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

POLICY Quarterly

Volume 19 – Issue 1 – February 2023

Developing Future Public Service Leaders for Aotearoa New Zealand

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

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ISSN: 2324-1101 (Online)

Volume 19, Issue 1 – February 2023

Copy Editor: Rachel Barrowman

Design & Layout: Aleck Yee, at@alltexdesign.co.nz

Proof Reader: Vic Lipski

Cover Potography/Montage: Aleck Yee

Production: Alltex Design

VICTORIA UNIVERSITY OF WELLINGTON TE HERENGA WAKA | Institute for Governance and Policy Studies
A research institute of the School of Government

Editorial – Machines on the mind

Technological developments globally continue at an extraordinary pace. Many readers of *Policy Quarterly* will be aware of the launch in November last year of the artificial intelligence (AI) programme called ChatGPT. The programme has been developed by OpenAI, a research company established in 2015 and based in California. Elon Musk is among the founders.

The company's mission, according to its website, is 'to ensure that artificial general intelligence benefits all of humanity'. While such a goal is noble, it is also vague. What exactly does it mean, what specific criteria would need to be met, and how?

ChatGPT is the latest output of OpenAI. Designed as a large language model, it has a formidable capacity. It can provide answers to a vast array of questions, from the most profound issues of life, death, meaning and purpose to the trivial and insignificant. And these answers can be generated in an instant.

As some readers can doubtless attest from their own investigations, ChatGPT can write in all manner of genres and can produce many different types of literature – text messages, fictional stories, poems, haikus, letters, and academic essays. They are invariably fluent and logical. But they are not necessarily wholly accurate. ChatGPT cannot be relied upon to distinguish truth from falsehood. But it can describe what such words mean.

To save time, I contemplated using ChatGPT to write this editorial. What might take hours of mental effort and clumsy wordsmithing could be resolved in seconds.

But could I then claim to be the author? Indeed, what exactly would authorship mean in these circumstances? Hence, I can assure readers that these words originated from a mind (however frail, forgetful, and limited), not from a machine.

Yet this begs many questions: how do minds and machines differ? (One is reminded of Alan Turing's *imitation game* and the debates which have followed.)

Further, how do you know if I am telling the truth? After all, one of the extraordinary features of ChatGPT is that it can imitate the style of individual writers. It you want an editorial delivered with the flourishes, wit or dullness of a particular author, it can deliver, albeit within the web-based resources upon which it can draw. And while these are vast, they are not unlimited.

For the global educational community, ChatGPT and similar AI programmes raise massive issues regarding student assessment. How are teachers, academics, and other assessors to know whether the answers to their questions reflect the mental effort and disciplined inquiry of their students or merely their competence in utilizing AI tools? Oral examinations, group work, and even handwritten assessments will sometimes be options, but they fall far short of a satisfactory or comprehensive solution.

Of course, there are already computer programmes that can detect significant AI authorship. But ongoing AI advances may render such detectors ineffective or unreliable. Perhaps the only realistic choice, therefore, will be to facilitate, if not encourage, the use of AI in student assessment, albeit within clearly prescribed limits and with proper acknowledgement. I gather that this is now the approach of some Australian universities.

Beyond the classroom and lecture theatre far more profound questions arise. Some of these questions are not new, but the rapid development of general-purpose AI gives them greater importance and urgency. What, for instance, is the proper role of advanced technologies in the many and varied dimensions of social life? To what extent will it be technically feasible in the future to regulate that role, even when there is a moral imperative and political desire to do so? In short, will it be possible to control how general-purpose AI is applied, whether in homes, offices, schools or on roads and battlefields?

At the heart of the matter is the kind of society that humanity wishes to fashion. What is the vision for the future? What are the desired goals? And what are the acceptable means to achieving these goals? Such questions are fundamentally ethical, not technical. They are about what is good or evil, beneficial or detrimental. As such, they are central to public policy and hence the concerns of journals like *PQ*.

In a pluralistic world which is deeply divided geo-politically and ideologically, securing agreement on such matters will be extremely difficult. Yet relying on companies like OpenAI to determine what 'benefits all of humanity' and thus shape our collective destiny is hardly comforting.

With a general election in Aotearoa New Zealand in October 2023, there is an opportunity for some of the larger policy questions that will profoundly affect the nation's future – such as those surrounding the ethical limits to, and proper regulation of, AI to be raised and debated. Whether the opportunity is taken, however, is another matter. But to some extent that matter is in our collective hands.

In the meantime, the February 2023 issue of *PQ* contains plenty of other topics to stimulate the mind, from the policy challenges of the COVID-19 pandemic to important constitutional questions, such as lowering the voting age to 16 and the funding of political parties.

