IN FOCUS:
Social Insurance

Editorial Note

Wicked policy problems abound. The COVID-19 pandemic continues to run rampant worldwide, straining national health care systems, restricting normal life, exacerbating public debt, and highlighting the fragility of international institutions.

Compounding matters, effective global leadership is lacking. Currently, close to 95% of people in low-income countries remain unvaccinated. By contrast, at least 60% of people in high-income countries have received at least one dose. Such differences are morally repugnant. Many millions of people in low-income countries are destined to suffer needlessly.

Such inequities are also short sighted. As Dame Sarah Gilbert, one of the developers of the Oxford/AstraZeneca vaccine, has recently pointed out, the inability of the international community to ensure that low-income countries can access and distribute vaccines will not only cause more deaths, but could also facilitate the emergence of 'potentially dangerous new variants' (*The Guardian*, 6 October 2021). The 'ever-evolving' virus, she lamented, 'continues to circulate unchecked'. As a result, every country remains at risk of 'further Sars-CoV-2 variants'.

Meanwhile, the equity implications of climate change loom ever larger. Indeed, in many respects climate change poses much greater distributional issues than COVID-19, both intra- and inter-generationally. For one thing, those with the least income and wealth are bound to suffer disproportionately (e.g. from storms, droughts, heat waves, fires, crop losses, physical displacement, and changing disease vectors). For another, the remaining global carbon budget consistent with a lowish warming cap is diminishing rapidly; the ecological losses being inflicted on future generations will be immense.

By the time this issue of *Policy Quarterly* is published, the climate talks in Glasgow will have concluded. COP 26 aimed to secure more ambitious commitments from countries, through their Nationally Determined Contributions (NDCs), for reductions in their greenhouse gas (GHG) emissions during 2021-2030, thus reducing the large gap between projected emissions and that required to meet the goals of the Paris Agreement.

Negotiated in late 2015, the Paris Agreement commits the international community to limiting the global average temperature to 'well below 2°C above pre-industrial levels' and ideally to no more than 1.5°C above pre-industrial levels.

Such goals are demanding. The Earth's mean surface temperature has already increased by around 1.1°C since the 19th century. According to a 2018 report of the Intergovernmental Panel on Climate Change, to remain within the 1.5°C warming cap (i.e. with little or no overshooting), global net anthropogenic carbon dioxide (CO_2) emissions must fall by around 45% from 2010 levels by 2030 (i.e. about 7% per annum) and reach zero by around 2050. Living within the 1.5°C warming cap will also require deep reductions in non-CO_2 emissions, primarily methane and nitrous oxide.

In mid-October 2021, the Earth was on track to warm by at least 2.5°C by 2100 – assuming countries meet their pledges. Hopefully, the revised NDC pledges offered at COP 26 will have reduced the projected warming track somewhat.

But will such pledges be fulfilled? Realistically, the prospects are not good. Many developed countries, including Aotearoa New Zealand, will need to purchase substantial volumes of emissions units offshore to meet their NDCs. But given the cost, the political acceptability of such purchases remains problematic, even if sufficient offshore markets exist.

Compounding matters, only a tiny fraction of the vastly expanded public expenditures for fighting COVID-19 has been earmarked to emissions-reduction initiatives. A much larger fraction has been allocated to carbon-intensive investments.

Worse, current policy settings in the world's largest GHG emitters are incompatible with the Paris Agreement. China and India continue to build new coal-fired power stations. Russia continues to support large-scale investment in oil and gas exploration and production. Brazil continues to encourage the destruction of the Amazon rainforest – the 'lungs of the Earth'. And in the US, the Biden Administration is unable to enact ambitious climate-related legislation because the fossil fuel industry continues to line the pockets and influence the political judgement of key senators.

Significantly, despite three decades of global efforts to mitigate climate change, the fossil fuel industry remains heavily subsidized throughout the world. The International Monetary Fund estimates that current direct and indirect subsidies for the production and burning of coal, oil, and gas are close to US$6 trillion per annum – more than US$11 million every minute. To date, no country has priced fossil fuels sufficiently to reflect their full environmental costs. The reasons are simple: fossil fuel companies exert enormous influence (e.g. via their donations to political parties and candidates); and high carbon taxes are viewed as electoral suicide.

Against this, the fourth industrial revolution (e.g. AI, robotics, autonomous vehicles, EVs, biotech, nanotech, etc.) will eventually transform the political economy of climate change mitigation. New power-brokers based on renewable energy, cleantech, and regenerative agriculture will gradually prevail.

But time is running out. Dramatic reductions in global GHG emissions are needed this decade. As Greta Thunberg argues, absolute honesty from world leaders is vital. Above all, this means honesty about four things: first, the rapidly diminishing size of humanity's remaining carbon budget; second, which countries' NDCs are clearly falling short; third, where the policies needed to meet each NDC are lacking; and fourth, how the gaps can best be closed.

As policy makers in Aotearoa New Zealand finalize their emissions-reduction plan, these questions must be front and centre.

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A Critical Consideration of Current Social Insurance Policy Developments in New Zealand

Abstract

Recent surprising announcements about the development of a social unemployment insurance (SUI) system by the Labour government are critically considered. Introducing SUI represents a major philosophical lurch from a welfare system mainly about family poverty alleviation towards one which has a stronger focus on market income replacement for individual low- and middle-income earners. We critically consider the policy process, the reasons why an SUI system might be desirable, and several alternative solutions to the likely proposal. We express scepticism about the democratic credentials of the process thus far and conclude that a persuasive case for such major reform has not yet been made.

Keywords social insurance, individual market income replacement, family poverty alleviation, middle-class welfare

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In the May 2021 Budget, Minister of Finance Grant Robertson announced that the government had committed to developing a social unemployment insurance (SUI) scheme for New Zealand (Robertson, 2021). Few details have been made public.[1] But Robertson indicated that the idea was at the 'urging' of the New Zealand Council of Trade Unions (CTU), and the employer group BusinessNZ suggested that the scheme would be 'ACC-like', and hinted that it would pay low- and middle-income earners who lost their jobs about 80% of their previous earnings up to some maximum cap for a period of time of less than a year. The proposal appears to be a form of conservative Bismarckian social insurance, which arose out of reforms by Otto von Bismarck during the period of the Second Reich in Germany after its 1871 unification, and which is the current norm across most continental European OECD countries.

This announcement was a considerable surprise. The majority Labour government elected in 2020 had not included any discussion of social insurance in their

electioneering. In fact, in 2020 one of Labour's stated commitments was '[s]implifying the income support system and ensur[ing] the settings that underpin access to income support are fair and fit for purpose', a commitment arguably inconsistent with adding a whole new SUI layer.[2]

Work to develop the scheme has so far been carried out behind closed doors, initially through the government's Future of Work Forum and, since the Budget, by a dedicated working group comprising representatives of the CTU, BusinessNZ and officials from several government agencies. The announced public discussion

conditional on accepting certain assumptions underpinning the SUI reforms, to the Bismarckian SUI of Robertson's Budget speech, one based on strengthening the existing social welfare system and the other involving a form of social insurance, both of which, we believe, may have greater net equity and efficiency benefits. It concludes with considerable scepticism about where the policy process seems to be heading.

The political economy of social insurance
Introducing SUI represents a major philosophical shift from a welfare system which is mainly about family poverty

discussed as a policy issue in any of the media reporting on the elections which led in 2017 to a minority Labour government and in 2020 to a majority Labour government, and there was no consideration of social insurance in the Welfare Expert Advisory Group's major report on reforms to the welfare system in 2019. We suggest that a strong commitment to open government and the democratic process means that major policy shifts – which include introduction of radical changes like social insurance – should, before the fact, be broadly discussed and carefully considered as part of the process by which political parties try and persuade New Zealanders to vote for them.

In addition, all New Zealanders benefit from carefully considered, stable policies which endure through time. Welfare has long been an important left–right political football. In other words, this is an area where a greater degree of considered bipartisanship and longer-term stability may be of value for New Zealanders' well-being. The degree of cross-spectrum political support for social insurance is unclear, but what is clear is that a bipartisan approach, at least politically, has not been adopted thus far and negotiating any such approach will be time-consuming.

> If Labour goes into the 2023 election with social insurance as part of its platform, then the proposal can at least be debated by politicians and interrogated by voters in a manner consistent with democratic norms.

paper is currently unreleased but is due later in 2021. From informal conversations with officials, it seems the scope of the paper is not to explore whether such a scheme should be introduced, what the range of alternatives to it might be and their various pros and cons. Rather, it will narrowly focus on details of a particular social insurance scheme, apparently for introduction in 2023. The proposal is likely to cover social insurance not just for those who become unemployed because of redundancy but also for those who lose their jobs on account of sickness.

This article considers the political economy of social insurance in New Zealand in the context of the policy process so far, and some of the possible implications of the major philosophical shift which SUI represents. It considers the major rationales for having a social insurance system, and the range of institutions which currently exist to solve insurance problems which may be crowded out by social insurance. It suggests two alternative policy responses,

alleviation towards a welfare system which has a stronger focus on market income replacement for individual low- and middle-income earners. Given that the introduction of a second, conceptually distinct and more generous tier into our core welfare system would represent the biggest change to social security policy in New Zealand since the 1974 establishment of the Accident Compensation Corporation (ACC), the lack of openness and apparent haste in the SUI policy process is a serious concern. By contrast, the establishment of ACC followed a lengthy royal commission of inquiry reporting in 1967 and many years of scrutiny thereafter. With change as significant as the proposed SUI scheme, there should be a comparable level of transparent and public discussion of all options, including non-insurance-based ones, before any final decisions are made.

As already touched upon, Labour did not go into the 2017 and 2020 elections with social insurance as a manifesto commitment. Nor was social insurance

The social insurance project appears to have been developed, promoted and endorsed by what some refer to as the government's 'social partners' – the CTU and BusinessNZ (McNamara, 2021). There are questions here about the representativeness of these partners. The CTU affiliates cover a small minority of those in paid employment and are disproportionately skewed in membership towards white-collar professionals – nurses, teachers, academics and other public servants – whose wages are largely funded by taxpayers. Via their 'major companies' group' of more than 100 private sector firms which produce over 67% of New Zealand's GDP, BusinessNZ perspectives are likely to be predominantly those of big business. These businesses operate in a largely non-unionised labour market.

An opportunity for democracy comes in 2023, which is when the scheme is expected to be introduced (ibid.). If Labour goes into the 2023 election with social

insurance as part of its platform, then the proposal can at least be debated by politicians and interrogated by voters in a manner consistent with democratic norms. If Labour rushes its plan through before the election, significant public scrutiny will be avoided and democracy, arguably, significantly trampled upon.

Politicians are, not surprisingly, political, weighing up re-election impacts of their policies. It is worth considering the question: why is SUI politically attractive to the Labour government in the current moment? Some informed speculation on these matters is of value.

The first reason in part is likely driven by internal Labour Party politics. SUI throws a considerable bone to the trade union arm of the labour movement, some parts of which have decided they want social insurance. What is more, this part, crucially, has big business support. It is therefore a significant economic policy change which avoids conflict with big capital while supporting the CTU power bloc – somewhat similar, ironically, to constellation of social forces which led to introduction of Bismarckian social insurance during the Second Reich. It is possible that big business in New Zealand favours social insurance because it provides a socialised cushion which allows continuance of otherwise easy-hire, easy-fire labour market regulation under the umbrella of 'flexicurity', for which it has a preference. To the extent that a social insurance scheme allows big business to negotiate away existing terms and conditions in a largely non-unionised environment, at least some of the economic costs falling upon them can be shifted onto others, and this may also be a calculation they have made in offering their support.

The second advantage which a social insurance system has is in terms of Labour's announced tax policy. In 2017 Labour committed to maintaining government spending at under 30% of GDP, and in 2020 it committed to no new taxes in this term, beyond adding a new top PAYE rate.[3] However, a social insurance system allows a new tax to be sold politically as a levy, potentially side-stepping the taxation commitment. Introduction of a new levy is, of course, a politically risky judgement

by Labour, since its effectiveness depends on spinning a persuasive political narrative to the voting public and the commentariat which is sufficiently plausible to ensure that the tax label and accusations of broken promises don't stick. The effect of the 'no new taxes' promise is to constrain promises to those which can be sold as a levy.

The third advantage from a Labour political perspective is that a social insurance scheme disproportionately benefits the employed middle classes with sufficiently stable employment histories to qualify for significant social insurance, playing on a classic middle-class fear of

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downward mobility.[4] These insecure middle classes are typically marginal voters, on whose votes New Zealand's elections generally swing. It is likely that Labour strategists will be aware of this insecurity.

The dynamic political economy of a two-tier system

Establishing a stronger two-tier, social insurance/benefit structure in New Zealand's core welfare system runs some significant centrifugal dynamic risks, in terms of erosion of broad public support for the current social welfare floor and further impetus to the individual income replacement philosophy. An expansion of social insurance to sickness and unemployment will, to a large extent, remove from the social welfare system many of the remaining middle-class users, who are currently typically short-term users. Their focus will shift more strongly to improving that new income replacement system, to the neglect of the welfare floor, which will become even less important to them. The public perception that the

social welfare system is predominantly for the underclass will also be reinforced. In addition, introducing SUI will remove much of the rump middle-class voice from the current working-age welfare system. If that removal is considerable, it will consequently create longer-term risks of an increasingly divergent two-tier system of 'good' and 'bad' welfare, with concomitant risks of erosion of the adequacy and quality of the family welfare floor, especially should a fiscal crisis eventuate. Overall, there is a significant risk of progressively improving the social insurance system and undermining the welfare system, driving

further wedges between the two tiers. The risks of such a dynamic may be contested. Jonathan Boston, for example, suggests that countries with weak contributory systems have weaker safety nets (Boston, 2019, p.18). However, we are unsure if this cross-sectional relationship is causal, and OECD comparative evidence on changes through time in generosity of the social insurance system relative to the welfare system within countries does not confirm such patterns (Immervoll and Richardson, 2011).

Why insurance? Why social insurance?
This section considers the fundamental policy problems that a social insurance scheme may address. Orthodox public policy development begins with identification of a policy problem, followed by an assessment of how many people are affected, which people and how severely, and then considers the costs and benefits of the full range of possible policy responses (including doing nothing) against relevant efficiency and equity criteria. In this

instance it appears the solution of an SUI system came first, with a case for it being developed afterwards.

A significant number of people have a desire for stability in their material circumstances, seeking to smooth their consumption over time, and, in particular, in response to future adverse contingencies to which a positive probability can be attached, such as job loss, sickness, death, theft of property or destruction of property (say, by fire or earthquake). In theory at least, these needs may be met privately via insurance. The buyer of insurance pays an insurance premium to the insurer, who

the queue. Those who are lower than average risk in the queue find that their purchase costs exceed their expected benefits from insurance and stop queueing. Consequently, the average risk of those remaining in the queue rises, premiums must rise in order for insurance to be profitably provided, and a vicious cycle may commence, where the queue to purchase insurance becomes progressively smaller as lower-risk people leave and the premiums consequently rise. At the end of this sequence, little may remain of a private insurance market. Private insurance is under-provided and the social interest is unsatisfied.

the problem of moral hazard, with people altering their behaviour to increase their eligibility for insurance payouts.

Yet solving the problem of insurance market failure is not the only problem definition which may be adopted. Solving other problems may also provide a rationale for government intervention. If there are scale economies, for example, there may be lower costs of providing insurance on a large scale which government may be able to directly capture. (Subsidising the private sector is an alternative to capturing these economies.) Additionally, there may be a view that some people are myopic and do not perceive a need to insure. The assumption, often tacit, is that policymakers can better perceive this need and can make a government insurance purchase on these people's behalf which makes them better off than simply giving them the money and allowing them to make their own choices about their purchase of goods and services, which may or may not include insurance. Often this value judgement is coupled with a belief that these myopic people are likely to be low-income and unable to afford insurance, introducing an equity as well as a paternalistic argument into policy discourse. Much of Rosenberg's discussion (Rosenberg, 2020), in fact, seems to argue for social insurance in terms of what we describe as redistributional paternalism. For example, he dismisses a state-subsidised private insurance system as having 'little ability to share … costs … more equitably', discusses social insurance policies in terms of a 'need' and mentions the 'unfair costs of adverse events' like redundancy.[6] It is not clear why Rosenberg concludes that some people should have a merit good in the form of insurance purchased for them by the state and some other people should pay for it. However, his argument implies a belief in a considerable degree of myopia about the need for unemployment insurance among low- and middle-income wage earners, so that (presumably well-informed) policymakers need to purchase it on their behalf.[7]

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provides the insurance by pooling the risks of these contingencies across a broad pool of customers. The insurer, in return, commits to making some payment to the buyer of insurance (or their beneficiaries) in the case of a particular event adverse to the buyer.

Two classic problems exist in private insurance markets, however, which mean that they underprovide relative to people's insurance needs. The first problem is adverse selection, which arises out of the fact that people seeking insurance have better information about the nature of the risks facing them than do the businesses which would like to profitably insure them, and have no good reason to disclose this information to providers. Insurers know that those queuing to buy insurance at any particular premium will be made up disproportionately of those who are at higher risk of claiming than the population at large, without being able to otherwise identify these customers. In order to make money, insurers set an insurance premium reflecting an average level of risk of those in

A further cause of the failure of private insurance markets to meet the social interest is moral hazard. Moral hazard arises because the risks of needing to access insurance payment are not independent of the purchase of an insurance policy. If, for example, a person has insurance, they may act to take on more risk, without the insurer knowing exactly which customers are adopting more risky behaviour. Again, the consequence is a higher market insurance premium than is socially desirable and less (or no) insurance resulting from that.

The market failure creates a possibility that careful, well-designed government intervention may meet the social interest, in particular via compulsion to insure, which addresses the adverse selection issue otherwise created by the exercise of private choice and asymmetric information between buyers and sellers.[5] At the same time, by ensuring that all people must be in the insurance queue and must purchase the product, a compulsory social insurance system considerably expands the scope for

Theoretical and empirical analysis suggests that strongly social insurance-based welfare systems, be they relatively lean like in the United States or relatively generous like the Nordics', are largely about

intertemporal redistribution across a person's life course rather than redistributing income from long-term well-to-do people to long-term poorer people (see Feldstein, 2005 and Ståhlberg, 2007 respectively). SUI would most benefit full-time middle-income workers who lose their jobs, by providing them with a period of higher payments than the current welfare system. The most income cushioning would be experienced by full-time middle-income workers who are partnered with a person who is similarly employed.[8] It would be of less benefit, or no benefit at all, to the many ineligible who are likely to miss out on unemployment insurance, including business owners, the self-employed, precarious workers and dependent contractors, young new labour market entrants, sole parents caring for children, and people not able to work in the first place because of disability.

In effect, the tacit comparator group for consideration of equity for those who become redundant or lose a job through sickness are those people who remain in jobs. The equity judgement is that those people who become unemployed for other reasons, say because a relationship ends, or who decide to shift from home to market production (perhaps because a child has gone to school), or who have left education and training in hope of finding work are not considered sufficiently deserving of the higher payment; or the costs of providing support to such people are tacitly assessed as excessive.

There are further tacit equity value judgements or cost judgements in advocacy of social insurance as an equitable solution: for example, that employed people who have a low tolerance for redundancy risk and who consequently take stable but lower-paying jobs and who adopt healthy lifestyles that lower the risk of sickness should subsidise those who have a high tolerance for redundancy risk and who take less care with their health. That's the equity implication of the risk-pooling dimension of social insurance.

Lastly, an equity value judgement is hidden in the individual nature of social insurance entitlements. Family income has no influence on entitlements. If their employment and earnings histories are the same, a childless Remuera 60-year-old married to a lawyer earning $500,000 a year on being made redundant from a part-time life-style job in the local interiors shop could receive exactly the same social insurance compensation as a 30-year-old Manukau solo mother of three who loses her full-time office cleaning job. Some might consider this highly inequitable and others not, but promotion of individualised social insurance means accepting this newly created situation. (Of course, the sole mother will be better off under social insurance than on a main benefit.)

Current solutions to missing private insurance markets

Any consideration of social insurance provision by government needs to address the extent to which it crowds out current provision for the missing market. Crowding out may be considerable.

Individual employees can self-insure against job loss by putting financial resources aside to protect themselves against income volatility. Additionally, people may consciously acquire human capital or skills to cushion against known risks of job loss. Lastly, evidence which indicates that people who are unemployed can spend up to two hours a day on home production compared to those who are employed indicates that home production may function as partial self-insurance when market production is lost (Krueger and Mueller, 2012, Table 3, p.771).

Furthermore, if people use information regarding future income volatility in the segment of the labour market to which they have chosen to allocate their labour, compensating variations for job loss risks may arise. These compensating variations may be higher wages or better terms and conditions, including redundancy payout rights. A decade ago, more than half of displaced workers in New Zealand had a redundancy entitlement, with a mean value then measured at over $28,000 (OECD, 2017, p.61). Additionally, many workers will have some sick leave entitlement in their employment contracts, as well as accumulated annual leave, another margin of self-insurance which people can adjust.

Family can provide further non-market

> … government … currently provides a range of policies to mitigate income volatility … [t]he most obvious [being] the working-age welfare system, which has been eroded relative to wages in the last 35 years …

insurance against individual income volatility. Much of the SUI policy focus appears to be on individual income smoothing. However, income-smoothing problems typically arise at a family, not an individual, level, due to family income sharing. If a single person or a one-earner family loses their job, they lose 100% of their market income, while if family with two full-time earners loses one job, they most likely lose considerably less than 100% of their market income.

This insurance may involve a spouse who has a job, or a spouse who chooses a low-risk job in order to insure a partner in a high-risk job and who is compensated for this act by sharing the bounty when times are good. Or, currently, it might be a young person who moves home with their parents when they lose employment due to redundancy or sickness, or whose parents take over their mortgage or pay their rent in similar circumstances. The existence of couple-based labour supply also allows people with families to access the private finance market to compensate: for example, an earner loses a job but

maintains consumption via bank loans which are serviced by their spouse working and a higher loan–income ratio in the transition. (Banks are unlikely to provide loans to offset income volatility if there is no market income in family.)

Turning now to the profit-driven private sector, the primary private market failure creates profitable incentives for private providers to innovate and provide some form of insurance. Many households in New Zealand have some form of private income insurance. For example, Horizon Research in 2012 estimated that 15% of households had income protection for sickness or unemployment (Horizon Research, 2012, p.4). There are also

but take-up, especially by people not on a first-tier benefit, may be an important issue due to lack of information about eligibility and stigma.

A further important existing institution is the student loans scheme. This scheme creates a set of individual accounts for people, at any stage of their life, aimed at overcoming the private capital market failure to fund education and training, including when pre-existing skills become redundant. Via the system of individualised accounts, personal incentives are better aligned with personal information and choices, and moral hazard in terms of socially excessive durations on the public coin is better avoided. Additionally, if

for over a year if they lost their primary earner to unemployment or sickness (Horizon Research, 2012, p.12).[10]

If there remains a significant gap in this pre-existing portfolio of solutions, which we believe should be persuasively demonstrated analytically rather than assumed, then policy change which contemplates social insurance to fill this gap needs to consider: its deadweight, in terms of SUI simply substituting state provision for one or several of the pre-existing solutions, which are downsized when insurance is introduced; and whether reforming one or more of these pre-existing institutions may be preferable in terms of cost and effectiveness in addressing identified policy gaps.

Furthermore, like these other institutions, social insurance will itself be an imperfect substitute for the missing private insurance market. Social insurance is a set of rules where one size fits all; there is no allowance for human diversity. Even neglecting diversity among the employed in terms of their risk preferences for income volatility, the average income-smoothing service set by central fiat may be in excess of or below what the average person would want or need. And traditional social insurance creates a significant moral hazard problem for recipients, and incentives for both employers and employees to game the system to shift costs of performance management and personal grievances on to third parties – other levy payers.

Putting the problem in this fashion immediately suggests the following two central points. First, potential solutions may involve: (a) reducing the chances of redundancy or sickness which result in job loss (we might think of these as preventive fences at the top of the cliff); or (b) providing some forms of compensation – be that compensation in money or in goods and services such as training and job search assistance – to help adjustment consequent on finding oneself at the bottom of the cliff (i.e. the ambulances at the bottom of the cliff).

Second, there are consequently a wide variety of potential policy choices to address the problem which need to be considered as a portfolio, and which need to be examined in the context of their

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imperfect means of overcoming the *ex post* capital market imperfection to smooth long-term consumption via use of various forms of overdrafts.

Of course, government also currently provides a range of policies to mitigate income volatility. The most obvious is the working-age welfare system, which has been eroded relative to wages in the last 35 years by CPI indexation of benefits. Hence it works less well than it used to for many people in providing for the missing private market. However, recent and announced rises in benefits have, at least to some degree, offset this, reducing space for a social insurance system. Current social welfare assistance also includes the accommodation supplement, which is available to pay financial commitments like mortgages should family income sink below certain market thresholds, and Working for Families if people have children and again meet a family income test. Eligibility for both the accommodation supplement and Working for Families benefits is not dependent on eligibility for first-tier working-age benefits,

suffering significant hardship, the over three million people in KiwiSaver have the right to access their accounts (which had an average value of $26,000 in 2021).[9]

Lastly, in terms of unemployment insurance, a monetary policy which is effective in keeping unemployment at low and stable levels is likely to eliminate much of the need for an unemployment insurance system. Full employment rather than income support payments was the foundation of the New Zealand social welfare system for much of the post-war period (Chapple, 1996; Rosenberg, 1977).

All these imperfect substitutes go some considerable way to mitigating the primary market failure. Policymakers need to understand what these other institutions are doing to understand the size of the problem and therefore the extent to which an SUI solution is of net value. That institutional reach of imperfect substitutes appears to be considerable. Horizon Research indicated that one in five New Zealand households could maintain current living standards at existing levels

impact on the currently existing suite of solutions, both fences and ambulances. All these solutions will have their pros and cons and all will be imperfect substitutes for one another. That is to say, expanding one solution will reduce the potential benefits of expanding other solutions, but never eliminate the problem entirely.

An alternative based on existing social welfare foundations
Should some form of income support be perceived as a core solution to any equity and efficiency issues, building on existing institutions rather than creating a new set is a strong option. Consequent on 30 years of real erosion of working-age welfare benefits relative to average wages from 1990, the main welfare system has increasingly failed to work for some because of poor income replacement for those who are made redundant, amongst others. (Again, we note that recent real increases in welfare benefits and their indexation to wages are going to eliminate some of this space, and substitute for SUI to some significant extent.) If addressing low replacement rates is the objective of the SUI proposal, welfare reform could go a long way towards cushioning the poverty impact of redundancy while avoiding the inequities and divisiveness of a two-tier system and the large costs and uncertainties of setting up an entirely new tier.

For example, main benefit rates could be returned to levels set following the 1972 report of the Royal Commission on Social Security – 40% of the average weekly wage for a single adult and about 67% for a couple. This would mean a single adult rate (in 2021) of around $520 per week and a couple rate of $436 for each person per week. In this example, and including the accommodation supplement, a single person who loses their job at the average wage could be entitled to assistance equal to a little under 60% of their previous net income.[11] While less than the 80% apparently proposed under the SUI scheme, they would be entitled to it for as long – or as short – as they need it, and without discrimination on the basis of the reason they became unemployed. Of course, there is an issue of the political economy of how

to fund such an increase when a government has committed to no new taxes this term.

If the concern is with relatively low-paid dual-earner couples where one person loses their job, there are alternatives within existing institutions which can be considered. In particular, the current benefit system's couple-based unit of assessment means that where one partner in a dual-earner couple loses their job, their entitlement to the jobseeker allowance is abated at 70% for each dollar the partner earns (or they both earn) above $160 per week. If the partner earns $809 gross per week, there is no entitlement at all.[12] On

> Creation of a new agency ignores the expertise ACC and MSD have in managing systems with some significant similarities ...

the assumption that the couple share income, the loss of one job lowers their standard of living less than the situation of a single person losing their employment, but they would nevertheless experience a significant income cut. One option for addressing this which avoids the problems of SUI is to introduce an element of individualisation into the welfare system, perhaps through a spousal earnings disregard set, say, equal to average weekly earnings. There are pros and cons to this option too (of course), but one advantage is that it could apply more widely, beyond redundancy and sickness, including to supported living payment recipients and sole parents, reducing the partnership penalty for people forming new relationships.

An alternative social insurance model
If one conditionally accepts that government is committed to introducing an entirely new institution in the form of a social insurance-style system which focuses on individual income replacement, following Feldstein (2005, pp.14–16) there is an option which addresses the major moral hazard problems in the

Bismarckian model. The alternative social insurance system would involve each employed person being required by law to accumulate funds in a personalised unemployment (and sickness) insurance savings account sufficient for a payout proportional to their earnings for a fixed duration if they become unemployed.

Conditionally accepting paternalistic equity concerns about the ability of those on low individual earnings to contribute, their contributions could be wholly or partly government-subsidised. If funds in the personalised accounts were used up by too many unemployment spells, the accounts would turn into an individual loans system, to be repaid in better times with an interest rate as in the student loans scheme. If a positive balance exists at retirement or the death of the person, balances would be paid out to the person or as bequests. Because balances are individualised, this system eliminates much (but not all) of the moral hazard inherent in traditional social insurance, as longer durations on SUI are directly costly to individuals, while directly addressing the lack of a private insurance market. Additionally, such an individualised system gives more scope to individual agency and human diversity than does the Bismarckian system under contemplation.

There are, of course, disadvantages to this sketched approach too, but if social insurance options are being proposed, its pros and cons should be carefully considered.

If the Bismarckian approach is adopted, who should manage a social insurance system?
If one conditionally accepts a Bismarckian social insurance scheme, an obvious issue is where to institutionally locate the

administration of the system. There are at least four options: ACC, the Ministry of Social Development (MSD), Inland Revenue (which manages the student loans scheme and KiwiSaver) or a new, separate agency. Creation of a new agency ignores the expertise ACC and MSD have in managing systems with some significant similarities, and, in addition, is likely to be more resource intensive in terms of building something new from ground up. In addition, it would mean adding a third stand-alone institution to the existing environment, adding additional complexities in terms of information and coordination and reducing opportunities for scale economies, so it is not further examined here. Our focus is on MSD and ACC, as Inland Revenue has no particular expertise in labour market issues of any sort.

There are strong arguments for locating social insurance provision within MSD. MSD already has expertise in dealing with people who lose their jobs from sickness and redundancy in terms of paying people income support, work-testing people and providing them with active labour market assistance. ACC would have to build more such capability. MSD-based delivery would ensure that people on social insurance would be better connected with the higher-tier elements of the welfare system, such as the accommodation supplement and Working for Families, should they need it. MSD has a relatively dense network of offices and infrastructure around the country, considerably more so than ACC. MSD would have better incentive alignment in terms of reducing the numbers of people in the system at or near the point of transition out of social insurance and into social welfare.

ACC does have experience, which MSD does not, in running a levy-funded system, so if such a system is chosen this may favour choice of ACC. ACC doesn't have the stigma associated with it that MSD does, which makes it more attractive to the middle classes (the 'good' versus 'bad' welfare distinction). On the other hand, locating provision with MSD may mitigate some of the risks of a two-class welfare system, as, even if some people have rights to better seats, at least they come in the same MSD door.

Conclusion

The current policy process involves an apparent leaping to a particular social insurance design without seeking any coherent answers to many critical and logically prior questions. In proposing a particular roof design before setting it on solid foundations, as a nation we are risking constructing a very shoddy house.

A much better process, in our view, would have been setting up a royal commission-driven process to examine the *entirety* of the New Zealand income support and taxation systems as an integrated whole in terms of meeting efficiency and equity goals, and other relevant objectives, something which is well overdue and that has been avoided by successive governments across the political spectrum.

Creating a system of social insurance would be a considerable philosophical change in New Zealand's structure of income support, shifting its emphasis away from a poverty-focused, family-based system of interpersonal life-course redistribution towards an individual income replacement-based system of redistribution across a person's life course. It is our view that, because of the substantial costs should the policy go wrong and because of the path dependence of policy change in this space (once committed, reversal becomes very costly), revolutionary changes need:

- broad public consensus, including across the ideological spectrum;
- careful and time-consuming open public consideration in terms of a coherent, well-articulated problem definition and consideration of all the many potential policy options and their pros and cons; and
- a high evidential bar for significant change.

It is our belief that the secretive and elitist policy process so far shows little indication of getting anywhere near to meeting these criteria.

Putting aside fundamental matters of good democratic practice and rational public policy processes, based on current information we do not see an efficiency problem of sufficient size which would convince an undecided and fair-minded person of the merits of introduction of SUI,

especially given the costs of the creation of new institutions and the longer-term risks of undermining the welfare floor. If, on the other hand, the argument for social insurance is primarily an equity one, we struggle to see that an income replacement-based welfare system is more equitable than a poverty elimination welfare model.

Additionally, it is hard to see why someone moving into unemployment has greater merit for income support if they lose their job due to redundancy or sickness than those becoming unemployed or moving onto welfare for other reasons. If the rationale is one of equity, the case remains to be made that the relevant equity concept is individual rather than family income. We are not convinced of the paternalist arguments implicit in some of the offered rationales for social insurance. If the argument is that there are no alternatives, we have offered several alternatives, conditional on accepting some of the questionable assumptions underpinning proposals for Bismarckian social insurance. However, our minds remain firmly open to new evidence.

1   As social partner discussion will likely not be covered by the Official Information Act, almost certainly a significant amount of policy discussion will have occurred outside public purview. This is not open government.
2   See https://www.labour.org.nz/news-labour_2020_manifesto, p.14.
3   See https://www.labour.org.nz/tax, where the Labour Party states: 'we've committed to no new taxes this term'.
4   Boston (2019, pp.18–19) presents this political economy argument in a more positive fashion.
5   One of the arguments for introducing social insurance now is the assertion that a sea change is coming in the labour market which will make work increasingly insecure. Hence, the problem that SUI solves will become dominant in the future. The growth of work insecurity story has been seriously questioned (World Bank, 2019) and the mere assertion that large changes are coming seems a very weak reed on which to hang such major policy change, particularly when potentially better solutions lie unexamined. Another thin argument is that social insurance would have helped in terms of Covid-19 adjustment, or major structural changes in particular industries due to carbon pricing or removal of subsidies. We are not persuaded that the Covid-19 challenges that have faced New Zealand would be any more than marginally effected, and then perhaps not positively, by the presence of SUI. In terms of SUI being a solution to the need for phased exits from particular industries, due, say, to loss of a sector (like the Tiwai Point aluminium smelter or Marsden Point), a bespoke package is likely to be a stronger policy option.
6   In discussing policy options, Rosenberg mentions no advantages of subsidised private insurance. However, an appropriately set subsidy for private insurance may fully compensate for the missing private market, crowding in rather than out the private sector, and allows for private sector innovation and can be tailored to the individual risk preferences and other individual and family circumstances of each worker (for example, for mortgage commitments). In other words, a market-based solution is advantaged in dealing with dispersed knowledge, and human diversity and creativity. If there is a further residual concern about equity, differential subsidies could be set for different equity groups defined by socio-demographics or earnings. Also, Rosenberg does not mention any disadvantages of a system of social insurance, when obviously it possesses some. This

note's discussion does not, of course, mean that a market subsidy is necessarily better than social insurance. It merely indicates that policy choices are more complex and subtle than allowed by Rosenberg's analysis, which we must acknowledge is limited by both a time and space constraint.

