency and irreversibility (for example, the loss of species or entire ecosystems). Policy advisors' sound professional judgement is needed to decide what to include and what to leave out. This is a key policy skill.

- *Quantify* impacts to the extent possible, relative to the counterfactual. This is usually resource intensive and the evidence base is often variable. An initial run of the CBAx model and sensitivity analysis can be helpful for adjusting efforts, so that effort focuses on impacts that matter. This starts with available information, and then goes

> Many values in the CBAx database are fiscal impacts for government, reflecting the fact that these values are easier to access and are already in dollar terms. But CBAx goes beyond fiscal impacts.

on to fill information gaps for significant impacts.

- *Monetise* the significant impacts where possible. It can be useful in the policy development process to monetise a wide range of impacts to clarify and test assumptions and sensitivities. After thinking widely about the impacts and ways of measuring these, agencies can choose the most appropriate impact measures. For the final results, it is better to be selective and focus on monetising the significant impacts, to avoid double counting and avoid reduced confidence in the results from the inclusion of tenuous, weakly evidenced impacts that boost the overall ratios.

The IQM steps build on each other and increase in difficulty. In reality, cost-benefit

analysis tends to be iterative. Impacts should be identified and quantified to the extent possible. It is not necessary (or indeed possible) to monetise every impact. However, to forego a cost-benefit analysis when evidence of impacts is relevant and available would be to forego an opportunity to achieve a good outcome, and itself a potential ethical lapse.

Beyond fiscals to wellbeing

The Treasury released the first CBAx version in October 2015, and agencies first applied CBAx to funding proposals in the 2016 Budget. At the time, ministers, including the minister of finance, took a 'social investment approach', which sought better outcomes from policies and spending.[4] While cost-benefit analysis was a widely accepted technique for measuring impacts, views varied about what impacts to include. For example, as Boston and Gill note:

> At the heart of these concerns [about the social investment model] is the failure, at least thus far, of ministers and their advisers to incorporate an appropriately broad range of costs and benefits into their evaluation of specific policy interventions. While fiscal objectives are unquestionably important, they are not a sufficient measure of overall performance. (Boston and Gill, 2017, p.24)

This comment reinforces the point made above, that the choice over what to measure is an assumption of what is valuable, and a substantive ethical and policy choice.

Concerns such as a too-narrow focus on fiscal impacts shaped the design of CBAx from the start. Many values in the CBAx database are fiscal impacts for government, reflecting the fact that these values are easier to access and are already in dollar terms. But CBAx goes beyond fiscal impacts. For example, the Australian Social Value Bank social impact values are available (outside the CBAx database) under a sub-licence.[5] In 2018 CBAx included Housing New Zealand subjective wellbeing values. The subjective wellbeing values offer opportunities to value wider impacts, and could be further expanded

using New Zealand data such as the New Zealand General Social Survey and Te Kupenga (Grimes, 2019). Subjective wellbeing could contribute to policy in a number of ways (O'Donnell et al., 2014). For example, it could potentially be used as a common measure across a wide variety of impacts (Layard, 2016). Associate Professor Jan-Emmanuel De Neve at the University of Oxford has developed policy tools to apply subjective wellbeing weightings for different wellbeing domains.[6]

Users need to be aware that different CBAx values monetise different types of impacts and are derived from different methodologies: fiscal savings to the government from avoided costs of diabetes ($4,075 per year), for example, or the subjective wellbeing value to an individual of living in a cold house for every point change on a 0–3 point scale (–$6,991 per year – the more often a house is cold, the more subjective wellbeing is reduced). In early 2019 the CBAx impact values, and the robustness of these, attracted public debate (Jensen, 2019). Users should review the source data that can be accessed through links in the database.

For many government interventions, there is no market value for the relevant impacts. We therefore need to use non-market valuation methodologies to derive a value. The a range of methodologies include: revealed preferences (estimating implicit value through related market prices and travel costs); contingent valuation (survey stated preferences of willingness to pay); discrete choice experiments; value transfer (from other primary studies); and subjective wellbeing (life satisfaction regressions) (Boardman et al., 2018; OECD, 2018). There is no 'one right' valuation methodology; each has strengths and weaknesses (Fujiwara, 2016). Surveys to estimate individuals' willingness to pay can have a number of biases, and good survey design and practice are critical. Confidence increases when a value is estimated similarly using different methodologies. However, sometimes policy advisors will be fortunate to have even one valuation.

In general, cost-benefit analysis values impacts on human wellbeing. The view that human wellbeing exhausts what constitutes the good impacts is an ethical assumption that ought to be borne in mind when interpreting the results; it is plausible that good and bad consequences are broader than just the impact on human wellbeing. For example, the preservation of an endangered species might be an intrinsically good impact, irrespective of any implications for human wellbeing.

> The requirement in CBAx for broader consideration of impacts using a societal perspective encourages agencies to work with others outside their immediate sector, putting *people* – not agencies or sectors – at the centre of the analysis.

The view that human wellbeing should be interpreted as the satisfaction of preferences (measured, for example, by willingness to pay for benefits or to avoid costs) is a further ethical assumption. The preference-satisfaction view of wellbeing is just one of three standard views of wellbeing, the other two being the hedonist view (wellbeing consists in a certain mental state) and the objective list view (there is a list of certain things such as health and education that make an individual's life go well).

Note, though, that CBAx is pluralistic and does not constrain the user's choice of impacts, measurement or valuation methodology. It does, however, require the user to be transparent about these and the assumptions. Users can freely add other impacts to those already included.