But apologies: the moral and legal rights of robots, humanity's responsibilities to machine-based forms of intelligence, and the challenges of regulating rapidly evolving technologies must await a later issue of the journal.

Jonathan Boston - Editor

Sir Ashley Bloomfield

This article is an edited version of the Sir Frank Holmes Memorial Lecture delivered at Victoria University of Wellington on 23 November 2022.

Developing Future Public Service Leaders for Aotearoa New Zealand

Abstract

The New Zealand public service performs comparatively very well internationally and this has been evident during the global Covid-19 pandemic. The public service will need strong and adaptable leadership in future to respond effectively to significant global challenges and threats to public trust, and the need for better public policy responses to extant 'wicked' problems. The pandemic response in New Zealand and internationally provides strong pointers as to what New Zealand should do to develop public service leaders for the future.

Keywords leadership, public service, Covid-19, public trust

In late 2019, the *Economist*, the Nuclear Threat Initiative and Johns Hopkins University published the 2019 Global Health Security Index, which ranked 195 countries or jurisdictions on their capacities, across a range of domains, to prepare for epidemics and pandemics (GHS Index, 2019). The assessment ranked the United States and the United Kingdom as the two best-prepared countries. New Zealand came in a lowly 35th.

Sir Ashley Bloomfield is a public health medicine specialist. He served as the director-general of health between June 2018 and July 2022. In this capacity he was responsible for leading the nation's public health response to the Covid-19 pandemic. He previously held senior positions in the Ministry of Health and district health boards, and worked earlier in his career for the World Health Organization in Geneva. Address for correspondence: bloomfielda.who@gmail.com.

As we now know, just a few months later those preparations were put to the test with the emergence of a novel coronavirus, leading the World Health Organization to declare a global pandemic on 11 March 2020.

There were many things that lay behind the gap between apparent readiness for a pandemic and the delivery of an effective response in different jurisdictions. A prominent one was the quality of leadership – by politicians especially, and also public service, business and community leaders. I want this evening to share my reflections on public service leadership in New Zealand, taking a look at what we know about perceptions of, and the impact of, that leadership presently, and share my view of lessons we learnt through the Covid-19 response. I also want to identify the attributes I think will be essential for future public service leaders and make a few comments on what we might need to do differently to ensure we develop those leaders here in Aotearoa.

Current leadership expectations, values and principles

Te Kawa Mataaho, the Public Service Commission, has a clear set of values that outline 'how New Zealand expects public servants to behave to maintain public service integrity'. These values are codified in section 16 of the Public Service Act 2020. Public servants are expected to be:

- impartial;
- accountable;
- trustworthy;
- responsive;
- respectful.

Alongside these values is a set of principles that underpin how the public service should operate:

- politically neutral;
- free and frank advice;
- merit-based appointments;
- open government;
- stewardship.

... New Zealanders trust their government more than any other nation in the world, although its competence is viewed less positively ...

So, what do we know about how the New Zealand public service performs in delivering against these expectations?

Transparency

I want to turn first to the Transparency International Corruption Perceptions Index, which is quite widely known. New Zealand has been first equal on this index for the last three years and is consistently in the top two (Transparency International, 2021).[1] In 2021 New Zealand, along with Denmark and Finland, scored 88 points; for comparison, the UK was in 11th place with 78 points, Australia 18th on 73 points, and the US 27th on 67 points. Of course, the most important comparison is with ourselves – that is, how are we doing over time, and are we making progress on the matters that account for the 12-point gap between our current score and a 'perfect 100'? From 2013 to 2015 our score peaked at 91, so there has been a small, but not precipitous, decline in recent years. This contrasts with much larger declines in the scores for Australia (a 12-point drop since 2012), Canada (a 10-point drop since 2012) and the US (a 9-point drop since 2015).

Transparency International noted in its 2016 report that the most common issues causing concern in high-scoring countries were closed-door deals, conflicts of interest, illicit finance and patchy law enforcement; in its latest (2021) report the issues were the blurred line between politics and business, inadequate controls on political finance, opaque lobbying, and the revolving doors between industries and their regulators.

So, New Zealand performs well here, and this is no small thing. Corruption undermines public trust, as well as the effectiveness and equity of public services if funding is not used for the purpose intended but is siphoned off for other purposes. However, we cannot afford to be complacent.

Public trust in government globally ...

Related to perception of public sector corruption is public trust in government – and I want to make the point that 'small g' government in New Zealand includes the executive, Parliament and the public service. I'm going to talk a bit about this, as trust is fundamental to effective governance and was central to the effectiveness – or otherwise – of pandemic responses around the world.