7 Another argument sometimes advanced for social insurance is that it addresses wage scarring – that those who lose their jobs (predominantly via redundancy) tend to re-enter the labour market at an earnings rate which is below what they previously earned, and that discrepancy endures over time (OECD, 2017; Rosenberg, 2020, p.68). New Zealand studies suggest that scarring may be higher in New Zealand than the OECD average (Dixon and Maré, 2013; Hyslop and Townsend, 2019; OECD, 2017). A system which pays redundant workers a premium over and above the existing welfare system provides incentives to remain unemployed longer (Krueger and Mueller, 2012; Feldstein, 2005). Hence, it is suggested by social insurance advocates that this allows expanding job search along the extensive margin, resulting in a better job match quality and potentially less wage scarring. However, Hyslop and Townsend (2019, p.159) find that earnings effects of job displacement are 'substantially larger' for older workers (and 'generally small and insignificant' for young workers), which, they point out, is 'consistent with the notion that they are due to the loss of firm- or industry-specific skills', not the inability of workers to search for a

better job. Moreover, time-use evidence indicates that the average amount of a day that unemployed people search for work is very low – varying from a few minutes to half an hour across a variety of rich countries – so time for searching may not be a particularly binding constraint (Krueger and Mueller, 2012, Table 4, p.775). The overseas empirical evidence also suggests that the time unemployment insurance recipients spend on job search is inversely related to unemployment benefit generosity (Krueger and Mueller, 2010). SUI may worsen overall search outcomes, as the intensive job search margin declines, offsetting greater job search along the extensive margin. Additionally, extended duration of time out of employment may result in an erosion of human capital, and hence more rather than less scarring. Finally, the job-search argument makes it plain that the actual purpose of SUI is to increase the unemployment rate, as unemployment durations rise to permit more job search. Whether the higher unemployment arising from the policy will improve well-being, which all evidence suggests is significantly and negatively affected by unemployment over and above the income loss, is unclear.

8 To illustrate, imagine, say, an 80% replacement rate and a couple both earning $50,000 a year where one person loses their job: family income declines by 10%. On the other hand, a single person who earns $50,000 experiences a 20% reduction in their family income if they lose their job.

9 See https://www.fma.govt.nz/assets/Reports/Kiwisaver-AR-2021.pdf.

10 They describe this number as 'only' 20%, an adverb which reveals something of their priors.

11 The precise amount depends on the accommodation supplement, which varies by area and rent paid.

12 The figure is $848 per week if the couple has dependent children.

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Grant Duncan

Social Unemployment Insurance

a case (more or less) in favour

Abstract

Budget 2021 announced a social unemployment insurance (SUI) system, to be developed in partnership with BusinessNZ and the New Zealand Council of Trade Unions, and modelled on the accident compensation (ACC) scheme. This new policy addresses the needs of workers involuntarily laid off as industries restructure and seek new skills. This article considers concerns raised about the SUI proposal, drawing comparisons with the ACC experience. While SUI would perpetuate market income inequalities and may not do much to prevent poverty, it could also reduce other sources of inconsistency and disadvantage.

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The Ardern government's proposal to introduce social unemployment insurance (SUI), announced in the Budget in May 2021, was stimulated partly by the need for ad hoc income relief payments in the Covid-19 lockdown for those laid off, alongside wage subsidies to sustain employment relationships. (For more on the Covid-19 income support response, see Rosenberg, 2020 and Fletcher, 2020.) The minister of finance, Grant Robertson, also harked back to the job losses caused by the global financial crisis of 2008 and the Canterbury earthquakes. Large numbers of people lost their jobs through no fault of their own, nor due to planned restructuring. The minister connected the proposed SUI with rapid technological innovation, changes in demand for skills, and hence the need for workers to transition and upskill from time to time during their careers.

An aim of SUI, then, appears to be to reduce uncertainty and stress about household incomes during such career changes, and to support retraining and re-employment. Thus the Labour government is recognising and addressing underlying transformations that may affect 'the future of work' through a social security apparatus that adapts to change within a flexible

labour market, rather than seeking to preserve job security or tenure. This alone is a significant political concession (some might call it a betrayal) on the part of a Labour party. And the minister's statement on the SUI proposal was sketchy and speculative. It resembles, however, a recommendation for New Zealand made by the OECD:

Consider replacing the voluntary redundancy payments with a mandatory active redundancy insurance scheme that integrates early intervention support and redundancy payments. The insurance scheme could cover all workers irrespective of their individual work contract and can be financed by a payroll-based levy. (OECD 2017, p.21)

At the time of writing, the only social security supports for workers going through such transitions were income-tested welfare benefits, normally 'jobseeker support' if the person is looking for full-time work. Other entitlements may include supplements for accommodation costs, Working for Families tax credits and childcare subsidies. The outcomes in New Zealand, according to the OECD, have not compared well with the experience of other economies.

While many displaced workers in New Zealand find a new job quickly, … wage losses for re-employed displaced workers reach 12% in the first year after displacement, compared with negligible wage effects in Germany and the United Kingdom and a loss of 6% in the United States and Portugal. While on average these wage losses are offset by redundancy payments in the first year after job loss, the average annual personal income for displaced workers in New Zealand (including government income transfers and redundancy pay) is about 20% lower in the second and third year after displacement than for non-displaced workers with similar characteristics. (ibid., pp.13–14)

Partly due to income testing, the OECD found that 'in 2015, only about one-third of the stock of non-employed workers,

Insecure employment is more likely to be experienced by women than by men, by Māori and Pasifika workers than by Pākehā workers, and by workers who are young and those who have a disability …

laid-off or made redundant from their previous job reported welfare benefit receipt' (ibid., p.15). So New Zealand's income-tested welfare is not effectively providing transitional support in these circumstances. There has been insufficient pre-termination re-employment assistance, other than that provided by employers. Furthermore, those who end up with lower wages in a new job are likely also to experience professional downgrading, which is a loss to the economy of their potential for skilled labour. The OECD commented that, in New Zealand, employers and public employment services should take a more proactive approach to transitions caused by job displacement.

ACC as a model
It is useful to compare the welfare supports for workers made redundant with the support from ACC for workers incapacitated due to personal injury. When an accident causes personal injury or death – even when there are a large number of victims, such as in the 2011 Canterbury earthquake – the ACC scheme is fully funded and ready to provide medical treatment, social and vocational

rehabilitation and payment of normally 80% of previous individual gross income on a no-fault basis. In cases of work incapacity, the weekly compensation payments are based on individual income lost rather than needs: they are the same regardless of whether the accident occurred at work or outside of work and regardless of the total household income. And dependent spouses and children may also receive compensation payments in recognition of the support they have lost, if the injury is fatal. Furthermore, there is post-injury support for social and vocational rehabilitation.

No-fault cover under ACC makes up for the ban on the right to sue for compensatory damages in all New Zealand courts. But the rationale behind the scheme concerned social and economic goals, not only legal issues. The architect of the ACC system, the late Sir Owen Woodhouse, established that there is a 'community responsibility' to address the personal, familial and social impacts of personal injuries, *and* there is an economic interest in ensuring that workers return to productive employment to the maximum degree possible and as soon as possible, without wasteful, stressful and inequitable litigation.

The SUI proposal is modelled on ACC, but it will have a defined time limit and it lacks the rationale of ending wasteful litigation that underpinned the ACC law in the 1970s. And, whereas ACC has a legislative mandate to prevent accidents, SUI will be facilitating redundancies, not preventing them. Like ACC, however, SUI will provide 80% of income, albeit for a fixed period of time, with minimum and maximum caps. It will be linked to training opportunities (in ways that have not been described publicly in detail so far).

The SUI proposal was greeted with some valid objections: for example, from the Child Poverty Action Group (Child Poverty Action Group, 2021). The present article considers some of those objections, and, without aiming to overturn them, offers some views in favour of SUI nonetheless. As the proposed scheme has been likened to the well-established ACC model, it is possible to consider some of the pros and cons of SUI based on that experience. Elsewhere I have argued that

ACC – conceived in 1967 and implemented in 1974 – has been a success story in New Zealand's public policy history (Duncan, 2019b). It was the product of legislative reforms by both National and Labour governments. As a state monopoly it survived two waves of efforts to open it up to competitive multi-insurer provision. Successes in public policy are never unqualified, however. 'Successful' doesn't mean 'problem free'. The issues identified by critics of the SUI proposal can also be raised about the ACC scheme.

Perpetuation of inequalities

Income-replacement or social-insurance models replicate the income inequalities that already exist in the labour market. This particularly affects people in insecure employment with low and variable earnings and with uncertainties about hours per week and about how long their jobs will last. Insecure employment is more likely to be experienced by women than by men, by Māori and Pasifika workers than by Pākehā workers, and by workers who are young and those who have a disability (New Zealand Council of Trade Unions, 2013). Inequities are complicated by the likelihood that those who are already better off and with higher education find it easier to pursue their rights and get their claims accepted in the first place.

Looking at the ACC example, there is a sense of 'guilty as charged' here. By paying out normally up to 80% of previous incomes, the scheme leaves pre-existing income inequalities in place. The maximum weekly compensation rate at the time of writing was $2,066.58; that caps the unequal outcomes, but doesn't eliminate them. The social dimensions of inequities in the ACC scheme were revealed in a series of briefing memos from ACC to the responsible minister, Carmel Sepuloni, obtained by Radio New Zealand (Bradley, 2021).

Inter-ethnic inequalities in market incomes are perpetuated under ACC. But, even before people have claimed weekly compensation, access to cover is inequitable. Māori have higher rates of serious injury than non-Māori. Serious injuries are routinely registered as claims by medical practitioners, but when all claims, including minor injuries, are

> ... providing social insurance cover for incomes, at least temporarily to smooth out the financial consequences of such events, the country would collectively address adverse circumstances that are judged not to be the fault of the individuals affected.

counted, the rate of claims is lower for Māori than for non-Māori, and particularly lower for Māori women. This is a case of the 'inverse care law': those who need access to care the most are receiving it the least frequently. The multiple factors contributing to this inequity include allegedly the history of colonisation and consequent institutional racism, a greater exposure to injury-related risks, especially at work, and legislative provisions that focus on the individual and not on families. Gender inequality is also found in ACC, exacerbated by the fact that, due to gender differences in occupational risks, men are more likely to experience injuries that necessitate time off work, and for longer periods. Men lodge more ACC claims for cover than women, and the disparity is greater when it comes to claims for weekly compensation. Furthermore, personal injury related to pregnancy and childbirth has often been declined cover due to the ACC legislation (Bradley, 2021).

A current bill amending the ACC legislation will address cover for injury caused during childbirth, and ACC does make administrative and service-level efforts to address inequalities of access and entitlement. But the proposed SUI would face similar issues. International evidence indicates that 'for a subset of displaced workers who experience professional downgrading – mostly women, older and mid-to-high-skilled workers – displacement brings in its train substantial human capital losses' (Quintini and Venn, 2013, p.44). The development of the SUI proposal should build in – from the very beginning – legislative frameworks and delivery models that seek to improve access across occupational, age, gender and ethnic groups, rather than simply 'baking in' inequalities and institutionalising ageist, racist or sexist presumptions. Special attention is needed in assessing fair income-replacement entitlements for those who have had insecure employment with variable levels of income. And cover should not be declined simply because a worker is at or near the age of eligibility for New Zealand Superannuation. A person aged 65 or over may still want re-employment.

For casual or non-permanent employees, the calculation of ACC weekly compensation is based on all PAYE earnings in the year before the injury prevented the person from working. For lower-paid people who are underemployed, or who experience breaks in earnings due to termination of casual and fixed-term employment, weekly compensation replicates the pre-existing disadvantages. The proposed SUI scheme may not do much better. The legal definition of redundancy would be crucial here, as workers who are simply 'let go' on termination of a fixed-term or casual agreement, rather than through a formal redundancy process, may not be covered at all. (At the time of writing, this level of detail was not available.) Any such social insurance scheme will deliver higher transitional benefits to workers who have had ongoing contracts with steady and higher wages. But those who have had insecure employment should not be excluded or put through unduly complex application processes to verify previous earnings.

Unlike ACC, SUI would presumably be unable to cover the self-employed, as they have no employer to make them redundant. This will lead to controversies affecting those workers who are bogusly employed as 'independent contractors' or 'owner-operators' but who are effectively working as full-time employees, as are, for example, many couriers.

Return to work

The proposed SUI would add to the complexity of the social security system overall, so there needs to be a good reason for having it. SUI supposes that there are two basic problems in need of a solution: first, that occasional redundancies and career changes are now a normal part of a person's career (as it is considered, even by the Labour Party, that job security is a thing of the past); and second, that the current social security system is not well-enough prepared for unexpected events causing large numbers of lay-offs at once. By providing social insurance cover for incomes, at least temporarily to smooth out the financial consequences of such events, the country would collectively address adverse circumstances that are judged not to be the fault of the individuals affected. This is similar to the thinking behind ACC: a certain rate of personal injury is inevitable, given the numerous work and recreational activities that we undertake and value, and, as we all benefit from such activities, and we are all at risk of injury, we should collectively insure against the consequent economic losses. Finding fault and leaving individuals to cope don't get us the social and economic outcomes we want. (Inevitably there are value judgements underlying such policy choices, but Woodhouse stated them openly and clearly in the 1967 royal commission report that led to ACC. These value judgements have been more or less supported by successive governments, including Ardern's.) The objective is to return the affected person to, or as close as possible to, their previous social and vocational status as soon as possible.

Admittedly, ACC has not been required by recent law to concern itself with claimants' skills and incomes once weekly compensation is terminated. This is problematic in cases where the injured

If the incapacitated worker doesn't have to deal with so much stress establishing entitlements and adjusting to termination of employment, then the job of finding a new job may be briefer and easier.

person is unable, due to permanent partial impairment, to return to a previous skilled occupation and wishes to retrain for a new occupation at a similar status, skill level and/or income. The injured person can be deemed 'fit for work' in a lower-skilled occupation even when there is no actual job available (Duncan, 2019a). An amendment bill (at the time of writing expected to be introduced to Parliament) will, however, require ACC to take account of pre-injury incomes in the process of assessing readiness to return to work, or 'vocational independence'.

In a flexible labour market affected by technological innovation and Schumpeterian 'creative destruction', it makes a lot more sense for employers, unions and the government to collaborate on systems that will preserve or even enhance workers' skills as they face the almost inevitable career transitions, rather than allowing people to go without support or retraining. (It is not at all clear, though, why the government is not as actively seeking to improve public employment services for transitions from formal education into work, or from raising children back into work.)

Evidence suggests that those covered by ACC return to work sooner than those with

comparable levels of impairment who are on working-age welfare benefits. This goes against what one might expect if we look at the apparent economic incentives. Since ACC weekly compensation entitlements are generally higher than welfare benefits, the incentive would appear to be to stay on ACC for longer, if one can. A study that compared outcomes for ACC-covered and non-ACC-covered incapacities by matching age, sex and functional impairment (McAllister et al., 2013) and another comparing two samples with spinal-cord injuries (Paul et al., 2013) have found that those on ACC were less likely to have inadequate incomes, and significantly more likely to have returned to work.

Why would a higher income-replacement rate not disincentivise – and hence lower the rate of – return to work? Admittedly, it is not possible to find perfectly matched samples across ACC and non-ACC disability, and there may be intervening factors that make ACC claimants, on average, more motivated to return to work. On the other hand, the no-fault, non-income-tested and higher ACC entitlements reduce the stress of adjustment to an involuntary break in employment; hence they reduce the complications attendant upon rehabilitation and retraining.

In the disability field, it has been found that putting less focus on strict rules for cover and entitlements and focusing instead on work-related interventions and rehabilitation leads to better return-to-work outcomes on average (Anema et al., 2009). Stress caused by dealing with a social security system detracts from positive health and employment outcomes and has been correlated with poorer long-term health and disability status (Grant et al., 2014). Those on ACC weekly compensation tend to fare less well economically in the long term than those who have never suffered a serious incapacity for work (Crichton, Stillman and Hyslop, 2011), but those who are incapacitated for work by illnesses that are not covered by ACC receive even less support. If the incapacitated worker doesn't have to deal with so much stress establishing entitlements and adjusting to termination of employment, then the job of finding a new job may be briefer and easier.

If these kinds of findings generalise from disability to redundancy among the able-bodied (admittedly, an unproven inductive inference), then an automatic no-fault insurance cover may benefit those made redundant and improve return-to-work rates. Those jurisdictions that have more proactive re-employment schemes, such as Ontario and Sweden, get better outcomes (OECD, 2017). Hence, it may make sense to create a new branch of social security for unemployment insurance and also retraining, just as it made sense in 1974 to extend the former workers' compensation scheme to cover everyone in New Zealand on a 24/7 basis, with a strong emphasis on rehabilitation.

Litigation and discrimination
A predictable effect, however, is to create new causes for disputes about cover at the boundaries between the different branches of social security. People litigate to establish that they do have cover under ACC rather than to escape from ACC cover, thus 'voting with their feet', so to speak. Not many injured people go to court to argue that ACC doesn't cover them, even though that could free them, in principle, to sue for compensation. There would be a similar set of disputes over SUI cover, although it is hard to predict at present what the causes would be, as we don't yet know how cover is to be defined. One question will be cover for termination of employment on medical grounds, which would bring the SUI system into closer proximity to ACC as it is disability-related. (ACC already covers work-related illnesses.) And one might speculate that when an employee and employer negotiate a termination on performance-related grounds or because of an alleged personal grievance, the parties could be tempted to present the event as a redundancy to socialise the costs to the employer and ensure protection of the employee's reputation.

A long-standing source of grievance in the disability community arises from the disparity in entitlements for those covered by ACC and those who rely on welfare and public health. A case claiming discrimination on grounds of disability was brought by a woman with multiple sclerosis before the Human Rights Review Tribunal in 2007. Her income and

A levy-based system that provides time-limited income replacement to anyone made redundant can be more equitable across the spectrum of displaced workers …

rehabilitation entitlements were much lower than she would have received had she been covered by ACC. The matter went to the Court of Appeal, which agreed that there was *prima facie* discrimination, but found that this was justified under section 5 of the New Zealand Bill of Rights Act. The ACC law was originally intended to overcome the anomalies in the common law actions for negligence, and so the disparity it created was considered reasonable and lawful. Furthermore, the court agreed with the Ministry of Health that the disparity arose from the *cause* of disability, not disability per se (as comparable with those with no disability), and that 'cause of disability' is not a prohibited ground of discrimination (*Trevethick v Ministry of Health* [2008] NZCA 397). From the point of view of a plaintiff with severe disability, this was neither fair nor reassuring.

The disparity between ACC and public health support was also highlighted around the payment (or lack of payment) for domestic care for persons with a disability when the carer is a family member. In its 2010 decision, the Human Rights Review Tribunal saw fit to comment on the relevant fact that ACC paid family member carers, while the Ministry of Health was making

submissions that it should only have to pay carers who are not family members (*Atkinson et al. v Ministry of Health, Human Rights Review Tribunal*, 01/10, HRRT 33/05). This weakened the ministry's case, which was unsuccessful. Subsequently, the government rushed legislation through with the 2013 Budget to block any further such claims.

It is possible that the disparity between SUI and welfare entitlements could lead to a discrimination case. Suppose, for example, an employee leaves their employment at the end of a fixed term and applies for the jobseeker allowance, but they find that others who were working at the same place and were made redundant around the same time receive SUI at 80% of their previous wages. Would this be discrimination based on the prohibited ground of employment status, comparing those who formerly had fixed-term employment with those who had no fixed term? Or, would the SUI legislation satisfy the section 5 New Zealand Bill of Rights Act test? Even if it did, the disparity would still generate discontent. Social insurance schemes coupled with a safety-net welfare system create two-tier systems that are perceived as discriminatory and stigmatise those on safety-net welfare. The ACC scheme has been accused of this, and it is predictable that SUI will be too.

But, at present, workers who are displaced due to redundancy get supports that differ dramatically for no discernible merit-related or wellbeing-related reason. A few (mainly the better off) may have private income insurance; some may get generous severance payments as per their employment agreements; some can only fall back on a welfare benefit; others get nothing at all due to income testing. It was a similar set of inconsistent provisions (unpredictable common law remedies, no-fault workers' compensation, motor vehicle insurance and social security) that moved Woodhouse in 1967 to propose a universal no-fault accident compensation scheme with a dedicated levy. A levy-based system that provides time-limited income replacement to anyone made redundant can be more equitable across the spectrum of displaced workers, especially if it readily accommodates those who have had variable earnings. Such a system could also

induct workers into an outplacement and retraining programme even before their employment has formally terminated. Redundancy can sometimes lead to better employment, and an effective income protection and retraining system can improve the chances of that, especially if employers, employees and trade unions collaborate. The trade-off could be that employers phase out large redundancy payments on the grounds that the laid-off worker gets an automatic entitlement to income replacement at 80%. The costs of redundancy payments presently pose a financial obstacle to restructuring processes, and so it may make more sense from the employers' viewpoint to contribute small amounts regularly to an SUI scheme than to build up large redundancy liabilities. From the trade unions' point of view, anything that facilitates redundancies is undesirable, unless there is generous no-fault compensation and an effective re-employment scheme to make up for it.

Redundancy clauses in collective agreements – mainly in the state sector – are unlikely to be affected in the short term. But, in the longer term, cancellation of redundancy payments could be on negotiation tables once SUI is available, especially as the levy to fund it would be visible to all concerned. Employers are likely to welcome SUI, then, as schemes like this and ACC impose relatively predictable and affordable costs of doing business compared to the alternatives. One impediment to restructuring and flexibility is the cost of redundancy pay-outs. Workers could find such severance payments being phased out of employment agreements as employers cite SUI as the back-up.

Addressing social needs?
Some critics of the SUI proposal have argued that scarce resources would be better spent on relieving child poverty. Not only is addressing child poverty an urgent social need, it is also a cornerstone of the Ardern government's agenda.

In ACC weekly compensation assessments, the focus is on income lost due to personal injury. Family/whānau-related needs, especially of children, are not considered. On one hand, a family with dependent children is maintained at a level

> From the point of view of those incapacitated due to congenital disability or illness (and not covered by ACC), it makes more sense to follow Woodhouse's suggestion to extend social insurance to all forms of disability ...

closer to the previous income, hence preventing household poverty, whereas the jobseeker allowance is income-tested against the earnings of the spouse. But the ACC weekly compensation entitlement doesn't adjust according to the number of children and isn't designed to prevent or alleviate child poverty.

So, for example, a single parent who lost a job has quite different outcomes depending on whether they receive ACC payments or a main welfare benefit. The former may be more generous in most cases, but take no account of the family's size. If the parent's previous wages or hours of work were already inadequate to support the family, however, then the 80% income replacement under ACC will be even less adequate. Against this, the Working for Families family tax credit and in-work tax credit still apply while on ACC weekly compensation. Welfare benefits start from a low base and take account of the number of children as well as accommodation costs, but the Working for Families tax credits are lost.

The situation is very different for a two-parent family in which both parents were working. An injured parent on ACC gets 80% income replacement, and the household income is lessened but not by much. If, however, the incapacity was due to an illness or redundancy (under present policy without SUI), then income testing of the spouse leaves the household to rely on one market income, although Working for Families tax credits and the accommodation supplement may help. SUI would obviate that problem in the case of redundancy, but not normally for illness-related incapacity (unless extended to cover illness). And then there would be different consequences for the support available for the children. A two-parent family would be worst off if illness happened to be the problem affecting one of the two earners, rather than personal injury or redundancy. Public policy can't help us choose which misfortunes we suffer, and certainly the children have no say in the matter.

In some cases, SUI could be instrumental in preventing a decline into poverty for a family, even though that's not the main aim of the proposal. SUI wouldn't directly address the country's biggest social policy problem: child poverty. Some critics have held this against SUI. The ACC-related analogy would be to argue that the New Zealand government should never have extended the workers' compensation model to non-work injuries and to those not in employment, as the resources would have been better spent on alleviating poverty among low-income families with children, regardless of the cause. This has some merit, but to follow that argument through to the present would mean deducting from ACC's higher entitlements in order to meet the needs of another group. Given that accidents can happen to anyone, it may be that most New Zealanders would accept the opportunity cost created by ACC, if they were asked. Furthermore, the ACC scheme is more or less fully funded now: that is, the reserve funds could pay for the (estimated) net present cost of all current open claims. And so most claimants are drawing on a system to which they've contributed. This is made possible by dedicated levies that have built a financially sounder system (with its own investment portfolios and revenues) than pay-as-you-

go welfare. From the point of view of those incapacitated due to congenital disability or illness (and not covered by ACC), it makes more sense to follow Woodhouse's suggestion to extend social insurance to all forms of disability (Duncan, 2016), rather than reduce ACC entitlements to match health-related welfare benefits.

The costs

With the parameters of the scheme yet to be finalised, there are no clear estimates of the financial costs of SUI, including the public employment services that would be needed to make it effective. Nor is it clear (at the time of writing) how those costs would be met, and by whom. Will it be funded by levies on employers or employees, or both, and/or with government contributions? If there is an employee levy, does this mean that workers would effectively be paying to fund their own redundancy packages?

One estimate, based on up to 12 months' entitlement at 80% of previous wages, arrived at an average annual payment of $0.65–$1.10 per $100 earned per worker. (Currently earners pay an ACC levy of $1.39 per $100, and employers' levies vary by industry.) But what then would be the possible benefits of SUI to the economy as a whole? There are assumed to be wage-scarring costs of lost skills and productivity due to job displacement. Estimating such costs would ideally take account of those who fail to find a new job, take longer than necessary to find a new job, or find a new job that does not match their skills and potential productivity. The overall cost to individuals and to the economy of redundancies can't easily be estimated, but the OECD evidence cited above suggests that New Zealand is getting poorer outcomes than comparable economies. Officials have estimated that the lifetime and economy-wide costs of wage scarring may be roughly ten times the estimated cost of an SUI scheme. But we don't know how much, if at all, SUI, once implemented, would reduce those wage-scarring effects. SUI costs would be offset by reduced demand for welfare benefits, but again the extent of this is not known (Ministry of Business, Innovation and Employment, 2020).

We also don't know what the relative contributions to projected better outcomes

> The proposed SUI financial and re-employment provisions could lead to better outcomes, based on comparisons with other OECD countries and with ACC.

would be from the 80% income replacement compared with early intervention by employment services. If the latter is the critical factor, then one would have to ask why the government doesn't just improve employment services to *all* those who are seeking work, including new entrants to the workforce and older workers seeking a change, not just to those who have been involuntarily laid off.

Recommendations

The various objections to SUI have some validity. But if they were robust, they would also call into question ACC – although the latter critique also brings up the right to sue. Yet it can be argued that ACC has been a long-term success, despite its known shortcomings. If so, then the proposed SUI deserves at least qualified support, subject to learning more about the details. The fact that SUI (unlike ACC) is not intended to address inequitable and capricious outcomes of negligence actions is relevant to this debate. But problems with the law of torts were not the only concerns on Woodhouse's mind in 1967. He also gave cogent social, vocational and efficiency reasons in an accident compensation scheme's favour.

Woodhouse's aim was always to restore the injured person, as far as possible, to a level of social and occupational functioning

that he or she had previously enjoyed. Rehabilitation was to be the first goal, followed by compensation. The success of SUI will depend not only on the degree to which it provides a 'bridging' income for individuals and families going through the stress of a redundancy process and job search. The legislated aims and the practical effectiveness of its re-employment and retraining services will be crucial.

- Early intervention, beginning at the initial consultation stages of redundancy processes, is essential. This should include formal recognition of prior learning and of skills acquired on the job.
- Insurance should be available to the widest range of workers possible, and cover should apply to all redundancies, not just large restructuring processes in large enterprises. Inclusion of small and medium-sized firms is essential.
- Training options should be negotiated with and tailored to the needs of the individual. This implies a well-organised and resourced public employment service.
- The SUI scheme should proactively address inequitable outcomes correlated with age, gender, ethnicity and prior employment insecurity. It should anticipate possible sources of discrimination when compared with other branches of social security.
- Levies should be set at a level that builds a reserve fund to cope with large-scale job losses during a major economic shock and, when the economy is strong, to generate investment income. One can anticipate pressure to see the scheme fully funded on an actuarially valued basis (just as ACC is) so that it doesn't have a negative impact on the Crown balance sheet.

Conclusion

Although we have yet to see a detailed plan for social unemployment insurance, we can draw some initial conclusions. Under the present system, workers involuntarily laid off receive a range of possible supports – or sometimes none. The outcomes are often negative and inequitable, especially for those in precarious employment. The proposed SUI financial and re-employment provisions could lead to better outcomes,

based on comparisons with other OECD countries and with ACC. The ACC model indicates how SUI might work, what its benefits might be, and what some of the drawbacks might be. The effectiveness of retraining will be crucial. Adding a second tier to social security for unemployment will create inequalities and inequities, however. These can't be entirely eliminated, but should be addressed and mitigated, as far as possible, in the design stages. A detailed plan needs to be published for debate as a party election policy, given the significance of this proposed reform.

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Matt Boyd and Nick Wilson

Anticipatory Governance
for Preventing and Mitigating Catastrophic and Existential Risks

Abstract

The world faces many large-scale risks. We describe these global catastrophic and existential risks and identify some challenges in governing the prevention and mitigation of such risks. We identify that risk reduction activity in Aotearoa New Zealand has not appropriately addressed these threats. On the basis of the challenges identified, we then deduce the desired features and functions of an entity for effectively governing risk reduction approaches. We argue for an entity that is: anticipatory, central/aggregating, coordinating, apolitical, transparent, adaptive and accountable. We offer structural options for such an entity and outline the merits of several options.

Keywords anticipatory governance, catastrophic risk, decision theory, existential risk, governance, long-termism, risk assessment

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The world faces a suite of extreme risks, which separately or in combination entail catastrophic harm. One objective of good governance should be to reduce the probability of catastrophic harm to as close to zero as possible. Anticipatory governance and long-term risk assessment are essential to this goal. Expected harms may be prevented with timely analysis and action. Unexpected harms can be minimised through good decision-making processes, resilience building and adaptive response.

New Zealand has slowly adopted a forward-looking approach to some individual risks, such as climate change (Climate Change Commission, 2021). There are additional opportunities for identifying small wins, embedding long-termist thinking, giving special attention when long-term interests are at risk, and creating and sustaining an enabling environment for sound long-term governance (Boston, 2021). However, the

Covid-19 pandemic demonstrates that large-scale harms can occur unexpectedly soon, with unforeseen ramifications.

In this article we outline the global catastrophic and existential ('extreme') threats to humanity. We discuss challenges to the governance of this category of risk, before outlining some of the New Zealand government's present risk and resilience mechanisms. We argue that these are insufficient, and then detail the desirable features and functions of an entity tasked with governing extreme risks. We evaluate a set of structural options for establishing an apolitical entity in New Zealand tasked with understanding catastrophic risks and overseeing mitigation measures.

Global extreme risks

The Covid-19 pandemic illustrates many of the problems of large-scale risks. First, the threat of coronaviruses was not appropriately understood by governments, and many pandemic action plans (New Zealand's included) focused narrowly on influenza. Second, New Zealand decision makers had not contemplated the most effective measures ultimately deployed, namely border closure and managed quarantine. Some suggest that Covid-19 was a 'black swan', an event that comes as a surprise, has a major effect, and is inappropriately rationalised after the fact (Taleb, 2007). However, coronavirus pandemics had been identified as a 'time bomb' following the emergence of SARS. Indeed, the Covid-19 pandemic was a paradigmatic 'black elephant', a catastrophe that was extremely likely and widely predicted by experts, but ignored or simply unspoken of (Asayama et al., 2021). Furthermore, knowledge of human cognitive biases explains why we ignore these kinds of risks (Gluckman and Bardsley, 2021; Liu, Lauta and Maas, 2020). Overall, and painfully, not only was the pandemic threat known, but we also knew that we would ignore it. Given this systemic failure, we must look to how we might better anticipate and improve the governance of large-scale risks, because greater threats exist.

The set of global catastrophic risks includes: pandemics, bioweapons, laboratory accidents, artificial intelligence (AI), autonomous weapons, nanotechnology,

climate change, geoengineering, ecosystem collapse, nuclear winter, supervolcanic eruption, asteroid/comet strike, global agricultural shortfall, creeping totalitarianism, coronal mass ejection, interstellar events, and other, as yet unknown risks (Bostrom and Cirkovic, 2008; Ord, 2020). These global catastrophic risks could all lead to a loss of 10%, or more, of the human population and/or trillions of dollars of damage through foreseen or unforeseen cascades that bring about states of large-scale harm. The threat is probably rising due to technological advance, increasing global interconnectedness, loss of diversity, component homogeneity and synchronisation, leading to slow accumulating (Liu, Lauta and Maas, 2018) and/or sudden catastrophic failures (Homer-Dixon et al., 2015).

Existential risks are a subset of global catastrophic risks that could lead to the premature extinction of humanity, or the permanent and drastic destruction of its potential (Ord, 2020). Existential risks are unprecedented and would not allow for meaningful recovery. Mitigation might require international cooperation. Uncertain timing, and/or the sheer scale of the mitigation effort required, might necessitate immediate and/or intergenerational efforts. However, it is rare for governments to explicitly address existential risks. For example, nuclear disarmament is pursued, but nuclear winter is not planned for, and 'unsexy' risks, such as human overpopulation (and irreversible natural resource degradation), do not map well onto traditional disciplinary boundaries or governance (Kuhlemann, 2018). Some existential

catastrophes could happen unexpectedly soon, including deliberate biological events (Sandberg and Nelson, 2020), unexpected climate feedback loops (Masson-Delmotte et al., 2018), rapid advances in AI (Boyd and Wilson, 2020a), nuclear winter (Robock, 2010; Toon et al., 2019), or previously unknown risks (Ó hÉigeartaigh, 2017).

Accumulating scholarship now describes the psychology of existential risk perception (Schubert, Caviola and Faber, 2019), methodological considerations for estimating or quantifying these risks (Beard, Rowe and Fox, 2020), conceptual

> A number of challenges exist that may preclude a full and effective approach to governance of global catastrophic risks and existential risks unless there is specific engineering of institutions.

frameworks to help manage extreme risk (Torres, 2019), and the world's vulnerability to existential threat (Bostrom, 2019). Risk governance should aim to foresee both near and distant catastrophic events, as well as more nuanced, creeping and fragility-inducing factors that can accumulate. Anticipation would allow prioritising action across the suite of risks in proportion to threat and tractability.

Challenges to the governance of extreme risks

A number of challenges exist that may preclude a full and effective approach to governance of global catastrophic risks and existential risks unless there is specific engineering of institutions. Among them are seven key problems, of anticipation, centralisation/aggregation, coordination, politicisation, transparency, adaptation and accountability. We discuss each in turn.

There are a number of barriers to effectively anticipating large-scale risks. These are founded in short-term thinking, inadequate analytic tools, failure of

imagination, and uncertainty. Governments face intertemporal policy conflicts, but tend to favour the near term over the long term (Boston, 2021; Gluckman and Bardsley, 2021), yet catastrophic risk governance requires foresight and forecasting. Governance must be alert to a wide range of risks, including the risk of a temporal bias towards the present (Boston, 2017). However, some standard tools (e.g., time discounting) don't allow for future value (and therefore true cost–benefit) to be acknowledged. Furthermore, if risks lead to outcomes that are irreversible or where there are no second chances, then the usual 'as low as reasonably practical' approach to risk might be insufficient. Sufficient

term risks involve 'deep uncertainty', which requires a different set of analytic tools from those typically used in government (Kwakkel, Walker and Haasnoot, 2016). Specialised impartial and quantitative expert risk assessment is needed to overcome neglect of 'uncommons' risks, when learning by experience is not possible (Wiener, 2016).

It can be difficult for organisations to appreciate risks outside their domain, and varying risk methodologies make cross-cutting comparison difficult. This means that effective leadership and centralised oversight are needed to ensure aggregation of information and prioritisation of resources across the portfolio of extreme risks, which by their nature have an impact

allocation across risks can be done (every department thinks their risks are important).