The Treasury updated CBAx in 2018 to support Budget wellbeing analysis by categorising specific impacts, such as changes in income, within the wellbeing domains, such as 'jobs and earnings', from the Treasury's Living Standard Framework.[7] New Zealand hosted the Third International Conference on Wellbeing and Public Policy in September that year, and has gained international attention through the prime minister's and the minister of finance's emphasis on wellbeing, with much attention being given to the 2019 Wellbeing Budget.[8] The OECD's *OECD Economic Surveys: New Zealand 2019* provided a wellbeing focus and included information on CBAx as a mechanism for including wellbeing analysis in policy development (OECD, 2019, p.103). Durand and Exton covered CBAx in the Global Happiness and Well-being Progress Report (Durand and Exton, 2019, p.159). Measurement is one of the challenges for New Zealand becoming the leading light in the wellbeing approach to public policy. As Weijers and Morrison note, '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' (Weijers and Morrison, 2018, p.6).

Co-design – the discount rate example
Since its introduction, the role of the CBAx toolkit has evolved and the government's requirements to use it for Budget purposes have changed. Initially there were structural changes to the model. The model is now structurally stable and the changes are mainly to the database. The CBAx toolkit, while led by the Treasury, is collaborative and co-designed with agencies. The CBAx database is an example of this partnership. All of the values in the database are supplied from publicly available agency information. These are not Treasury values, but the Treasury has a system enabler role, making it easier for users to access these values, standardising the values to a common year, and allowing for consistent assumptions across

initiatives (for example, by using the same assumption about the value of a GP visit).

The partnership has not been without tensions. For example, the discount rate[9] was a point of disagreement early on. Agencies, and ministers, were concerned that the Treasury public sector discount rate was too high (8% real at the time, now 6%), rendering longer-term impacts inconsequential. The tensions led to a review of the approaches to setting the discount rate. The Treasury working paper concluded that there is no completely objective way of determining public sector discount rates; value judgements and assumptions are inevitable (Creedy and Passi, 2017). The discount rate reflects three separate things: time preference, risk and the opportunity cost of capital. The appropriate choice of discount rate to reflect these three factors is still subject to considerable disagreement amongst theorists and cost-benefit analysis practitioners. To address the concerns, the Treasury changed the design of CBAx to automatically produce a sensitivity analysis including the standard rate and an alternative rate. Jonathan Boston welcomes CBAx sensitivity analysis, and proposes a lower discount rate 'especially for periods exceeding thirty years and when there are risks of catastrophic or irreversible consequences' (Boston, 2017, p.129). CBAx is designed so that agencies are able to change the discount rate (though for comparability reasons agencies are expected to retain the two CBAx rates of 6% and 3% respectively).[10] The Treasury reviews the CBAx models submitted as part of Budget proposals to assess whether the relative ranking of different Budget initiatives would change under different discount rate assumptions. To date, the relative ranking of initiatives on their '50-year return on investment' is insensitive to 3% or 6% rates.

Lessons learned from practice

The collaborative approach to developing CBAx also includes the sharing of user experiences and troubleshooting. We share some of the lessons here, which all relate to the central themes of what to measure and how to measure it.

A common problem is for policy advisors to think that the impacts they know the most about, or that are the policy aim, are the most important impacts. Some agencies, for example Pharmac, are tasked with delivering outcomes within a particular domain (health) and have focused their perspective accordingly (Alsop and Crausaz, 2017). But impacts on employment or social services may be the most significant impact from a particular health policy. These are not traditionally considered when undertaking a cost-

> While many challenges remain, there has been a strong drive towards better data, evidence and quantification in recent years.

benefit analysis from a health sector perspective, and may be overlooked (Neumann et al., 2017). The requirement in CBAx for broader consideration of impacts using a societal perspective encourages agencies to work with others outside their immediate sector, putting *people* – not agencies or sectors – at the centre of the analysis.

CBAx encourages agencies to identify impacts comprehensively, including fiscal impacts for government, such as hospital cost savings, and wider wellbeing impacts, such as less physical pain. While the costs and benefits to government tend to be the easiest to quantify (because they are often already measured in monetary terms), they may not be the most important impacts based on the intervention analysis.

A variety of frameworks can help agencies identify the relevant wellbeing impacts. Some agencies, such as Sport New Zealand, have outcome frameworks for their policy area; other agencies, including the Ministry for Women, provide population-based frameworks, such as 'Bringing Gender In'.[11] CBAx encourages agencies to use these, and to think beyond sector-specific frameworks. The Treasury's Living Standard Framework covers 12 multidimensional wellbeing domains (such as health, housing, safety, environment). CBAx categorises specific impacts according to these 12 wellbeing domains (there is also an 'other' category, as there may be impacts that are not captured by the 12 domains). Total economic value is another framework that people can apply in combination with sector outcomes and the wellbeing domains. It distinguishes use values (including direct use, indirect use and option value) and non-use values (including existence, bequest and altruistic value). Non-use values can be relevant for environmental policies (OECD, 2018).

Policy practitioners often raise concerns that the evidence base for impacts is weak. The 2018 review highlighted this problem. In spite of this limitation, practitioners can at least do the first step of identifying the expected impacts and the intervention logic, and it can be useful to apply the CBAx model to undertake a reverse analysis (see Treasury, 2019). This looks at what assumptions are necessary for the option to be worthwhile; the plausibility of these assumptions can then be considered and sensitivity tested. Reverse analysis focuses on one, or maybe two, key expected impacts. Often people have enough experience to draw on to assess how reasonable or unreasonable those assumptions would be. Usually, this can also provide a basis for developing an ex post evaluation of the policy if it goes ahead, thereby building a better evidence base over time, as well as an ability to change approach if the assumptions turn out not to hold.

While many challenges remain, there has been a strong drive towards better data, evidence and quantification in recent years. New Zealand can use international evidence, such as the Environmental Valuation Reference Inventory,[12] the United Kingdom What Works centres[13] and the Washington State Institute of Public Policy benefit–cost studies.[14] Statistics New Zealand and agencies have made significant progress in developing the Integrated Data Infrastructure,[15] which is a large research database that holds microdata about

people and households. The Hub[16] provides access to social science research and helpful guidance on how to assess evidence (Superu, 2017). The CBAx guidance includes links to such sources.