Since 2000, Edelman has undertaken an annual survey of trust in government and other key groups and institutions, the Edelman Trust Barometer (Edelman, 2022). Prior to the pandemic, across the 28 countries surveyed (36,000 people), public trust had declined significantly over the previous decade or so. Presenting the results of the 2022 survey at the World Economic Forum in January 2022, Richard Edelman described the current global situation as a 'vicious cycle of distrust' that threatens societal stability (World Economic Forum, 2022). He noted that:

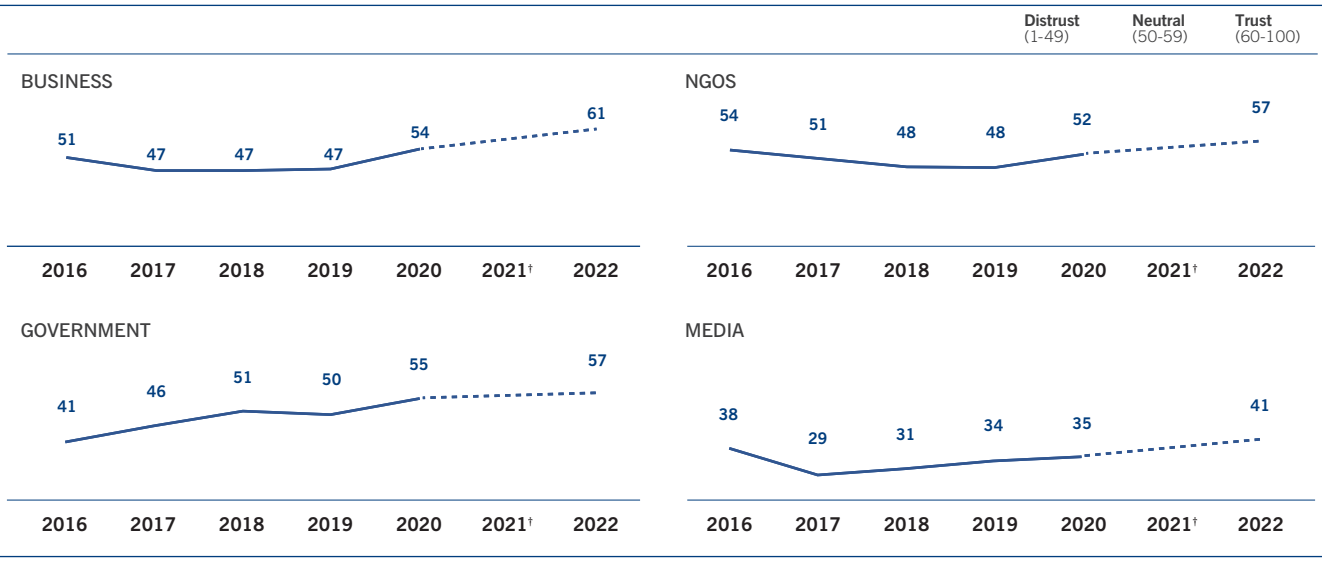
- globally, almost two-thirds of people are inclined to distrust organisations, which could impact attempts to tackle Covid-19 and climate change;
- scientists are the most trusted in society, and government leaders the least trusted;
- the barometer shows four forces at work, including a failure of leadership that could destabilise society, according to Edelman: he points the finger at 'governments and the media feeding a cycle of disinformation and division for votes and clicks';
- it is possible to break the cycle of distrust and rebuild public trust through factual information and demonstrable progress.

... and in New Zealand

While New Zealand is not one of the 28 countries in the global survey, the survey is carried out here by Acumen. The Acumen Edelman Trust Barometer 2020 (with field work completed in late 2019, just prior to the pandemic) concluded that 'New Zealanders trust their government more than any other nation in the world, although its competence is viewed less positively' (Acumen, 2020). The New Zealand government was the only one among 29 countries included in that Acumen Edelman Trust Barometer to be viewed as 'ethical' by locals.