- Issues of global justice should be considered when preparing for global catastrophic risks, but this is beyond the remit of most departments.
- Government faces both exogenous and endogenous (from within) risks, but most government entities are not in the business of monitoring government for endogenous risks to long-term outcomes (ibid.).

Without large-scale coordination there is a tendency for markets to undersupply large-scale global public goods (Beckstead and Ord, 2014). Only governments or international agencies serve as a mechanism to solve social problems by coordinating various interests across sectors and across departments, and balancing multiple needs, including the needs of present and future generations. The problem of coordination is amplified by the lack of global legal regimes in force that grasp the gravity of extreme risks (Boyd and Wilson, 2020b), and the lack of any coordinated global approach to most extreme risks (Ord, Mercer and Dannreuther, 2021).

Short election cycles mean that politicisation can obstruct long-term planning and political decisions risk undermining plans that are underway.

anticipation of global catastrophic risks might require new analytic tools that identify risk at the appropriate granularity (e.g., pandemic rather than influenza pandemic) and key states of harmful affairs (e.g., obscured sunlight, electrical failure), no matter what causal cascades led to them. There is a responsibility to more fully imagine what could go wrong; there needs to be a willingness to search for problems, because one blind spot could spell doom. Ultra-rare but catastrophic risks may be neglected due to psychological unavailability, mass numbing and under-deterrence. Thinking is often obstructed by cognitive barriers, such as difficulties with probabilistic thinking, not caring about people we cannot see and not valuing the future. New Zealand's pandemic preparations had not taken a 'what's the worst that could happen?' approach and attention focused only on influenza, not coronaviruses. Red-teaming approaches (which employ independent experts to critically probe plans for weaknesses) might have anticipated how existing plans could fail. Many catastrophic and long-

on multiple sectors. This is difficult for any sectoral institution, or set of disconnected institutions, to accomplish. Without a process of centralisation and aggregation, risk analysis may fail to identify instruments and policies that can address multiple risks and drivers in tandem (Kemp and Rhodes, 2020), including strategies that account for complex interactions across risks. It will never be sufficient to task individual government departments with managing extreme risk. This is because of a suite of factors that limit their ability to address large-scale, long-term, cross-cutting risks.

- Departments are busy with day-to-day operational needs; this prioritises the present and obscures slow-onset 'creeping problems' (Boston, 2017).
- The siloed nature of government results in attentional deficits to cross-cutting issues that require central and broad analysis, with sufficient imagination and a forward-looking rather than historical perspective on risks.
- Extreme risks must be understood as a set so that prioritisation and resource

Short election cycles mean that politicisation can obstruct long-term planning and political decisions risk undermining plans that are underway. A number of present risk assessment activities take place behind closed doors, and in government agencies that are political (e.g., the Prime Minister's Office) or operate in a political context, where authorisation for relevant risk work may not be forthcoming. Barriers may include concerns around official information requests, or the optics of releasing key information (Kibblewhite and Boshier, 2018). Risk analytic entities such as New Zealand's Department of the Prime Minister and Cabinet may also partially suffer some of these limitations. Additionally, politics can be blind to the long term and to particular moral considerations that transcend politics: for example, the potential immense value of intelligent life on Earth if this is unique in the cosmos. Approaches to rare but extreme risks need to be disconnected from the day-to-day political process.

Additionally, political decisions and processes often lack transparency. As we discuss below, this is not conducive to effective risk reduction. Extreme risks can be complex, unprecedented and difficult to assess and address; therefore, government risk assessment processes should pay special attention to them and this attention should be open to peer review, facilitating appropriate critique of, and attempts to reduce, uncertainty. In New Zealand, legal action against the Climate Change Commission in 2021 to address a claimed error of calculation underscores the importance of transparency.

Rapidly advancing human knowledge and technology (which is both the source of and solution to many global catastrophic risks and existential risks) means that risk governance must be adaptive. Humanity is increasingly capable of having an impact on the geological and ecological world. Entering this era of the Anthropocene challenges traditional human institutions, and existing approaches to risk and mitigation may not be appropriate to safeguard the future. Vulnerabilities enhance risk, and these vulnerabilities include poor risk governance structures. Institutions are good at defending their processes rather than critically assessing them. Risk governance must help institutions examine their own risk processes and improve, despite entrenchment of processes and practices. Additionally, human cognitive biases (such as exponential blindness, or near-term direct causal bias) mean analysts may fail to attend to some risks (Liu, Lauta and Maas, 2020). The increasing threat of extreme risk calls for adaptive design of institutions, and actions which cut across traditional governance silos. This is because the complexity of global catastrophic risks is 'overwhelming the organizational logic of the post-war multilateral order' (Kreienkamp and Pegram, 2020). We note that some rigidity is necessary for staying the course on long-term projects, but this persistence can be supported through a common narrative or vision (van Assche, Verschraegen and Gruezmacher, 2021).

A final challenge to governance of extreme risks is that for many cross-cutting threats there is no individual or organisation that has accountability for

oversight of the risk. There must be accountability for understanding and approaching extreme risk and there must be representation of those most likely to suffer harm. Inaction poses a moral hazard, where future anonymous people may be most likely to suffer, yet they are voiceless and powerless in any present deliberation (Kuhlemann, 2018).

If we are to protect humanity from catastrophe, wise decisions must be facilitated through a process that overcomes cognitive biases and aggregates information on disparate risks, and risk and resilience advice must be transparent and independent of politics. Any governance structure for global catastrophic risks must

Defence and Emergency Management, 2019), but it retained a large bias towards natural hazards such as earthquakes and tsunamis (rather than strategic or anthropogenic risks). The strategy does not mention global catastrophic or existential risks and is aligned with the international Sendai Framework (UNDDR, 2015), which suffers from the same blindness. We contest that more attention needs to focus on anthropogenic risks, which probably contain most of the total risk (Ord, 2020). These include risks from non-aligned AI, biological threats and nuclear winter, as well as human impacts on climate and ecology. Since these threats are human generated, we have control over the factors

> ... any entity tasked with improving New Zealand's resilience to extreme risk must be anticipatory, central/aggregating, coordinating, apolitical, transparent, adaptive and accountable ...

have features to help overcome the seven challenges described above so that it can support the functions needed for effective risk mitigation. We now examine the present state of large-scale risk governance in New Zealand.

Extreme risk governance in New Zealand
A report by the United Nations Office for Disaster Risk Reduction (UNSIDR) in 2017 outlined New Zealand's approach to 'designing, conducting and delivering national disaster risk assessment' (UNISDR, 2017). This report noted New Zealand's traditionally 'siloed' approach to risk assessment (e.g., security agencies, local bodies and scientific agencies acting in parallel). Subsequently, a new national risk assessment process and methodology were deployed which focused on natural threats and operational risks to many government entities. The New Zealand *National Disaster Resilience Strategy* was published in 2019 (Ministry of Civil

that raise and lower the probability that they eventuate.

The 2021 report *Uncertain but Inevitable*, written by former New Zealand chief science adviser Peter Gluckman and Anne Bardsley (Gluckman and Bardsley, 2021), notes that governments are responsible for keeping people safe and provides an account of how government thinking on risk and resilience has changed in New Zealand since 2014. The national intelligence and risk coordination team within the Department of the Prime Minister and Cabinet delivered a national risk approach. A multi-year workstream culminated in a national risk register, which allegedly includes 'maximum credible' threats (there are apparently 42 risks across the domains of natural hazards, biological hazards, technological hazards, malicious threats and economic crisis). However, this register is not publicly scrutinisable. We note that the risk profile for 'terrorism' was released in partial

summary form following the Christchurch mosque attacks to satisfy a media official information request. The threat was assessed as 'very high' in the wake of the attacks. However, it is unclear what level was determined prior to this tragedy.

Associated with the Department of the Prime Minister and Cabinet's new approach to assessment of nationally significant risks was a 2018 Treasury discussion paper calling for protection of New Zealand's four capitals: human, social, natural and financial/physical. The report recommended improved institutions for risk mitigation, including legislation,

(Ord, 2020). In sum, the present New Zealand approach to extreme risks is at risk of politicisation and lacks transparency, accountability, sufficient foresight and imagination.

National risk registers
New Zealand risk governance presently makes use of a secretive national risk register. The UK, on the other hand, publishes a public, although incomplete, risk register. For example, the UK national risk register mentions nuclear attack, but not nuclear winter. Artificial intelligence is mentioned once in passing. Risks are not

major catastrophes, or truly existential threats, national risk registers also quite possibly omit almost all the risk, given the fat tail of the distribution of impact. Risk registers are probably important, but in their present form are technically inadequate.

A national risk register should be public in substantial form in democratic countries. There are arguments that some highly sensitive content should be redacted to avoid broadcasting security weaknesses, encouraging perverse investments, or adversely affecting international relations. However, the presumption must be towards open government. The public needs to know that the government acknowledges risk and has plans for addressing (or justification for accepting) risk. Transparency is a commitment device: if a risk is broadcast, it must be addressed (or accepted). The decision to accept risk hinges on risk appetite, and the relevant appetite is the risk appetite of the public and other stakeholders (including future generations). The 2018 Treasury report notes the importance of 'a whole-of-government and whole-of-society response … a multi-stakeholder coordinated approach to risk management and resilience building'; that 'a strong relationship between the public, private and civil society sectors is pivotal' (Frieling and Warren, 2018, p.38). Openness also facilitates crowdsourcing approaches to risks and solutions (Kankanamge et al., 2018), and superforecasting, a key approach to scenarioising the future (Katsagounos et al., 2021).

Decisions about mitigation (or not) need to balance the values of present people, the rights of future generations, and the wider moral significance of the threat. An open risk register would help facilitate research and engagement on civil society's values with respect to extreme risks. Various methods are appropriate to supplement national risk registers, such as citizen surveys, hui, deliberative democracy and citizen juries (Boyd and Wilson, 2018).

… the present state of extreme risk governance in New Zealand is inadequate in the face of the set of catastrophic and existential risks identified above and the seven challenges to effective governance of extreme risks.

governance and operationalisation (Frieling and Warren, 2018).

The *Uncertain but Inevitable* report concludes that much more institutional transparency and accountability of risk assessment are needed, with external review of the national risk register. There should be an apolitical focus on high-impact risks that overcomes three particular failures: risk identification, assessment and communication; human factors (especially issues of cognitive biases); and policy/political dimensions. Any entity overseeing this process should also take a global perspective and focus on the impacts of high-risk events, because the causal factors may be uncertain. The report recommends that the Office of the Auditor-General oversees this. Our foregoing discussion clearly concurs with many of these points. However, the focus on 'inevitable' risks is too narrow, and specific omissions include catastrophic risks posing the greatest threat, namely unaligned artificial intelligence, nuclear war/winter and synthetic biology

listed in order of expected utility loss (per annum or otherwise), so prioritisation (which must necessarily include the additional dimensions of neglectedness, tractability and cost-effectiveness) is difficult.

However, national risk registers are not without criticism (Hagmann and Cavelty, 2012). They are often delimited by national boundaries, and take a problem rather than solution-focused approach. There can be spurious scientific precision, usually reliant on historical data, and a lack of discussion of values, or the structural causal mechanisms behind many anthropogenic risks. Furthermore, uncertainty may be interpreted along lines of vested interest. National risk registers therefore downplay political, normative and ethical questions. Finally, the probabilities factored into national risk registers depend on our actions, and a solution-focused rather than reactive posture could significantly alter the risk matrix (ibid.). Additionally, if we consider the likelihood and impact of some

Features and functions of an entity for governing extreme risks
The foregoing suggests that the present state of extreme risk governance in New Zealand is inadequate in the face of the

set of catastrophic and existential risks identified above and the seven challenges to effective governance of extreme risks. We now summarise the desired features and functions of an entity tasked with anticipatory governance of extreme risk, before offering a set of possible structural solutions in New Zealand.

Desired features
Given the discussion above, it is clear that the entire risk and resilience process must be governed by an entity possessing certain key features. The entity should be:

- anticipatory;
- central/aggregating;
- coordinating;
- apolitical;
- transparent;
- adaptive; and
- accountable.

The entity should also be capable of taking a global and intergenerational perspective, and possess imagination. This entity should be responsible for presenting a coherent and thorough representation of the risks, their probabilities, their impacts, the expected annualised utility loss from each, avenues for prevention/mitigation, and roles and responsibilities, and should help facilitate the required institution building to combat extreme risks. This accounting and planning must be based on research evidence and scientific advice, which must be obtained or developed, if not available. Needless to say, any entity performing these important functions must be well resourced. The next section details these functions of a well-resourced governing entity.

Desired functions
A unique mix of functions and expertise, not found within any existing public sector department, is required for a thorough, aspirational assessment and mitigation strategy to reduce extreme threats. These functions and expertise include the ability to: identify, articulate and prioritise catastrophic risks; engage with stakeholders; advocate for international cooperation; facilitate wise decision making across government; coordinate across government and across sectors (facilitating institutional reflexivity and an external view); deploy a long-termist perspective using appropriate analytic tools and cross-generational institution building; cultivate expertise on catastrophic risks and long-termism; and focus on, ideally cross-cutting, solutions, including improved risk register methodology (see Table 1).

It might be argued that New Zealand's limited global influence might equate to limited impact in preventing and mitigating global catastrophic risks. However, global catastrophic risks will exhibit an origin and a mechanism of scale-up, and, in the case of existential

Table 1: Desired functions for governing to prevent and mitigate extreme risks

Domain	Specific functions of governing to prevent and mitigate extreme risks
Identification, communication and prioritisation of extreme risks	• Critically review existing national policy and strategy documents, including red-teaming activities. • Problem-finding activity (incentivise identification of risks, including risk inherent in present government structures, rather than minimising of risks). • Commission an independent review of extreme risks and analysis to determine which risks justify early commitment and which can wait. • Determine the likelihood of a range of catastrophes, their potential impact, and the tractability/cost-effectiveness of mitigation efforts, and rank by annualised expected avoidable disutility impact. • Focus on risks neglected by other branches of government. • Focus on impacts of risks given uncertainty about precipitating events.
Stakeholder engagement	• Reach consensus on 'acceptable risk' among stakeholders (including future generations). • Recognise that transparency, crowdsourcing and superforecasting are essential aspects of robust risk reduction. • Integrate a te ao Māori perspective on long-termism and risk. • Consider education on long-term risk.
International engagement	• Advocate for international cooperation on extreme risks. • Call out global risk factors that could affect New Zealand and other countries (e.g., reckless Covid-19 policies). • Actively cooperate with Australia on large-scale mitigation projects. • Contribute to research on and development of methods to help solve collective action problems.
Facilitating wise decision making	• Develop improved national risk register methodology that overcomes current weaknesses. • Support and facilitate better decision making by developing decision-making and prioritisation tools that overcome human decision-making biases. • Develop and deploy decision strategies appropriate in situations of deep uncertainty, rare events and 'creeping normalcy', and to protect future wellbeing. • Embed insights from institutions such as CSER, FHI, FLI* and others that study catastrophic and existential risks across government and in key prioritisation decisions.
Cross-sector and cross-government coordination (facilitating institutional reflexivity/external view)	• Use a prioritisation framework that crosses sectors and government so that evidence is aggregated and actions with the greatest pay-off are prioritised. • Nurture structural changes across all government entities that enable the public sector to take an 'anti-fragile' stance. • Avoid an excessively hazard-centric approach and focus on a systems-based and resilience-focused approach. • Oversee and consider deeply any major government decisions that are 'irreversible'.

Domain	Specific functions of governing to prevent and mitigate extreme risks
Long-term focus	• Take a long-termist perspective on risk and employ decision tools appropriate for evaluating long-term strategy. • Formalise ways to incorporate the interests of future generations in policy and cultivate a concern for the future. • Oversee comprehensive and long-term (e.g., 50 years+) catastrophic risk reporting along with possible solutions in public, unredacted form to encourage innovative solutions. • Lay the institutional foundations for projects developing immunity from existential risk, some of which may span decades. • Advocate for, and establish, commitment devices to ensure perpetuation of risk mitigation.
Cultivate expertise	• Connect and exchange risk analysis across government. • Cultivate research within and outside government to fill identified priority knowledge gaps that will materially affect decisions. • Fund secondment of New Zealand experts to international organisations such as CSER, FHI and FLI. • Foster ethical leadership that has an understanding of recent advances in moral philosophy.
Focus on solutions with oversight of operational activities	• Oversee stress testing of existing response mechanisms to risks well beyond historical examples, including cross-government exercises involving ministerial chief executives and sector leaders. • Responsibility and accountability for overseeing mitigation measures.

* CSER: Cambridge Centre for the Study of Existential Risk; FHI: Oxford Future of Humanity Institute; FLI: Future of Life Institute

threats, the process will affect every last human. Actions by New Zealand would be wise to focus on risks that may originate locally (such as biological or agricultural threats), on mechanisms for resilience against scale-up once threats emerge, and on surviving threats where New Zealand has a relative advantage in ensuring humanity survives – for example, catastrophic pandemics, biological weapon use, nuclear and volcanic winter (Boyd and Wilson, 2021; King and Jones, 2021). Particular priority areas of activity in New Zealand might include:

- resilience building, in general terms, as well as specific preparations for threats where New Zealand has a relative survival advantage;
- determining which global catastrophic risks might plausibly originate in New Zealand, and associated prevention steps;
- collaborative efforts with Australia, especially where the value of cooperation may be greater than the sum of individual mitigation efforts;
- research into imagining realistic worst case scenarios and problem finding that can be shared with the world;
- contributions to fostering a global workforce of extreme risk expertise; and
- increasing overseas development assistance to the agreed 0.7% of GDP to help neighbouring countries build resilience.

Structural options for governance of extreme risk

Preparing for large-scale risks is one key component of safeguarding the future. So it is illustrative to look at steps other countries have taken. We note that all these international examples fall short of providing capability or capacity to undertake the functions in Table 1. Current initiatives to embed foresight and anticipatory governance in other countries have included establishing a futures commissioner, legislation, think tanks, a government office for science, parliamentary committees, long-term reports, a government council on the future, use of a strong precautionary principle, non-government organisations, and horizon-scanning capability (see Appendix). Many of these initiatives do not have sufficient focus on extreme risks; however, they provide examples of possible institutional structures that may begin to form an ecosystem for extreme risk resilience. Independent researchers have recently published a comprehensive plan that could be implemented in the UK. This 'future proof' approach focuses on addressing biological threats, artificial intelligence, improving government extreme risk management processes, and increasing funding for extreme risk research (Ord, Mercer and Dannreuther, 2021).

In New Zealand there is a need for a substantive first step to act as a catalyst for

change and facilitate the required institutional self-reflexivity and subsequent adaptation. Table 2 lists some contender solutions, and whether they exhibit the features desired of an entity to govern extreme risks.

The ideal approach might be an integrated package of measures. However, first steps in addressing extreme risk must be taken. A well-resourced, independent and capable central entity should design (and redesign as necessary) a catastrophic risk mitigation strategy. The structure must resist procrastination, half-hearted measures and future policy reversal (Boston, 2017). It should nurture capability and development of existing policy, processes and institutions (ibid.). It should have an outward focus towards stakeholders and the global community. Finally, it must aggregate advice from a broad range of experts and stakeholders, and therefore be completely transparent to enable peer review.

Importantly, any mitigation approach must avoid disproportionately preparing for narrowly specified risks (e.g., pandemic influenza versus unspecified pandemics or biothreats), and fighting 'the last war' when the next should be sought. Action must be prioritised by an aggregating mechanism and cost-effectiveness analysis across all risks (while investigating new risks). In some cases, existing risk preparation/ mitigation might advisedly be stopped in favour of shifting resources to higher-

Table 2: Possible New Zealand entities for governing to prevent and mitigate extreme risks

Examples of possible structures	Does the structure have the desired features? (anticipatory, central/aggregating, coordinating, apolitical, transparent, adaptive, accountable)	Advantages	Disadvantages
Risk team within the Department of the Prime Minister and Cabinet	Longer-term anticipatory function would need to be developed; at present lacks transparency.	Currently exists (in a complicated form); close to highest-level decision makers; can bring issues to awareness of the prime minister; deals with issues that cut across all other ministries and agencies.	Potential to be used for political ends; contents of the current risk register are secret; tendency towards securitisation rather than openness.
Independent parliamentary commissioner for extreme risks (as per the parliamentary commissioner for the environment)	Currently does not exist. Could satisfy the required features by design.	Could offer independent advice, with wide powers as an office of Parliament; facilitates a clear sense of ownership/responsibility for advising on the issues; could have a legislative mandate to represent specified future-oriented interests, and requirements for full and transparent regular (time-specified) reporting on activities and advice.	External to the core of government; advice could be ignored, as seems to sometimes be the case with advice from the parliamentary commissioner for the environment.
Parliamentary select committee for extreme risk	Inherently political, so not a stand-alone solution; may lack sufficient anticipatory function given election cycles; insufficiently adaptive given MPs' agendas.	May be relatively sustainable (as part of Parliament's structures – institutional DNA) and can run inquiries.	Traditionally, the New Zealand Parliament has not made sufficient use of expert advice; this would need to be addressed.
Commission (e.g., Climate Change Commission or another Commission for the Future as per the 1980s in New Zealand)	Not sufficiently central; may lack accountability.	Can offer independent and potentially depoliticised advice; facilitates a clear sense of ownership for advising on the issues; could have a legislative mandate to represent specified future-oriented interests, and requirements for full and transparent reporting.	External to the core of government, so advice could be ignored; could struggle to investigate all disparate interests. Aggregation and prioritisation oversight probably has to happen centrally.
Well-resourced team in the Office of the Chief Science Advisor (chief risk and futures advisor)	Not sufficiently central; may lack accountability.	There is a specialised skill set in prioritising and decision analysis under deep uncertainty, and hence a specialised entity (rather than expanded existing capabilities) could provide services to all ministries, as, for example, Treasury does; Office of the Chief Science Advisor started some work in this area (Chief Science Advisor, 2016).	Focus of workstream can shift with new government/new advisor, as seen with the 'Understanding Risk' report series ceasing once Peter Gluckman's term ended and government changed.
Ministry for the Future	Ministries operate in a political context; risk that free and frank advice tempered by ministerial expectations; not sufficiently central; not cross-departmental.	May allow for more critical mass of expertise in one setting than the other arrangements detailed in this Table.	Vertical structure of traditional ministries makes cross-cutting work more difficult; likely to be constrained by the minister or political party in charge.
Mandate for the Office of the Auditor-General to oversee risk assessment	Office already exists. Longer-term anticipatory function would need to be developed; could strike difficulty where entrenched processes may lack adaptivity.	Preferred option of former chief science advisor (Gluckman and Bardsley, 2021). Wide powers as an office of the New Zealand Parliament; apolitical and reports to Parliament not the New Zealand government.	Risk assessment and reporting would be one function among many and might not attract sufficient attention; current focus on auditing may obstruct; multidisciplinary approach needs to be developed.
Develop capability within all existing agencies (e.g., chief futures advisors in all ministries)	Not sufficiently central; aggregating/prioritisation mechanism still required; entrenched processes may limit adaptivity.	Overcomes the issue of expertise (i.e., the problem that any new agency would have in developing expertise across all agencies); could make future-orientation a part of everyday business.	Risk that big novel issues like existential risk or poorly understood technological threats get drowned out by a concern for familiar issues, just on a longer-term scale.

impact areas. These decisions are of critical importance because short-term decisions and unreflective inertia can propagate through time.

We note that 'in-house' agencies, even if mandated by law, can be made impotent by a government that is not supportive, as was the case with the Public Health Advisory Committee under a National government (Skegg, 2021). We note that the advice of 'arm's-length' agencies (e.g., Pharmac) can be ignored, or they can be disestablished, by a new government. The relevant entity needs to be close to the prime minister and Parliament and be well resourced, with a legislative mandate for guaranteed ongoing funding as well as specified reporting requirements. There must be a designated leader who is responsible for ensuring that this brief is fulfilled.

The above requirements and challenges lead us to conclude that a newly established entity, led by someone specifically chosen for their understanding of extreme risks, is most desirable. A parliamentary commissioner for extreme risks working in conjunction with a mandated parliamentary select committee could achieve the aims. Importantly, a commissioner would sit at the heart of Parliament, but would not be bound by election and media cycle pressures. The office could be designed from scratch to satisfy the desired features, without legacy entrenchments, and have a circumscribed focus to attend solely to those factors that have the largest potential impact on the lives of New Zealanders, namely extreme risks. However, we acknowledge that other structures in Table 2 could work if specifically designed to satisfy the seven features we identified above.

We further note that the recent Public Service Act 2020 requires every departmental chief executive to publish a long-term insights briefing independent of ministers every three years (starting in 2022), which should cover medium- and long-term risks. The briefings are to be tabled in Parliament. Unlike other countries, New Zealand lacks a surrounding ecosystem of think tanks, universities and large companies developing long-term views on a range of subjects. For these long-term briefings to be done well, to overcome siloed orthodoxy and cognitive biases, support for the chief executives will be needed. A commissioner, answerable to Parliament (with select committee oversight), could be tasked with supporting risk aspects of these processes. The first round of these reports should be written by experienced multidisciplinary teams, and include the possible impacts of extreme risks, as well as a search for as yet unidentified problems. High-level mitigation strategies should be proposed.

Conclusion

The Covid-19 pandemic suggests that historical decisions have led to widespread lack of preparedness to mitigate global extreme risks. Some decisions today may create path-dependent outcomes in the future, exposing societies to unprecedented risk, possibly destroying large amounts of future value. Mitigating some catastrophic risks might be multi-year, multi-decade or multi-generation projects, which, if not started in time, or if not coordinated internationally, will not be able to address the intended risks in time. Working from the premise that any entity tasked with improving New Zealand's resilience to extreme risk must be anticipatory, central/aggregating, coordinating, apolitical, transparent, adaptive and accountable, we argue for the establishment of a New Zealand parliamentary commissioner for extreme risks, possibly working in direct synergy with a parliamentary select committee. This project will necessarily be trans-generational, and should include risks where New Zealand is especially well placed to provide some immunity for humanity. The issues and solutions described above will likely generalise to many high-income democracies and there is wide scope for collaborative efforts.

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Appendix: Selected strategies for embedding foresight and anticipatory governance into government in other countries, illustrating a range of possible approaches

Jurisdiction	Strategy
Wales (UK)	Legislation and commissioner for the future • Wellbeing of Future Generations Act 2015 • Future generations commissioner with statutory powers to represent people who haven't yet been born • Executive summary of the *Future Generations Report 2020* (Future Generations Commissioner for Wales, 2020) focuses on environment/climate/jobs/transport/wellbeing • Report recommends a minister for prevention, and budget for prevention activities across government (see p.22 in the executive summary) • Mentions 'catastrophic' with regard to sixth mass extinction/climate, but not other catastrophic risks and doesn't mention 'existential' • Only three PDFs mentioning 'catastrophic' on the futuregenerations.wales website; none mention 'existential' • 2019 *Wales and the Sustainable Development Goals report* (Welsh Government, 2019) mentions 'improving resilience to disaster'; specifically mentions flooding and coastal erosion along with the words 'catastrophic risks'
Scotland (UK)	Independent think tank • Scottish Futures Forum – Scotland Parliament think tank to promote research and stimulate debate (since 2005) • Provides content about sustainability, education, future horizons of ten years, e.g. Scotland 2030 programme • Focus seems to be narrow and 'short-term': climate change and the future of work to 2030 'and beyond'
England/UK	Government Office for Science Proposed Wellbeing of Future Generations Bill • Ministerial oversight from minister for cabinet office • Foresight team works on projects where there is a department that will champion them, reports include *Reducing Risk of Future Disasters* (Government Office for Science, 2012), natural hazards only; and *Infectious Diseases: preparing for the future* (Government Office for Science, 2006) • Horizon-scanning team in the Government Office for Science in London produces research on, e.g., artificial intelligence, demographic change, emerging technologies; fosters communities of interest across civil service • Government Office for Science report *Innovation: managing risk not avoiding it* (Government Office for Science, 2014) includes a chapter on 'managing existential risk from emerging technologies' • *Global Britain in a Competitive Age* integrated review, including ten-year strategy and mention of low-probability but catastrophic risks (Cabinet Office, 2021) • National security risk register (but immediate focus: focuses on 'events' not risks, on 'attacks', 'accidents', but not systemic risks; also no peer review. Evidence given to House of Lords Committee on Risk Assessment and Risk Planning, 13 January 2021: The National Risk Register omits the very many ways in which these technologies interact across the board (e.g., steam engine technology leading to railways, modern warfare, and the rise of communism and fascism). The risk register omits many really important risks. By putting technological risks alongside events like 'flooding' it misses an account of undesirable outcomes (e.g., breakdown of transport system, civil unrest, erosion of democracy, etc.) and how these become more likely with e.g., artificial intelligence.

Jurisdiction	Strategy
	• House of Lords call for evidence on national risk assessment and risk planning (expert evidence panels January/February 2021) • Well-being for Future Generations Bill (private member's bill, introduced 2020, at second reading stage in mid-2021)
Finland	Parliamentary committee Long-term reports • Committee for the Future in Parliament consists of 17 members of the Finnish Parliament, serves as a think tank for futures, science and technology policy in Finland • Government 'long-term reports' once each election cycle, 10–20 year focus – e.g., the *Government Report on the Future* (Prime Minister's Office, 2018) focused on the future of work. The report process always involves Parliament, and aims to encourage broad debate • Finnish Ministry for Foreign Affairs supported an Oxford FHI report, *Existential Risk: diplomacy and governance* (Farquhar et al., 2017)
Sweden	Government Council on the Future • Minister for strategic development led 'Mission: the Future' (2014) • Council on the Future created by the minister, comprising seven MPs plus the prime minister. There are three working groups: future of work, fossil-free society and global coordination • Horizontal coordination across many ministries is important, says the minister: we are an 'internal government think tank whose role is to constantly remind others to include the long-term in the decision making process' (Mucci, 2015) '• Total defence concept' national resilience exercises across 15 national agencies
Canada	Strong precautionary principle • Precautionary principle use is stronger than in New Zealand • A Supreme Court ruling based on application of the precautionary principle in law is likely to give governments a broad mandate to reject anything that 'has potential' to harm the environment • Note that New Zealand has exhibited confusion and misapplication when the precautionary principle has appeared in law (Scott, 2016)
Australia	Non-governmental organisation • Australian Human Futures Commission (fledgling, circa 2020)
Singapore	Advanced and dedicated risk/horizon-scanning capability • Risk Assessment and Horizon Scanning Experimentation Centre • Uses cognitive (artificial intelligence) tools to aid analysts in identifying threats; cross-government, joining silos • Centre for Strategic Futures (2010) – internal think tank

Tom Fehsenfeld

Enacting Forward-Looking Policy in a Democracy
seven lessons from the United States Congress

Abstract

The purpose of this exploratory study was to develop ideas about the conditions under which the United States Congress can enact forward-looking legislation to address critical issues. The framework for the study is the multiple streams paradigm developed by John Kingdon and modified with insights of subsequent scholars. Conclusions are based on four case studies of significant enactment efforts. Seven propositions about conditions for enactment of forward-looking policies were developed from the cases. Further research is planned to validate the propositions with a larger number of cases.

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Three decades ago, the United Nations' Brundtland Commission challenged the nations of the world to embrace development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. As citizens and policymakers of democratic states, we struggle to meet the challenge. There is a daunting list of long-term issues unaddressed by many democracies that includes climate change, the rapid extinction of species, racial and economic disparities, the viability of pension systems, the growth of government debt, and technology-driven unemployment.

With short election cycles, news media that focus on the dramatic and urgent, and interest groups lobbying hard for near-term benefits, it is difficult for policymakers to think long-term, but the situation is not hopeless. Jonathan Boston documents 27 major laws with long-term implications passed in his native New Zealand since 1989 (Boston, 2017, pp.34–5). Jacobs (2011) examined ten cases of four nations making decisions about pension programme reforms and found many in which governments showed foresight,

designing programmes that imposed near-term costs on voters and to ensure the long-term stability of benefits. If forward-looking policies are occasionally enacted under democratic governments despite the obstacles, how does it happen?

In 2019–20 I conducted four case studies (Table 1) to investigate how the United States Congress enacted – or failed to enact – forward-looking policies on significant issues (Fehsenfeld, 2020). Because this was an exploratory study to develop ideas that could later be developed into hypotheses for validation, the criteria for case selection was fairly open. The only criteria were that they involve an effort to enact a forward-looking policy to address a significant issue, and that both the internal efforts of lawmakers and the external efforts of policy advocates be well documented. A forward-looking policy was defined as one that addresses a significant problem with a solution flexible enough to meet a range of possible future developments, and a policy outcome that relies on long-term goals or future scenarios (Pot et al., 2018).

While conclusions must be tentative when based on a limited number of case studies, a clear pattern emerged. Efforts to enact forward-looking policies were most successful when an informal partnership emerged between political entrepreneurs who worked inside Congress to gain party leadership support and assemble multi-party majorities, outside policy entrepreneurs who could fashion and promote creative policy packages, and problem brokers who could mobilise public pressure. When politically important segments of the public were not mobilised, efforts to enact forward-looking policies either failed, or only incremental steps were possible.

This article explains the paradigm that was used to study the cases and the factors that were found in successful enactment efforts. Consider it a report on work in progress and an invitation for suggestions and questions about its future direction.

The multiple streams paradigm

The framework for my study came from John Kingdon's multiple streams paradigm, which was developed in the 1970s (Kingdon, 2011) and has since been modified by other

Table 1: Forward-looking policy cases from the US Congress

Case	Year	Subject	Result
Clean Air Act	1970	Created national air quality standards and set industry requirements for emission reductions with strict timelines.	It passed with near unanimous support of both major parties. Its basic structure has lasted for 50 years, with subsequent bipartisan amendments. Air quality has improved significantly on all measures.
Bipartisan Policy Center	2010–18	This NGO created and lobbied for proposals to significantly increase energy research and development expenditures by the US government as a way to improve the sustainability of the US energy mix.	Congress increased annual energy research and development budgets by 1.5% at a time when the Trump administration had recommended they be eliminated.
Dodd-Frank financial reform	2009–10	Implemented many reforms to make financial institutions more resilient and to protect consumers from predatory practices.	The Obama administration engaged with the effort early and often. It passed with only three votes from Republican senators. The Trump administration weakened many of its provisions through regulatory actions and the appointment of hostile administrators.
Cap and trade enactment effort	2009–10	This proposal would have created a regulatory structure to implement a declining cap on greenhouse gas emissions. Firms were to have the option to trade emission permits.	Many concessions were made to industry in drafting the bill. It passed with narrow majority support in the House of Representatives. The Obama administration failed to engage in the effort. A major grassroots environmental coalition withdrew its support. Party leaders declined to bring it to a vote in the Senate.

Source: Fehsenfeld, 2020

scholars. The paradigm is well-known and utilised by policy researchers, now having over 25,000 citations on Google Scholar. Kingdon envisioned the policy world as one in which political and policy actors respond proactively to three streams of information, which deal with problems, policies and politics.

Kingdon's problem stream contains information about social conditions that have been framed as public problems. Information about problems is plentiful, but ambiguous, with many competing frames and interpretations being offered. The policy stream consists of ideas that circulate in communities made up of academics, think tanks, civil servants, legislative aides and issue stakeholders. Individuals in these communities originate, critique and modify each other's policy

proposals in a process Kingdon calls 'softening up'. Finally, the political stream describes the political factors lawmakers must navigate when enacting policy. These include elections, partisan interests, the national mood and interest group pressures. National mood captures the idea of how politicians and their staffs evaluate public opinion. In large measure, it is policymakers' perception of what attentive members of the public want Congress to do or not do, and how.