The monetisation of impacts – valuing of impacts in dollar terms – can be challenging. In many situations agencies will not have the time or resources to develop values. This is where the CBAx database can be particularly helpful. The database aims to:

- make New Zealand values publicly available and easily accessible for users;
- standardise the values used for particular impacts: for example, the value used for the statistical value of life ($5,000,000);
- make the values consistent: for example, by adjusting all values to a common year, including values that users add themselves;
- increase the monetisation of impacts and thereby the comparability across multiple dimensions of wellbeing; and
- make undertaking a cost-benefit analysis more efficient by reducing the research costs and time.

The CBAx database helps with standardising; however, policy advisors need to use their professional judgement of what the most appropriate values are and make any variation transparent, including the basis for the variation. If the CBAx database misses values relevant for a particular proposal, agencies can add in values that they have found outside CBAx. These may be values from agency statistics or adapted from overseas studies. In using the values, agencies need to look at the quality and nature of the source data, make any adjustments for the particular proposal, and document the rationale and method for making adjustments.

Acknowledging the practical challenges and imperfections, the question is whether the policy practices and advice, and ultimately the decisions, are better with, or without, CBAx. In the words of one agency policy advisor: 'If you care about outcomes, get comfortable with this discipline.'

Applying CBAx results to decision making
The purpose of undertaking a cost-benefit analysis using CBAx is to inform decisions by measuring the impacts of different options within a policy or across different initiatives, and helping decision makers make trade-offs. The CBAx results include:

- the standard cost-benefit analysis summary metrics, such as net present value for five, ten and 50 years and the benefit–cost ratio using two standard methods (Abelson, forthcoming), with automatic sensitivity analysis of the discount rate (6% and 3% currently);

> Issues of distributive justice should be considered alongside the results of cost-benefit analysis. … Different theories of distributive justice may be relevant.

- impacts for government (mainly fiscal impacts) and for society overall;
- a chart of the present value of impacts across the wellbeing domains;
- the strength of the evidence base for specific impacts (qualitative contextual information that does not affect the calculations);
- the present value for specific impacts, which is helpful for focusing on the impacts and assumptions that matter the most;
- qualitative indication of the unmonetised impacts, and key assumptions.

The simplest and most visible way to use the results of cost-benefit analysis would be to assess and rank the options according to their performance against the (monetised) summary metrics, such as net present value, benefit–cost ratio and return on investment. However, the Treasury has used CBAx results to inform value-for-money judgements (including unmonetised impacts) and considered this alongside a range of decision factors.

The Treasury encourages consideration of all impacts, whether these are monetised or not, and factors the evidence base into the judgement about the relative value of options. This is a broader value-for-money judgement than the summary metrics. For example, option A with a return on investment of '2' (i.e., $2 net societal benefits for every $1 invested) may be preferred over an option B with a return of '3', if option A's evidence base gives greater confidence in the return or if the unmonetised impacts are significant.

In many cases there is a default and implicit equal weighting of all impacts. This can be changed. There may be various reasons for greater emphasis and weight on some impacts than on others. Previously we shared the example of using subjective wellbeing information to weight wellbeing domains (Government of Dubai, 2018). Decision makers may weight impacts for different people differently: for example, place higher weight on impacts for children or disadvantaged groups (see distribution below). A third possibility could be greater weighting on catastrophic or irreversible impacts (Boston, 2017). Impact weightings are best as a distinct step; they should be transparent, include sensitivity analysis and inform (not make) political judgements.

In addition, there are a range of decision factors and criteria, other than value for money, that inform policy advice. Consequently, a good or bad cost-benefit result is not deterministic and does not preclude decision making on other grounds. The nature and magnitude of the impacts can be overshadowed by other factors, such as:

- affordability (for government and users) – often scaling is considered;
- evidence strength and planned ex post evaluation;
- collaboration or fit within a package of initiatives;
- implementation readiness and practicality;
- alignment with ministerial priorities – a key driver in practice;
- rights, if not considered earlier in the policy process;

- distributional effects – who is affected matters.

The last two factors – rights and distribution – may be considered as separate steps from the cost-benefit analysis. Regarding the last factor, as noted earlier, cost-benefit analysis is often silent on the issue of distribution.

Cost–benefit analysis does not (necessarily) require recommending the alternative that maximises the sum total of benefits over costs – i.e., overall net benefits (the 'efficient' policy alternative); to do so would be to make a substantive ethical choice. Kaldor-Hicks potential Pareto improvements occur when the benefits of a proposal outweigh the costs so that it is theoretically possible for the winners to compensate the losers such that no one is worse off and at least someone is better off (see Hausman, McPherson and Satz, 2017; Boardman et al., 2018). Note, though, that a Kaldor-Hicks potential Pareto improvement does not imply that the compensation is actually paid. To recommend the policy option that maximises the aggregate net benefits (with or without weights applied to individuals) is to apply the ethical theory of utilitarianism. Utilitarianism ignores what Rawls (1973) terms the 'moral separateness of persons'. While it may be permissible for an individual to trade off costs and benefits in their own life, it is illegitimate (so it is claimed) to aggregate costs and benefits across individuals.[17]

Issues of distributive justice should be considered alongside the results of cost-benefit analysis. And consideration of issues of distributive justice are compatible with the CBAx framework. Different theories of distributive justice may be relevant, depending on the policy case.[18] Policymakers could, for example, recommend the policy option that:

- allocates the greatest benefits to the worst-off members of society (prioritarianism) (see Parfit, 1997);
- allocates some minimum level of benefits to each individual (sufficientarianism) (see Frankfurt, 1987);
- ensures people receive the costs and benefits they are personally responsible for, and allocates all other costs and

benefits equally (luck egalitarianism) (see Dworkin, 1981a, 1981b).