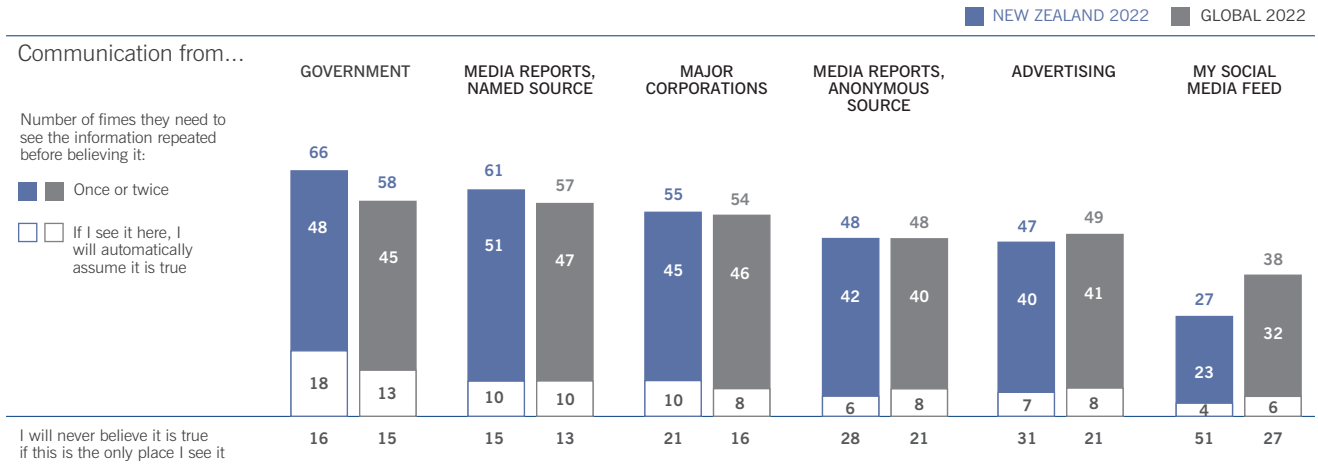
The more recent 2022 results are encouraging in many respects and also provide pointers to the qualities and skills required of our future public service leaders (Acumen, 2022). On the good news side, New Zealand was unique among democracies in seeing an *increase* in overall trust between 2020/21 and 2022 (remembering that the fieldwork is completed in November the year before). This increase is all the more significant when contrasted with the 'biggest losers': Germany (–7%), Australia (–6%), South Korea and the US (both with a 5% drop).

Figure 1: Trust in New Zealand over time*



Source: Acumen 2022 * Percent trust, in New Zealand †New Zealand 2021 results unavailable

Figure 2: Information sources that are most trusted*



2022 Edelman Trust Barometer. HEAR_TIMES1. When you see a new piece of information or a news story in each of the following sources, how many times do you need to see it or hear it repeated in that same type of information source before you believe it is really true? Question asked of half of the sample. "Once or twice" is a sum of codes 2 and 3. General population of New Zealand. "Employer communications" only shown to those who are an employee of an organization (Q43/1).

* Percent who believe information from each source automatically, or after see it twice or less, in New Zealand Source: Acumen 2022

Furthermore, trust in key institutions in New Zealand – government, business, NGOs and the media – increased over the last five years (Figure 1). This is not generally the picture in other democracies. I should note that trust in the media in New Zealand is a lot lower than the global average (41% vs 50%), which contrasts with higher trust in government in New Zealand (57% vs 52% globally). New Zealand is also a standout regarding trust in government leaders – eight percentage points ahead of the global average.

Government is also the most trusted source of information, ahead of media reports, corporations, advertising and social media feeds (Figure 2). This trust in government as a source of information is considerably higher in New Zealand than the global average (66% vs 58%). It is also encouraging to see that New Zealanders are more sceptical about their social media feeds than citizens in many other countries.

These findings are consistent with those of the Te Kawa Mataaho quarterly surveys of public trust and confidence in the public service, which have shown a steady increase in trust over the last decade, with a large increase during the pandemic (Public Service Commission, 2022).

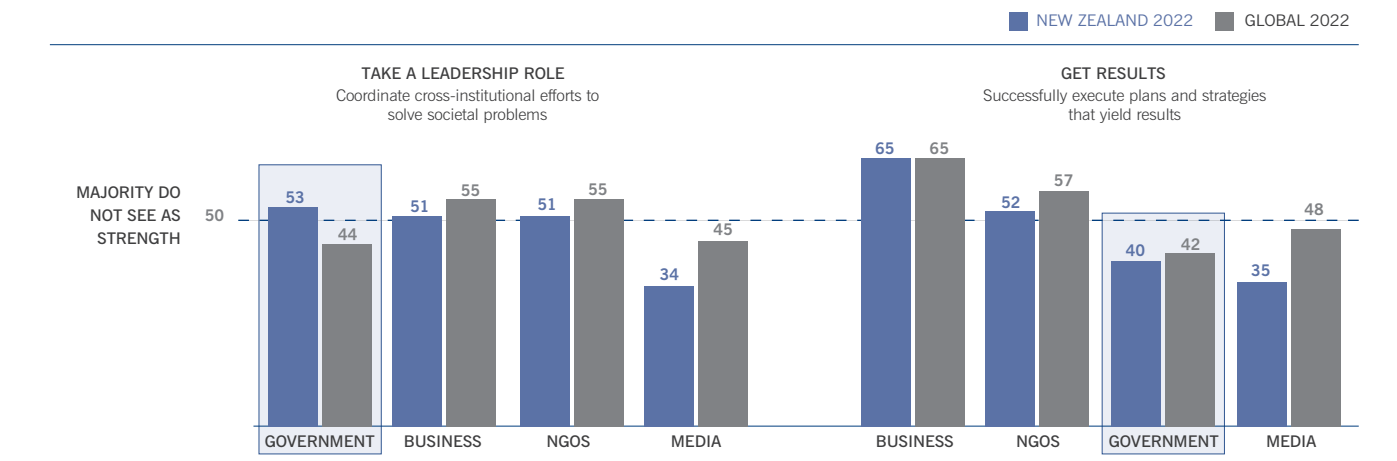
I think it is safe to say that at least part of the explanation for these results is the government's response to the Covid-19 pandemic, and it accords with the findings of surveys conducted during the first 18 months of the pandemic showing high levels of public support for the response.