While these streams often affect each other, in Kingdon's framework they are largely independent. He could find no evidence that acceptable policy ideas will necessarily be ready when social conditions are framed as important problems that need government intervention. Nor will political conditions necessarily be favourable when

Figure 1: Modified multiple streams paradigm
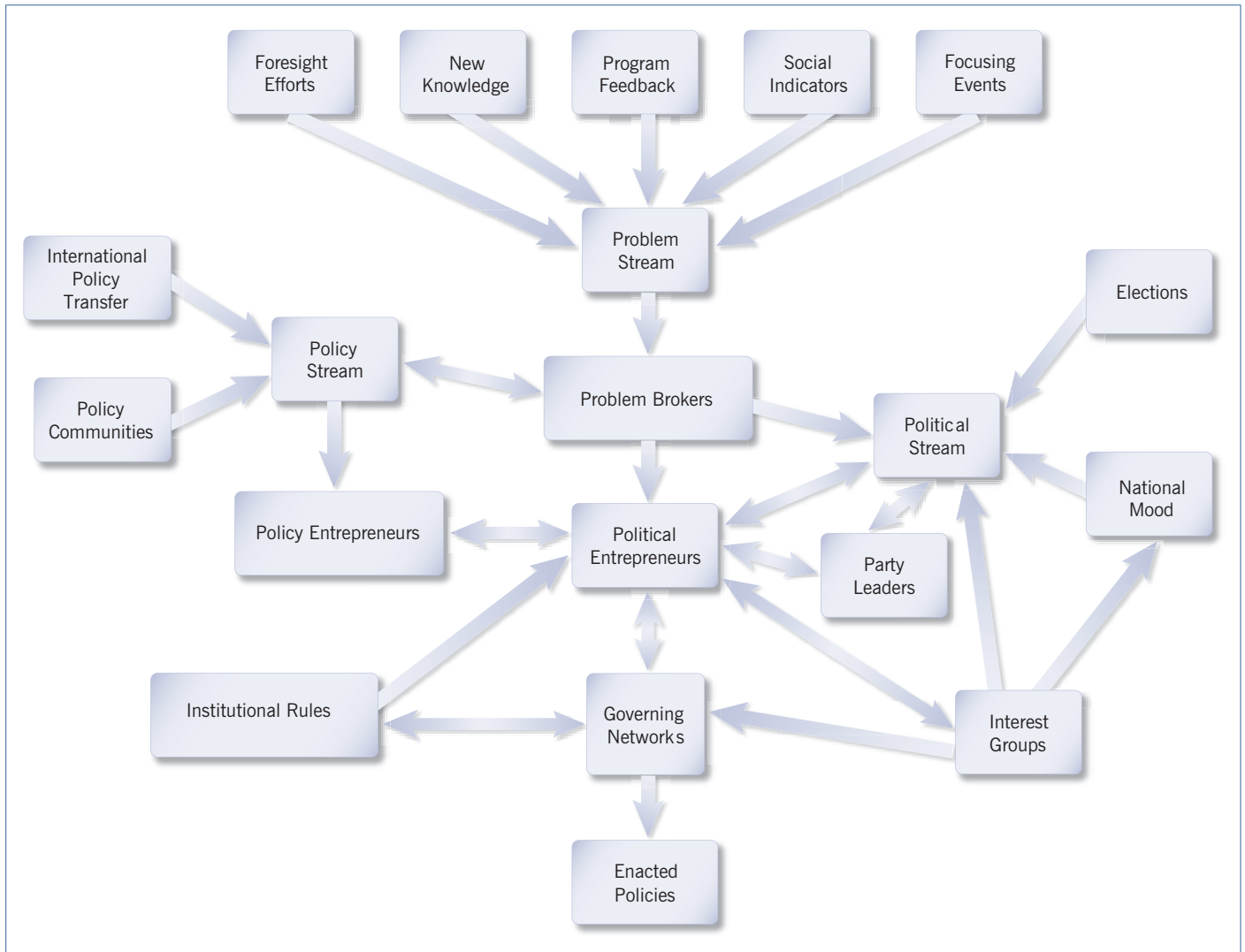
a well-framed problem and a well-designed policy become available. At times, the development of the three streams seemed so random that he characterised the policy world as a 'garbage can', in which policy ideas, problem framings and political conditions are mixed together and sometimes randomly connect.

The process becomes less random when policy entrepreneurs intervene in these streams to move proposals forward. In Kingdon's telling, these are individuals and groups who are monitoring the three streams to discover policy windows when a well-understood problem can be matched with developed policy ideas, and with favourable political conditions for enactment.

Since Kingdon published the framework, other scholars have added refinements. Knaggård (2015) suggested adding the role of problem brokers to the framework to emphasise the role of

outsiders in defining social conditions as problems and mobilising public pressure to address them. To obtain enactment of a policy, Herweg, Huß and Zohlnhöfer (2015) recommended adding the concept of political entrepreneurs. Political entrepreneurs are advocates with formal policymaking authority who can assemble majorities for passage by offering concessions or package deals, or by using manipulation. The goal of their efforts is to enact policy while insulating allied lawmakers from short-term political pressures, which is one of the key factors Boston (2017) cites to enable forward-looking policymaking.

Because the American system has many veto points and weak party discipline, Grossmann (2014) found that political entrepreneurs must deal with a subset of political actors who have long trusting relationships. These subsets of congressional and executive branch actors, which he labels

'governing networks', are needed to reach compromises and assemble policy packages that will attract a majority of votes for passage. A few prominent interest groups may assist in assembling the coalitions.

Lovell (2016) has drawn attention to the transnational diffusion of policy ideas and precedents, which plays an increasing role among advanced democracies. These influence the policy communities through exchange of ideas about issues. International policy examples are especially important in demonstrating technical feasibility because they have often been proven in other contexts.

Boston (2017) catalogues a number of ways that individuals and organisations can bring concerns about emerging issues into the problem stream. These include risk assessments, horizon scanning and scenario analysis, among others. These activities, which I labelled 'foresight efforts', can be added as a fifth source of the problem

stream. They often focus on the risks and uncertainties of future conditions. Foresight efforts enable governments to understand long-term problems by providing clear signals of future harms before they become crises.(2011, pp. 90-115)

Zohlnhöfer, Huß and Zohlnhöfer (2016) made the sensible observation that institutional rules should be added to the framework because they influence how policy is developed and enacted. There are certainly variations in the sources and procedures of policy change between presidential and parliamentary systems of democracy, as well as many variations between national systems within these broad categories.

Finally, my research (Fehsenfeld, 2020) showed the importance of party leaders in moving forward-looking policy through legislative bodies. In the American system, the party leader who mattered most was the president. The major enactments found in my research had not only rhetorical support from presidents, but their administrations also provided help in drafting legislation, direct involvement in making concessions and compromises, and help in building majorities for passage by soliciting votes. The centrality of presidential leadership does not come from formal legislative power, which is relatively weak in the US constitution (Shugart and Carey, 1992), but from the presidents' leadership on public opinion and the resources of the executive branch. With these additions, the multiple streams paradigm can be seen in Figure 1.

Lessons for forward-looking policy enactment
Based on this modified multiple streams framework and observations from the case studies, a clear pattern emerged about the necessary conditions for enactment of forward-looking policy in the US Congress. Enactment was more likely when these seven conditions were met.

Problem brokers have mobilised enough public pressure to increase the risk of a change in party control if a major issue is not addressed
In the Clean Air Act case, problem brokers, both in and outside Congress, published best-selling books and held meetings

... the conditions in 2009 were not ripe for cap and trade to radically alter the American energy system, but they were ripe for the Bipartisan Policy Center's incremental proposal to increase federal support for energy research.

throughout the country to highlight the problem of air pollution. Problem brokers also used a number of serious air pollution incidents in the years before the legislation to focus the public's attention on the issue. This resulted in a groundswell of public demand such that Republicans and Democrats vied for political advantage by offering duelling policy proposals to address the problem. The resulting Clean Air Act was passed with near unanimous votes in Congress.

In the cap and trade case, problem brokers were not successful in mobilising effective public pressure. Surveys in 2009 showed that substantial majorities of US voters supported action to address climate change, but it was ranked near the bottom of the list of issues they were concerned about. This lack of voter intensity and mobilisation provided neither fear of losing control of government for the majority if the issue was not addressed, nor hope for the minority party that addressing it would lead to gaining control.

Problem brokers have created effective public pressure on all of the potentially controlling political parties
The Dodd-Frank case, when Democrats held both the presidency and the two

chambers of Congress, demonstrated that major legislation can be passed without significant support from the minority party in the US, but such victories can be hollow in the long run. Given the many veto points in the American system, outright repeal when there is a change in government control is less likely than in a parliamentary system, but measures without multi-party support can be undermined through regulatory changes, reduced budgets, court rulings, and the appointment of hostile administrators. The Trump administration used all of these strategies to limit the influence of Dodd-Frank.

The Clean Air Act, which was enacted with strong bipartisan support, and the bipartisan defence of energy research budgets in the face of Trump administration hostility, demonstrate the importance of multi-party support in defending the longevity of policies. This implies that problem brokers would be well-advised to mobilise significant support from representatives of all major parties. Enactments of forward-looking policies that are reversed at the first change of government are often wasted efforts.

Policy entrepreneurs are ready with proposals that can be enacted quickly when broad-based voter pressure develops that affects both majority and minority parties
The cases demonstrated the importance of policy entrepreneurs having 'just in time' proposals ready to deliver when a policy window opens. Taking advantage of fleeting opportunities for multi-party support is more important than elegant policy designs for forward-looking legislation. Because public pressure for the Clean Air Act was strong enough, policymakers were willing to bet on a policy that expressed values the public demanded, despite its admitted flaws. Alternatively, when there was not enough public pressure to enact cap and trade, studies indicating solid technical feasibility were not enough to save it.

Enacting policies without strong evidence of technical feasibility may not seem like the best way to enact good policy; however, the opportunity to enact forward-looking policies in Congress is so rare that a rational strategy might be called 'enact it

first when a window opens for a bipartisan agreement, and fix it later'. This has actually played out with the Clean Air Act, which has been amended several times with bipartisan support over a 50-year span.

Political entrepreneurs evaluate whether political conditions are favourable for enactment of a comprehensive policy or an incremental policy, or not favourable for any policy enactment

Kingdon popularised the idea that policy enactments happen when a policy window opens. Experienced political entrepreneurs understand that, when dealing with forward-looking policy, they need to judge the levels of 'openness'. As an example, the conditions in 2009 were not ripe for cap and trade to radically alter the American energy system, but they were ripe for the Bipartisan Policy Center's incremental proposal to increase federal support for energy research.

Judging the favourability of political conditions is a critical function of political entrepreneurs. In the Clean Air Act case, both the Republican president and the Democratic congressional leadership surveyed political conditions and made judgements that the time was ripe to propose a major initiative on air pollution. In the cap and trade case, Democratic leaders misjudged what could be accomplished by not understanding the fragility of Republican support.

Political entrepreneurs gain and maintain the support of party leaders for major forward-looking policies

On near-term issues, interest groups and congressional allies can often spark legislative efforts and maintain elite pressure on lawmakers to cobble together and pass a bill. Presidents, prime ministers and congressional leaders may not lead, but tolerate these efforts as the cost of maintaining political support. This pattern also holds for incremental forward-looking policies, as shown by the Bipartisan Policy Center case.

When major forward-looking policies are proposed to address difficult issues in the US, only presidents have the platform to rally public support, provide cover for their partisans if there are costs to be paid, and provide Congress with material

> One of the key problem brokers in the cap and trade effort, former vice president Al Gore, commented to friends that his advocacy work had failed to create enough intensity of feeling ...

support from the executive branch to see the effort through.

Political entrepreneurs offer concessions or alternative benefits to overcome the resistance of influential organised interests that bear the near-term costs of the policy

Overcoming the resistance of organised interests through bargaining and concessions is an important responsibility of a forward-looking political entrepreneur. There are times when public pressure is so mobilised that concessions are not necessary, as was the case with the Clean Air Act. In the Dodd-Frank case, a series of strategic concessions were necessary for the sponsors to eke out a victory.

A danger of this strategy was apparent in the cap and trade case: the sponsors made so many concessions to industry that they lost significant support among environmental constituencies and the bill was never brought to a vote in the Senate. In the absence of public mobilisation, it seems impossible for a political entrepreneur to compromise their way to a major enactment in the US.

Political entrepreneurs gather enough multi-party support to prevent the policy from being overturned at the next change of government

The durability of the Clean Air Act over 50 years supports the importance of gaining

bipartisan support. In contrast, Dodd-Frank, passed with minimum Republican support, was significantly weakened under the Trump administration just eight years after it was passed (Werner, 2018).

The lesson of cap and trade, however, is that the potential for bipartisan support may be extremely difficult for political entrepreneurs to find after a bill has been introduced. The prior work of problem brokers in building public pressure seems critical to enable multi-party agreements for major enactments. Unless there is broad-based public support, as there was for the Clean Air Act, the opportunity for bipartisan enactment rests in the hands of policy entrepreneurs like the Bipartisan Policy Center, to design incremental policies that fit in the often small convergence of interests of the political parties.

Conclusion

Four implications for researchers and practitioners flow from this investigation. The first is the importance of problem brokers. If they are able to frame expected future conditions as serious and urgent public problems, they have a chance to mobilise enough public pressure to create electoral incentives for legislators to act. The effects of mobilisation were clear in the different outcomes of the Clean Air Act and the cap and trade cases. One of the key problem brokers in the cap and trade effort, former vice president Al Gore, commented to friends that his advocacy work had failed to create enough intensity of feeling (Pooley, 2010).

Second, if public mobilisation is high and multi-party support is available, the technical aspects of a policy are not as critical as moving quickly to enactment. Public mobilisation can evaporate, so it is critical for problem brokers, policy entrepreneurs and political entrepreneurs to seize the moment and enact a law. Minor flaws can often be handled through regulatory actions. If the major parties are committed to the law, it can be re-opened and major corrections can be made later.

A third implication is the importance of evaluating political conditions to determine whether there is an opportunity for a major initiative, or if launching an incremental initiative would be a better

strategy. There are often dozens of ways that government policies can address a serious problem with a forward-looking solution. Only a few of these policy designs may be effective both in addressing the problem and in gaining multi-party support. In majoritarian parliamentary systems, and in the US when one party controls both chambers of Congress and the presidency, major initiatives can be passed along exclusive or nearly exclusive partisan lines, as was the case with Dodd-Frank, but their longevity will be in doubt. Unless there are commitment mechanisms that can lock in future governments, it is more effective to take a smaller, incremental

approach, as the Bipartisan Policy Center did with its energy initiative, and then prepare for the next opportunity. A series of incremental steps can result in a major change.

Finally, for major forward-looking initiatives, a key factor is the commitment of executive presidents and prime ministers. To be effective, their commitment must go beyond rhetorical support and lead to tangible support in the form of advocacy by a Cabinet member or agency head, drafting help and lobbying assistance. Tight coordination between the party leaders and the political entrepreneurs is also critical, as was shown by a positive experience with

Dodd-Frank and missteps with cap and trade.

As mentioned in the introduction, this is a report on work in progress. Next steps include establishing a firm theoretical foundation for the findings based on a bounded rationality model of the actors and their incentives, restating the findings as testable hypotheses, and performing a large-scale quantitative study of forward-looking enactments in the US Congress. If that goes well, future projects could extend the study to other legislative bodies, and delve into theory and research about how problem brokers create public mobilisation.

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Jan Rivers and Jill Abigail

Sex, Gender and Women's Rights

Abstract

Despite legislation proposing sex self-identification being deferred in early 2019, numerous government departments and agencies have implemented self-identification in their policies and practices. If a man can declare himself to be a woman, what, then, is a woman, and how can women's rights as a political class be maintained? This article explores the tensions between women's sex-based human rights and the claims of transgender advocates. In so doing, it discusses the nature and implications of gender ideology and highlights the failure of public sector institutions, in embracing key tenets of this ideology, to follow well-established policymaking processes.

Keywords   sex, gender, human rights, women's rights, gender theory, gender ideology, policy capture, transgender

The purpose of this article is to:
• show how parts of the New Zealand government have implemented sex self-identification without a legislative mandate;
• explain the background to gender ideology;
• demonstrate how gender theory is leading to the disappearance of the traditional concept of 'sex' in public policy, and has led to a clash between women's rights and transgender claims;
• discuss the processes for good policymaking in New Zealand and how policy capture by gender ideology has replaced proper process; and
• discuss lessons to be learned and future steps that could be taken to provide a legal mandate that acknowledges gender diversity without erasing women's rights.

The article draws on our 2020 investigation into the implications of gender ideology[1] for women's sex-based human rights (Rivers and Abigail, 2021). This work focuses on women because men in general do not suffer rights infringements in the same way, or to the same extent, when female-to-male trans men claim male social roles and spaces. However, the ceding of sex to gender does have negative impacts on gay men, as well as on lesbians.

Background

Sex and gender identity

For millennia human societies have lived with the material reality of two sexes, with biological sex determining who is female and who male. In recent years this reality has been turned upside down by the belief of some that sex is a spectrum and is fluid, that it is possible to change sex and that biological features are irrelevant to, and may conflict with, the 'inner essence' of our 'gender identity' (Reilly-Cooper, 2015). The

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enormity of the societal upheaval stemming from this belief can scarcely be overstated. The New Zealand population has not been asked whether it thinks our biological features are no longer what make us male or female, or whether they believe people can actually change sex. Yet the gender ideology underpinning this revolution in thinking has become embedded in public sector institutions (not only in New Zealand), with almost no public oversight and with no legislative mandate (Hamilton, 2019; Ffiske, 2020b; Sinnott, 2020). Associated work is moving us towards a society where 'sex' as a biological descriptor does not exist except as a private matter (International Conference on Transgender Law and Employment Policy, 1993), and is replaced by 'gender' (Future of Legal Gender, 2019; Stock, 2019) as determinative of identity for almost all purposes.

The belief that a man can transition to becoming a woman is the crux of the issue in relation to women's rights. If 'woman' is no longer defined as 'adult human female' and instead means 'anyone who feels like one', what, then, is a woman, and what does it mean for women's sex-based human rights? Women as a political class will disappear if a belief in gender identity is mandated, raising issues as to how the injustices experienced by women as a class can be addressed.

Sex self-identification
Sex self-identification refers to a person being able change their sex label, including on their birth certificate, with no social, legal or medical preconditions of any kind. This means that men who declare a female identity have the right to be regarded in all respects as female, including to use female resources, to take up positions designated as women-only, and to take part in women's sports.[2]

In 2017 the Births, Deaths, Marriages, and Relationships Registration Bill (BDMRR Bill), a technical update to existing legislation, was introduced into the New Zealand Parliament. It went through the select committee process but was then amended to include sex self-identification, after public consultation had closed. Because of this, and on advice from Crown Law, the bill was deferred in February 2019 (Martin, 2019).

At the time of writing the government has re-introduced the bill, including provision for self-identification. The bill caters for multiple sex changes over a lifetime, with intermediate or non-gendered options available (Tinetti, 2021). A suite of other legislation will embed gender identity and non-binary status. For example, it is proposed that 'gender identity' be covered by the proposed hate speech legislation, making it possible that any expression of disagreement with this concept will be regarded as hate speech. Those failing to acknowledge gender identities as real, or parents who refuse

their child access to puberty blockers, could commit new offences related to conversion practices.

Until recently, sex transition was regarded as a means by which people desperately uncomfortable in their bodies (mostly men) could take on the appearance of the other sex in order to live in the role of that sex. There are many trans people who say they have not literally changed sex (Hayton, 2021; Yardley, 2017). Trans advocates often point to the existence of indigenous trans people – for example, hijra in India, fa'afafine in Samoa and 'two-spirit' people in the Americas. However, the presentation of such people as analogous to modern transgenderism is rejected by many indigenous people (Pember, 2016; Mana Wāhine Kōrero, 2021). Almost always men, they were never understood to be literally women.

Policy changes in ministries and departments
The impetus for our research in 2020 was an article by a Scottish policy think tank which showed that sex self-identification was being implemented in the Scottish

census and prison system, despite the lack of legislative mandate (Murray and Hunter Blackburn, 2019). When we began to explore departmental practices in New Zealand, it became apparent that policy initiatives to implement self-identification were already underway prior to the BDMRR Bill being introduced, and, despite its deferral, had gathered pace. We found that across multiple agencies new policies and approaches were introduced to bring in gender ideology. In general, such changes were made with little policy analysis, no risk mitigation or impact assessment, no pilot processes and no proposed evaluation of

> In 2018 Statistics New Zealand announced that it was in the process of creating a framework for sexual orientation and a statistical standard for sexual identity.

the changes. No opinions were canvassed, other than from people claiming a gender identity and their supporters.

Ministry for Women
The Ministry for Women has changed its understanding of the meaning of 'women' without any consultation with the population group it was set up to serve. Despite the deferral of the BDMRR Bill in 2019, the ministry's response to a request made under the Official Information Act in June 2020 stated that it represents the interests of all women, including transgender women, and recognises the right of all people to self-identify (Ministry for Women, 2020). It appears that from late 2017 the ministry quietly included 'trans women' as part of its client group (Ministry for Women, 2018). There was no public notification of this change until OIA requests apparently prompted a statement on the ministry's website in March 2021 (Ministry for Women, 2021).

Statistics New Zealand
In 2015, Statistics New Zealand announced a world first in a new gender identity

statistical standard. 'Gender diverse' would appear as a new classification, distinct from 'male' or 'female'. The standard defined 'gender identity' as:

> A person's internal sense of being wholly female, wholly male, or having aspects of female and/or male. A person's gender identity can be expressed in several ways, and may or may not correspond with the sex recorded at birth. (Statistics New Zealand, 2015)

In 2018 Statistics New Zealand announced that it was in the process of creating a framework for sexual orientation

Women, Statistics New Zealand designed a new standard for pay gap measurement, in which 'employees should be included as the gender they choose. Some employees may not identify as men or women but as gender-diverse, or they may prefer not to state a gender identity' (Statistics New Zealand, Ministry for Women and State Services Commision, 2020). Since 2018, all public sector workforce information has been collected by self-identified gender, affecting not only pay data; roles held by trans women are being counted as held by women (State Services Commission, 2018).

Statistics New Zealand also decided that the 2019/20 Household Economic Survey would for the first time ask

apply across all of New Zealand's public sector over time, except for those cases, such as in the health services, where knowledge of sex is a specific requirement. Despite the extensive consultation, sex information in a medical context was declared 'beyond the scope' of the new standard (Statistics New Zealand 2021a).

'Gender by default' is explained in the consultation document as:
an approach that defaults to the collection of gender data as opposed to sex at birth ... Collection of sex at birth information should be viewed as an exception where there is a specific need.

> *In most cases a person's gender – their social and personal identity – is most relevant for policy making and research rather than their sex at birth.* Gender based analysis is used in a range of areas, from income equality to health and education. (Statistics New Zealand, 2020c, emphasis added)

All the documents referenced in the sex and gender identity standards relate to the specific concerns of transgender and intersex people. There is no evidence of research either into the various impacts of failing to collect sex-based data or data on men who identify as women being added to women's data.

Public Service Commission

The Public Service Commission – formerly the State Services Commission – has led the work of implementing gender ideology across the public sector (State Services Commission, 2019). As noted above, the commission co-designed in 2018 a new standard on the measurement and analysis of gender pay gaps (Statistics New Zealand, Ministry for Women and State Services Commission, 2020), in which, despite pay equity legislation being based on sex, not gender, transgender people were included as their claimed gender identity.

The pay comparisons for the New Zealand public sector for 2019 showed an historically exceptional result, with the gender pay gap falling from 12.2% in 2018 to 10.5% (Genter, 2020). Because for the first time it is impossible to know who is included in the category of women, it is

> In mid-2020 the Public Service Commission announced that staff should 'consider starting a meeting with each attendee sharing their name and pronouns' and that 'having pronouns in an email signature signals you as an LGBTQIA+ ally' (Public Service Commission, 2020).

and a statistical standard for sexual identity. It used a three-week public submissions process to collect feedback on these initiatives (Statistics New Zealand, 2018a). The new sexual orientation standard stated that orientation may be defined as same-gender or opposite-gender orientation (Statistics New Zealand, 2018b). But sexual orientation has never been defined as anything but sex-based attraction, including in the Human Rights Act. Based on submissions, the standard also recognised 'non-binary' identities, despite there being no legal status for these. Yet if people can legally identify as non-binary, the definition of 'sex' collapses. This was one of the points made by Crown Law which contributed to the deferral of the self-identification provisions in 2019 (Crown Law, 2019a).

Also in 2018, together with the State Services Commission and the Ministry for

respondents to describe their gender as well as their sex at birth (Statistics New Zealand, 2019a).

A review of the statistical standards for sex and gender identity in 2019–20 did involve public consultation. By this stage, 'gender' and 'gender identity' were becoming conflated, as the new definition of 'gender' was: 'a person's social and personal identity as male, female, or another gender such as non-binary ... A person's gender may change over time. Some people may not identify with any gender' (Statistics New Zealand, 2020c). The consultation paper provides an almost identical definition for 'gender identity'. It also says that 'sex' can change over the course of a lifetime (ibid.).

The proposed changes heralded the effective replacement of data on sex (based on biological features) with data on gender (defined in this case as a belief). This would

unclear whether self-identified women (trans women), who were likely to be in better paid, traditionally male occupations, had any effect on the reduction in the pay differential.

In mid-2020 the Public Service Commission announced that staff should 'consider starting a meeting with each attendee sharing their name and pronouns' and that 'having pronouns in an email signature signals you as an LGBTQIA+ ally' (Public Service Commission, 2020). Many agencies have since adopted 'preferred pronoun' use (Statistics New Zealand, 2020d; Crown Law, 2019b). Despite their use not being mandatory, some departments have introduced them in such a way that public servants effectively have no choice (Ministry of Justice, 2021).

Human Rights Commission
Despite its legislated role under the Human Rights Act 1993 to prevent discrimination against women, the Human Rights Commission has consistently promoted transgender rights over women's sex-based rights (Alves, 2018), and in its submission to the BDMRR Bill in 2018 advocated sex self-identity without preconditions (Human Rights Commission, 2018). The submission gave no consideration to whether those rights might disadvantage women.

The commission's 2020 *Prism* report repeats that gender identity refers to 'each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth' (Human Rights Commission, 2020). Statements about 'each person' tie everyone into a belief, despite many people not accepting this and there being no proof that 'gender identity' exists (Hayton, 2021).

The Human Rights Act also protects against discrimination on the basis of sexual orientation. The *Prism* report states that sexual orientation refers to attraction to the same, different or both genders (Human Rights Commission, 2020). Given its interpretation of gender as meaning 'gender by self-identification', this language effectively drains sexual orientation of its meaning. It also misrepresents the legislation on protection of sexual orientation.

A further duty of the Human Rights Commission is to 'encourage ... harmonious relations between individuals and among the diverse groups' of our society (Human Rights Act 1993, 5(1)(b)). The level of discord between trans lobbyists[3] and women's rights advocates has reached toxic levels, but the commission has so far failed to play its role with these antagonist groups.

Ministry of Education
The Ministry of Education launched new relationships and sexuality education (RSE) guidelines in September 2020 (Ministry of Education, 2020a). The guidelines' provision for self-identification of sex in schools includes a sex category of 'other'. Science teaching is affected by ideas such as 'how biological sex has been constructed and measured over time' and sex being 'ascribed at birth'. The guidelines mandate the use of preferred names and pronouns and 'all school forms [should] allow for genders in addition to male or female (eg, gender diverse, non-binary, takatāpui)'.[4] An Official Information Act request to the ministry reveals that teachers are to rely on their professional ethics to determine when 'sex' is of primary importance (biology curriculum) and when it is not (relationships and sexuality education) (Ministry of Education, 2020b). Teaching materials for the curriculum are marketed to schools, including a game from Family Planning in which the ideas are planted that boys can have periods and grow breasts (Family Planning, 2021). The guidelines advise that pupils are to have access to the sports, toilets and changing rooms of their chosen gender. There is no consideration of whether girls feel comfortable in using mixed facilities or with boys using the girls' facilities (Ministry of Education, 2020a).

Legislation decrees that school boards and parents must be consulted periodically about the health curriculum (Education Act 1989), but there is no evidence that this RSE curriculum has been approved by parents.

Ministry of Social Development
A Ministry of Social Development policy change in December 2019 was announced by the trans advocacy group Gender Minorities Aotearoa. The ministry

> has carried out community consultation and added a 'gender diverse' option to their systems. You can choose whether to use male, female, or gender diverse, just the same way you can choose

With standard forms changed to accept self-identification, the ministry now collects gender data rather than sex data by default.

> ethnicity – with no supporting documentation. You do not need to change your birth certificate or other ID to change your gender marker with MSD. (Gender Minorities Aotearoa, 2019)

Such change can be made with a simple phone call to an 0800 number.

With standard forms changed to accept self-identification, the ministry now collects gender data rather than sex data by default. An OIA response shows that, contrary to the statement from Gender Minorities Aotearoa, there was no community consultation on the change. The ministry stated that, in their view, the decision to change to a self-identification model 'was not regarded as policy work'; instead it was implemented as a technical change to the ministry's 'Guide to social development policy' (Ministry of Social Development, 2020, 2021).

Implications and unintended consequences
Our discussion above has focused on the policy and administrative changes that have resulted from the implementation of

gender ideology in the New Zealand public sector in recent years. The consequences of these changes are a story in themselves, of which we can give only a brief outline here.[5]

Data issues

First, the creation of new statistical standards will have an impact on record keeping, with serious consequences for future researchers. The implications of omitting sex-based data are that 'distorted statistics will give a distorted picture of actual real world inequality rooted in the biological and reproductive differences between women and men' (Reilly-Cooper, 2015).

Such issues as health, occupational differences, access to money and roles of influence, and perpetration of and vulnerability to violence all continue to have sexed dimensions. Without accurate data on women, neither improvements nor slippage can be measured. In deciding on 'gender' as the default setting, there was also no examination of possible risks to work that has until now relied on data sets and series that are standardised to 'sex' (Statistics New Zealand, 2020a).

Not only does statistical data on women become unreliable when female-identified men are included in that category; it works also against the interests of transgender people. If they cannot be tracked, their particular needs cannot be properly understood. Such omissions also fail to consider detransitioners – those reverting to understanding themselves as their birth sex – many of whom experience severe mental health and medical consequences.

'Hiding' trans people in the statistics also obscures the fact that this group remains by and large in the occupations, relationships and sex-based crime categories that they were in prior to transition. Violent crimes typical of males are being reported as female crimes (Coleman, n.d.).

Justice issues

In New Zealand, men can already be housed in women's prisons if they self-identify as women, provided their crime is not sexual violence against women. Assaults on women have occurred as a result (Place, 2019). These men are reported as women, even when other information is freely available (New Zealand Herald, 2020; Shaw, 2020).

In Canada the statistics on 'dangerous criminal women' increased dramatically following self-identification, skewing both the numbers and the reporting (Mason, 2021). The therapeutic environment designed for female inmates in Canada has changed to take account of the management issues that arise when men are housed (Mason, 2019). In California, pregnancies and abortions are allegedly happening in the women's prisons since trans women have been housed there (Kaminsky, 2021), while in New Zealand there are reports of pregnancies at Wiri women's prison (Chick, 2021). There are strong indications of opportunistic identification as female in order to gain access to vulnerable women (Biggs, 2020; Shaw, 2020). Two per cent of male prisoners in the United Kingdom report they are female (Hymas, 2019); sex data is obscured, allowing the sex of male prisoners identifying as female to be unknown by other prison staff and prisoners (Ffiske, 2020a). There are shocking rates of prison rape (Shaw, 2020; Biggs, 2020).

In the United Kingdom women victims of violence at the hands of male-bodied trans women have been made to refer to their assailants as 'she' or they will be penalised for 'misgendering' (MacLachlan, 2019); this has applied even when the actual sex was known, and even when the attacker's male genitals were discussed during evidence (Shaw, 2020; Ghose, 2018). A New Zealand press report on an alleged murderer used a female name and pronouns throughout, making the person unidentifiable as a trans woman even while a campaign to have them housed in a women's prison was being covered in other news stories (New Zealand Herald, 2020; Sherwood, 2019).

The law in the United Kingdom allows women to be charged only as accessories to rape, a charge that is very rare. However, the Office of National Statistics has published Crown Prosecution Service data on rape prosecutions over a seven-year period showing that 436 individuals prosecuted for rape were recorded as women (Sullivan, 2021). The number of cases of child sexual abuse reportedly perpetrated by women has doubled over four years; self-identified women are included in this figure (Fairplay for Women, 2021).

In both Canada and the United Kingdom, refuges and rape crisis centres used by women victims of sexual violence are losing their funding if their services are maintained for biological women only (Linehan, 2021; Zygan, 2020). In New Zealand such services, originally created by women for women, are now inclusive of 'gender diverse' people, including as staff (Wellington Rape Crisis Services, n.d.).

Other impacts

We note other already apparent consequences very briefly:
- Language is being distorted in the name of inclusiveness, erasing women in the process: 'mother' is replaced with 'birthing person'; 'pregnant women' are now 'pregnant people'.
- Freedom of speech does not apply when anyone wanting to discuss women's rights is accused of hate speech and is 'deplatformed'.

> In both Canada and the United Kingdom, refuges and rape crisis centres used by women victims of sexual violence are losing their funding if their services are maintained for biological women only …

- Public servants cannot give 'free and frank advice' when they are expected to adhere to gender ideology.
- In academia and in the sciences a climate of fear for careers is preventing reasoned debate and balancing of evidence; 'cancel culture' rules.
- Doctors and counsellors who do not agree with gender-affirming drugs for children are silent for fear of opprobrium.
- Lesbians are accused of transphobia if they do not accept relationships with trans women, and are being shut out of rainbow community events for being 'exclusionary'.

Gender ideology – theory and principles
We turn now to a broader discussion of gender ideology and its influence in New Zealand. The starting point for its introduction into government policy was the Labour Party manifesto for the 2017 election (New Zealand Labour Party, 2017). The case for changes rested on a sense of duty founded on claims of transgender people's vulnerability (Transgender Trend, 2019; Biggs, 2018), and new social conventions that render personal preferences and styles (once regarded as 'personality') as an 'identity' (Bilek, 2020b). But underpinning these changes lie international factors: the rise of gender theory, a subset of postmodern critical theory; the Yogyakarta Principles, which see 'gender identity' as the latest civil rights issue (International Commission of Jurists, 2017; Bindel and Newman, 2021);[6] and significant funding from international foundations advocating gender ideology, including some that make grants in New Zealand (Gender Minorities Aotearoa, 2017).

Postmodern gender theory
The term 'gender' was used in feminist theory of the 1970s to explain societal expectations that imposed narrow and damaging stereotypes on both sexes. Its meaning changed with the rise of postmodern queer theory, especially in universities, in the 1990s. Academic courses in gender studies turned the focus away from women's studies' analysis of patriarchy, rejecting biological materialism and the reality of sexed bodies (Todd, 2019; Jones, 2018b). The

idea of gender as brought into being by repeated performances of a particular gender role took hold: 'a man or woman came to mean someone who performed manhood or womanhood, which were sets of stereotypes ... that were meaningful simply because they were performed over and over again' (Joyce, 2021, p.5). This notion has continued to underpin gender ideology.

Yogyakarta Principles
ARC International is an organisation which lobbies internationally for LGBT rights (ARC International, n.d.). It initiated a project to set up a human rights framework for sexual orientation

and gender identity, resulting in a 2006 meeting in Yogyakarta, Indonesia. Here a group of human rights experts constructed the Yogyakarta Principles, in which gender identity was first defined.