Conclusion – incentivising better practices
CBAx can contribute to better valuing of impacts and better policy practices. CBAx challenges the view that cost-benefit analysis is too difficult and time consuming for policy advisors to do. It offers a practical way forward to make cost-benefit analysis easier and less resource intensive. It takes

> [CBAx] takes a broad perspective on impacts and makes different initiatives comparable, thereby facilitating trade-off discussions.

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Mandatory cost-benefit analysis requirements have provided impetus and practical insight for the development of the CBAx toolkit, using a 'learning-by-doing' approach. The Treasury and agencies have invested in the development and use of CBAx. Agencies have demonstrated that they can do better cost-benefit analysis with CBAx than without CBAx. CBAx allows for more robust, transparent and comparable evaluation of the broader impacts of policy options. So, where to from here? User feedback matters – it incentivises public sector behaviours and policy practice.

The Treasury has a key role, one not just limited to providing the CBAx toolkit and setting requirements. Importantly, the Treasury has a role in making use of agency CBAxs and in providing feedback to

agencies, both on the agency analysis and on how this has been used by the Treasury. If it is not clear to agencies what they can do better, or it is unclear if their analysis influences Treasury advice, they lack incentives to undertake and improve their use of CBAx.

Agency policy leaders play several important roles. First, they set the expectations for staff of what analysis to undertake in support of policy advice. Internal agency expectations for when to use CBAx may need to be explicit. Second, they are responsible for the capability build that is needed to make staff well placed to undertake quantitative analysis. Third, they can support the change agents in their organisations. Often one or two key people drive the change in practice, and they need support to challenge the accepted practices and to build the capability to adopt new practices.

Agency behaviour is strongly driven by ministers. Ministers set expectations, for example via Cabinet circulars. Ministerial demand for, and use of, advice incentivises officials (Productivity Commission, 2018). Demand for advice on the nature and value of the impacts, and on the comparable value across wider policy options, provides incentives for agencies to make use of CBAx.

One possible scenario is that CBAx, while useful and supportive of the strategic direction in the public sector, dies from lack of demand and use. Another scenario is that New Zealand policymakers (and others) embrace CBAx and take up the challenge to build capability and continually improve the toolkit and policy practices. One practical action could be for the public sector, academia, the community sector and the private sector to contribute to the publicly available CBAx database with robust values, measures and methodologies, thereby building a public asset. This could include subjective wellbeing measures, as encouraged by Arthur Grimes. Officials and academics could work together to contribute to this fast-growing area in wellbeing economics, and to apply wellbeing economics to public policymaking (Grimes, 2019). As with neural pathways, so with CBAx – use it or lose it. We invite policy practitioners and decision makers to use CBAx to value

impacts and improve cost-benefit analysis practice, strengthening policymaking in the service of New Zealanders.

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Michael Macaulay

Towards a New
Public Ethics

Abstract

This article is a very slightly modified version of Michael Macaulay's Victoria University of Wellington inaugural professorial lecture, of the same title, which was delivered on 5 November 2019. It offers an overview of misconduct issues in the New Zealand public sector, and an explanation over the causes of toxic workplace cultures. It ends with a plea to develop a more specifically care ethics approach, to augment current public ethics perspectives. The lecture draws on seven years of accumulated research but foregrounds results from the three-year, ARC-funded Whistling While They Work 2 research project, for which Michael was the New Zealand lead.

Keywords New Zealand, ethics, misconduct, organisational culture, care

The last time I gave an inaugural lecture was in 2011, when I was Professor of Public Management at Teesside University in the UK. At that time I had recently been involved in a minor spat with then-Prime Minister David Cameron over a major piece of research my team and I had published on corruption in the UK for Transparency International (Macaulay, 2011). Cameron flatly denied that there was any corruption in the UK and disagreed with many of our findings. At the time I was taken aback by these claims, not least because about two weeks after sending us his critique came the first of his government's ministerial resignations precisely on the grounds of corruption. I think history has shown that it wasn't the last time that Cameron miscalculated a response to perceived criticism.

I am now privileged to live in beautiful Aotearoa, where we are consistently ranked among the top two or three least corrupt countries in the world, and whose prime minister is globally recognised as possibly the best example of an ethical, responsible leader currently working in modern politics. Only last week former FBI director James Comey revealed himself as yet another prominent US citizen who wants to move to New Zealand. No wonder that many colleagues in the UK assumed I was moving to New Zealand for some form of pseudo early retirement, as there is so little to research.

But of course that's not really the case. Only within the last few weeks a new inquiry has been launched into bullying in the New Zealand Police, which follows fairly hot on the heels of a damning report into the same behavioural issues in Parliament. The prime minister's party is still embroiled in a sexual harassment scandal which, in classic tradition, has become much worse due to the perception of cover-ups surrounding it. My own research, which obviously I will be touching upon this evening, reveals what the key issues facing the New Zealand public service are.

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This lecture will explore such themes in three ways. First, it will offer a diagnosis of the ethics issues facing the public service (and, more broadly, public life). Second, it will outline an explanation for many of these issues, although time probably won't enable me to look at all of them. Third, it will argue for some ways forward for us to reconsider these issues; not necessarily to solve them, but to begin to resolve them.

The idea that such solutions can come from one person, or a small group of people, is in itself part of the problem. Ethics problems are socially experienced and understood; they can only be properly resolved through social interaction and meaningful conversations. They are not owned by academics; nor are they owned by public servants alone. Hence the title of this lecture: there can be no new public ethics without a public.

Before getting to the heart of the discussion it may be useful to add a couple of caveats. The first is that the observations tonight are the product of research and evidence and are not simply critique.[1] To reiterate, New Zealand's reputation for having a high-trust, high-integrity public service is entirely deserved. It is a shame, in a sense, to have to add this caveat but it is important to emphasise. Many times in my near-seven years in New Zealand I have observed research being diminished and rejected as being negative, when it is only trying to illuminate genuine problems.