I can't emphasise enough how important these finding are in the context of falling levels of trust globally, significant economic and social challenges both on and offshore, and our current 'VUCA' world – volatile, uncertain, complex and ambiguous. They are also a very clear reminder of the importance of trust and the need for public service leaders to constantly consider how they can build and maintain that trust. Trust is a public service leader's key currency – with ministers, with colleagues, with staff and, of course, with the public.

Public service effectiveness

A further finding of the Acumen Edelman Trust Barometer 2022 was a reasonable level of public confidence in government's ability to take a leadership role to coordinate cross-institutional efforts to solve societal problems (Figure 3). There is a much higher level of confidence in

Figure 3: Governmental Leadership offset by inability to get results*



* Percent who say each is a strength of insitutions, in New Zealand Source: Acumen 2022

government to do this in New Zealand than there is globally (53% vs 44%), which contrasts with findings for business, NGOs and the media. There is a kicker, though: there is a much lower level of confidence in government to deliver results. This finding has obvious implications for future public service leaders.

Looking further, New Zealand's public service does perform well in international comparisons. The International Civil Service Effectiveness (InCiSE) Index 2019 rated New Zealand second (to the UK) in terms of overall effectiveness (Blavatnik School of Government, 2019). New Zealand rated highest of the 38 countries surveyed on three domains: capabilities, integrity and procurement. Interestingly, two areas where New Zealand didn't perform quite so well were crisis and risk management, and tax administration.

Our management of crises and risks has certainly been tested several times in recent years – for example, by *Mycoplasma bovis*, the Christchurch mosques terrorist attack, the Whakaari eruption, and, of course, the Covid-19 pandemic – and has performed well on each occasion. And our tax administration system has been significantly improved and upgraded in recent years, as anyone who uses MyIRD will know.

So saying, we all know where the proof of the pudding is. My experience in the public service is that we are generally strong on policy development, and it is in implementation where things fall down. Sometimes the reasons for this are outside the direct control of the public service: for example, where a change of government leads to a change in policy and subsequent implementation priorities. However, reflecting on my (by no means unique) experience and the relevant findings of the Acumen Edelman survey, it is clear that the public service could be stronger on delivery.

Leadership lessons from Covid-19

I have been reflecting for some time on my personal leadership lessons from over 20 years in public service leadership roles. Many of these lessons were highlighted or amplified during the Covid-19 pandemic. I've distilled these down to five key lessons, which, you will see, are linked. All are relevant to future public service leaders.

I want to set the scene first with the definition of leadership I have found most helpful: that 'leadership is an invitation to collective action'.

The first lesson is the importance of leaders being able to ensure and constantly articulate a clear sense of purpose and direction; in other words, the sense of 'why'. It is important to note here that 'ensuring' direction is not the same as 'giving' direction. The former is a process of engaging people in identifying, agreeing and owning the purpose, consistent with the definition of leadership as an 'invitation to collective action'.

During the Covid-19 pandemic we saw New Zealanders across the country embrace the call to action, especially during the lockdowns and in response to the vaccination programme. A key reason for this is that they understood clearly the 'why' – the need to stop the virus transmitting to protect themselves, others and the health system. The response was quite remarkable, and in my mind demonstrates the fundamental importance of generating a clear and compelling sense of purpose, which then unleashes huge energy and action.

I witnessed this on a daily basis in the public service, where people did extraordinary work – often without being asked – because they were so clear about the purpose and knew where their work fitted in and how important it was. Often as leaders we focus too much on the 'what?' and 'how?' without taking enough time to engage people fully in the 'why?' The pandemic response highlighted that people have a very good idea of what to do and how to do it if they have a clear sense of purpose. The leader's job is to ensure direction and adequate resourcing and then, more or less, get out of the way.

A second key lesson was the importance of trust, which I've already spent some time on. Arguably, trust was the essential ingredient in New Zealand's successful pandemic response, and clear, consistent and honest communication was the most important public health intervention. There were several key elements of the communication approach: regular, and for long periods daily, stand-ups where any and all questions were answered (sometimes the same question repeatedly); 'turning up' for interviews regularly, especially when the 'heat' was on; and owning and explaining changes in advice and mistakes.