It appears that no attention was given to the implications for women's rights. One of the original participants, Robert Wintemute, now says: 'women's rights were not considered during the meeting where the principles were written and the authors "failed to consider" that fully intact males would seek to access female-only spaces' (Bindel and Newman, 2021; Wintemute, 2021).

The principles were updated in 2017 in a way that has taken advantage of jurisprudence related to the progress of gender ideology around the world and therefore serves to reinforce it (Zobnina, 2020). The acronym adopted, SOGIESC (sexual orientation, gender identity and expression and sex characteristics), helped to tie the gender identity issue to the larger,

more well-established LGB wagon (Holloway, 2020; Jones, 2018a). The principles also created a false equivalence between transgender identity and disorders of sexual development ('intersex' conditions). By far the large majority of intersex people are either male or female.

Despite their not having been adopted by the United Nations and so not being binding on governments, the Yogyakarta Principles have been hugely influential in adding novel, unnegotiated definitions and new policy into UN and European Union policies, and even national constitutions (Zobnina, 2020). The New Zealand Human Rights Commission consistently implies that the principles have official standing.

> Governments and wealthy private benefactors, as well as large corporations, have funded gender ideology to an extent that was never the case for the LGB rights groups of earlier years ...

According to the principles, men can become women, and vice versa, and must be regarded as such. Sex is fluid, so a man may be a woman one month but a man the next, with the possibility of non-binary status at any stage. Men who transition are a group of women in the way that women of colour, white women and disabled women are different categories of women. By this logic, trans women deserve access to women's protected services, spaces and roles. This is what is planned for implementation in New Zealand legislation.

Funding from international foundations and local sources
Gender ideology has gathered pace significantly in the last five or six years as transgender organisations have gained access to significant funding. Governments and wealthy private benefactors, as well as large corporations, have funded gender ideology to an extent that was never the case for the LGB rights

groups of earlier years (Biggs, 2018; Bilek, 2020a). Organisations originally set up to support gays and lesbians have morphed into trans rights groups to support the 'queer' community, with millions of dollars going into advocacy work. New Zealand's 'rainbow' organisations have had large levels of funding from such sources (Rainbow Youth, 2020; InsideOUT, n.d.; Gender Minorites Aotearoa, 2017).

In 2019, law firm Dentons and the Thomson Reuters Foundation funded pro bono a project to help trans groups bring about changes in the law that would allow children to legally change their gender without adult approval. The resulting report encouraged non-governmental organisations

rainbow organisations are employed to develop local policies and to train staff. Given the adoption of the Yogyakarta Principles and postmodern approaches, the way this has played out has led to an inclusion and diversity framework that excludes people who do not believe they have a gender identity or that people can change sex.

Rainbow Tick

Rainbow Tick is one of a number of organisations that provide SOGIESC advice to the public sector. It offers certification for organisations that complete a diversity and inclusion assessment process. Rainbow Tick binds

hepatitis-C, young Māori men – to ensure either that they feel fully included in the public sector or that they are welcomed as people needing special support.

Women excluded from consultation

There is a glaring absence of women's rights advocates from consultations and working groups that need their input in order to create fair and robust policy that includes 'sex' as a useful category. When Statistics New Zealand established an advisory group of paid representatives to discuss the new statistical standards for sex and gender identity, every member represented the views of transgender or intersex people; none represented women (Statistics New Zealand, 2019c). Unsurprisingly, the consultation completely discounted the idea that a correct representation of women by 'sex' was relevant.

The same absence of women's rights advocates pertained in the Department of Internal Affairs. A working party to look at making sex self-identification easier included only voices that supported this and none that cautioned about overreach or risks (Department of Internal Affairs, 2020). The principal organisation speaking out for women's rights in relation to the BDMRR Bill is Speak Up For Women. It was not invited to join the working group.

As a result of the sidelining of women's interests, the subsequent regulatory impact statement for the reintroduced BDMRR Bill found no evidence that women will be harmed (Treasury, 2021).

Confusion between agencies on gender and sex

A Ministry of Justice letter to the authors of this article stated that it is not correct to conflate 'sex', 'gender' and 'gender identity' because 'all three terms have distinct definitions' (Greaney, 2021). We agree. However, the *Statistical Standard for Gender, Sex, and Variations of Sex Characteristics* includes gender identity within its definition of 'gender', and also states that sex, gender and gender identity can change over the course of a lifetime (Statistics New Zealand, 2021a). In response to an OIA request seeking clarification of this confusing statement, Statistics New Zealand said it was referring to the legal right to be able to change sex

> A Ministry of Justice letter to the authors of this article stated that it is not correct to conflate 'sex', 'gender' and 'gender identity' because 'all three terms have distinct definitions' …

to get ahead of the government and publish progressive legislative proposals before the government had time to develop their own. NGOs need to intervene early in the legislative process and ideally before it has even started. This will give them far greater ability to shape the government agenda. (Kirkup, 2020)

The report also advised using the youth wings of political parties, and coat-tailing on popular reforms such as the legalisation of gay marriage (Hamilton, 2019; IGLYO, Thomson Reuters Foundation and Dentons, 2019).

As has been seen in this country, those tactics have worked well, thanks to the funding that has enabled them.

The implementation of gender ideology in government

The current government seeks to train public servants in inclusion and diversity, an approach that has gained momentum since the Public Services Act came into force in 2020. New diversity and inclusion roles are now part of human resources teams across the public sector. In addition,

signatories to policies and practices without any apparent checks as to whether these create conflicts of interest, even though there are examples where pressure has been applied to bring organisations into line (Desmarais, 2019).

The Public Service Commission's approach to issues of gender seems to follow the Rainbow Tick prescription to the extent that this appears, to us, to be an undue and unauthorised influence on policymaking. There are requirements for annual re-certification, board-level representation, funding of affinity groups, and representation of the relationship between Rainbow Tick and the agency to its employees, stakeholders and suppliers (Murphy, 2019). Training for all staff in 'unconscious bias' is prescribed. Through the Cross Agency Rainbow Network, agencies demonstrate how fully they are meeting the expectations of their SOGIESC communities (Cross Agency Rainbow Network, 2019).

There is nothing of this kind for other minority and vulnerable populations – refugees and new migrants, people with

multiple times over a lifetime (Statistics New Zealand, 2021b).

Meanwhile, the Department of Internal Affairs maintains not only that the content of birth certificates is not determinative of sex, but also that a definition of sex is beyond the scope of the BDMRR Bill (Treasury, 2021). It appears there is no coherent understanding across government of the relationship of 'sex' to 'gender' and 'gender identity'. Into this environment the minister of internal affairs has announced that the bill will be reintroduced into Parliament in a way that supports multiple gender and sex changes as well as intermediate statuses (Tinetti, 2021). We suggest that this 'queering' of sex serves to undermine the understanding of the public that male and female are distinct and meaningful categories.

Policy capture
In our view, the implementation of gender ideology in the New Zealand public sector is a clear example of policy capture. The OECD defines policy capture as:

> the process of consistently or repeatedly directing public policy decisions away from the public interest towards the interest of a specific interest group or person. Capture is the opposite of inclusive and fair policy making and always undermines core democratic values. (OECD, 2017)

The way policy should be designed and implemented in the New Zealand government is led by the Department of the Prime Minister and Cabinet's Policy Project team (Department of the Prime Minister and Cabinet, 2020). Its Policy Quality Framework outlines how policy objectives should be met, with guidelines, checklists and other requirements for implementing good policy (Department of the Prime Minister and Cabinet, 2019). Our research shows little evidence that the guidelines have been followed, given the ceding of women's, lesbian and gay rights in favour of transgender rights in recent years.

The adoption of gender theory across government means that large segments of our public sector appear to be acting:

· undemocratically, in bringing in or promoting policies and protocols that

have not undergone proper public consultation or approval;
· illegally, by claiming legislation, international conventions and conference recommendations as the basis for bringing in or promoting policies and protocols, when these do not legalise what is claimed; and
· discriminatorily, in terms of ignoring women's sex-based rights in favour of those of men who claim female identity.

The public sector is well versed in addressing accountability issues, but does not respond so well to the impacts of systemic technological, cultural or social changes. The lack of capacity of the public

> Prime Minister Jacinda Ardern has stated that our country has done well in managing the Covid-19 pandemic because the government has followed the science and has learned from watching what has happened overseas.

sector to carry out due diligence in the face of new ideas is concerning and cannot but create poor policy and unintended impacts.

Of missteps and silences – looking back
When it comes to introducing recognition of gender diverse and transgender people into policy, there has been very little public engagement or efforts to research issues in the way that good public policy development demands. Instead, governments have allowed a situation to develop where there is deep societal antagonism on this issue between transgender advocates and women's rights advocates. The atmosphere is now so deeply polarised that few politicians or media personnel are prepared to address the topic. Many professionals, too, are scared of speaking out, despite their concerns.[7]

The Department of Internal Affairs has claimed that 'New Zealand society is changing to recognise that a person's gender can differ from their sex and that it can change over time' (Treasury, 2021, p.6).

On what grounds can it make such a claim? The government has had more than 18 months to provide information about sex self-identification and its implications and encourage reasoned public debate. Instead, the public were given only three weeks to respond to a supplementary order paper reintroducing the new provisions in the BDMRR Bill. Only those who have been following this issue closely will be aware of this. Since the issue is one involving existing rights and claimed new rights, the Ministry of Justice and the Human Rights Commission should have taken the lead in getting information out to the public.

The New Zealand media has been woefully silent, with a lack of good investigative journalism that could have prepared the public to have an informed view. Coverage in newsprint or on television has mainly been confined to sympathetic portraits of individual trans people.

New Zealanders live in a pluralistic and secular society, in which the state does not formally endorse any particular religion or creed. Yet there is now, in effect, a faith-based system of belief being imposed on New Zealand's children, its public servants, and gradually society at large. Something as fundamental as a belief in the possibility of changing sex should not be imposed on a population whose permission or opinion has not been sought. But voices opposing gender ideology have been systematically silenced, in New Zealand and elsewhere. In the United Kingdom, for instance, a woman who lost her job because of her belief that men and women cannot change their sex had to resort to the courts (Daly, 2021) for a judicial decision that in a democratic society those who believe in biological

reality have the same rights as those who believe in gender identity. In New Zealand, Speak Up For Women had to seek a judicial review in order to be ruled not a hate group (High Court of New Zealand, 2021, para 43). How many more women are going to have to take court cases because gender ideology's introduction into policy and legislation undermines their rights to assert their reality?

Prime Minister Jacinda Ardern has stated that our country has done well in managing the Covid-19 pandemic because the government has followed the science and has learned from watching what has happened overseas. The same respect for science and observing overseas experience should be applied to this issue. Science, we believe, demonstrates that it is not possible to change a person's biological sex (Reilly-Cooper, 2015; Hilton and Wright, 2020). Germany, Japan and the United Kingdom have withdrawn proposed sex self-identification, while negative consequences of self-identification elsewhere are well documented.

New Zealand cannot continue to bask in the glory of having been the first country in the world to grant women's suffrage while it pursues policies that undermine women's rights.

Conclusion – looking forward
The evidence from our research shows that the ship has sailed on the minister of internal affairs' aim to 'get it right' (Piper, 2021). The question now is how to address the worst impacts of these changes. The stated justification for the policy and legal moves is compassion and inclusion for a marginalised community. But while such considerations are relevant, they are not sufficient. What is also required is a proper analysis of the issues from all points of view, with the consequences spelled out clearly. The gender ideology debate should be able to be managed through normal democratic processes, as are other conflicts of rights.

If 'sex' is no longer to be a relevant category for most policy purposes, New Zealanders should be apprised of why this is the case. Even if 'woman' and 'man' are accepted to mean 'gender by identification', there will still need to be words that

describe the possession of male or female anatomy and the resultant life possibilities. People should be able to understand how their sex-based rights can be addressed and equitably met.

Proposed new legislation will have an impact on self-identification of sex – the hate speech bill, anti-conversion therapy law, and inclusion of 'gender identity' in the Human Rights Act. Overlaps between the current confused policy settings and the new laws are already apparent. The potential for unintended consequences warrants serious attention.

The approach adopted in the United Kingdom provides a sensible model. Single-sex services are permitted for various reasons, but have to be objectively justified. This means any exclusions of transgender women have also to be shown to be justified. Recent UK research shows that, faced with examples, even advocates of transgender rights recognise that women need services that meet their needs (Dillon, 2021). In addition, recent case law has protected belief both in gender identity and in sex (Daly, 2021). On the important issue of whether sex or gender should have primacy, the UK Equalities Act 2010 retains women's protections where there is objective justification.[8] A research project funded by the Economic and Social Research Council is an academic exploration of different ways of reforming legal gender status, 'focusing on England and Wales, while drawing on experiences in other countries, [and] the different legal approaches taken towards other social characteristics, such as religion, disability, ethnicity and sexuality' (Future of Legal Gender, 2019).

Given the scale of the changes that have already been implemented in New Zealand, and the implications of the legislative changes that are in train, it would seem that nothing less than a holistic and disinterested review of the current conditions will suffice. Private legal action could seek a declaratory decision on the meanings of 'sex', 'male' and 'female' in law. But that would not effectively clarify all the other issues, nor set New Zealand on a path to ensuring that women's interests are accounted for.

The Human Rights Commission must ensure that the rights of women are retained while it supports the rights of transgender people. To date this has not been the case.[9] The commission must also fulfil its legislated duty to 'encourage … harmonious relations between individuals and among the diverse groups in society' by enabling constructive contact between advocates for women's rights and trans advocates. While the issues are being worked through, women's same-sex spaces must be retained.

The government should ensure that its actions align with the intent of the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill. The purpose of this legislation is to provide a remedy for when governments act in a way that undermines either the New Zealand Bill of Rights Act or the Human Rights Act.

Given the scale of what is happening, an investigation by the Law Commission or by a royal commission is also warranted. New Zealanders deserve nothing less.

1 We have retained the term 'gender ideology', as this was the term we used in our original paper. Many commentators are now using the term 'gender theory' instead. We use this where it refers to the body of knowledge arising from post-modern and critical theory, whereas we take 'ideology' to mean implementation of a belief system that advances the interests of adherents.
2 Laurel Hubbard's selection for the women's weightlifting category at the 2020 Olympics is the most well-known New Zealand example.
3 We make a distinction between trans people and trans activists. Not all trans people are engaged in political activism, and some agree with gender-critical feminists. Likewise, by no means are all trans activists transgender. 'This powerful new lobby far outnumbers the trans people it claims to speak for' (Joyce, 2021, p.5).
4 In the United Kingdom a judicial review is testing whether 'non-binary' is an appropriate status to encode into legislation (Elan-Cane, 2021). In New Zealand, by contrast, the term is implemented and is not even regarded as a policy matter.
5 For a full account, see Rivers and Abigail, 2021.
6 In New Zealand, as in the US and elsewhere (Reuters, 2020), endorsing new kinds of trans rights as civil rights is gaining currency. But no previous civil rights movement has expected other groups to give up their human rights; 'demanding that self-declared gender identity be allowed to override sex is not, as with genuine civil-rights movements, about extending privileges unjustly hoarded by a favoured group to a marginalised one' (Joyce, 2021, p.3).
7 Following our report 'Another unfortunate experiment? New Zealand's transgender health policy and its impact on children' (Rivers and Abigail, 2020), which covered puberty blockers and gender-affirming medicine, we encountered doctors at the very top of the medical profession who agreed with our analysis but were not prepared to say so publicly.
8 https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/20/7.
9 In a recent communication with the authors the chief human rights commissioner said, 'the Commission does not share the view that the rights of women and transgender people are at odds with each other'.

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Natalie Talamaivao, Gabrielle Baker, Ricci Harris,
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Informing Anti-Racism Health Policy

in Aotearoa New Zealand

Abstract

Racism is firmly established as a determinant of health and an underlying cause of ethnic health inequities. As an organised system, racism operates at multiple levels (including structurally and interpersonally). Racism and its many manifestations are breaches of international human rights obligations and, in the Aotearoa New Zealand context, te Tiriti o Waitangi. This article considers approaches to anti-racism in health and disability policy in the 30 years following the foundational publication *Pūao-te-Ata-Tū* (Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, 1988), which was one of the first government publications to name and call out the harmful impacts of institutional racism. The article then examines the ways in which government health and disability sector organisations have talked about and responded to racism at a national level since 1980. The results of this research urge a stronger organisational-level approach to anti-racism in the health and disability system for more tangible results, requiring multi-level solutions, and transforming what is considered 'business as usual' in health and disability sector institutions.

Keywords racism, anti-racism, institutional racism, discrimination, health, organisations, health policy

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In Aotearoa New Zealand and internationally, racism contributes significantly to poorer health outcomes for Māori and other minority ethnic groups. Racism is an organised system that is underpinned by ideologies of superiority and inferiority, and shapes the structures that have defined, and continue to define, the functioning of society (Priest and Williams, 2018).

Racism operates at multiple levels, with various pathways to health (Williams, Lawrence and Davis, 2019). These levels have been conceptualised as intrapersonal (including internalised racism), interpersonal (or personally mediated) and systemic (structural or institutional) (Jones, 2018a; Williams, Lawrence and Davis, 2019). Intrapersonal racism involves attitudes, beliefs or ideologies often founded on understandings of supposedly innate superiority and inferiority that may be held by members of dominant social groups and/or oppressed ones respectively. Interpersonal racism refers to racism between people, with varying degrees of frequency and intensity, including manifestations from racially motivated assault to verbal abuse, ostracism and exclusion. Finally, systemic, structural or institutional racism involves the production of, control of and access to material, informational and symbolic resources within societal institutions, laws, policies and practices (Jones, 2018a; Williams, Lawrence and Davis, 2019). Institutional racism has harmful impacts on population health and has been referred to as the most embedded and powerful form of racism (Williams, Lawrence and Davis, 2019). Institutional racism reflects how deeply embedded racialised social structures are in society and how they ultimately determine the inequities arising from unequal access to the wide range of factors that drive health.

In the last 20 years there has been a 'remarkable growth in scientific research examining multiple ways in which racism can adversely affect health' (ibid., p.105), although indigenous peoples have always understood the harmful impacts of racism on wellbeing. The majority of research looking at racism and health has been undertaken in the United States, for both adults (Paradies, 2006; Paradies et al., 2015)

> Aotearoa New Zealand's international human rights obligations stress the requirement and need to eliminate racial discrimination in all its forms...

and for children or adolescents (Priest et al., 2013).

In Aotearoa New Zealand, routinely collected national surveys such as the New Zealand Health Survey, the General Social Survey and Te Kupenga (Māori Social Survey) all include questions that assess the experience of racial discrimination and reinforce the significance of racism as a health determinant and social wellbeing indicator. The New Zealand Health Survey has collected data over time regarding experience of racism overall and this data shows that Māori have a higher prevalence of reporting experience of racism than non-Māori (Ministry of Health, 2015), as well as higher prevalence for non-European groups, such as Asian and Pacific groups, compared to European (Harris et al., 2012a; Harris, Stanley and Cormack, 2018). Research demonstrates a consistent link between experience of racism and a range of negative health measures (such as mental and physical health measures, individual-level risk factors and health service experience and use) that may have a significant impact on ethnic health inequities (Talamaivao et al., 2020b).

Both quantitative and qualitative research shows that Māori experience racism in multiple domains (such as in health, employment or housing settings) over their lifetimes, with significant impacts on health and wellbeing (e.g. Barnes et al., 2013; Harris, Stanley and

Cormack, 2018; Huria et al., 2014; Talamaivao et al., 2020b). Racism influences access to healthy environments and other conditions that are required for good health for Māori, as well as access to health care and experiences of healthcare interactions (Harris et al., 2012a, 2012b). The effects of experiencing racism can be transmitted intergenerationally, with research showing impacts from birth through childhood to adulthood (Hobbs et al., 2017; Paine et al, 2020; Thayer and Kuzawa, 2015).

Evidence of links between racism and poorer health outcomes ultimately presents as a breach of Aotearoa New Zealand's stated commitment to te Tiriti o Waitangi (Waitangi Tribunal, 2019), and also to human rights agreements internationally, specifically the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). Aotearoa New Zealand's international human rights obligations stress the requirement and need to eliminate racial discrimination in all its forms and to recognise and address racism and its deleterious impacts, particularly for indigenous peoples.

Despite the substantial body of evidence which confirms racism as a determinant of health and work that continues to explore relationships between racism and health, there is still scope for new research into, and actions towards, the next steps – translating research into anti-racism interventions and initiatives that address and eliminate racism in health.

Approach to document analysis

A strategic review of a range of documents was undertaken to inform this article. These were scanned and assessed in order to identify organisational anti-racism policy approaches. First, a scan was undertaken of publicly available documents produced by central government agencies with reference to the health and disability sector in Aotearoa New Zealand. To be included in the review, these documents needed to reference racism in the content of the report; the intent was to see to what extent racism is acknowledged, and how that acknowledgement is linked with subsequent actions (or not). Documents

Table 1: Summary of central government policy documents that refer to racism/discrimination and health in Aotearoa New Zealand, 1980–August 2020

	Crown documents
Publication year	
1985–89	1
1990–94	1
1995–99	3
2000–04	5
2005–09	6
2010–14	2
2015–19	6
2020	4
Publication type	
Policy reports/strategies	20
Toolkits/action plans	8
Publication author	
Health sector agencies	25
Other government agencies	2
Human Rights Commission	1
Population focus of publication	
Ethnicity	
Māori	14
Pacific	1
Total population	13
Age group	
Child/youth	2
All age groups	26

were sourced via the Ministry of Health library and supplemented by further online searching and scanning of references to source further publications. Second, a scan of anti-racism interventions in health was conducted via academic search engines (Ovid databases and Web of Science) and was supplemented by using Google, Google Scholar and relevant websites (as some interventions are not featured in indexed publications). The methods used to identify anti-racism interventions for the health sector were based on earlier work, including a review of anti-racism interventions which was undertaken as part of a broader project on understanding racism as a determinant of child health and subsequent future health in adulthood (Cormack, Harris and Paine, 2018; Paine et al., 2018; Paine et al, 2020).

The overall approach to document analysis was shaped by the Public Health Critical Race Praxis (PHCRP) framework, which constitutes a set of anti-racism health equity research methods that are grounded in critical race theory (Ford and Jeffers, 2019). PHCRP is useful as an approach which centres the impact of racism at all levels and enables thinking about where the perspective of the 'racial/ethnic minority' sits (Ford and Jeffers, 2019). PHCRP supports the centring of indigenous peoples in its approach to understanding the focus of research. This aligns with a kaupapa Māori research approach, which by its nature should be transformative, beneficial to Māori, Māori-led and aligned with a structural determinants of health analysis (Curtis, 2016; Smith, 2012). Anti-racism in this context is seen as a broad range of activities and practices that counter racism.

Results

Anti-racism health policy and strategy

A scan of central government policy papers, strategies, action plans and toolkits connected specifically to the health and disability sector in Aotearoa New Zealand (from 1980 to August 2020) shows that racism has been explicitly mentioned in 28 policy documents (Table 1). A small subset of these explored the relationship between racism and poorer health outcomes and health inequities, or racism in relation to cultural competency, cultural safety and workforce development. It is important to note that the 28 documents identified over this period are in the context of a far greater volume of reports produced by government and the health and disability sector every year that have *not* included any references to racism (for example, the Ministry of Health website shows that over 30 publications have been released in the period 30 June 2020 to 16 October 2020).

Table 1 shows that racism is most commonly referred to in policy reports and strategies (20), and was referred to in eight toolkits or actions plans. Health sector agencies (primarily the Ministry of Health) were the predominant Crown author.[1] Policy reports and strategies comprise a mix of reviews commissioned by the government and health and disability sector frameworks and strategies that signal priorities for all (or part) of the health and disability sector. Toolkits or action plans detail the specific steps or deliverables expected in relation to a specific policy area.

There has been a significant increase in documents that refer to racism in recent years, with eight documents referring to racism published between 2019 and mid-2020. From 2015 onwards there has been an increase in reporting within health policy documents that not only references racism but begins to provide more examination of the role that institutional racism has in relation to advancing equity and addressing poor health, particularly for Māori. These policy reports coincide with a greater acknowledgement and prioritisation of equity in health and disability policy – for example, in the findings of the Waitangi Tribunal in stage one of its health services and outcomes kaupapa inquiry (Waitangi Tribunal, 2019), and the consideration of equity approaches in health and disability policy development. However, it is pertinent to note that one of the first policy reports (possibly the first) to refer to racism was the Māori perspective advisory committee report on the Department of Social Welfare, *Pūao-te-Ata-Tū* (day break), released in 1988 (Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, 1988). *Pūao-te-Ata-Tū* named institutional racism as the most 'insidious and destructive from of racism' and pointed to the impact of racism on the health and wellbeing of Māori in society (and in the Department of Social Welfare itself). It is compelling and concerning that the messages from *Pūao-te-Ata-Tū* remain very relevant and applicable over 30 years later.

Table 1 shows that there are far fewer documents that provide tools or toolkits that include reference to racism (eight), and none of those identified are focused on tackling racism in health as their primary purpose. The majority of action plans and toolkits (five) talk about institutional racism in discussion sections or theoretical underpinnings, and most have an explicit Māori health focus.

There was a noticeable decline in the number of policy documents where racism was referenced from about 2010 to 2014, which coincided with a change in government at the end of 2008 and subsequent implementation of new policy

and legislation. From the mid-2000s there was also a reduction in references to te Tiriti o Waitangi in government documents, in the wake of a ministerially initiated, state sector-wide review of 'race-based' policies and programmes. This policy review, initiated in 2004 (New Zealand Government, 2004), was criticised in the context of Aotearoa New Zealand's human rights obligations, with the 2011 CERD committee, for example, voicing concern and noting that 'the review was adopted in a political climate unfavourable to the rights of Māori' (Human Rights Commission, 2012, p.11). The pattern over the period 2010–14 highlights that discussions about race and racism in government documents and within a wider governmental system are sensitive to political will and environments (specifically, the will of politicians), and are not always driven by evidence alone.

In 2020 the Ministry of Health released *Whakamaua: Māori Health Action Plan 2020–2025 and Ola Manuia: Pacific Health and Wellbeing Action Plan 2020–2025* (Ministry of Health, 2020c, 2020a). These are the most recent reports (at the time of writing) to be released to the sector which reference racism. The Māori Health Action Plan is underpinned by the Ministry of Health's te Tiriti o Waitangi Framework (Ministry of Health, 2020b) and states that the health and disability system needs to address racism and discrimination in all its forms, as one of four high-level outcome areas. Actions pertaining to this outcome area specifically include the design and implementation of a programme of work to address racism and discrimination in the health and disability system, with most actions placed under the priority area of quality and safety.

While acknowledgement of racism as a health determinant and its importance is often present in the identified documents, many of the documents have minimal discussion of constructive ways that racism in all forms, and particularly institutional racism, can be addressed and eliminated. For example, the mention or acknowledgement of racism is often centred around actions of individuals or relates to workforce sectors (e.g., workforce training to address 'unconscious bias', cultural competency or cultural safety),

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which, while important, needs to be part of a wider, multi-level programme of addressing racism in the health sector. It is important that action to address racism takes place at many points within the health system (not only at an individual level), and importantly at locations of power, such as leadership and governance, funding and organisational functioning.

There are also recent examples in Aotearoa New Zealand that exhibit how institutional racism remains entrenched in systems and structures and is not shifted by statements alone. For example, the revised *New Zealand Cancer Action Plan 2019–2029* (Ministry of Health, 2019) is explicit in stating that addressing all forms of racism and discrimination is central to achieving equitable cancer outcomes. However, when institutional racism was identified in the recent government policy on the eligibility criteria for the national bowel cancer screening programme, the government declined to address it, with spokespeople instead stating: '[w]hilst we acknowledge the need to extend the age range to increase health gains for Māori and Pacific peoples … the only viable and safe option is to introduce the change once the programme is fully rolled out' (Jones,

2020). This tends to indicate that assertions about addressing racism in all forms do not apply to government decision making, reflecting and perpetuating 'inaction in the face of need', one of the manifestations of institutional racism (Jones, 2018b). This can be understood as a form of what Sara Ahmed theorises as the 'nonperformativity' of institutional claims about commitment to anti-racism, where the acknowledgement or 'statement of commitment' becomes the action (Ahmed, 2006, 2012).

Discussion

Anti-racism interventions generally focus on individual acts of racism, discrimination or bias

There are minimal examples of interventions that are explicitly framed as 'anti-racism interventions' in Aotearoa New Zealand, with most focused at the health practitioner level in workforce training and education, centring around work in cultural safety (kawa whakaruruhau). Cultural safety had its genesis in the nursing education sector in the 1990s and had a focus on providers being aware of their own culture and beliefs (Ramsden, 2002), and is regarded as one of the most effective approaches that can be taken within the health and disability sector towards the achievement of health equity (Curtis et al., 2019).

The Health Safety and Quality Commission as part of its Patient Safety Week campaign in 2019 released a series of video talks focused on understanding 'bias', with three presentations exploring, understanding and addressing implicit bias, te Tiriti o Waitangi, colonisation and racism, and experiences of bias. In this campaign, racism is discussed more in the context of 'implicit bias'. Recent research has also investigated ethnic bias (as one form of expressing racism) in health education training (Cormack et al., 2018; Harris et al., 2018).

In Aotearoa New Zealand there is also dedicated teaching about racism and anti-racism in both undergraduate and postgraduate health sciences programmes, and a focus on indigenous-framed learning that includes anti-racist elements (e.g., Pitama, Huria and Lacey, 2014). Targeted admission schemes in health education and training have also successfully

increased the representation of Māori in health professional programmes (Curtis et al., 2015). Recent objections to some admission schemes are an example of the challenges of implementing anti-racism interventions that sit within a colonised system and structure (Hook, Norton and Geddis, 2020).

There have been public awareness-raising campaigns such as the Human Rights Commission's 'Give nothing to racism' campaign (www.givenothing.co.nz), aimed at spearheading a nationwide response to racism, and, more recently, the 'Racism no joke' campaign launched online (on Facebook) in response to an increase in racism towards those from (or believed to be from) Asian ethnic groups during the Covid-19 pandemic.

Organisational practices in employment can be a site of anti-racism initiatives, such as refocusing organisational design and elements, including workforce systems for hiring, representation, protocols, leadership and mentoring (Paradies et al., 2009). Williams, Lawrence and Davis (2019) note that changes to organisational employment policy – such as practices where identifiable information is removed from employment applications – can reduce discrimination. Although very rare, there are also examples of anti-racist approaches taken by organisations in Aotearoa New Zealand, such as Auckland District Health Board's 'straight to interview' policy, whereby Māori and Pacific candidates who meet core criteria for a role are progressed straight to interview (Auckland District Health Board, 2019).

Outside government or health education, in 2014 the Public Health Association of New Zealand issued a policy statement on institutional racism which named the elimination of institutional racism as a key enabler in addressing health inequities and outlined priorities for action; this was updated in 2020 (Public Health Association, 2020). Similarly, in public health, the Stop Institutional Racism network works actively to name institutional racism and contributes to a range of anti-racism actions, such as training in anti-racism, advocacy and publishing on institutional racism (e.g., Came and Griffith, 2018).

> More recent challenges to the health system, such as the Covid-19 pandemic, show how timely it is to ensure that there is an embedded and effective anti-racism approach in health policy.

International comparisons
A scan of anti-racism health interventions internationally shows similar patterns to interventions in Aotearoa New Zealand. In most cases interventions are single-level (Talamaivao et al., 2020a). Single-level interventions are often one-off staff training (for instance, at a health provider) or based around professional training. While there is a recognised place and need for training staff (in particular non-indigenous staff) to understand the complexity of and harm caused by institutional racism and understand the need for meaningful organisational change to work towards and achieve equity, there is a caution that training in a cultural or anti-racism context will be ineffective on its own, 'given that the effect of institutional racism is driven by factors beyond the behaviour of individual staff' (Bourke, Marrie and Marrie, 2019, p.613).

Examples of multi-level anti-racism interventions within organisations (e.g., at health provider or NGO level) include an external assessment tool operating in a hospital setting in Australia, which has shown capacity to begin and progress a transformational process for an

organisation (ibid.), and the US-based White Coats for Black Lives initiative; the latter focuses on addressing racism and spearheading change within the health system by using a 'racial justice report card' for medical institutions to assess areas for action in addressing racism in both medical schools and more widely in the health system (White Coats for Black Lives, 2018).

Evaluations of anti-racism interventions found that activities such as staff training can be effective in regard to awareness and understanding of anti-racism in health, but that 'care providers wanted tools to help them translate the abstract ideas behind equity-oriented health care into action' (Varcoe et al., 2019, p.2). Overall, however, there is limited evaluative information on the effectiveness of anti-racism measures on health provider behaviour in the long term. There is also little research available that goes further and explores the health benefits of anti-racism interventions (Kelaher et al., 2018; Kwate, 2014). Kelaher et al. explored the mental health benefits of participation in anti-racism interventions in Australia and found that such interventions may have positive mental health effects (e.g., confidence and self-esteem) for participants from minority ethnic groups.

Conclusion
In Aotearoa New Zealand's health and disability sector, most anti-racism interventions or initiatives are one-off, single-level approaches, often located at health practitioner or provider level. This is in line with published examples of anti-racism interventions internationally, and is perhaps a reflection of national-level policy and other statements, which acknowledge the injustices of racism as a determinant of health but fail to commit to tangible anti-racist action.

Incorporating anti-racism frameworks or approaches essentially means a reassessment of the power base, power relationships and 'the parallels, intersections, and distinctions between all forms of oppression and the ways they manifest themselves within an organization' (Greene, 2007, p.12). Lasting change in health systems can only occur when power imbalances are examined and addressed – for example, by reorienting funding

structures, services, access and representation for and partnerships with indigenous peoples (Bourke, Marrie and Marrie, 2019).

As is the experience of embedding equity as 'business as usual' in the health and disability sector, all too often it is easy for embedded structures within which society operates to fall back 'to type' and for the system to revert to doing what it has always done. As Greene (2007) highlights, there are risks that anti-racism work gets pushed to the side when other 'pressing' matters take precedence as a matter of course. More recent challenges to the health system, such as the Covid-19 pandemic, show how timely it is to ensure that there is an embedded and effective anti-racism approach in health policy. This arguably has been evident during the ongoing Covid-19 pandemic response, where a lack of an equitable and anti-racism approach has been highlighted and failings identified in incorporating a meaningful te Tiriti o Waitangi partnership framework into tackling the Covid-19 health crisis (King et al., 2020; McLeod et al., 2020).

There is a strong platform of empirical knowledge regarding racism as a determinant of health in Aotearoa New Zealand (Talamaivao et al., 2020), and it is telling that the recommendations outlined in *Pūao-te-Ata-Tū* in relation to deleterious impacts of racism on health, and in particular Māori health, remain relevant decades on. An acknowledgement of racism as a public health crisis and call to action requires immediate attention across the state sector and society to meet Aotearoa New Zealand's te Tiriti o Waitangi and international obligations. This is echoed in a similar way across reports recently released (e.g., Waitangi Tribunal, 2019) and across the wider public sector (e.g., Office of the Children's Commissioner, 2020). It is important given the moving nature of political will and what is deemed in favour regarding government policy that actions to address institutional racism in government policy move forward to embed, capture and publish the 'where to from now' steps.