So please do not misunderstand my intent this evening. I will not be critiquing any agency, nor the public service generally. And I must stress that every single issue that is being discussed tonight applies equally if not more so to the world of academia. I am not speaking from a position of moral superiority. In fact, I am willing to wager that what I discuss is neither more nor less than the experiences that a majority of people in this very room have experienced. In fact, I am going to go further. For much of this discussion the voice you will hear is not mine – it is yours, the voice of the New Zealand public service, being reflected back onto itself.

Diagnosis

What, then, are the main integrity issues facing New Zealand? They are not issues of hard corruption or bribery, which do

exist but in relatively isolated incidents. They are issues of behaviour. Our research on misconduct and internal reporting shows these problems very clearly. Our work shows conclusively that bullying is the single most observed and reported form of misconduct in the New Zealand public service. This is probably the least surprising observation of the lecture.

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In just the past few days an inquiry has been launched into bullying in the New Zealand Police, headed by Debbie Francis. Francis, let's not forget, only published her report into bullying in the New Zealand Parliament in May. Over the years my friend and colleague Geoff Plimmer has produced significant evidence of the prevalence and harmful effects of bullying. The Public Service Association has produced much research which has reinforced this view. In 2013 the State Services Commission's own Integrity and Conduct survey found the same. And, of course, it is not just the public sector. In June this year we learned that New Zealand has the second highest rate of school bullying among all OECD countries.

What has brought this home to me on a much more personal level, however, are the public servants I teach. Over the last seven years I have run a course on public integrity for students doing Victoria's Master of Public Policy and Master of Public Management degrees. The students

are overwhelmingly New Zealand public servants who are still working in important leadership roles. Every year we begin with a self-reflective essay on an ethics issue they either face or have recently had to contend with. Nearly every essay has been about bullying in varying forms: psychological, always emotional, occasionally even physical. My students have been crying out for years on this issue.

Explanation

Why does it happen? The answer is simple to understand and, of course, deceptively difficult to counter. It is a combination of individual, cultural and systemic issues.

The vast majority of work in this field – both academic and in various inquiries, consultancies, etc. – focuses on the first two elements. It is often unhelpful to make predictions, but I am sure that the new inquiry into the New Zealand Police will do so too. This is because so much work has already been done on police cultures around the world, and in New Zealand in particular as has already been shown to be the case, over and over again. Very little is unknown about this area.

Toxic workplace cultures allow poor behaviour to thrive. As we can see from our recent research in New Zealand and Australia, but also from decades of research preceding it, these always have a combination of the same specific factors.

- *Ineffective leadership.* For the purposes of this lecture, the following may seem slightly unscientific so please don't raise your hands, but how many people here have experienced serious issues at work that have simply been either managed away, or where the person who has created chaos has even rewarded? It could be a passive reward (for example, other people picking up the mess that they have caused), or it can be an active reward: there are no small number of cases of people being promoted out of a problem. Again, I'm very willing to wager that many of you have witnessed this at first hand. This is done because leaders can't or won't make decisions that will confront an issue. I would hesitate to suggest that this behaviour is due to a lack of moral courage, and very often the decision makers are themselves in a bind. But such

behaviour isn't helpful. Our research also shows that leadership issues can be exacerbated as leaders tend to overestimate their own ethical judgement and abilities, compared to the perceptions of their followers.

- *Poor processes.* There is a lack of process, or at least an unclear process that makes accountability very difficult to follow. New Zealand did not rate as highly in terms of robust processes as Australian jurisdictions (Brown and Lawrence, 2017)
- *External reputation above everything.* Organisations will go through all sorts of moral wriggling to ensure that their reputations are protected in the outside world.
- *Internal silence.* Closely linked with the above, when a person finds out something has happened without them knowing it makes them feel isolated and disempowered. Again, I ask members of the audience to think of your own experiences to see how much this may resonate. In more extreme cases it can lead to perceived cover-ups, non-disclosure agreements and 'quiet words' with people. There may be good reasons for any of this behaviour, but if there is silence around it, the person most affected does not know. And we all know that huge stress is created from not knowing. As a result, even if leaders think this is the best course of action, the outcome is usually the opposite: people who come forward do not feel protected or supported. Silence overwhelmingly protects the organisation.
- *Trust.* It is absolutely true, and it is completely justified in my view, that levels of public trust in New Zealand are very high, particularly for the public service in general, but also in specific institutions such as the Police. People work very hard to build and maintain that trust relationship and it should be both celebrated and cherished. Conversely, however, trust within an organisation can become neglected. I was honoured a couple of months ago to offer a summary of the third IPANZ public sector conference. I don't know how conscious it was, but trust was the issue that came up again and again with

nearly every speaker and the message was largely the same. Agencies of all sizes and shapes are working tirelessly to promote public trust. Too many agencies are overlooking the trust of the teams within. That is where the fault line is, my friends, and it needs to be healed by not losing the public focus (never do that), but not allowing that to morph into protectionism.

> Some generalisations can be so bad that they work on the basis of the Forer effect – the psychological bias that enables people to read into statements whatever they wish.

- *Myth of exclusivity.* Finally, I would argue that the other common denominator in toxic cultures is an obsession with exclusivity. Every agency believes it is unique. Agencies within agencies believe that they are unique. Look at the building we are in. To a non-academic there might be a belief that academic culture is unique. To academics outside the university there may be a perception that Victoria has its own unique culture. Each faculty may believe it has a unique culture. And, within those faculties, each school usually considers itself to have its own culture. And, in fact, within each school there can be subcultures. So, within a single institution – this very university – we cannot talk about a 'culture' but really a cultural pyramid scheme, each part fuelled by a conviction that it is

unique. It is all nonsense. They are all very different, for sure, but difference isn't uniqueness and there are far more unifying factors than differentials.