Third, leadership is about values and acting in accordance with those values.

This is especially so in a crisis situation where there are high uncertainty, high stakes and limited information. Leaders need to be able to acknowledge and manage their own emotional response and then act from their values, both personal and organisational. I'm talking here about the way we behave, especially under pressure: to quote, 'we judge ourselves by our intentions, others judge us by our behaviours' (Lennox, 2017).

Chesley 'Sully' Sullenburger, who successfully landed US Airways flight 1549 on the Hudson River in New York on 21 January 2009, interviewed 11 prominent US leaders from across the military, government, private sector and non-government organisations as part of a book on the topic. Here is what one of those leaders said when asked what he learned from his key mentor early in his career: 'Number one, he was – you're not going to believe this – a good human being. He had good values. He had integrity. He was straightforward. He was good-humored. He was just a good person to be around, okay?' (Sullenburger, 2016, p.62). Actually, I *do* believe it because it accords fully with my experience. Our behaviours are the outward expression of our values: the mantra I use is 'every interaction, every day'.

During the pandemic I was always very conscious as I fronted the media that I was representing the public service and I wanted to uphold and demonstrate public service values. I also drew heavily on four values to underpin my personal response; that is, 'how I wanted to come across': kindness, humility, courage and integrity.

I am still getting used to people approaching me on the street to thank me 'and the team', and I've received hundreds of letters, cards and emails from members of the public. A common theme is that the daily stand-ups provided people with a sense of both connection and reassurance, especially during the first lockdown in the face of great uncertainty and attendant anxiety. People comment often on the fact that I came across as calm and reassuring and that this conveyed a sense that 'everything would be all right'. As I've shared publicly before, I did not exactly feel calm during the stand-ups, which felt like being 'in the arena'. Both the preparation for and delivery at the stand-ups was stressful and the intensity and degree of concentration required often left me exhausted. However, I chose to retain my composure and convey calmness at all times and this is something that many people valued and remember. As the old leadership adage goes, 'people won't remember what you said or did; they will remember how you made them feel'.

A fourth important lesson was how to deal with the media's favourite 'F-bomb' – failure. This word is applied to anything that doesn't go perfectly, even in the situation of a pandemic where there was huge uncertainty and no operating manual. After the first high-profile hitch in our pandemic response, I took the position that rather than the event being a problem in itself, the only failure is the failure to review, learn and improve. This doesn't mean dodging accountability – in fact, a key part of building and maintaining public trust during the pandemic response was acknowledging what had happened when things didn't go as well as they could or should have – but ensuring that the focus is on reviewing and learning. This is the approach that the airline industry has taken to improving safety over many decades, and it also underpins quality improvement in health care. Fundamental to this is a focus on the system rather than the individual (even if the common response of the media is to call for a resignation).

A fifth Covid-19 leadership lesson was the importance of looking after yourself and your people. This was especially important during the relentless and high-stakes response to the pandemic, but it is apposite to leadership in all circumstances. Resilience is a key leadership attribute, and the pandemic taught me that resilient people are not those who 'just keep going'; rather, they are people who are highly aware of the boundaries of their physical, mental and emotional wellbeing and they take active steps to manage within those boundaries.

These were my personal leadership lessons, but there were a number of other important takeaways at a system level that should inform our approach to future public service leadership, and our planning for responses to future crises. I will run through these briefly.

- Preparation is important, but excellent decision making is essential: as the results of the Global Health Security Index demonstrate, preparation and planning are important but having agreed decision-making structures and processes in place and testing these beforehand is critical. It doesn't matter how prepared a jurisdiction is on paper; it is of little value without strong, values-based leadership and evidence-informed decision making.
- Having agreed shared objectives: at the start of the pandemic there was some debate about public health outcomes versus the economy, but it soon became clear that the best economic and social response was a strong public health response. This then informed a unified approach across government.
- Flexibility and agility: one of the reasons New Zealand's pandemic response was successful is that we were able to adjust it 'on the fly' on the basis of new information, evidence or empirical learning.
- The need to deliver for marginalised and vulnerable groups: we clearly didn't always do this as well as we should have, but avoided 'failure' by learning and adjusting. There were some remarkable results achieved in both outbreak management and vaccination.

Resilience is a key leadership attribute, and the pandemic taught me that resilient people are not those who 'just keep going' ...

- Communities have enormous capability and capacity to look after themselves if we listen, provide them with good information and resources, and let them take the lead.
- If you look after staff and, in particular, 'have their back' when mistakes are made, you will get huge discretionary effort.
- Communication is absolutely critical to an effective crisis response: one of the first things we should do in response to a significant event is put in place a full communications response that reaches into all communities through a range of channels right from the start.

The more proactive approach used by the Defence Force, as well as approaches used in the public service in other places, such as the UK, provide useful pointers for New Zealand.