The recent review into Aotearoa New Zealand's health and disability system (Health and Disability System Review, 2020), and resulting government announcements of health and disability system transformation (Little, 2021), have been labelled a once-in-a-generation opportunity to truly re-set the health and disability sector to deliver on its long-stated equity and wellbeing goals (Health and Disability System Review, 2018). The government-endorsed changes critically include the establishment of a Māori Health Authority, which would sit alongside the Ministry of Health and another new entity, Health New Zealand. While the exact functions of the entities are still being shaped, the Māori Health Authority seems set to have a policy role as well as a commissioning (or purchasing) function. The government therefore has a unique opportunity to address institutional racism in the structuring of its health and disability institutions' health system design from the top down. However, as many commentators have noted, the devil will be in the details (Baker, 2021). In working through the details of the health sector transformation, ministers and their officials need to be considering both how to build anti-racist health organisations, and how to ensure appropriate monitoring and review of anti-racist approaches at a system and organisation level and resist the temptation to focus only on interpersonal racism at a practitioner level.

The need and demand to enact real actions for anti-racism change is pressing and urgent, particularly in light of the very real challenges to equity and reminder that racism still permeates our health sector structures and responses. An approach to an anti-racism health policy at the organisational level needs to be transformational, incorporate multi-level solutions, and be embedded into 'business as usual' through all levels of the health and disability sector. The organisational level is an important yet neglected site for anti-racism in the health and disability system and warrants further urgent focus in research and in policy, but most importantly in action.

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Greg Waite

Resetting Benefits
benchmarks for adequate minimum incomes

Abstract

New Zealand's successful management of the Covid-19 pandemic has emphasised the value of evidence-based policy. Government policy on income support payments is also changing significantly in response to the Welfare Expert Advisory Group's 2019 report. This article examines the report's recommendations in the context of international and local research, considers whether benefit increases in the 2021 Budget deliver on those recommendations, and discusses the impact of high housing costs on welfare reform options.

Keywords benefit adequacy, minimum income, budget standards, evidence-based policy

The Welfare Expert Advisory Group (WEAG) concluded in its final report that New Zealand's income support system was both inappropriate and inadequate, with households facing weekly shortfalls of between $66 and $356 across a range of family types and benefits (WEAG, 2019a). In response, the Ministry of Social Development began internal work to address the report's recommendations, with the most significant changes to date becoming public in the 2021 Budget. According to Finance Minister Grant Robertson, 'By April next year we will have moved all main benefit rates to the level recommended by the WEAG and in the cases of families and whānau with children, beyond those rates' (Robertson, 2021, p.9). On the other hand, Michael Fletcher, an economist who advised the group, reviewed the 2021 Budget changes and concluded, 'all of these households still face substantial weekly deficits' (Fletcher, 2021). Why are these two well-informed voices so far apart?

Both are correct, but they are referencing different recommendations in the WEAG's *Whakamana Tāngata* report. Grant Robertson refers to recommendation 20: 'increasing main benefits by between 12% and 47%' (WEAG, 2019a, p.23), while Michael Fletcher refers to recommendation 26: 'Increase, as soon as possible, overall income support to levels adequate for meaningful participation in the community, as defined by the minimum income standard' (ibid., p.24). The difference here is between the advisory group's recommendations for immediate monetary increases, to be implemented urgently but constrained by the limitations of the current benefit system, and their recommendations for an adequate minimum income, which would require systemic review and changes.

But there is much more to unpack in New Zealand's current measurement of minimum income adequacy. Statistics New Zealand, in accordance with the Child Poverty Reduction Act 2018, publishes data for nine separate measures of poverty annually, including three primary measures

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(Stats NZ, 2021). The majority are variants of the OECD measure of poverty, which is set at 50% of median equivalised household income, with the balance measuring material hardship. These income measures collectively provide a reliable public indication of trends in poverty over time, but they are not accurate enough to evaluate which household types face the greatest hardship. Hirsch et al. (2021) found that the modified OECD equivalence scale used in Statistics New Zealand's reports underestimated the costs of children compared to adults in all four countries studied, and the costs of singles compared to couples in three of the four countries. They concluded: 'These results have high policy relevance … While no single equivalence scale can be universally accurate, making use of evidence based directly on benchmarks such as MIS [minimum income standard method] can help inform public priorities in tackling low income' (Hirsch et al., 2021, p.1).

The WEAG's supplementary paper 'Example families and budgets' developed detailed family budgets to provide more accurate estimates of income adequacy in New Zealand (WEAG, 2019b), an approach which draws on the latest international research.

Contemporary budget standards methodology

To measure poverty, researchers choose one or more measures which are best suited to their particular research question. These may include absolute and relative income benchmarks for poverty; well-being, deprivation and capabilities matrices; outcomes analysis, and more. Among these many approaches, budget standards[1] are being adopted in a growing list of national studies because they provide a credible and robust evidence base (Saunders, 2018, p.7). Carefully considered budgets are developed for each household type, tenure and employment status to support a specified standard of living. This ensures consistency across different circumstances, including benefit types. Budget estimates can be validated using multiple sources of evidence: behavioural (survey) data on the spending patterns of relevant families; expert (normative) advice on how much is needed to achieve the specified living

… 76% live in less formal tenancies without bonds, live in state housing, share with family or friends, are homeowners or are homeless.

standard; and experiential (focus group) input on how real families budget and live. The WEAG incorporated all three of these.

Major budget standards studies include Vranken (2010) and Goedemé et al. (2015) in Europe and Davis et al. (2018) in the United Kingdom. Australian research has been particularly thorough, with their extraordinary, 670-page foundation report published in 1998 (Saunders et al., 1998), followed by a comprehensive review and update in 2017 and extension to estimate the costs of children in 2018 (Saunders and Bedford, 2017, 2018). In the United Kingdom, the Centre for Research in Social Policy publishes annual minimum income standard reports. 'Participatory social minimum standards' to enable healthy lives and include a modest level of participation in society have been widely discussed there (Davis, Hirsch and Padley, 2017). Another notable inclusion in UK budget standards is a specific category for those receiving age pensions. While many nations have traditionally provided very different levels of support for working-age and retired households, the increasing use of evidence-based budgets may encourage some future convergence.

In addition to consistency with this growing body of international research, the WEAG's implementation of budget standards allows some flexibility in their application. Budgets were separately specified for core living costs and limited

social participation, which provides two options depending on political and budgetary constraints. This ability to vary its underlying components and assumptions is a key advantage of budget standards that no other approach shares, according to Saunders and Bedford (2018, p.26). Budget standards will never be the only approach used to understand poverty, because it measures only income and expenditure. Other approaches add vital supplementary evidence about experienced hardship, barriers to health services or learning, non-cash transfers and more (Saunders and Naidoo, 2018). However, budget standards is the only poverty methodology which transparently generates consistent benchmarks across different household types and circumstances, making it uniquely suited to the complex task of reviewing social support benefits.

Minimum incomes: how much is enough?

In concluding that New Zealand's benefits were inadequate, the WEAG relied on example case studies and assumed that each household received their full entitlement to secondary payments, paying lower-quartile rents in a dwelling size appropriate to their family type. In real life, recipients pay a wide range of rents and may not receive their full entitlements. My research analysing administrative data on benefit recipients in private rental housing provides a check on the WEAG estimates by replacing their example households and normative assumptions with the average received incomes of and rents paid by real households.

Table 1 summarises the results for the full range of household types and benefits, using extrapolation to extend the WEAG's six example families[2] (Waite, 2021). The average amounts for secondary payments (the accommodation supplement, temporary additional support and family tax credits) prove to be lower than the WEAG's estimates of entitlements. Bond records of the rents paid by benefit recipients also show that in large centres like Auckland with diverse suburbs and housing stock, the WEAG's assumption of 25th percentile rents is reasonably accurate, but low-income households in smaller regional centres are less able to secure

Table 1: Benefit adequacy measured by administrative data on income and rent, recipients of full benefits (jobseeker support, sole parent support and the supported living payment) with no earned income and living in private rental, June 2019

Benefit,[1] household type	Shortfall[2] ($)	Shortfall (%)	Benefit & allowances	Budget after housing	Household rent	Accommodation supplement[3]	Family tax credits[3]	Temporary support[3]
JSWR, single	-279	-84%	333	302	310	84	–	27
JSWR, couple	-308	-55%	565	494	379	137	–	49
SLP, single	-183	-47%	386	312	257	74	–	30
SLP, couple	-217	-34%	631	515	333	118	–	43
Various, adult only sharers	-188	-24%	781	636	333	177	-	38
SPS, single 1 child (all ages)	-199	-33%	611	433	377	141	81	39
SPS, single 2 children	-241	-35%	684	518	407	185	127	25
SPS, single 3+ children	-257	-34%	764	597	425	185	215	17
JSWR, single 1+ children	-277	-43%	649	530	396	154	111	34
JSWR, couple 1 child	-311	-46%	679	626	364	154	99	22
JSWR, couple 2 children	-361	-47%	769	700	430	186	148	30
JSWR, couple 3+ children	-514	-68%	758	818	455	174	164	16
SLP, single. 1 child	-212	-33%	634	483	364	129	72	41
SLP, single 2 children	-234	-32%	730	570	394	176	130	25
SLP, single 3+ children	-212	-25%	840	620	431	191	237	13
SLP, couple 1 child	-269	-36%	740	662	347	140	92	15
SLP, couple 2 children	-287	-33%	880	762	405	163	204	17
SLP, couple 3+ children	-461	-56%	823	901	384	154	162	11
Various, sharers + children	-184	-16%	1157	929	412	246	175	41

Source: Statistics New Zealand Integrated Data Infrastructure (IDI) 30 June 2019 (8,100 households). Includes rental bonds lodged in the 24 months to June 2019; excludes households with earned income.

Notes: 1. SLP is supported living payment, JSWR is jobseeker support work ready, SPS is sole parent support. 'Full benefit' excludes recipients on reduced rates due to earned income, but includes sole parents with deductions of $22 per child plus $6 after 13 weeks for refusal to identify the second parent (sanction removed on 1 April 2020). WEAG budgets are inflation adjusted using CPI groups for June 2018–2019.
2. Weekly shortfall = benefits + allowances – (budget costs + rent), using WEAG 'basic living with minimal social participation' budget; all figures are averages.
3. Accommodation supplement, family tax credits and temporary additional support payments are shown separately at right for information, but also included in benefit & allowances total. Total includes winter energy payment but excludes Best Start tax credit, as this payment covers first-year costs not specified in WEAG budgets.

properties below the market median (ibid.). Despite these differences in incomes and rents, the final estimates for weekly household deficits are still broadly consistent with the results presented in the *Whakamana Tāngata* report. No household type received enough financial support to afford, on average, the WEAG's 'basic living with minimal social participation' budget. Average weekly shortfalls are higher for most household types, ranging between $183 and $514 per week, or between 16% and 84% of household income (ibid.).

Analysis of this administrative data set also reveals the diversity of household arrangements among income support recipients. Just 24% of households receiving only benefit income are in the formal private rental market, with bonds held by Tenancy Services. The remaining 76% live in less formal tenancies without bonds, live in state housing, share with family or friends, are homeowners or are homeless.

Michael Fletcher's analysis of the 2021 Budget also used the WEAG's example family budgets as his benchmark when assessing the announced increases to main benefit rates. After allowing for inflation for both benefit rates and household budgets since 2018, he concluded:

[A]ll of these households still face substantial weekly deficits. Even looking just at 'core' expenditure, only the sole parent with one child family comes close to even; the others are between $56 and $150 per week in deficit. Include participation allowances and these households will be between $74 and $286 per week short. ... you might feel you are able to trim $20 – or perhaps even $30 – per person off the weekly budget but making the budgets balance is going to require deep cuts and, unless you have savings or some other income to fall back on, serious hardship. (Fletcher, 2021)

Finally, the latest biennial OECD economic survey of New Zealand provides comparative international evidence in favour of increasing benefits, noting that the country's 'income distribution is more unequal than the OECD average, reflecting lower than average redistribution through taxes and transfers, and is more skewed towards high-income households' (OECD, 2019).

The announcements in the 2021 Budget suggest that the current government has accepted the WEAG's urgent recommendations for increases to main benefit rates and annual indexing to keep pace with wages. Broader recommendations, including reform of Working for Families and the accommodation supplement, are yet to be addressed. Competition from other government priorities and budget constraints may stretch the timeline and limit the scope, and the composition and policies of governments will change, but the landmark status of the *Whakamana*

Tāngata report does appear to have shifted the political centre.

Systemic complexity

The WEAG noted clawback mechanisms in the current benefit system, where secondary payments reduce as a result of increases to primary benefits (WEAG, 2019b, p.26–7). The Ministry of Social Development responded to media coverage by advising that its internal modelling estimated that those on main benefits would receive an average of $19 a week more in assistance from the $20 1 July increase (Rashbrooke, 2021). Further reductions may occur over time as recipients are required to reapply for temporary additional support payments, most of which are to meet ongoing high housing costs (McAlister, St John and Johnson, 2019, p.35). This artificial separation between core benefit payments and additional payments adds to the complexity faced by clients and has led to calls for increases in main benefits and simplification of temporary payments (Rashbrooke, 2021).

New Zealand's social support system uses the accommodation supplement as its primary tool to address the very large differences in rents between major cities, regional centres and rural areas. The payment meets only part of higher rents, covering 70% of the rent above a minimum (set at 25% of base benefit) and below maximum thresholds which vary across four areas and by household size. The partial nature of this subsidy ensures that households in regions with higher rents, such as Auckland and Wellington, have higher average weekly income shortfalls.

The WEAG recommended the following changes to accommodation supplement payments: increasing the government contribution from 70% to 75%, increasing the maxima to the median regional rental rates, and annual indexing to maintain relativity with housing costs (WEAG, 2019a, p.115). This would certainly reduce poverty, but Grant Robertson has expressed doubts about the accommodation supplement and flagged a review (Satherley, 2021), while weekly accommodation supplement payments rose sharply from $17.02 million in December 2016 to $32.5 million in December 2020 (Edmunds, 2021).

Table 2: Weekly income shortfall ($) by region and bedrooms, benefit recipients in private rental, June 2019

Benefit, household type	1 bed	2 beds	3 beds	4 beds	5+ beds
Northland	–153	–191	–225	–284	
Auckland	–184	–226	–260	–314	–448
Waikato	–155	–185	–243	–342	–498
Bay of Plenty	–166	–203	–278	–379	
Gisborne	–140	–159	–265		
Hawke's Bay	–124	–239	–264	–369	
Taranaki	–145	–176	–218	–201	
Manawatū-Whanganui	–154	–174	–232	–288	–313
Wellington	–175	–226	–293	–453	
West Coast		–178	–213		
Canterbury	–137	–209	–241	–291	–395
Otago	–148	–217	–240	–299	
Southland	–134	–180	–220	–309	
Tasman			–203	–311	
Nelson	–168	–203	–342	–294	
Marlborough		–160	–259		

Source: Statistics New Zealand Integrated Data Infrastructure (IDI) 30 June 2019 (8,100 households). Includes rental bonds lodged in the 24 months to June 2019; excludes households with earned income.

Note: Estimates based on fewer than 20 households removed under confidentiality rules.

A consistent approach to annual adjustments is also needed across the benefit system. Without this, very low benefit-abatement thresholds for earned income of $80–$100 per week remained unchanged from the 1980s until 2020 (Child Poverty Action Group, 2018, p.2) and there were no updates to accommodation supplement maximum payments between 2005 and 2018 (McAlister, St John and Johnson, 2019, p.18). Looking to the longer term, a regular independent review would provide consistency with the minimum wage setting process.

Intersections with economic trends

In New Zealand, low-income privately renting households are the fastest-growing group living in poverty (Perry, 2018; Hick and Lanau, 2018). If rents continue to rise faster than income, this relatively non-negotiable budget item will form a larger share of weekly costs, increasing the number of unsustainable tenancies. Internationally, New Zealand ranks as the sixth worst nation in the OECD for low-income rental affordability, behind the United States, Great Britain, Spain, Greece and Chile. New Zealand and the US provided non-standard affordability figures calculated on gross rather than net income, so unaffordability was underestimated and our true ranking is probably worse (OECD, 2019).

New Zealand regularly ranks at or near the top in global rankings for unaffordable home purchase (Cox, 2021; Thomson, 2021). Nominal property prices in New Zealand have risen by an average of 9.5% per annum between 1980 and 2019[3] (Waite, 2021), primarily driven by speculative, debt-fuelled investment which treats housing as an asset for financial gain (McArthur, 2020). Over the same period, rent increases have averaged 5.6% per annum, much less than house prices but more than the 4.5% average change in household incomes, and the 4.2% annual increase in the CPI (Waite, 2021).

And the final outcome of our past policies is still to come, because New Zealand's housing market is not in a stable equilibrium. Landlords have accepted lower rent increases while they got untaxed capital gains which frequently exceeded full-time annual salaries (Bell, 2021a, 2021b). Capital gains on property must eventually reduce to keep home purchase viable. When that happens, investors will need to derive their return primarily from rents.

To illustrate the consequences of declining capital gains, consider the annual

return from capital gains and rent on a $1 million investment property in Auckland of around 12.3%. This illustrative scenario assumes a typical property investment model of 40% equity, interest-only 25-year loan, 2020 median Auckland purchase price, median rents, four weeks vacant and 8% management fee, using the Westpac rental investment calculator. Compare that with a future scenario where housing, immigration, tax, interest rate and/or pandemic policies shift to encourage constant real house prices. The 2020 Auckland median rent of $589 for a three-bedroom house would need to rise to $707, an increase of 20%, to give future investors a net return of just 5.6%. Every extra half percentage point increase in investor returns above 5.6% would require an additional 5% rise in rents (Waite, 2021). When New Zealand's house price curve flattens, rent increases may be dramatic.

After the Budget, where to next?
I have argued here that the Welfare Expert Advisory Group's example family budgets provide the most robust benchmark for the adequacy of New Zealand's social support system. The strengths of this approach have been outlined above: fitness for purpose; accuracy and specificity in relation to varied household circumstances and benefit types; transparency; and flexibility in both method and application. It is worth restating here the two minimum budgets developed by the WEAG: one for core or basic costs, and a slightly higher level that allows for some relatively minimal social participation. These provide an evidence base for public and policy discussion about what level of income support is appropriate. While recent changes to benefits, indexing and abatement thresholds have been significant, incomes will still not meet the lower WEAG benchmark in June 2022, and do not deliver equivalent support across the three main benefits (Fletcher, 2021).

This is particularly important as the 2022 changes were the first benefit-specific increases, after flat additions of $25 in 2020 and $20 in 2021 to all benefits. These changes were in response to the WEAG's short-term recommendations, limited by weaknesses in the current system, but they are a critical first step to creating a fit-for-purpose welfare system.

> *What we know is that high house prices relative to incomes are contributing to rapid declines in our home ownership rate.*

A further review of the accommodation supplement has been announced, but there will be no easy policy solutions. If the WEAG recommendations are accepted, annual costs will be much higher and become increasingly less affordable for the state as long as rent increases continue to outpace earnings and tax revenue. The review will include consideration of alternative initiatives, such as rent to buy (Satherley, 2021). But rent subsidies have one key advantage: they can deliver large-scale targeted assistance. Accommodation supplements were paid to 351,912 people in June (Ministry of Social Development, 2021), distributing $1.7 billion of assistance in the 2019/20 financial year (Edmunds, 2021). Scaling back that support and redirecting it to alternatives may mean reducing effective assistance to many, with higher-cost assistance to a few.

An alternative approach, recommended by the Child Poverty Action Group, is to increase core benefit rates and Working for Families payments to 'cover all basic necessities (for example, housing, food, power, clothing, transport and social inclusion) without requiring supplementary income assistance in all but the most extraordinary circumstances' (McAlister, St John and Johnson, 2019, p.8). With large differences between rents in urban and rural locations, this would create

a financial incentive to move to rural areas with limited employment opportunities. New Zealand's excessive housing prices also undermine other major policy options. High costs for scarce land, labour and materials undermine new-build affordable housing and reduce government's capacity to grow and renew an ageing social housing portfolio.

For 40 years, nominal house price growth has averaged 9.5%, rising to 21% in the year to August 2021 (Bell, 2021a). In response, the bright-line limit for capital gains tax on existing residential property was increased to ten years from June 2021, deductions for interest expenses on rental properties were restricted from October, and the Reserve Bank reintroduced its 40% deposit requirement for investors from May. In its pre-Budget economic briefing, the Treasury forecast that annual house price growth would peak at 17.3% in June 2021, then ease to 0.9% by June 2022 (Robertson, 2021). Will these regulatory changes be enough to moderate long-term house price growth? Was the record-breaking 10% rise in rents for the year to July 2021 (Bell, 2021c) a response to short-term lack of supply or a taste of the future? Time will tell. What we know is that high house prices relative to incomes are contributing to rapid declines in our home ownership rate. Social change of this magnitude emphasises the need for an effective policy response to assist the significant share of our population disadvantaged by high housing costs. Unaffordable housing is ultimately a policy choice, but one which disadvantages future generations to lift the profits of today's property investors.

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1   Budget standards are also referred to as minimum income standards in the UK and reference budgets in Europe.
2   Budget standards can be extended to cover additional household types by extrapolating from representative example families; see, for example, Saunders and Bedford (2018). The assumptions to extend WEAG budgets were: couples' savings for shared services were set at two thirds those for three sharing adults; cost of children as difference between household costs with and without children; children aged up to 4 are based on WEAG's budget for a child aged 2, child aged 5–11 on average of ages 5 and 8 (not separated by WEAG), 12–24 on average of ages 14 and 16.
3   House prices Reserve Bank of New Zealand; rent, household income and CPI Statistics New Zealand. All values are nominal, unadjusted for inflation.

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Integrated Data Infrastructure disclaimer: Results are not official statistics. They have been created for research purposes from the IDI, which is carefully managed by Statistics New Zealand. For more information about the IDI please visit https://www.stats.govt.nz/integrated-data/.

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Environmental Governance and Greening Fiscal Policy

Government Accountability for Environmental Stewardship

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His book addresses the increasingly urgent question: 'How can governments be held more accountable for environmental stewardship?' It explores enhanced national State of the Environment reporting and integration of environmental outcomes in key national indicators; mainstreaming environmental goals, targets, and risks by integrating them in fiscal policy and the annual budget, a government's most powerful policy instrument; and progressively exposing and eliminating harmful tax and expenditures policies, putting a price on pollution, and providing environmental public goods.

The book combines in-depth assessment of the latest green and climate budgeting literature and country practices with discussion of entry points for greening fiscal policy, and the role of civil society monitoring. It will be of interest to finance and budget officials, to environment agencies, oversight institutions, international organizations, and civil society organizations, and to academics and students in the fields of environmental studies, development studies, economics, public finance, and public policy.

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Kimberley O'Sullivan and Helen Viggers

Six ways to help fix
energy hardship
in New Zealand

Abstract

Energy hardship is caused by the interaction of factors including housing quality, appliance efficiency, energy source and price, and occupant needs and income. Multiple policy approaches are needed to address these varied causes of energy hardship, and the lack of an official definition and a measurement strategy in Aotearoa should not preclude policy action to address this critical social determinant of health. Here we outline six ways to help fix energy hardship in New Zealand.

Keywords energy poverty, energy efficiency, health, equity, just transition, co-benefits

The term energy poverty (increasingly known in New Zealand as energy hardship) describes the inability of households to access and/or afford sufficient household energy to meet the needs of occupants (including maintaining healthy indoor temperatures) (Bouzarovski and Petrova, 2015). While there has been a focus on the need to achieve affordable warmth, from the earliest definitions there has always been an acknowledgement that energy poverty encompasses all energy use within the home (Boardman, 1991, 2010). Energy hardship is caused by several interacting factors, including inadequate energy efficiency of both the building and appliances, energy service needs of the home and its occupants, and access to and the cost of household energy (Bouzarovski and Petrova, 2015; O'Sullivan, 2019). Health consequences are both acute and chronic, including the physiological health risks of exposure to cold indoor temperatures, such as respiratory and cardiovascular impacts and exacerbation of chronic health conditions, and poor mental health outcomes, including stress, depression and anxiety (Jessel, Sawyer and Hernández, 2019). Broader impacts include negative effects on education and nutrition, demonstrating that energy hardship acts as a social determinant of health and deserves significant policy intervention (Free et al., 2010; Jessel,

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Sawyer and Hernández, 2019; O'Sullivan et al., 2017; O'Sullivan, Howden-Chapman, Stanley et al., 2013).

Energy hardship differs from general income hardship as the major contributing causes of energy poverty – dwelling design and housing quality that determine the energy requirements of the dwelling, as well as energy source and price – are largely external and outside the control of occupants. Increasing household income is rarely enough to lift a household out of energy hardship, as capital expenditure to address housing and appliance energy efficiency is usually required (Riva et al.,

to heat as they did in 1975 or 1995. Retrofitting programmes, including those run by the government, typically focus on the easy-to-reach parts of a dwelling, such as ceiling insulation in pitched roofs or underfloor insulation for suspended floors.

Prior to Covid-19, energy poverty had gained traction as an issue for the political and policy agenda in New Zealand over the past ten years, with policies to address the critical driver of improving home energy efficiency gaining cross-party support. It was estimated to affect around a quarter of New Zealand households in 2008 (Howden-Chapman et al., 2012), and around one

- ensure equitable energy pricing;
- increase visibility of energy use;
- manage electricity infrastructure investment to support residential consumers; and
- monitor energy poverty, and target remediation policies.

Improve the minimum energy efficiency of dwellings

The economic, environmental and wellbeing benefits of insulating homes are well-established (Grimes et al., 2012; Howden-Chapman, 2017), and successive governments have committed to improving the energy efficiency of existing homes through continuing work programmes to retrofit insulation, as well as installing efficient heating. While these programmes have made significant progress, insulating 300,000 to date, an estimated 900,000 homes still require upgrading (Energy Efficiency and Conservation Authority, 2017). These programmes for existing housing should be continued and extended as much as possible; this should include both insulating more dwellings and ensuring that the level of insulation installed maximises long-term wellbeing.

In addition, the required energy performance of new housing should be increased to reduce future energy costs for occupants. The insulation levels required under the current Building Code are lower than in many appropriate comparison countries: for instance, required insulation values of new dwellings in the coldest part of New Zealand are only about half those required in Scotland (Scottish Government, 2019; Standards New Zealand, 2009). Unless the quality of new housing increases, expensive and potentially difficult retrofit procedures will still be needed many years into the future. Of particular importance is that areas of a dwelling where it is difficult to retrofit insulation, such as under a concrete pad or inside walls, should have a high minimum requirement for compliance unable to be traded off at the design stage for improved values in parts of the dwelling which would be easier to upgrade later. Updates to the Building Code are currently under discussion (Ministry of Business, Innovation and Employment, 2021b). While the proposed insulation options are improvements on

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forthcoming). Were increasing income and energy use the sole method used to address energy hardship, the additional carbon expenditure to reach the energy requirements for the dwelling and occupants would pose future risk and costs. Other policies, such as improving housing and heating appliance energy efficiency, have proven co-benefits and provide better value for money (Fyfe et al., 2020; Grimes et al., 2012; Preval et al., 2010; Preval et al., 2017).

New Zealand national law did not require insulation in new dwellings prior to 1978, and requirements increased slightly in the 1990s and again in the mid-2000s (Viggers et al., 2017). At the time of the 1976 census there were 926,484 private dwellings counted, and 1,276,329 at the time of the 2001 census (Statistics New Zealand, 2015). Many of those dwellings are still occupied today, and unless retrofitted will still require as much energy

third in 2017 (Statistics New Zealand, 2017). However, the Covid-19 pandemic and its economic and social fallout is likely to have caused increased energy hardship, at least temporarily (Rotmann et al., 2021). The Electricity Price Review (Electricity Price Review, 2019) has strengthened previous evidence-based calls that we must define, monitor, and find ways to reduce energy hardship in New Zealand (Howden-Chapman et al., 2012; O'Sullivan, Howden-Chapman and Fougere, 2011, 2015). Here we suggest that specific policies that are intended to reduce energy hardship be targeted to specific groups or locations and time frames. We outline six policy fixes that could contribute to the suite of policy initiatives required to address this complex problem:

- improve the minimum energy efficiency of dwellings;
- introduce mandatory energy performance certificates for housing;

the current situation, some still lag behind international standards. The proposed changes lack the aspirational vision required to meet the climate challenge in that they do not even mention approaching near-zero-energy housing, and do not appear to consider requirements for thermal comfort in summer.

In the era of climate change it will be increasingly important for buildings to be designed to cope with extremes of both heat and cold. Buildings should ideally be designed to be free-running (with passive heating and cooling) for as much of the year as possible with natural ventilation. There are considerable tensions between the desire to minimise costs when designing buildings suitable for today's environment, and ensuring that buildings built now will remain suitable for the environment 50 years hence. There is a need for cradle-to-cradle assessment of the role of buildings in driving or reducing carbon emissions, as acknowledged in the recent advice to the government from the Climate Change Commission. In addition, urgent consideration should be given to how much of the housing stock it makes sense to retrofit, or what to do when the energy and carbon costs of improving some dwellings far outweigh the benefits (Boardman, 2012; Boardman et al., 2005). Co-benefits of reducing carbon emissions include improved thermal comfort and reduced energy requirements, providing health gains and easing energy hardship.

Introduce mandatory energy performance certificates for housing
The healthy homes standards recently introduced under the Residential Tenancies Act require, where feasible, some basic measures for rental properties, including mechanical ventilation, ceiling and underfloor insulation, adequate drainage, and a form of fixed heating in the living room. However, the standards apply only to rental properties, and do not give the prospective tenant any direct information on the likely cost of adequate energy services for the property. Energy performance certificates are used in a number of jurisdictions (Viggers, Keall and Howden-Chapman, 2021), and a recent review found that despite some methodological problems, dwellings

with higher rated performance generally attracted a price premium (Daly et al., 2019).

There is considerable information asymmetry between landlords and prospective tenants, and vendors and prospective buyers. Energy performance certificates are one way for buyers/tenants to more fully understand the potential thermal performance of a dwelling and therefore assess more accurately the costs of energy services inherent in living there. Currently, without a formal mechanism for this, potential inhabitants are reliant on their previous experiences in dwellings of apparently similar design. This estimation

Business, Innovation and Employment, 2020) such modelling is proposed at the consenting and compliance stages, which will support the government's signalled intention to introduce energy performance certificates (Energy Efficiency and Conservation Authority, 2020). This modelling could be designed to be suitable for energy certification. Although the 2020 proposal covered only new buildings, feedback from the consultation was in favour of existing buildings also being included (Ministry of Business, Innovation and Employment, 2021a), which would allow a natural extension of the energy performance certificates.

> While energy poverty includes all energy used within the home, by far the most important in the New Zealand context is electricity, with an estimated 69% of all household energy powered through electricity.

leaves substantial room for error, and can be particularly problematic for migrants without long experiences of New Zealand's housing styles and weather conditions (Teariki, 2017).

Energy performance certificates enable landlords and developers to better value the energy gains for prospective inhabitants of their dwellings, reducing the split incentive for energy efficiency investment. This encourages building and retrofitting above the bare minimum required by regulation.

In order for an energy performance certificate to be reasonably accurate in predicting a dwelling's energy use under standard conditions, a substantial modelling exercise would need to be undertaken. This would include both the gathering of dwelling-specific information, and the development of a modelling process and protocol to cover the whole country. Under the Ministry of Business, Innovation and Employment's Building for Climate Change programme (Ministry of

Ensure equitable energy pricing
While energy poverty includes all energy used within the home, by far the most important in the New Zealand context is electricity, with an estimated 69% of all household energy powered through electricity. Electricity pricing in New Zealand presents several challenges for addressing equity while also meeting environmental and demand-side management needs. The price of electricity, to the residential consumer, is made up of the cost of electricity generation and transmission, the cost of electricity distribution, taxes to government, metering charges, and a levy paid to the Electricity Authority. The generation and distribution charges make up the bulk of the cost of most electricity bills.

The cost of electricity generation varies through the day and year as the viability of cheap generation methods, often renewable, to meet the country's demand changes with both the demand and weather conditions. Many retailers average out this cost to

present householders with a flat cost per unit of electricity, but some include price signals – 'time-of-use pricing' – to indicate when the electricity is most costly to generate. This provides a useful monetary incentive for households with the capacity to shift their load away from peak times, which should help to reduce the need for additional 'peaking' generation capacity. Yet time-of-use pricing also presents significant challenges for families, who often have energy schedules that are difficult to shift (for example, laundry, with complicated schedules for clean school or sports clothes (Anderson, 2016), or 'dinner,

to engage fully with the market, share the distribution network with commercial and some industrial consumers. One feature noted by the Electricity Price Review was that distribution cost allocations for residential consumers tended to be at the higher end of the 'fair' range, while those for business consumers were at the low end (New Zealand Government, 2018).

There is considerable tension between pricing to encourage load shifting away from peak demand periods, to reduce the need for further investment in expensive generation or distribution assets, and pricing to ensure that households with

comparing equivalent plans and usage, most prepayment options remain more expensive in New Zealand than standard post-payment plans (O'Sullivan, Howden-Chapman and Fougere, 2011), except Globug, a prepay product offered by Mercury Energy to customers eligible for a community services card discount. We have long argued for better consumer protections for prepayment consumers, as well as reporting and monitoring of 'self-disconnections' on prepayment connections in order to understand the extent to which prepayment disconnections are problematic or pose health risks (ibid.; O'Sullivan, Howden-Chapman and Fougere, 2015).

The low fixed charge tariffs introduced by regulation in 2004 allow, with some restrictions, households which use less than 8–9,000 kWh/annum to opt for a tariff with lower daily fixed charges, but typically a higher charge per kWh unit, giving an overall cost saving. Although instituted in response to consumer concerns about fixed cost increases, the legislation's primary stated objective was energy conservation. The tariffs were signalled for removal by the Electricity Price Review, and this change is currently in progress (Electricity Price Review, 2019; Woods, 2020). Basic zero-sum modelling suggests that if the tariff is removed, very low users might pay up to about $300 more per year, average users a similar amount to what they pay currently, and high users save about $150 per year (Viggers, 2021). While the low fixed charge tariffs are not perfect, they act as a way for income-constrained households to control their energy costs, so we suggest that they should not be removed unless and until there is suitable replacement policy or regulations in place for these households.

There is inherent tension in pricing, largely through market mechanisms, for electricity, which is essential to participating fully in modern life (Viggers, Amore and Howden-Chapman, 2021). Other options for pricing include progressive pricing, where the unit price of the first consumption block has a lower tariff, the second block, which meets the average consumption, has a higher unit price, and subsequent blocks have increasing tariffs, which has been proven to encourage

> There is inherent tension in pricing, largely through market mechanisms, for electricity, which is essential to participating fully in modern life …

bath and bed' routines (Nicholls and Strengers, 2015)), and can contribute to gender imbalances, with 'more work for mother'. Other households have people with health needs or engaged in shift work, meaning that household schedules cannot be easily altered.

The distribution charges are the costs of delivering the electricity from the grid exit point to the household through the local lines network. These costs vary sharply across the country, dependent on the local geography and the number of consumers to support the network. There is no opportunity for a household in a given location to switch between distribution networks. Some lines companies offer a discounted cost for electricity delivered outside peak periods, although retailers may or may not average this out across the bills they deliver to households. In addition, some lines companies offer lower rates for households which use some demand shift technologies, such as cycle timing ('ripple control') for hot-water tanks, which the company can control during peak periods. Residential consumers, being large numbers of small users typically without the time or expertise

little flexibility are not disadvantaged further. However, some technologies (e.g., timing of freezer de-icing) could usefully shift some peak-time load with no difficulty or input from households.