Exclusivity is the one area that I respectfully disagree on within the magisterial report on parliamentary bullying (Francis, 2019). The report concluded that the institutional context within Parliament was so different that its very uniqueness promoted its poor behaviours. I cannot agree because the report found the same combination of factors outlined above (plus a few more I don't have time to mention). Far from being unique, the bullying in Parliament is the same old combination of toxicity.

Again without wishing to be too speculative, I am sure the New Zealand Police report will find these same factors too. It will also find that there is no single police culture but a network of subcultures that cross location, rank and levels of behaviour, just as in all other police forces across the globe.

What is pernicious about the misguided belief in exclusivity are the cumulative effects of its logic. If we are unique then nobody can understand us. If nobody can understand us, then they have to become one of us to do so. In order to become one of us, they must follow our codes, rules and 'the way we do things around here'. In order to do that you must effectively become initiated. Those who won't or don't become initiated are ostracised, explicitly or tacitly. Outsiders are neither trusted nor welcome. And on it goes.

We have seen these patterns time and time and time again, throughout history and across both sectors and jurisdictions. People have been writing about this for years. It doesn't change. You know what I'm talking about because it has happened to you. It might be happening to you right now. It is crucial to reiterate: difference is not exclusiveness. More things unite us than separate us.

Systemic solutions

The individual and cultural aspects of organisational and/or public ethics are thus very well understood and are an extremely lucrative business opportunity for consultants and, to a slightly lesser financial extent, academics. Solutions are

very often couched in generalisations that border on platitudes. One recent report for the Australian public service concluded that ethical leadership is important and is needed. Can there be a more obvious truism? Respectfully, that is not a very valuable conclusion.

Some generalisations can be so bad that they work on the basis of the Forer effect – the psychological bias that enables people to read into statements whatever they wish. A very general statement can have almost mystical significance, simply because people have attributed their own meaning to it. Go into any airport bookshop and you can find reams of such work.

Deeper and more nuanced solutions are far less popular and they are more difficult to sell, and that is because they are far more difficult to implement. I'm very proud to be part of the Whistling While They Work 2 project because it has offered practical guidance throughout: towards legislation; organisational improvements (Brown et al., 2019). It does not rely on generalities or promote something that would be nice to achieve. We say what works and tell you how to do it. But even that only attends to one set of organisational cultural aspects.

That is because we need to collectively work on much deeper, more systemic solutions. These are by their nature extremely complex and so ingrained that it is impossible to approach, or even discuss, them as individuals or small groups. In this age of climate justice, though, I believe that we are moving towards a much broader and more caring social consciousness, which will continue to be fuelled by environmental necessity, so I am very optimistic. My two boys are here tonight. I hope they will be part of positive change.

When I use the word systemic I mean deeper political, economic, social and value-based ideas. And obviously we could discuss so many of these, but not only does time not permit me to do so; it inevitably will lead us into too expansive a terrain. Bringing it back directly to public service ethics, the systemic issue I'd like to highlight is one that definitely affects New Zealand, but is also equally not a 'New Zealand problem'. It is an issue that affects all jurisdictions, though perhaps more so developed democracies, because it is the

problem of the ethical orientation of how we visualise the public service.

As a broad rule I'm sure we are all aware of the five major ethical orientations. In class I usually call them our five ethical senses, as they correspond to the way we perceive ethical issues. As in biology there

> … some of the issues that we may see in New Zealand are not 'New Zealand issues' at all, but a lasting legacy of systemic thinking about bureaucracies, democracies and what the public service is.

are, of course, more than five senses, but these will do for now:

- consequentialism – looking at the outcomes of our actions, which includes various forms of utilitarianism (greatest good for greatest number, etc.);
- deontology – what are we obliged to do and to whom, which includes the promises we make, either explicit or tacit;
- virtue – what are the characteristics that make us 'good' people and enable us to attain the good life, for ourselves and for others?;
- justice – what makes a decision fair, and for whom?;
- care – which is not only about considering the human side of an ethics issue, but a different orientation altogether: whereas the previous four are universalist in outlook, looking to

create abstract principles that we can apply across situations, care ethics looks at specific, concrete situations that rely solely on context.