Future leaders

So what does all this mean for future leaders in the public service? The short answer is that the future is now; the leaders we need in the future are the leaders we need now. So it is perhaps more a matter of emphasis than anything else.

I want to start with a list of attributes of future directors, compiled from feedback from participants in recent advanced directors' courses run by the New Zealand Institute of Directors. This is a 'work in progress' and I want to acknowledge Carol Scholes from the institute for the list and her agreement for me to share it.

Advanced directors' courses list of leadership attributes

- Big picture thinking and aware of impact of wider events on their organisation
- Decisive in ambiguity
- Assumes the best (optimism)
- Aware of biases
- Healthy level of imposter syndrome (self-doubt)
- Lifetime learner and lifetime teacher (i.e. is curious and doesn't have 'ownership rights' on knowledge or information)
- 'Constructive disruptive'
- Keeps wellbeing high (to maintain high resilience)
- Knows when to exit

I think these attributes are all apposite to public service leaders both now and in future, so it's a great starting point. I would like to suggest seven additional attributes; all are important now and will be even more so in future.

Essential public service leadership attributes

- The best leaders are those who do the basics well, and arguably the most basic and important task of leaders is effective communication. Communication is a two-way process which starts with listening, so public service leaders need to create opportunities to do just that, in particular with marginalised and vulnerable groups and communities. Public service leaders need to be able to communicate honestly with the public to build trust; it's no coincidence that the words 'trust' and 'truth' originate from the same linguistic root. Of course, being able to communicate is one thing; having the opportunities to do so is another. A significant change I noticed during my public service career was a move away from public servants fronting issues, including those of a technical nature (except perhaps when things have gone wrong). Incidentally, this change has occurred in parallel with the rise and rise of the political advisor. This did change during the Covid response, where there was a very obvious blend of political and technical communication with the public, in particular during the daily stand-ups during outbreaks. Of course it is fully appropriate for governments, and ministers especially as the decision makers, to develop and front the narrative. However, I think it's also important for government departments, through their chief executive, to be able to, and be seen to, help lead the agenda of the government of the day.
- A deep understanding of the public service and its role in ensuring governments can deliver on their agenda, and as stewards of essential public institutions and democracy itself.
- I've mentioned the perception and reality of the gap between good policy and issues leadership and the ability to deliver. Future public service leaders should have a strong understanding of, and preferably experience in, programme implementation and operational delivery.
- A very good understanding of te ao Māori and good working knowledge of te reo, including a moderate level of listening comprehension and the ability hold a basic conversation. This is a huge leadership opportunity for public service leaders in Aotearoa. They will need to know not only how to work in partnership with Māori at a range of levels, but be comfortable and accomplished in doing so.
- Strong knowledge of the drivers of socio-economic and cultural inequities in New Zealand, including the role of racism in creating and sustaining these.
- Public service leaders should be able to make connections readily across different areas of policy and practice, not just in their areas of expertise. Collaboration across sectors should be the norm and be 'rewarded'. Leaders should take pride in being well informed on wider local, national and global issues and the implications of these for their organisation and sector, and for New Zealand as a whole.
- Specific training in coaching and mentoring and developing other leaders and staff. Good leaders are excellent at skills transfer to help ensure people have

the same opportunity they did, as part of succession planning, and to ensure that the organisation can function well if they are not there.

What else is required to develop future leaders?

Leading in the public service is a huge privilege, always challenging but richly rewarding. Excellent future public service leaders will be essential for our country to continue flourishing and to address existing socio-economic and ethnic inequities.

Looking back on my public service career, I was fortunate to have a number of great mentors and bosses who facilitated a range of opportunities for me and supported and encouraged me as I took those on. But there was also a significant element of chance and, in many respects, I had to forge my own path.

It's reasonable to expect senior leaders to take the initiative on their career development, seek advice and look for opportunities to develop new skills and experience. However, I wonder if the current approach could be strengthened with:

- more systematic recruitment into and development of people in the public sector;
- organised investment in people to develop leadership skills; and
- closer oversight and nurturing of a cohort of potential future senior leaders.

This might also include more careful 'curation' of people's careers to ensure exposure to the range of experiences needed to develop the leadership qualities required. This is happening to some extent with coordination across ministries and departments on recruiting some graduates, and the Public Service Commission has career boards that look to link individuals with opportunities across the public sector.

While there is no 'right' balance between self-direction and system involvement and oversight, I think there is an opportunity for a more systematic approach to leadership selection and development. I am always struck by the significant investment that the Defence Force makes in developing its leaders and I observed the benefits of this during the pandemic response while working closely with a series of excellent leaders, especially in the leadership of the managed isolation and quarantine services. The more proactive approach used by the Defence Force, as well as approaches used in the public service in other places, such as the UK, provide useful pointers for New Zealand.