Comparisons are often drawn between the costs of residential electricity in New Zealand and overseas, highlighting New Zealand's cheaper electricity (Electricity Price Review, 2019), but these comparisons fail to take account of New Zealand's high dependence on electricity rather than cheaper fuels (Howden-Chapman et al., 2012) for space conditioning, and the way costs from those fuels are externalised in terms of greenhouse gases. A more comprehensive comparison would demonstrate support for higher use of renewable electricity.

The use of prepayment metering to pay for electricity provides a means of extending electricity services to those with poor credit history, as well as usually increasing visibility of home electricity use, the frequency of payment and sense of budgetary control for these households (O'Sullivan, Howden-Chapman, Fougere et al., 2013; O'Sullivan, Viggers and Howden-Chapman, 2014). When

electricity conservation (Prasanna et al., 2018; Youn and Jin, 2016). This approach would also potentially support some energy-poor households who have lower energy needs. Progressive pricing could be introduced with or without a component of 'free basic electricity', as used in South Africa (Ruiters, 2011), or in conjunction with other measures to reduce the impact of income and electricity cost on New Zealand energy poverty levels: for example, bulk purchasing of electricity for supply on a reduced 'social tariff' to a subset of households, such as those receiving government income support, eligible for a community services card, in state-, city- or community trust-owned housing, eligible for winter energy payments, or with incomes below a certain level. Another solution used in several states in the US is the 'percentage of income payment plan', where eligible low-income consumers pay a percentage of their income towards electricity (or gas), with the remainder of the bill offset through a charge to all consumers – although reforms to these programmes have been suggested to encourage conservation while preserving affordability (Migden-Ostrander, 2021).

Increase visibility of energy use
The goal of making household energy use visible is to allow households to make choices about the energy services they purchase for the money they spend on electricity at the time the energy is used. There is a classic analogy between receiving an electricity bill a month after energy has been used, and receiving an un-itemised bill from a supermarket without labelled prices a month after getting the groceries home (Gellings, 1985). Visibility of energy use has the dual benefits of encouraging households to improve their energy literacy by giving rapid feedback on the effects of their actions, and giving the energy literate sufficient information to make more informed choices to prioritise their required energy services.

Energy literacy is often touted as a means of reducing energy consumption and energy poverty. However, for those in energy poverty, increasing energy literacy is more likely to result in consumers having better understanding to enable more choice when it comes to shifting load from

one form of energy service to another (O'Sullivan, Viggers and Howden-Chapman, 2014). It is also important to understand the trade-offs in these choices, otherwise apparently 'low-hanging fruit' may be rotten – for example, where turning off a light increases risk of falls, resulting in higher expense overall once health costs are included. However, increasing energy literacy without increasing the ability of people to act on it is pointless and disempowering; that is, in the case of those who are already severely restricting energy use but have no ability to improve the other factors contributing to their energy poverty (ibid.). We expect that minimal overall reductions in energy use can be harnessed

through improving energy literacy among those experiencing energy hardship. However, for some groups, such as migrants from either low- or high-income countries who have limited knowledge of the home heating advice in the local climate, or for those who are newly energy poor (Ashby et al., 2020), increasing energy literacy may usefully result in either a decrease or increase in energy use.

For households in energy hardship, data visibility or feedback needs to be free, fast and intuitive. For example, households should be offered as a standard option a weekly billing cycle, or one that matches their income cycle. A clear benefit of prepayment metering is that it increases the visibility of household energy use, in part by giving pricing signals that are closer to real time, something that is increasingly a feature of energy retail packages and is possible with the use of apps, and may extend to using smart controls – although it is important to recognise that households without access to devices and data are less able to access these benefits. Customers on post-payment plans will also reap some of these benefits if billing cycle lengths are reduced. Increasing the visibility of energy use will also help households notice and

assess the relevance of installing energy efficient appliances and/or insulation for themselves.

Although some retailers are giving consumers easy access to their data, data ownership has not been fully discussed or contested, and there are several government departments, non-government organisations and consumer advocacy groups that should be able to offer useful perspectives on this. As something that could contribute to reducing energy poverty, this should be addressed swiftly, and reviewed at regular intervals as technology continues to advance in this area.

For households in energy hardship, data visibility or feedback needs to be free, fast and intuitive.

Manage electricity infrastructure investment and incentives to support residential consumers
There are considerable issues around fair profits and regulation of distributors who act as monopoly agents in their areas. Distribution costs are a significant proportion of most electricity bills, and the profit incentives of distributors are not necessarily aligned with the price concerns of residential consumers. The ongoing discussion of regulation of electricity is instrumental in achieving fair distribution pricing.

Large-scale demand control response could reduce the need for additional infrastructure and therefore the cost of the distribution network. Traditional demand response tools – e.g., controlled hot water heating – provide one means of smoothing demand, and extending these to strategic charging–discharging control of grid-connected electric vehicles will be critical for managing the expected increase in demand with energy transition and decarbonisation of transport (Solanke et al., 2020). However, this is one area where the short-term benefits to wealthy and energy-vulnerable households could diverge, with wealthy households more

able to afford the cost of small distributed generation assets or electric vehicles which have the potential to create extra grid costs. Emerging technologies are expected to have increasingly active uptake and there is a need to proactively avoid unintended consequences of them. Urgent consideration must be given to how to pay for transmission and distribution costs of maintaining the national grid and fair contributions for households to make to paying for it, whether they are high users, low users, use the grid only as a back-up, disconnect, or never connect.

development and help to achieve a just energy transition.

It is important for both increasing resilience to natural disasters and decarbonising the economy to encourage the use of small-scale renewables, but those in energy hardship must not disproportionately bear the extra costs placed on the grid by these new investments. Removing low fixed charge tariffs will remove an incentive for small-scale distributed energy and it may be necessary to introduce a replacement incentive in order to support the uptake of these important technologies. An appropriate

energy poverty rates will begin soon, as we have called for based on our research for a decade (Howden-Chapman et al., 2012; O'Sullivan et al., 2011; O'Sullivan et al., 2015; O'Sullivan, Howden-Chapman, Fougere et al., 2013). Households with children and young people are particularly vulnerable to energy poverty (O'Sullivan et al., 2017; O'Sullivan, Howden-Chapman, Stanley et al., 2013), and the government remains focused on reducing general poverty and improving living standards among children. Current research suggests that winter energy payments, currently provided to those eligible for New Zealand Superannuation (those aged over 65 years) and several other social welfare benefit payments, have broad public support, with useful nudge or labelling effects that increase home heating use (Viggers et al., 2019), and would be beneficial if extended more widely, particularly to households with children (Shorter et al., forthcoming). Targeting energy poverty remediation policies, including energy payments (winter, Covid-19 support, or otherwise) and energy efficiency and heating programmes to households with vulnerable children or elders makes sense economically and socially. There will always be some households who require extra help, and finding and supporting them financially, as well as with energy efficiency measures, and ensuring energy literacy so that they can make clearer choices about energy use at home should remain priorities as part of a policy package for energy poverty reduction.

> … enough is known to begin making these changes now; waiting longer leaves those already in energy hardship, particularly young children, at risk of lifelong negative health and wellbeing consequences.

The regulatory and pricing environment suitable to encourage innovators and early adopters to invest in little-known technology – such as early photovoltaic solar panels or electric vehicles – which the existing grid was well able to service may not be suitable for the volume of electricity that will be generated or used by fast-followers and the early majority as they take up the technology. The additional grid load these technologies have the potential to create in both local generation and peak use could create a need for significant new investment by distributors, which must be paid for. A fair solution would be to incentivise and eventually require owners of these technologies to also acquire at an individual or community level mitigating technologies, which might include storage batteries, home energy management systems, or controlled charging time devices or similar. Research exploring how local communities can fairly share both the costs and benefits of small-scale local generation would support policy

incentive might be to support the households with small-scale generation in also acquiring storage batteries.

Delaying and reducing the need for expensive new network and grid assets, with flow-on effects on prices, is necessary for ensuring that vulnerable households do not move into energy hardship.

Enabling community-distributed energy in more remote locations, and encouraging and supporting households with very high grid costs to either disconnect from, or never connect to, the grid is another tool for reducing energy poverty, particularly for rural households. Further research and policy development to investigate future-proof options for grid management and energy distribution are urgently needed.

Monitor energy poverty, and target remediation policies
Recommendations from the Electricity Price Review and initial work in this area suggest that official monitoring of

Conclusion
None of the solutions suggested here are likely to work fully in isolation; they are complementary, with the potential to augment each other synergistically. If planning for these six interventions began immediately, the effects are unlikely to be fully realised for over a decade. We argue that enough is known to begin making these changes now; waiting longer leaves those already in energy hardship, particularly young children, at risk of lifelong negative health and wellbeing consequences. The first effects would be noticeable through targeted policies such as the winter energy payment allowing those in current critical need to afford energy services; as the

visibility of home energy use increased – perhaps through weekly billing becoming standard – many households would increase their energy literacy, and value energy-efficient appliances more highly. In the medium term, energy performance certificates might allow price premiums for more efficient dwellings, in turn increasing demand for retrofits of existing dwellings and deeper retrofits. The increased number of energy-efficient appliances would include demand response options in their programming and allow the roll-out of large-scale demand response programmes; this could be coupled with time-of-use pricing to encourage take-up of the demand response programmes. In combination with these other interventions, equitable energy pricing would ensure that households in long-term disadvantage could access cheaper social rates, as well as dedicated housing quality improvement programmes. Over a longer timescale, as new dwellings were built to increasingly high standards less energy would be required, providing important co-benefits. Increased use of load shifting would allow network planning for lower peak loads, lowering the costs for peak demand infrastructure and allowing lower distribution costs. Open discussion would take place over whether preference should be given to residential or commercial customers, acknowledging the importance of electricity as an essential service to support wellbeing. While these interventions were implemented, energy poverty would be monitored and reported on to allow policy evaluation.

While the Covid-19 pandemic is likely to have increased the burden of energy poverty in New Zealand in the short term, we have an opportunity in the medium- to long-term recovery to significantly reduce the problem. Solutions to energy poverty include improving housing quality, through retrofitting insulation and efficient and affordable heating systems, and further increasing the value and visibility of these improvements through the introduction of an energy performance certificate scheme. Continued action to improve energy affordability through regulatory oversight of pricing, as well as sector-led initiatives in this area to enable consumers to make informed choices about the energy services they want to prioritise, will remain important. Crucially, the introduction of robust measurement and monitoring of the number of households living in, or transitioning into or out of, energy poverty will enable both policy targeting and evaluation to ensure that the size of the problem is being reduced.

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Lauren Tyler-Harwood and
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Local Alcohol Policies in New Zealand

an overview of their implementation and effects on crime

Abstract

We document the implementation of local alcohol policies in New Zealand and then study their impacts on crime. A key contribution of our study is that we construct a detailed data set on local alcohol policies applicable across territorial authorities between July 2014 and January 2019. To our knowledge, we are the first ones to provide such a comprehensive overview. In a subsequent analysis, we find that local alcohol policies as recently implemented in New Zealand do not appear to have reduced crime. This result holds for specific policy dimensions and their stringency (e.g., closing times and geographic restrictions on issuing new licences), and is reasonably robust across crime types, days/times of occurrence, and socio-economic subgroups. Our failure to identify significant reductions in crime following the imposition of local alcohol policies may partly reflect the policies being non-binding in some cases: for example, licensed premises had sometimes already operated within the restricted trading hours specified by a local alcohol policy.

Keywords local alcohol policies, crime

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Alcohol consumption is an important part of the sporting, home and social lives of many New Zealanders. While it is widely accepted that moderate levels of consumption yield significant private benefits and generate only small negative externalities, excess alcohol consumption generates large internal and external costs, including via violence and injury (Babor et al., 2010). For example, 18% of interpersonal violence-related deaths worldwide in 2016 were attributable to alcohol consumption (World Health Organization, 2018, p.67). Domestically, the New Zealand Police report that one in three violent crimes are committed by perpetrators who have been drinking prior to the offence (New Zealand Police, 2010, 2018), and the Ministry of Health finds that roughly one in five New Zealanders engage in drinking that carries a risk of harming themselves or others (Ministry of Health, 2019).

Alcohol availability – that is, the ease with which alcohol can be obtained – is considered to be a key environmental factor in alcohol-related crime (Babor et al., 2010). In many countries, the post-World War Two era saw a liberalisation of access

to alcohol (Stockwell and Chikritzhs, 2009). This trend has often been reversed in the last two decades, following growing public discontent with increased alcohol availability and a perceived increase in alcohol-related problems as a result (Wilkinson, Livingston and Room, 2016). Researchers have suggested that, in some circumstances, decreasing the availability of alcohol in a society leads to decreased consumption and societal problems such as crime (Stockwell and Gruenwald, 2003).

In New Zealand, the Sale and Supply of Alcohol Act 2012 set national default trading hours for alcohol outlets. The Act also gave territorial authorities the option to develop their own local alcohol policies to regulate alcohol availability through licensing constraints, such as local maximum trading hours. In this article, we document the gradual implementation of local alcohol policies and study their impact on crime.

Overall, we do not find any strong evidence of a reduction in crime following the implementation of local alcohol policies. This null result holds for a range of policy characteristics and crime types, and across various sub-samples by the day of week and time of day. Our failure to identify significant reductions in crime following the imposition of local alcohol policies may reflect policies being non-binding: as discussed further below, in some cases licensed premises appear to have already operated within the restricted trading hours specified by the policy.

Background: alcohol-related legislation in New Zealand

Prior to the end of World War Two, New Zealand had relatively strong liquor laws. In 1967 the nationwide ban on selling liquor after 6pm, which had been in place for 50 years, and was unique to New Zealand, was lifted and replaced with a 10pm nationwide closing time (Gibson, 2008). The pace of reform increased following the passing of the Sale of Liquor Act 1989, which liberalised New Zealand's alcohol-licensing regime. Licences became easier to obtain, as the earlier 'needs test', which required applicants to demonstrate that a new outlet was 'necessary or desirable' for the public, was removed (Law Commission, 2009). In addition, licences were available to a wider

> Research to date on the implementation of local alcohol policies in New Zealand has primarily consisted of qualitative case studies and descriptive statistics.

range of premises, including supermarkets and grocery stores, which were able to sell wine (Christoffel, 2006). This allowed for the rapid proliferation of alcohol outlets, which almost doubled in just five years, from around 6,200 in 1990 to 10,800 by 1995 (Hill and Stewart, 1996). Uniform hours of sale were also removed. Instead, hours were at the discretion of the Liquor Licensing Authority, which often allowed liberal closing times (Christoffel, 2006).

The year 1999 brought further changes, including the removal of the nationwide ban on the sale of alcohol on Sundays, lowering the drinking age from 20 to 18, and allowing supermarkets to sell beer (Law Commission, 2009). Per capita alcohol consumption increased by 9% between 1998 and 2008 (Law Commission, 2010).

Various reports in the 2000s drew associations between the apparent increase in alcohol availability and an increase in alcohol-related harm (Huckle, Pledger and Casswell, 2006; Kypri et al., 2017). Eventually, mounting public concern led the government to commission a comprehensive review of the current regulatory settings for alcohol in New Zealand (Maclennan et al., 2016). The Law Commission's review was completed in

2010 and called for the 1989 Sale of Liquor Act to be repealed and replaced, noting in particular that they believed it had had the effect of increasing rather than reducing alcohol-related harm (Law Commission, 2010, p.8).

In response to the commission's findings, the government introduced the Sale and Supply of Alcohol Act 2012. The Act legislates that 'the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised'. It lists crime as one of the key harms to be minimised.

The Act introduced two main measures that constrain alcohol availability. First, it set national default trading hours of 8am–4am for club and on-licences and 7am–11pm for off-licences.[1] These restrictions reportedly led to only modest reductions in alcohol availability in urban centres. For example, Randerson, Casswell and Huckle (2018) found that just 6% of on-licence premises in New Zealand were affected by the national maximum trading hours. Second, and importantly for our purposes, the Act gave territorial authorities the option to develop local alcohol policies, which were seen as key instruments for achieving the Act's wider goal of enabling greater community input into local licensing decisions (Maclennan et al., 2016).

Through a local alcohol policy, territorial authorities can restrict the maximum trading hours beyond the national default provided in the Act.[2] A local alcohol policy can also include policies on the following matters relating to alcohol licensing: (1) one-way door policies, which allow patrons to leave premises but not enter or re-enter after a certain time; (2) whether further licences, or licences of particular kinds, should be issued for premises in the district concerned, or any stated part of the district; and (3) restrictions on the locations of licensed premises, by reference to the proximity to certain facilities (such as sensitive sites), premises of particular kinds or broad areas. The third only applies to new licenses, and therefore may limit the impacts of local alcohol policies in districts that already have a large number of outlets (Jackson and Robertson, 2017).

Previous evidence on local alcohol policy implementation and effects

Research to date on the implementation of local alcohol policies in New Zealand has primarily consisted of qualitative case studies and descriptive statistics. The appeals process has been a key focus. For example, a mixed methods study by Randerson, Casswell and Huckle (2018) conducted between 2013 and 2015 found that appeals, particularly by the alcohol industry, are the most frequently reported barrier to developing a local alcohol policy, with some territorial authorities deferring or halting development until appeal outcomes in other districts are confirmed. Jackson and Robertson (2017) found some descriptive evidence of delays: of the 33 provisional policies notified as of August 2017, 32 were appealed and just 21 were adopted, and there was an average of 790 days between provisional notification and adoption of the policy.

A report by UMR (2018) emphasises that although there was optimism that local alcohol policies would be an important vehicle for addressing alcohol-related harm, there was also concern that the long, costly and resource-intensive appeals process may result in some territorial authorities being tempted to 'water down' their local alcohol policies (or abandon them altogether) to avoid appeals. Jackson and Robertson (2017) document the change in the stringency of policies as they move through each stage towards adoption, and observe that less restrictive provisions tend to be included in local alcohol policies as they progress.

The New Zealand Institute of Economic Research (NZIER, 2019) measured changes in spending patterns at licenced venues after the implementation of local alcohol policies by three territorial authorities (Tauranga, Western Bay of Plenty and Waimakariri). While they did not find evidence of a reduction in total spending at on-licence premises, they observed a decline in spending during peak times following reductions in maximum trading hours. They also found strong evidence of a shift in spending from on-licence premises to liquor stores, and mixed evidence of spending at on-licence premises being brought forward (to immediately before new restricted closing hours).

> In some of our analyses, we employ territorial authority-level control variables that the literature suggests may be positively associated with crime.

Data and methods

We constructed a unique panel data set on the licensing restrictions implemented in each mainland territorial authority in New Zealand (available on request) from July 2014 to January 2019. To do this, we obtained information from each territorial authority's local alcohol policy document, as published online as at 1 January 2019. We then manually recorded all key provisions and categorised them into the following local licensing restrictions: maximum on-licence trading hours (and whether on-licence premises in the central business district are allowed to extend their closing time); one-way door policy; an indicator for the club licence closing time being earlier than the on-licence closing time; a restriction on issuing new licences (including a cap on the total number of licences to be issued in an area and a restriction on the location by proximity to other licensed premises or sensitive sites such as schools); and the difference between on- and off-licence closing times. We provide a descriptive analysis of our data below.

We then matched local alcohol policy characteristics with monthly territorial authority-level crime rates[3] and tested whether these local alcohol policies have reduced crime. The New Zealand Police

record each instance of a person, organisation or premise being the victim of a crime. They also record the territorial authority where the crime occurred and the crime type, and the month, day of the week and time that the crime occurred. The crime data is broken down into the following crime categories: abduction and kidnapping; assault; blackmail and extortion; illegal use of property; robbery; sexual assault; theft; and burglary. Information on crimes committed in the home (except for burglary) and homicides is not publicly available due to its sensitive nature.

In our analysis of the effects of local alcohol policies on crime, we consider territorial authorities that implement local alcohol policies as members of the treatment group, receiving doses that vary in intensity and/or type, and territorial authorities that do not implement local alcohol policies as members of the control group.[4] Since we derive crime rates from crime counts, which take on a limited number of non-negative integer values, we estimate our regression coefficients using a Poisson estimator. We include population[5] as an exposure variable to control for the number of people who could have committed a crime.

In some of our analyses, we employ territorial authority-level control variables that the literature suggests may be positively associated with crime. These include the proportion of young men (16–24 years old) and the New Zealand socio-economic deprivation index score in 2013 (Atkinson, Salmond and Crampton, 2014; Cameron, Cochrane and Livingston, 2016).

Characteristics of local alcohol policies as implemented from July 2014 to January 2019

Just under half of New Zealand's territorial authorities (32 out of 66) had adopted local alcohol policies by January 2019, covering a quarter of the national population (Table 1). The first was Ruapehu in August 2014; the majority of territorial authorities adopted their local alcohol policies in 2016 and 2017. Half of the territorial authorities with local alcohol policies have adopted a joint policy which two or three authorities have developed together. Overall, there are 22 individual local alcohol policies.

Local Alcohol Policies in New Zealand: an overview of their implementation and effects on crime

Table 1: Local alcohol policies adopted over time

Year	Number of territorial authorities to adopt a new local alcohol policy	Number of new local alcohol policies adopted (i.e. counting joint policies once)
2014	1	1
2015	4	3
2016	15	9
2017	7	6
2018	5	3
Total	32	22

Table 2: Latest permitted on-licence and club licence closing times among territorial authorities with local alcohol policies

	On-licence	Club licence
3am	Gore, Mackenzie, Ruapehu,† Southland, Timaru, Waimate	Gore, Invercargill, Southland,
2am	Ashburton, Gisborne, Hurunui, New Plymouth,†† Selwyn, Stratford, Tasman, Waipā, Waitomo, Whakatāne	New Plymouth,†† Porirua, Stratford, Tasman, Whakatāne
1am	Carterton, Hauraki, Invercargill,†† Kawerau, Hutt City, Masterton, Matamata-Piako, Ōpōtiki, South Wairarapa, Tauranga,†† Thames-Coromandel, Waikato, Western Bay of Plenty	Hauraki, Kawerau, **Mackenzie**, Matamata-Piako, Ōpōtiki, **Ōtorohanga**, **Ruapehu**, Tauranga,†† Thames-Coromandel, **Timaru**, Waikato, **Waimate**, **Waipā**, **Waitomo**, Western Bay of Plenty
Midnight	n/a	n/a
11pm†††	Waimakariri	Waimakariri, **Gisborne**
10pm†††	n/a	**Hurunui**, **Selwyn**

† Ruapehu's Waimarino-Waiouru and National Park wards have a maximum closing time of 3am, while the Taumarunui and Ōhura wards have a maximum closing time of 1am

†† Central business district closing time of 3am

††† Weekend closing time of midnight (1am for Waimakariri)

Note: Territorial authorities in bold impose stricter closing times on the club licence than on-licence

Table 3: Latest permitted off-licence closing times among territorial authorities with local alcohol policies

	Off-licence
11pm	Gore, Invercargill, Whakatāne, Ruapehu (2014)
10pm	Carterton, Hurunui, Kawerau, Hutt City, Masterton, Ōpōtiki, Ōtorohanga, Porirua, Ruapehu (2018), South Wairarapa, Stratford, Tasman, Tauranga, Waikato, Waimakariri, Waipā, Waitomo, Western Bay of Plenty
9:30pm	Ashburton, New Plymouth
9pm	Gisborne, Hauraki, Mackenzie, Matamata-Piako, Selwyn, Thames-Coromandel, Timaru, Waimate

Our analysis is conducted at the territorial authority level, as in many instances there are different provisions applying to each territorial authority even within a joint local alcohol policy.

Territorial authorities with local alcohol policies tend to be smaller; New Zealand's four most populous territorial authorities – Auckland, Christchurch, Wellington and Hamilton – do not have local alcohol policies in force.

On-licence closing times

The latest permitted on-licence closing times adopted in local alcohol policies range from 11pm to 3am (Table 2). The most common choice is 1am. Most territorial authorities have the same closing times for on-licences and club licences. However, ten have earlier closing times for club licences. Four territorial authorities (Invercargill, Hutt City, New Plymouth and Tauranga) provide extended on-licence closing times

of 3am for on-licence premises in the central business district. Some territorial authorities have different closing times for different types of on-licences, such as restaurants or wineries.

One-way door policy

Six territorial authorities have one-way door policies as part of their local alcohol policy. In addition, Whāngārei does not have a local alcohol policy but implemented a one-way door policy during the period of study. One-way door policies come into effect one–two hours ahead of closing. Of the seven territorial authorities to implement a one-way door policy, in three cases it only applies to the central business district (Ashburton, Tauranga, Whāngārei), and in three only on Thursday, Friday and Saturday nights (Mackenzie, Timaru and Waimate). Gisborne is the only territorial authority with a one-way door policy throughout the district and on all days of the week.

Off-licence closing times

The latest permitted off-licence closing times in local alcohol policies range from 9pm to 11pm (Table 3). Just over half of territorial authorities with a local alcohol policy specified 10pm. Five territorial authorities opted to keep the national default maximum closing time of 11pm.

Restrictions on issuing new licences

Local alcohol policies include three key types of restrictions on the issuing of new licences: a cap on the total number of off-licences allowed in an area; a restriction on the location of a new licensed premise with respect to its proximity to other licensed premises; and a restriction on the location of a new licensed premise with respect to its proximity to sensitive sites. We group these three restrictions in our analysis due to the limited number of territorial authorities adopting them, as well as the significant overlap of authorities (for example, Waikato is one of only two territorial authorities to adopt a cap on further off-licences, and one of only two to adopt the proximity restriction). These restrictions are also similar in that they all aim to restrict new licensed premises from opening in a specified area.

Four territorial authorities – Stratford, New Plymouth, Waitomo and Hauraki –

include restrictions on the location of licensed premises by reference to proximity to 'sensitive sites'. The definition of a sensitive site varies. For example, in their joint local alcohol policy, Stratford and New Plymouth restrict new on- and off-licence premises outside the central business district from being within 100 metres of a school, a recreational facility or an open space designed to attract young people (e.g., a playground or a skate park), a community centre, a hospital or an addiction treatment centre.

The effects of local alcohol policies on crime[6]
To investigate the effect of local alcohol policy implementation on crime, we first estimated a simple correlation between the overall crime rate and the presence of a local alcohol policy (Table 4, model 1). This relationship is not statistically significant, meaning that we cannot reliably detect any relationship between the two variables. The results remain similar when we control for variables that reportedly increase crime, namely the percentage of young males and social deprivation (model 2). Having a local alcohol policy in force again does not lead to a reduction in crime rates. As expected, social deprivation in itself has a positive and significant relationship with crime: on average, and holding all else constant, a one-point increase in a territorial authority's social deprivation score is associated with a 0.5% increase in crimes per month.

However, the above estimates may be biased due to unobservable factors that are correlated with crime rates as well as local alcohol policy adoption. Our preferred model, therefore, controls for any stable differences across territorial authorities, as well as national (and to some extent also authority-specific) time trends, so that we can more clearly isolate any true, causal effect of local alcohol policy implementation. There continues to be no statistically significant relationship between adopting a local alcohol policy and crime (model 3). In fact, introducing appropriate controls drives the estimated effect of local alcohol policies to zero.

Using a crude binary variable to capture when a local alcohol policy is in force may disguise effects driven by different levels of stringency. In our subsequent analysis, we therefore employ a set of detailed policy

Table 4: The effects of local alcohol policy presence on overall crime rates

Dependent variable: number of crimes			
	(1)	(2)	(3)
Policy in force (yes vs no)	0.864	0.920	1.007
	(0.075)	(0.069)	(0.026)
% young males	–	1.041	–
		(0.041)	
Social deprivation	–	1.005***	–
		(0.001)	
Controls for:			
Stable differences across territorial authorities	No	No	Yes
National time trend	No	No	Yes
Territorial authority-specific time trend	No	No	Yes
Number of observations	3,630	3,630	3,630

Notes: The reported estimates are incidence rate ratios (IRRs) obtained from a Poisson regression. An IRR value greater than 1.0 indicates an increase in crime rates and a value lower than 1.0 a reduction in crime rates. Standard errors (heteroscedasticity-robust and clustered at the territorial authority level) are reported in parentheses.
*** indicates statistical significance at the 99% confidence level. None of the other IRRs reach statistical significance at the 90% level or more.
All models include population as an exposure variable.

dimensions instead. Overall, we find very little evidence that crime rates fall more in territorial authorities with more stringent alcohol policies.

Crime type
An analysis of total crimes may mask heterogeneous effects of local alcohol policies across individual crime types. Indeed, the literature primarily focuses on the link between alcohol and assault (or a slightly broader group of violent crimes). When we analyse different crime types separately, we observe that the introduction of a local alcohol policy is weakly associated with a decrease in assaults. We fail to find significant relationships between local alcohol policies and other types of crime. Similarly, we find only very weak effects of individual local alcohol policy dimensions on most crime types – including assaults – and some of the estimates even have unexpected signs, suggesting possible crime increases.

Weekend crime
To take into account well-known public drinking patterns and to focus on times when local alcohol policy provisions such as on-licence maximum trading hours are most likely to be binding, we re-estimated our models for weekend crimes. Following previous studies, some of our weekend analyses control for the number of crimes that occurred during non-weekend hours in order to compare

weekend behaviour with a baseline crime rate not expected to be affected by local alcohol policies (Tesch and Hohendorf, 2018). Similar to our other estimates, our weekend analyses do not reveal any strong relationships between local alcohol policy presence/dimensions and assaults or theft.

Time of day
It is possible that varying restrictions on trading hours affect the temporal distribution of crimes, even if they do not change the overall number of crimes. Consistent with previous studies, we investigated weekend assaults over the following time periods: 9–11:59pm, 12–2:59am and 3–5:59am. If a local alcohol policy has an effect on crime, we might expect this to be a decrease in assaults over the 3–5:59am period (i.e. after on-licence closing times) and possibly a shift in assaults to earlier time periods. Yet again, our analyses do not reveal any robust patterns consistent with this hypothesis.

Socio-demographic characteristics
Finally, we tested whether the effect of adopting a local alcohol policy on crime varies across territorial authority socio-demographic characteristics that the literature suggests are important. These include the social deprivation index, population size, the percentage of young men, and, for weekend crimes, the baseline crime rate. Our results are qualitatively

similar across subgroups, indicating that local alcohol policies do not appear to have a heterogeneous effect based on territorial authority socio-demographic attributes.

Conclusions

We constructed a unique panel data set on the recent implementation of local alcohol policies in New Zealand. In our subsequent analysis, we found little evidence that local alcohol policies introduced by territorial authorities between July 2014 and January 2019 have had a significant impact on crime. Our findings are robust to many different specifications, including: controlling for specific policy dimensions and the stringency with which they are applied; sub-sampling by different types of crimes; and sub-sampling by crimes occurring at different times of the day/ week. In addition, we did not find any strong evidence of temporal shifts in assaults to earlier parts of the evening as a result of closing hours being brought forward.

Our results alone do not conclusively show that local alcohol policies, and the specific measures contained in them, are ineffective in combating crime. One reason for the absence of a change in crime rates may be that local alcohol policies that territorial authorities have implemented to date have not been very binding. Some authorities, including Gore, Invercargill, Southland and Porirua, explicitly acknowledge in their policy document that the prescribed on-licence hours reflect the actual hours observed at the time of implementation. Using Ministry of Justice data[7] on all active licences in New Zealand between 2015 and 2018, we are able to estimate the percentage of existing licences that are likely to have been affected by maximum on-licence trading hours in the local alcohol policy.[8] Based on active licences before local alcohol policies were

introduced in each region, none of the on-licence premises would have been affected by the local alcohol policy on-licence trading hours in two of the five territorial authorities (South Wairarapa and Porirua) that introduced local alcohol policies in 2018. Just one, five and 14 existing licences, representing 7%, 20% and 18% of total on-licences, would have been affected in Carterton, Masterton and Gisborne respectively.

NZIER's analysis of spending at licensed venues in Tauranga, Western Bay of Plenty and Waimakariri provides additional evidence that at least some local alcohol policies have imposed maximum trading hours that do not affect actual hours of operation for the majority of premises (NZIER, 2019). Spending data for licences in these districts reveals that new trading hour restrictions for both on-licences and off-licences are estimated to have affected less than 0.1% of sales. Territorial authorities may be seeking to lock in existing settings as a means of future-proofing against the possibility of more liberal district licensing committees. Our inability to find a significant impact on crime, coupled with suggestive evidence that core local alcohol policy provisions were not binding for at least some territorial authorities, is consistent with other studies and commentary to date, which emphasise the 'watering down' of local alcohol policies following legal appeal or negotiation with industry.

There are a number of valuable potential extensions. First, it would be useful to repeat this analysis using a different harm outcome variable, such as hospitalisations or motor vehicle accidents. Second, it would be useful to repeat this study with updated data on local alcohol policies which continue to be introduced in additional territorial authorities. Third, obtaining data for each territorial authority

on the actual numbers of licences, and their permitted or actual trading hours, would also be worthwhile because it would provide a more accurate picture of experienced changes in alcohol availability following the introduction of a local alcohol policy. Obtaining individual licence-level sales data, as in the NZIER study, but with an expanded scope to include all territorial authorities, would be a further step. This would be useful in enabling a more direct observation of the impact of local alcohol policies on alcohol consumption, which is the key mechanism through which alcohol availability is believed to influence crime.

1 On-licence and club licence premises can sell alcohol for consumption at the premise, while an off-licence premise can sell alcohol for consumption somewhere else. A club licence has an extra condition that it may only supply alcohol to authorised customers of the club.

2 While the option to extend trading hours past the national default also exists in theory, no territorial authority has successfully adopted such a provision in practice. Wellington included a 5am closing time in its provisional local alcohol policy. During the appeal process, however, the Alcohol Regulatory and Licensing Authority ruled that Wellington's proposed 5am closing time was unreasonable in light of the object of the Act (NZARLA, 21–8 January 2015). Auckland also included a 5am closing time in its draft local alcohol policy but decided to remove it in its provisional policy.

3 Obtained from the New Zealand Police website, https://www.police.govt.nz/about-us/publications-statistics/data-and-statistics/policedatanz/victimisation-time-and-place. Data before July 2014 was not available due to a major change in crime recording which made older records not comparable.

4 Details of our estimation strategy are available at https://ideas.repec.org/p/cbt/econwp/20-02.html.

5 Obtained from Statistics New Zealand's annual population estimates for each territorial authority: http://nzdotstat.stats.govt.nz/.

6 Our detailed results are available at https://ideas.repec.org/p/cbt/econwp/20-02.html.

7 https://www.justice.govt.nz/tribunals/arla/register-of-licences-and-certificates/.

8 Specifically, we look at on-licences that were active directly before the local alcohol policy entered into force, to see whether any/what percentage of these licences allowed staying open beyond the maximum trading hours that were subsequently introduced.

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Social Policy Practice and Processes
In Aotearoa New Zealand

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A wide-ranging, multi-author work covering all aspects of social policy in Aotearoa New Zealand

This book is essential reading for tertiary students in social policy and related subjects, as well as the wider policy-making community.

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Seán Mahoney

Leading Locally
how New Zealand's mayors get things done

Abstract
New Zealand's directly elected mayors are considered an example of a weak mayoral model, with mayors having limited legal powers to make decisions or appointments. However, many mayors continue to shape policy direction alongside their councillor colleagues. This article examines how a collaborative leadership approach allows mayors to successfully lead locally even without strong executive powers. Future reforms of local government should consider how to build on this leadership framework.

Keywords mayors, leadership, local government, policy implementation

In April 2021 the government announced a review of local government, which among other things seeks to achieve public trust and confidence in local authorities, strong leadership, and effective partnerships between mana whenua and central and local government in order to better provide for communities (Department of Internal Affairs, 2021). This article suggests that in terms of New Zealand's directly elected mayors, many of the foundations for these are already in place. It presents evidence from a recent national survey of mayors which demonstrates the importance of local networks and consensual decision making in how New Zealand's mayors manage to lead successfully, even when they find themselves with a minority of support around the council table.