In any given situation we usually – even subconsciously – apply a number of these perspectives. It is interesting, too, to see how they are applied in commentaries on others. For a few years virtue theory was quite unfashionable, but with the rise of Trump, Johnson and other recent political leaders it is almost exclusively used as a means of denigration. Praise for our own prime minister also frequently focuses on the perceived quality of her character.
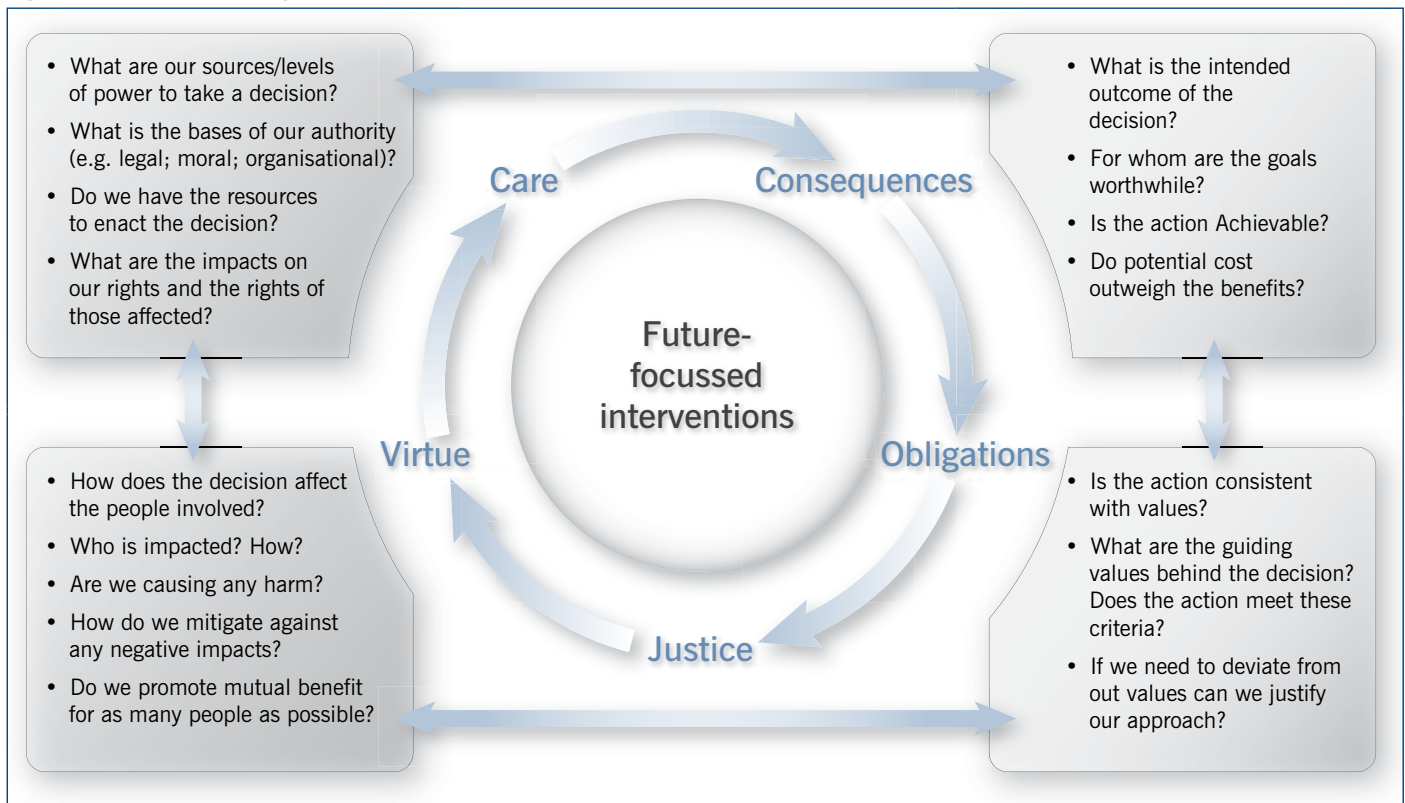
I would argue, however, that decades of thought on public administration – which includes here public policy, public management, and the relations between politicians and public servants – has been geared towards universalist principles. How can it not be? It is not easy to create public policy on an individual basis. I would further argue that in terms of such principles, the principle orientation has been around two of these perspectives: obligations and justice.

All of the cultural factors that I mentioned earlier in this lecture pivot around these two principles. When we look specifically at bullying we see this time and again. The principle organisational reaction is to protect the organisation and ensure fair process. These are understandable aims and I'm not arguing against fair process. But, as in real life, level playing fields are actually tipped heavily in favour of those at the stronger end of power differentials.

The most horrendous downside to these perspectives is a descent into what Guy Adams and Danny Balfour (1998) have identified as 'administrative evil'. The concept of administrative evil develops Hannah Arendt's seminal observations about the dehumanising power of bureaucracy and its tendency to enable people to do terrible acts. The Milgram experiments put that theory into action: a faceless authority figure is all it takes for people to do terrible things. Arendt was talking principally about the Holocaust, but there is no shortage of recent examples: Trump's concentration camps along the southern US border; the UK's treatment of the Windrush generation. The people who

Figure 1: Ethical stewardship

- What are our sources/levels of power to take a decision?
- What is the bases of our authority (e.g. legal; moral; organisational)?
- Do we have the resources to enact the decision?
- What are the impacts on our rights and the rights of those affected?

Care — **Consequences**

- What is the intended outcome of the decision?
- For whom are the goals worthwhile?
- Is the action Achievable?
- Do potential cost outweigh the benefits?

Future-focussed interventions

Virtue — **Obligations**

- How does the decision affect the people involved?
- Who is impacted? How?
- Are we causing any harm?
- How do we mitigate against any negative impacts?
- Do we promote mutual benefit for as many people as possible?

Justice

- Is the action consistent with values?
- What are the guiding values behind the decision? Does the action meet these criteria?
- If we need to deviate from out values can we justify our approach?

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implement these things are almost certainly lovely in most respects, yet through the mask of loyalty to the organisation and the sense that it's fair because it's an order to be followed they can engage in acts that shock and repel other people.

Is there a New Zealand equivalent? Yes; lots. You know them and unless we humanise public administration we will continue to face these issues.

Systemic issues can and do improve, however. This future generation is showing that a change in social values leads to so many changes to the world. What I suggest we need to think about at this level – and again I say think about because I believe this needs to be a collective set of decisions – is the basic orientation of public service ethics. Here is one such framework that students and I put together collectively in one of my master's courses, which we denoted *ethical stewardship* (Figure 1).

The framework can be used as a heuristic device: as rules of thumb that are easily recalled, rather than as anything deeply philosophical. The model is in a well-mined tradition of ethical decision-making frameworks, but this one specifically entails different ethical senses and also looks to a longer-term perspective. It is as strategic as it is reactive.

Conclusion

Obviously this is just one set of issues, but it is one that, I hope, you will agree is central to the idea of public service ethics. It also shows that some of the issues that we may see in New Zealand are not 'New Zealand issues' at all, but a lasting legacy of systemic thinking about bureaucracies, democracies and what the public service is.

And on that note I leave with a note of optimism and a challenge. The optimism is simply that the power to make changes is ours to use, but in order to do so we need to work together. I genuinely believe that the New Zealand public service may have issues, but that these are very similar to those in just about every other walk of life. And I also believe that the people who make up the public service are noble and aspirational people who are committed to improving well-being. My only concern is that they are hidebound by thinking that is 700 years old.

Which brings me to my challenge, which is primarily directed towards my fellow academics. It cannot have escaped some people's attention that I have cheekily titled this lecture 'Towards a New Public Ethics'. My colleagues will recognise this as a branding issue: ever since New Public Management became a thing there has

been a rush to slap the words 'new public' on just about everything.