The article also develops a leadership framework, which reflects the value of trust and influence within mayor and councillor relationships and considers the implications for this being reflected in local government's relationship and status with central government and ministers.

New Zealand mayors
The role of a directly elected mayor is still comparatively young, dating back to 1989. From the mid-19th century the office of mayor was largely ceremonial (Cheyne, 2017). There are currently 67 territorial authorities in New Zealand, each with a mayor elected from the district at large, together with over 700 councillors. The 11 regional councils comprise 120 councillors, and at each council one of these is elected first as a councillor and then appointed as chair by their fellow councillors.

The mayors' current range of powers and responsibilities is younger still, arising from challenges with the creation of the Auckland 'super city' council. Not only was the new mayor of Auckland given additional powers of appointment and a clear leadership role (Mouat and Dodson, 2013); there were also amendments to the Local

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Table 1: The local government leadership framework

Influences	Institutional/formal Legislation, standing orders, council constitution	Informal Relations with council parties, CEO, officers	Individual Experience, background
Leadership roles A. Governmental	Policy, budget, vetoes, appointments, personnel	Relations with parties, backbenchers, CEO, chief officers	Articulate, ability to dominate, negotiate competencies/experience
B. Governance	Representation, outside memberships, decentralised structures	Relations with lobbies, interests, other levels of government	Reticulist abilities/skills Established contacts/networks
C. Allegiance	Term of office, formal relation to council Power of recall/dismissal Abolition of office	Relations with outside parties, lobbies, electorate Power	Approachable, accessible? Risk of corruption: 'clientelism' Power

Source: Elcock and Fenwick, 2012

Government Act 2002 to provide a defined set of powers for mayors across the country.

Asquith (2012) argued that this created a potential power vacuum between the perception and reality of the mayor's powers and role. These new powers allowed mayors to appoint a deputy, appoint council committees and chairs, and assign the role of leading the development of plans, policies and budgets (Cheyne, 2017). Yet under the new arrangements there is no mayoral veto, whereas councillors can vote down the mayor's proposed appointments. Many mayors saw these changes as just 'legislation catching up with common practice' (Local Government New Zealand, 2015) rather than a new set of tools. They saw the idea of a council overturning a deputy mayor appointment as meaningless and nonsensical. Yet these changes have created situations where the mayor's power can be openly challenged by councillors, something which has the potential to create discord around the council table and be interpreted as dysfunction by the public.

Current challenges
A visitor finding themself in New Zealand in November 2020, just a year after the last set of local elections, might have been forgiven for wondering if any directly elected mayor was able to achieve their policy objectives. One mayor found themself forced to clear all media comments with council officers (Peacock, 2020). A report into another council, at the request of the minister for local government, recommended that Crown advisors be appointed to support the council. Shortly after supporting this report, the mayor resigned (Shand, 2020).

Another council, addressing the same request, published a report which asked that independent advisors work with the mayor and that the mayor delegate powers to the deputy (Savory, 2020). Finally, the capital's mayor lost a high-profile vote on a flagship land sale policy and was termed a 'lame duck' (Hunt, 2020).

In the current term there have been a series of open defeats and challenges for mayors. The mayor of Wellington, Andy Foster, has been defeated over a range of issues and faced numerous challenges from councillors, and even a code of conduct complaint regarding a council vote (ibid.). The mayor of Waitomo, John Robertson, found himself the subject of a code of conduct complaint from all councillors after he published his personal views ahead of a vote on rates increases (an issue he campaigned on), before suffering a unanimous defeat at the council table (Gullery, 2020). In Dunedin, Aaron Hawkins was heavily defeated over plans to pedestrianise the city centre, an issue he actively campaigned on prior to his election (Maclean, 2020). The mayor of Tauranga, Tenby Powell, was subject to what was termed a 'coup', receiving a letter of requisition from a majority of councillors to replace his deputy. In response, the deputy stood down and a replacement was appointed by the mayor, only to receive a further letter of requisition from the same majority group. Eventually Powell resigned his position and called for commissioners to be installed. All four of these mayors had beaten incumbents in 2019 (Bay of Plenty Times, 2020).

What can account for these issues? And are they endemic, or isolated cases?
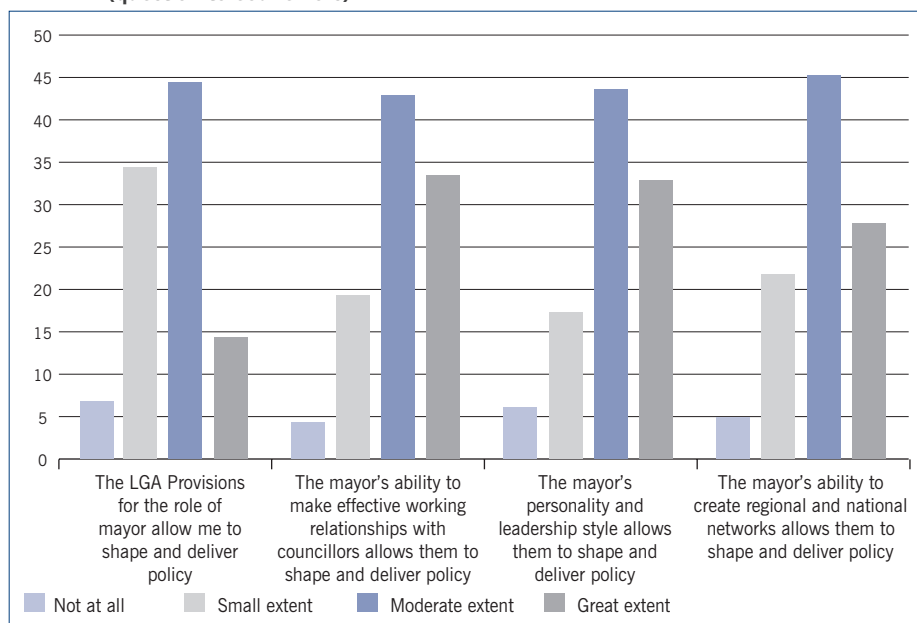
Mayoral leadership
Elcock and Fenwick's local government leadership framework (Elcock and Fenwick, 2012) enables comparison not only of leaders in different jurisdictions and models, but also between different leaders in the same country. It considers the institutional and formal aspects of the role, the informal relationships within the administration that the mayor must manage, and the personal or charismatic qualities the mayor brings. The framework then focuses on the relationship between leaders' attributes and their leadership roles, which are analysed against their formal governmental role, the governance aspects of their role and their understanding of political allegiances. Using the framework allows us to understand what mayors actually do in office, rather than just consider a role description (Fenwick and Elcock, 2014). It moves beyond simple successes and failures and enables us to consider the importance local leaders attach to the various roles and attributes in the framework and how these relate to their achievements or failures.

This framework was used to investigate the current state of mayoral leadership in New Zealand. In 2020 mayors and councillors across the country (with the exception of Auckland, which is governed by separate legislation) were sent an online questionnaire which attempted to gain an understanding of their views on collaboration, influence and leadership styles; results are summarised in Figures 1 and 2. Fifty-three per cent of mayors (35) and 25% of councillors (170) responded. In comparison, the 2015 survey by Local

Figure 1: When you think of your role in shaping council policy objectives and decision making, to what extent do you agree with the following? (question to mayors)

Legend: Not at all, Small extent, Moderate extent, Great extent
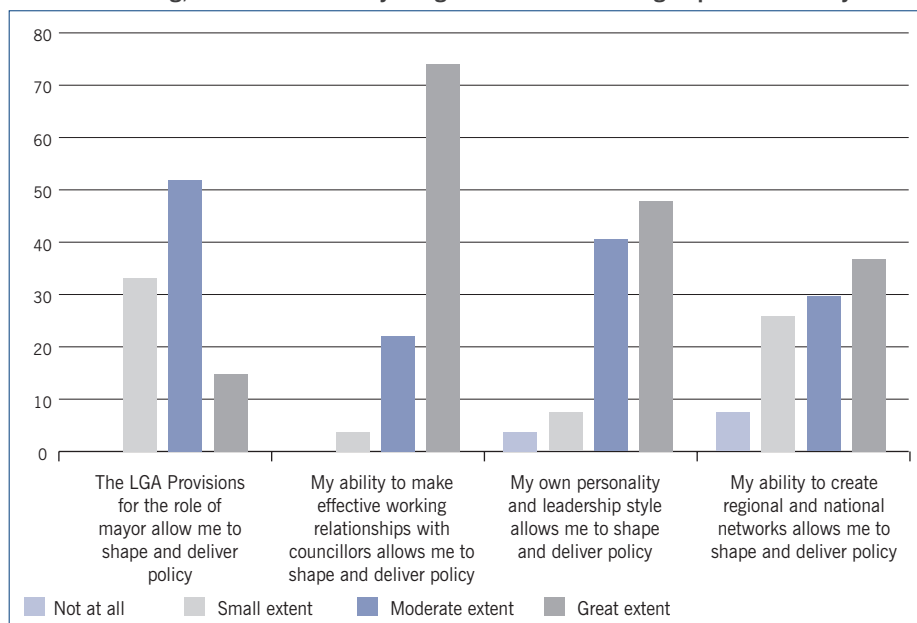
Figure 2: When you think of the mayor's role in shaping council policy objectives and decision making, to what extent do you agree with the following? (question to councillors)

Legend: Not at all, Small extent, Moderate extent, Great extent

Government New Zealand received a 41% response rate from mayors. The survey was followed up by four semi-structured interviews with mayors.

How mayors and councillors see leadership
New Zealand does not have a strong tradition of councillors being elected on a common policy platform or party grouping, and alliances are more often formed on an issue by issue basis (Webster et al., 2019). With the absence of party groups it can be hard at times to ascertain whether a mayor is in a majority, or even perceives whether or not they are.

The survey showed that mayors had a reasonably higher view of their ability to create coalitions of support on issues than those councillors on the receiving end: 60% of mayors felt they commanded a majority of support, with only 17% feeling they were in a minority. In contrast, only 46% of councillors believed the mayor had an absolute majority and 21% felt they were in a minority.

Section 41a of the Local Government Act provides the legal framework for the formal and constitutional role of the mayor. The Act provides a range of formal powers that the mayor can use. It is telling,

though, that 65% of mayors did not use these powers at the start of their term. Mayors and councillors saw other factors, reflecting the informal and relationship aspects of the mayor's role, as being of greater importance.

Mayors raised concerns over the scope and clarity of the Local Government Act. One mayor commented that the provisions in the Act to 'lead the development of policies and plans' lacked clarity on how far a mayor could go, or whether councillors could oppose them in this regard. The legal framework around the powers of patronage, such as the appointment of a deputy mayor, has illustrated that not only are these powers soft, but they are also confusing. The legal advice provided to Horowhenua District Council in 2016 highlighted not only that the councillors could overturn the mayor's appointments, but that once council had done this the mayor was then powerless to impose their will on council for the rest of the term (Simpson Grierson, 2016).

Of the mayors surveyed, 74% felt that their relationship with councillors allowed them to shape and deliver policy. Mayors also felt they had an important relationship with the chief executive and that this again helped shape and deliver policy. One mayor commented that the two of them had 'moved the district together'.

Mayors indicated that they tried to keep open dialogue with councillors and provide reports back to them on their activities. Councillors appreciated a 'climate of trust', mutual respect and openness. Some councillors felt that the relationships only worked where they were facilitated, or that councillors were afraid of 'courting controversy' by challenging the mayor. It was clear that where councillors felt they were not respected by the mayor, this was a serious breakdown or weakness in the relationship.

Many of the mayors interviewed argued that they are elected on a platform or an agreement with the community, rather than a political party, which they then have a mandate to deliver. Yet absence of party allegiance creates a tension in mayoral leadership: each council vote must be won. As one councillor remarked, 'the mayor cannot make promises to his constituents … without gaining the

Table 2: New Zealand's local government leadership framework

Leadership roles	Influences		
	Institutional/formal Legislation, standing orders, council constitution	Informal Relations with council parties, CEO, officers	Individual Experience, background
A. Governmental	Low use of legal powers Lack of clarity over extent of powers	'Climate of trust', relationships with councillors tend to be consensual (and where they are not it creates problems) Strong link and relationship between mayor and CEO	Non-party Individual votes on each issue and policy
B. Governance	Mayor is the chair of and external representative face of council within locality, region and country	Regional networks not considered high priority for mayors	Community –conduit
C. Allegiance	Subordinate role of local government Short terms/electoral cycle Code of conduct and accountability	Ability to use remunerated posts for support base	Largely uncorrupted system, though note ministerial intervention issue

support of council'. Each individual policy issue needs to be considered and many mayors simply do not 'propose things that don't have majority support'. There are advantages to this approach, and a recognition that members are elected on local community issues over policy, which is more reflective of the role and structure of local government (Reid, 2019).

Mayors can form and lead the governance agenda through chairing meetings and leading council decisions. One councillor described the mayor as 'the public spokesperson/team captain. They point/shape direction'. Some councillors saw the agenda and meeting role of the mayor as a negative factor for councillors to deal with. Councillors could be left with less opportunity to contribute or raise different points of view if the mayor guides and controls the meeting. Another councillor commented that the direction is being set by the mayor, deputy and chief executive and that 'it requires a lot of effort on the part of the balance of our small number of elected members to change that direction'.

Twenty-three per cent of mayors noted the relationship with other government bodies as a major challenge to achieving policy goals; this was higher than expected and could be a figure that continues to grow. Mayors play an increasing role in providing regional leadership and representation across a range of issues, not always with the full or ongoing support of their councillors. As local councils respond to water reforms and greater focus on

regional economic development, it will challenge mayors to ensure they can not only lead on national issues but bring their local councillors along (Botting, 2020).

In New Zealand, territorial authorities perform a narrow range of functions and have an even narrower ability to raise revenue. One mayor noted that the biggest barrier to success wasn't political in nature but the constraints caused by a lack of funding mechanisms. Beyond the creation of the Auckland 'super city', moves to amalgamate other councils and services have been unsuccessful (Kortt, Dollery and Drew, 2016). Regional networks were considered less important than other factors in achieving policy outcomes. This may change over time as governance changes push a more regional and collaborative focus on councils.

Mayors act as a clear and obvious conduit between the community and council. This is used to 'point/shape' the council direction. The Local Government Act gives the mayor the role of 'leading the people in the district', and 88% of mayors saw themselves as performing this key role through their personality and leadership style.

The office of mayor, like many of the functions of New Zealand's local government, exists in a subordinate role to that of central government, with no constitutional certainty. Central government has extended its role into intervening in council decision making, replacing councillors with commissioners or other oversight mechanisms, which has

been seen to have weakened the interest and engagement of local government (Brower and Kleynbos, 2015).

The role of scrutiny and accountability is not clearly defined, although many survey respondents recognised its importance. Systems such as the code of conduct were mentioned as a mechanism to hold mayors to account.

While only a minority of councillors felt the mayor used their powers of patronage to acknowledge supporters or opponents, and even fewer mayors acknowledged that this occurred, it is still highlighted as an area of interest. Some councillors considered that the 'stacking' of committee chairs, with additional remuneration, was a tactic to ensure the mayor went undefeated, though mayors insisted that all appointments were based on 'skills and experience'.

Mayors and any public officials are at risk of becoming captured or even corrupted by office. While on one level the extent of this can be measured by the rather small number of allegations of wrongdoing or personal gain, Elcock and Fenwick also consider the wider 'control' issue (Elcock and Fenwick, 2012). New Zealand's mayors with their absence of a party to support them can find themselves at greater risk of clientelism, or the need to reward and gratify supporters. There should be some concern that although the numbers are small, a greater number of councillors (22%) perceive that mayors use appointments to acknowledge supporters than the number of mayors (17%) who actually used this approach.

Implications for local government leadership
The institutional framework and legal powers of the role of mayor do not appear to drive or guide the way mayors get things done. The formal powers are used in a more practical, tactical or operational way, to dominate council meetings or debates. Several aspects of the statutory framework either create uncertainty (such as the deputy mayor appointment) or are contentious issues (the electoral term, local government's statutory settings or revenue).

Mayors clearly rely on their ability to create and maintain informal relationships in order to be successful: 74% of

Councillors reinforce the importance of the role of relationships above the legal framework, or 'building good relationships and mutual respect'. As one mayor noted, they always 'socialised and shared policy ideas … even if popular with the public'. The flip side is that when those relationships fail, council can appear to be in difficulty: 'The mayor shows no respect for the elected councillors so he receives no support, respect, or trust from them.'

Within the informal framework, trust and relationships were considered important in agreeing on policy outcomes. Mayors saw the value in creating a common purpose or strategic vision at the start of

'independent' and will continue to need to create councillor support on the major issues in front of them.

How do councils function with disagreement?
'We have 12 councillors each working independently, and the mayor needs a majority to proceed. He does not use his casting vote and does not overstep his mandate.' Many would agree with this councillor's comments, but in that situation, does it matter if not all 13 people agree? Mayors can be faced with opposition on votes without it needing to lead to chaos or dysfunction.

When Tauranga City Council received a letter from the Department of Internal Affairs regarding issues of 'significant conflict among elected representatives', the council's response included commentary that while the council acknowledged the issue of 'dysfunctional governance arising from the failure or breakdown of key relationships', it also noted that, despite the challenges, 'the formal decision-making processes of Council [are] not significantly impacted' (Tauranga City Council, 2020).

It may be that some defeats are considered more of a problem than others. The deputy mayor's appointment appears to act as a proxy for the mayor's strength. One mayor discussed how they had announced their new deputy prior to the election. Another, clear in their knowledge that they risked losing any vote, rather than risk political capital on who would be deputy simply left it to councillors to decide. The Local Government Act contains provisions and a process for the mayor to appoint a deputy mayor; it also contains a process for a majority of councillors to remove the deputy. The move by a majority of councillors in Tauranga to exercise this right was labelled a 'coup' (Shand, 2020) and led not only to the resignation of the deputy mayor and ultimately the mayor, but also to the start of a process towards replacing the elected council with a commission (Department of Internal Affairs, 2018). Irrespective of the rather tabloid language exchanged between councillors, the decision to take on and defeat a mayor was made by a majority of councillors in accordance with the Local Government Act. Though an independent

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respondents strongly acknowledged their development of such relationships, with a further 22% also positively acknowledging their importance. Mayors rank the importance of informal relationships much higher than either the legal framework or their individual personality in achieving policy objectives.

This view was also shared by councillors. One councillor commented, 'discussion, clear information and consensus' or on a more practical level relationships were managed by 'achieving consensus within a majority of elected members through informal discussion'.

When looking at the techniques or approaches used to achieve majority support, there is strong recognition of the use of meetings and portfolio responsibilities (utilising people's skills and interest), but little recognition that patronage or the use of third party mediators provides any support mechanism.

the term, and several councillors noted this in an appreciative manner. One of the mayors interviewed had even created this vision before the election, realised they had enough councillors in support of the vision and delivered it to the chief executive on the first day of their term of office. This contrasts with the current mayor of Wellington's 150-day plan, which, although made public, has failed to get council support. Successful mayors appear to socialise and share policy ideas before any formal proposals. The ability to meet informally or away from public meeting settings is well regarded by councillors, one of whom noted that councillors will informally advise the mayor when a majority is against an issue.

The mayor's individual role does include the use of appointments and remunerated posts to achieve policy outcomes. Interestingly, this is something councillors see as a more prevalent issue than do mayors. Most mayors are still

report makes little comment on this episode, where it does it highlights it as an example of a 'fundamental lack of trust', without addressing the rightful legal context (Review and Observer Team, 2020).

Initial research found that the new mayoral powers added little to the way that mayors operated, and that many of the changes did not provide a new executive role but simply put in place a legal framework around existing practices (Local Government New Zealand, 2015). A majority of mayors only use the legal framework to a moderate extent. However, the introduction of these limited powers has clarified the extent to which mayors can and cannot operate. This clarification has seen a number of councillors 'test' the limits of this, whether it is through the use of the powers to overturn a deputy, or simply through controlling the agenda and outcomes (as in Wellington and Waitomo). If councillors can successfully achieve policy outcomes this way, then the period of so-called dysfunction could be here to stay.

Mayoral leadership and the future reform of local government

The independent governance reviews of the Tauranga and Invercargill councils have both made recommendations that look to bring in experts and enforcers rather than empower and build up the leadership role and capability of mayors. If we are concerned about the capability and quality of local leaders, it is essential not only that we understand the role of local leadership; we also need to commit to supporting those individuals to grow and develop in their roles.

Mayors expressed consistently that they led through relationship building and negotiation rather than the legislative power of the role. Rather than employ a top-down and legislative solution to problem solving from a central government perspective, a greater emphasis should be placed on the relationship between the centre and local government and how an informal and consensual relationship can be supported between the two layers of governance, rather than further municipal reform.

Irrespective of the legal powers and role the mayor holds, when they do not command trust and influence councillors can extend their own role and flex their collective muscle. They are not content with voting down changes to parking fees when they can overturn the mayor's chosen deputy or committee chairs and structure. Mayors need to build trust with their council colleagues and it seems that the mandate from the wider electorate provides little comfort around the council table when they don't have this. The balance between the authority of the council and the authority of the mayor is not one demarcated by the legal limits of the roles or the politics of those holding the roles, but whether they can successfully negotiate and find collective solutions.

Greater legal powers either for the mayor to achieve their agenda or for ministers to restrict the actions of elected councils could well undermine the trust relationship which works effectively around council tables, and provides for little long-term recognition of the relationship between elected members and the communities they serve. Greater understanding and recognition that our diverse communities will elect a group of individuals with different ideals and personalities who may disagree on key issues yet this can still lead to effective governance and negotiated solutions being found is a more positive way forward for the challenges facing mayors.

Intervention and cries of dysfunction undermine the many mayors who successfully find negotiated solutions and compromises. The empowerment and recognition of a mayor's ability to appoint a deputy and lead the district, and at times have councillors who disagree with them, should be seen as a robust and healthy part of our local democracy. The connection between the local population, local democracy and leadership formed from the framework places a considerable emphasis on the importance of local knowledge and understanding as a key leadership factor – something far removed from the current desire of central government to introduce commissioners or external monitors.

The development of a leadership framework demonstrates that the role mayors play in leading locally and their ability to navigate uncertainty both politically and managerially without the need to resort to party political labels should be acknowledged and supported. Any reform of the local government sector should build on the leadership and influence that mayors bring successfully to the council table, rather than provide them with additional and unnecessary legal powers to govern.

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Gina Morrissey

The Holidays Act
will proposed changes solve the headaches?

Abstract

More than 200 organisations across New Zealand have been found non-compliant with the Holidays Act since its enactment in 2003. Thousands of employees have been underpaid by a combined amount in the millions and employers have incurred significant costs to remediate and maintain compliance. This article considers the issues with the Act, the impacts, and whether the changes proposed by the Holidays Act Taskforce will address these issues. It then sets out an alternative approach.

Keywords Holidays Act, legislative reform, risk remediation, non-compliance

In 2003 a new Holidays Act came into force in New Zealand. It was intended that the new Act would remove the confusion surrounding entitlement to and payment of holidays and leave that had been laid out under the previous, 1981 Act (Muir and Sandlant, 2000). However, despite the intent of the reform, the changes increased complexity of application, employer costs and non-compliance

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Note: the views expressed in this article are the views of the author, not Ernst & Young.

(Department of Labour, 2009). Numerous attempts have since been made to find a solution, including the establishment of a ministerial advisory group in 2009 resulting in recommendations and an amendment to the 2003 Act in 2010, the creation of several joint industry–government payroll sector leadership workstreams in 2016, and, most recently, the establishment of a Holidays Act Taskforce in 2018 (Minister for Workplace Relations and Safety, 2018; Employment New Zealand, 2021b). The government released the taskforce's final report in February 2021, 16 months after it was written and 19 months after it was due (Ministry of Business, Innovation and Employment, 2018; Wood, 2021). What are the issues with the 2003 Act? Why does it matter? And will the taskforce's recommended changes solve the current issues?

The issues

At a high level there are two key issues with the current legislation: it is ambiguous, and it is hard to apply in today's workplace (Holidays Act Taskforce, 2018a).[1]

Ambiguity

Although the 2003 Act sets out the minimum entitlements to each leave type and the payment method required, there is ambiguity in both the way entitlements should be provided and the way that leave should be paid. Specific examples include:

- whether four weeks of annual leave should be provided under section 16 or annual leave be paid out at 8% of gross earnings under section 28 because the employee works so 'intermittently and irregularly' that it is 'impracticable' to determine a week;
- defining 'a week' for employees whose working weeks change regularly, to enable determination of payment for, and entitlement to, annual leave;
- whether ordinary weekly pay should be calculated per section 8(1) or 8(2) – this depends on whether it is 'possible' to apply section 8(1);
- what is 'regular' for the purposes of calculating ordinary weekly pay under section 8(1);
- defining 'a day' for employees who do not have a fixed working day, to enable determination of payment for bereavement leave, alternative leave, public holidays, sick leave and family violence leave (collectively 'BAPS' leave);
- determining an employee's relevant daily pay, being 'the amount of pay that the employee would have received had they worked', for BAPS leave payments per section 9;
- whether relevant daily pay or average daily pay should be used to calculate BAPS leave: average daily pay may be used, per section 9A, if it is not 'possible or practicable' to determine an employee's relevant daily pay or the employee's daily pay varies within the pay period when the holiday or leave falls;
- whether an employee is entitled to payment for a public holiday if the day was not worked or accrual of an alternative day of leave if the public holiday was worked – this depends on whether the day would 'otherwise be a working day' for the employee per sections 49 and 56;
- what should and should not be included in gross earnings, as is required to calculate average weekly earnings, average daily pay, 'accrued' annual leave on termination and pay-as-you-go holiday pay per the Act. (Holidays Act Taskforce, 2018b)

Some of these issues have been considered by the courts and the Employment Relations Authority, including most recently in October

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2021, where the Court of Appeal overturned the Employment Court decision regarding short-term incentive payments. The Court of Appeal found that where an incentive scheme explicitly gives an employer discretion as to whether an incentive payment is made, those payments are discretionary payments and therefore do not need to be included in gross earnings (*Metropolitan Glass & Glazing Limited v Labour Inspector, Minister of Business and Innovation and Employment* [2021] NZCA 560).

Application in today's workplace
The ambiguous wording of the 2003 Act would not be a challenge were it not for the flexible working arrangements that exist in today's workplace and the volume of employees in organisations requiring employers to adopt systemised payroll functions. The ambiguity as a result of flexible working arrangements is at odds with the way in which payroll systems operate.

A payroll system is rule-based and requires that a configuration be established to deal with each variable. The judgement

required to apply the 2003 Act to flexible workers – for example, defining 'a day' and a 'relevant day of pay' – means manual intervention and monitoring is needed to enable correct leave calculations. For organisations with thousands of employees, this is a resource- and time-intensive process that may come at the expense of performing more value-adding activities.

Contractual solutions, for example smoothed-salaries, have been implemented by some organisations to increase ease of systemisation, but this may not always be an option as agreement with employees is required (Holidays Act Taskforce, 2018b). Other employers have dealt with the inability to systemise the 2003 Act by adopting the pragmatic approach of providing over and above the legislative requirement, for example, paying for annual leave at the higher-of ordinary weekly pay per section 8(1), ordinary weekly pay per section 8(2) and average weekly earnings. This is costly but is the approach with the lowest risk of non-compliance and has the associated benefit of reduced monitoring costs.

The impact
Hundreds of New Zealand organisations have been identified as being non-compliant with the 2003 Act, resulting in thousands of employees being underpaid for annual and BAPS leave and costly remediation programmes (Employment New Zealand, 2021a).

Employee underpayments
The Ministry of Business, Innovation and Employment is responsible for regulating compliance with the 2003 Act and does so through its Labour Inspectorate. Monitoring efforts have significantly increased since instances of non-compliance were identified in 2014 within government departments, namely the New Zealand Police and the ministry itself (Edwards, 2016). Another boost to monitoring efforts came in 2017, after the Labour government increased funding for the inspectorate in response to a growing media and public outcry about the treatment of migrant workers, including non-payment of holiday pay (Donovan, 2017). By June 2020, 201 payroll audits had been completed by the Labour Inspectorate, 171 enforceable undertakings and 42 improvement notices

had been issued and five organisations had been referred to the Employment Relations Authority (Employment New Zealand, 2021a). In addition, 112 employers had paid $237,700,000 in arrears to 227,300 employees, with an average payment amount of between $29 and $16,200 per employee (ibid.).

Underpayments have generally been greater and more prevalent for waged employees, who are often lower paid and thus for whom the payment is more significant. This is due to the variability of waged employees' working patterns and, thus, ambiguity with respect to the applicable calculation type and definition of some of the key terms in the 2003 Act. Additionally, employers often incorrectly exclude overtime and allowances, which make up a large proportion of some waged employees' pay, from relevant daily pay and ordinary weekly pay calculations.

The number of organisations yet to be identified as non-compliant and thus the number of employees, who have been underpaid for leave is unknown but is expected to be significant, given the number of enforceable undertakings and improvement notices issued as a percentage of audits carried out to date (Employment New Zealand, 2021a).[2]

Employer remediation and compliance costs
In order to rectify any previous non-compliance with the 2003 Act, organisations have been required to recalculate all employees' instances of leave for six years from initial identification of non-compliance until their systems and processes enable compliance (Employment Relations Act 2000, s131). The Labour Inspectorate has been clear that an estimation method is not acceptable and that every instance of leave must be recalculated when it is possible to do so (Labour Inspectorate, 2017).

Sequential recalculation is required due to the impact that underpayments have on calculations in periods that follow. It is noteworthy that overpayments may not be excluded from leave instances that follow unless the employer consults with the employee. Additionally, overpayments cannot be unilaterally deducted from an employee's pay (Labour Inspectorate, 2018).

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Due to the complexity of remediation programmes, most organisations have required external help with remediation. This has been expensive, with remediations costing between a few thousand and a few million dollars depending on the number of employees, years of remediation, quality of data and complexity of the working arrangements of employees. In addition, organisations have incurred significant costs to reconfigure payroll systems and implement processes and contractual solutions to enable them to be compliant going forward.

The answer
Proposed change
The taskforce's final report made 20 key recommendations for changes to the 2003 Act, all of which have been accepted by the government.

The recommendations address many of the ambiguities in the 2003 Act: for example, more guidance is given on how 'a week' and a portion of a week should be determined for annual leave payment and entitlement (Wood, 2021). Subjectivity has been removed with respect to selecting calculation types, with employers now required to pay the higher of three calculation types for annual leave and two calculation types for BAPS leave (ibid.). The definition of 'gross earnings' has been revised and is now simpler to interpret and apply; a more prescriptive and systemisable definition of an 'otherwise working day' has been added, and 'intermittent or irregular' now has a clearer definition making it easier to determine who can be paid pay-as-you-go holiday pay rather than given an annual leave entitlement (Holidays Act Taskforce, 2021). Additionally, the 'higher of' approach and the removal of the parental leave override will result in it being very unlikely for employees to receive less on a day of leave than for worked days.

However, many of the changes will not remove ambiguity and could cause further confusion and inconsistency in application: for example, the removal of ordinary weekly pay and relevant daily pay and their replacement with ordinary leave pay (ibid.). Currently, ordinary weekly pay and relevant daily pay are difficult to calculate due to the judgement or prediction required. Ordinary leave pay will require the same level of judgement and prediction, with allowances and incentive or commission payments that employees would have received if they had worked for the relevant period needing to be included in the calculation. It is likely that averaging of these payments will be required to determine the incentive or commission payments and therefore that the calculation will be very similar to the 13-week average weekly earnings calculation, rendering the ordinary leave pay calculation superfluous, especially given its complexity. Furthermore, the introduction of calculation types with units that are inconsistent will create additional confusion. Ordinary leave pay is defined in hours, whilst averaging calculations are defined in weeks for annual leave and in days for BAPS leave. This inconsistency will require organisations to define leave in

hours, days and weeks in order for the calculations to be applied and a comparison made to determine the amount owed.

An alternative approach

Commentators have suggested simplification through the adoption of one formula for all leave types, and that the new Act enable calculation and accrual of leave entitlements in the unit that best suits the workplace (Simpson Grierson, 2020). The suggested changes lack detail, but at a high level would address both the ambiguity issue by removing choice in the calculation option and the applicability issue by allowing the organisation to use the unit that works best in their workplace. However, the removal of a 'higher of' approach would result in instances where employees would receive less than they would under the existing legislation, which could result in stakeholder challenge and dissatisfaction.

Given the key issues, a new or amended Holidays Act should be simple, 'systemisable' and uniformly applicable to the variety of ways in which employees work, and it should not disadvantage employees when compared to the 2003 Act or when compared to their ordinary week or day of pay. One way this could be achieved is with an hours- and accrual-based approach, where all leave types are paid at the higher of the employee's base hourly and average hourly rate for each hour of leave taken. All employees would then accrue annual and sick leave based on hours worked and would be entitled to not less than 8% of their hours worked for annual leave and not less than 2% of their hours worked for sick leave.

An hours- and accrual-based approach would mean 'a week' and 'a day' do not need to be defined, and would remove ambiguity in determining whether annual leave entitlements should be provided or annual leave be paid out with employees' pay. It is important to note that 8% and 3% have been suggested to keep alignment with the annual entitlements of four weeks of annual leave and ten days of sick leave

> A new Act that adopts the recommendations of the taskforce will not be simple, 'systemisable' or uniformly applicable to the variety of ways in which employees work, and thus unintentional non-compliance is likely to continue and compliance costs will remain high.

as is currently provided for by the 2003 Act, but alternative percentages could be adopted instead. An approach based on hours also enables easy application in today's workplace, hours being the unit usually used in a payroll system. Reducing the number of calculation types from five to two and applying the same two calculation types to all employees and leave types removes complexity and subjectivity in determining which calculation to apply. A 'higher of' approach means employees are unlikely to be disadvantaged by the change in legislation, a weakness of a one-

calculation approach. The simplicity of base hourly rate and average hourly rate means systemising the calculations would be possible with no need to, for example, determine what the 'employee would have received had they worked'.

Conclusion

There are problems with the 2003 Holidays Act that are costing New Zealanders. Employees are being underpaid when they take leave and employers are incurring significant costs to remediate and maintain compliance. Change is required.

The Holidays Act Taskforce's proposed changes will not suffice. A new Act that adopts the recommendations of the taskforce will not be simple, 'systemisable' or uniformly applicable to the variety of ways in which employees work, and thus unintentional non-compliance is likely to continue and compliance costs will remain high.

A new two-calculation, hours- and accrual-based approach provides the answer. This approach would see all leave types paid at the higher of an employee's base hourly and average hourly rate for each hour of leave taken. An employee would then accrue annual and sick leave based on hours worked and would be entitled to 8% of their hours worked for annual leave and 3% for sick leave. This approach would take away the ambiguity that has plagued the various Holidays Acts since inception, and would be easily applied to payroll systems and the various ways in which employees work. Importantly, it would also mean employees would not be disadvantaged by taking leave, with a 'higher of' approach being adopted for all leave types.

1 It is important to note that while the focus of this article is on unintentional non-compliance as a result of the ambiguity and difficult application of the legislation, intentional non-compliance has been reported and is often associated with the exploitation of migrant workers in conjunction with violations of the Minimum Wage Act and other employment standard legislation (Collins and Stringer, 2019).

2 The number of enforceable undertakings issued is greater than the number of audits undertaken due to a number of employers identifying non-compliance with the 2003 Act prior to the Labour Inspectorate making contact. These employers signed an enforceable undertaking without an audit report being produced.

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