For those who did notice, then you are absolutely correct – I did that deliberately as a nod to that tradition. I also did it, however, because I really do think we need new approaches at systemic levels, particularly to expand our orientation away from obligation and justice, and towards a greater orientation of care. And I also did it because – ironically – there is nothing at all new in this idea.

The final challenge is to what seems to me to be the unending desire to keep rebranding very well-known ideas as 'new'. New Public Management wasn't particularly new, and I would argue wasn't even an actual thing. The history of thought in public policy, management and administration is one of evolution and emergence. That we craft labels for different phases of this thought is fine, but it's not real.

I respectfully suggest that it is symptomatic of what I call 'imperial thinking' – the idea that because something is new to us then it must be new to all, in the same way that discovering a piece of land that has been inhabited for hundreds or even thousands of years suddenly makes that a new country. We can take all of the

modern frameworks and thinking we have and see how they have been used for centuries. If anybody really wants to understand why Trump's chaotic leadership is sadly effective in its own way, just read chapter 17 of *The Prince* by Machiavelli; although I'm sure he hasn't. If anybody wants to understand concepts such as servant leadership, upon which entire reputations and careers have been built in the last few decades, I suggest talking to any of our Samoan sisters and brothers about tautua, which has been around for ever. The list goes on.

As for my role, I continue to be honoured to try and help create and disseminate knowledge in this area, which I can do only through my own learning. My future research plans include collaborating with some of my colleagues in this room to continue work on improving processes around internal reporting, and identifying the strategic value that anti-corruption and pro-integrity work can bring. But all of it will be done collectively.

Instead of trying to colonise knowledge as a branding opportunity to sell ourselves as great thinkers, we perhaps ourselves

need to exercise a care perspective towards those with whom we are trying to share our ideas. And we do so by listening to the public, in all its myriad and glorious manifestations. There can be no new public ethics without the public.

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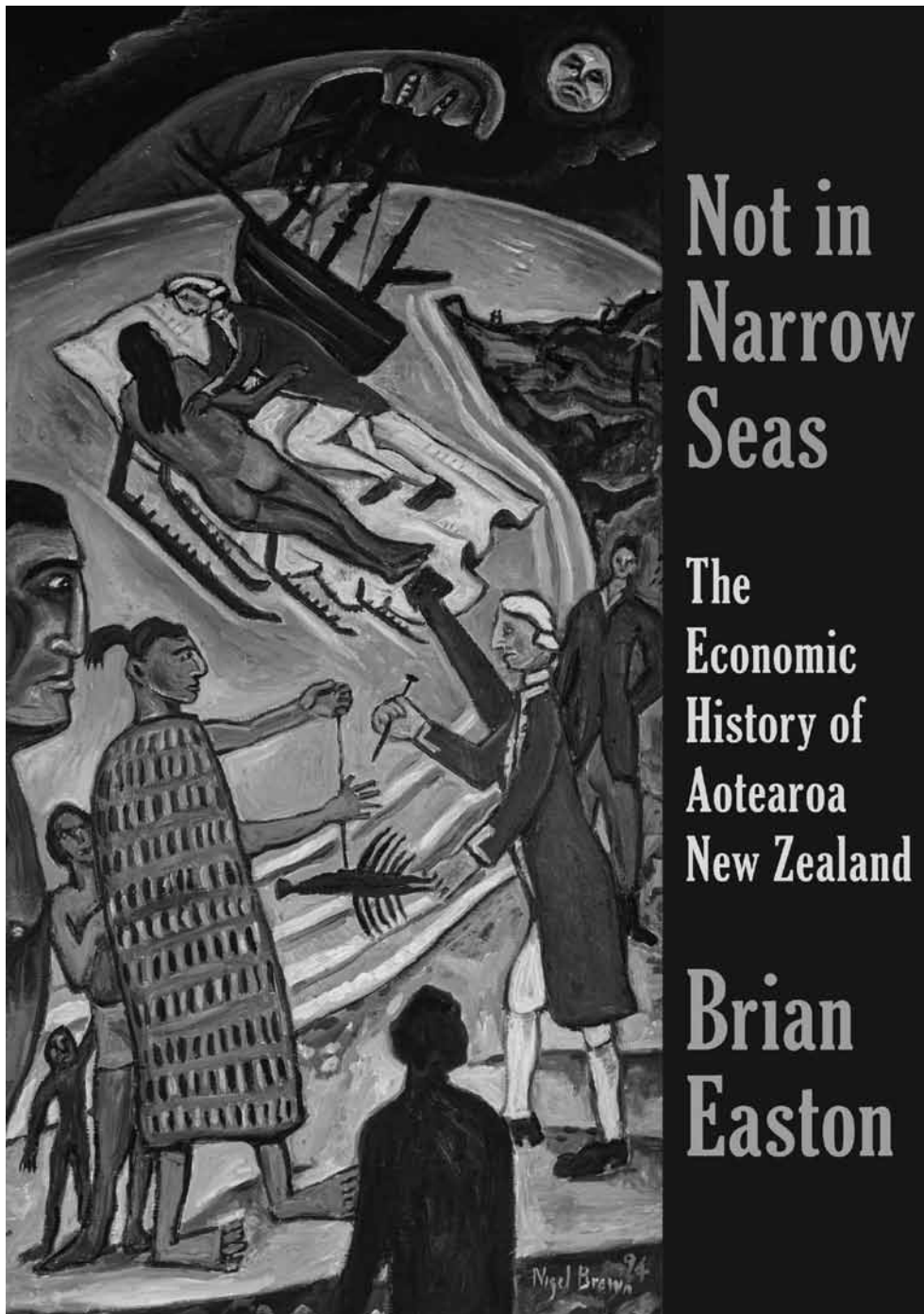
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