Concluding comments

In conclusion, I want to reiterate the importance of values-based leadership in the public service. As Sully comments in his book: 'For me, there is no effective way to cope with the ambiguity and complexity so prevalent today unless one has a clear set of values' (ibid., p.6).

The values that underpin the public service – impartial, accountable, trustworthy, responsive and respectful – provide a strong basis for coping with the world we live in. And they should be reflected in the behaviour of public service leaders at all times: in their organisations; when working collaboratively and with shared purpose across the public sector; when interacting with ministers; and certainly when engaging with and listening to stakeholders and communities. The challenge for any leader is to do so consistently; leadership is a full- not part-time occupation.

The pandemic has provided very useful lessons for public service leaders today and in the future. Overall, I think it's reasonable to conclude that public service leaders stepped up to the challenge and did a good job. Other data indicate that our public service is comparatively transparent, effective and trusted. But none of these can be taken for granted.

There are clearly opportunities to strengthen implementation of policy initiatives and to work more closely with communities throughout the development of and delivery on government policy, particularly that designed to address ongoing major societal challenges, including inequities between groups. This will require more deliberate investment in developing and nurturing public service leaders – an investment that is not only worthwhile but essential if Aotearoa is to be a great place to live and thrive for everyone.

1 The index, which ranks 180 countries and territories by their perceived levels of public sector corruption according to experts and businesspeople, uses a scale of 0 to 100, where 0 is highly corrupt and 100 is very clean.

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David King

The robustness of New Zealand's policy advisory system

the case of the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill

Abstract

Recent legislation reforming the oversight of Oranga Tamariki and the role of the children's commissioner was met with all but universal opposition. A key concern was that locating monitoring of the care and protection of children with a government department (and not the commissioner) was too close to ministers to ensure the level of independence required for such a function. This article suggests that the public sector policy advisory system was not robust enough to come up with the optimal policy solution when, in effect, all others said it was wrong. The case gives cause for the public sector to reflect upon the quality of its advisory function.

Keywords policy advisory systems, child care and protection, statutory independence, learning systems

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Disclosure: David King is a friend of the former children's commissioner, Judge Andrew Becroft. In forming his views on the bill he did not discuss its merits with Judge Becroft, to ensure the independence of his analysis.

The care and protection of children and young people at risk of or the object of abuse is a critical public policy issue. Children have the right to live free from abuse and the trauma it inflicts. Abuse is associated with increased risk factors for poor outcomes across a wide range of life domains.

The performance of Oranga Tamariki (New Zealand's care and protection agency) and its predecessor organisations has been the subject of ongoing scrutiny and review since at least 1988. Successive governments have undertaken reform to 'fix' the issues, but to date these reforms have not delivered results sufficient to enjoy public confidence.

In November 2021 the majority Labour government introduced a bill designed in major part to support improvement of the performance of Oranga Tamariki: the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill. The legislation was given royal assent on 29 August 2022.

The bill can rightly be considered one of the most controversial passed by the government during its term so far. It is one of the few bills to have been opposed by all other parties in Parliament (extraordinarily, Green MP Jan Logie and Act MP Karen Chhour advocated together in the media in opposition to the bill). The overwhelming majority of submissions were opposed to it (311 opposed, 8 in favour) and submitters included numerous organisations working with children and young people, academics, eminent Māori, former public servants, and young people who had been in the care of Oranga Tamariki (through their representative organisation, VOYCE Whakarongo Mai).

The bill, therefore, is an important case study of the robustness of the policy advisory system in New Zealand. Can government policymakers (policy advisors and ministers) have delivered the optimal solution for children and young people when everyone else in effect said they had it wrong? Exploring the answer to this question may provide a number of insights into, and lessons for, New Zealand's system of policymaking.

In addition, the bill raised a number of important issues about institutional design, in particular the degree of independence that can be expected from various institutional forms (departments compared with independent Crown entities, in particular) and the degree to which statutory independence guarantees actual independence.

The author brings a relatively uncommon perspective to this issue. He was for many years a senior public servant, intimately involved in the policymaking process. He left the public service in 2020 and from the beginning of 2022 played an active role in opposition to this bill during its passage through the House. He therefore got to see a system he knew well from the outside. This experience led him to gain a fresh perspective on the policy advisory system's character.

Background to the bill

Oversight of Oranga Tamariki on behalf of the children, young people and families (tamariki, rangatahi and whānau) affected by its actions or non-actions is a critical part of ensuring the optimal performance of Oranga Tamariki, including preventing abuse in care. The position of children's commissioner was created in 1989 to play a critical role in the oversight of care and protection, as well as to advocate on behalf of all children. Overall, children's commissioners have been highly regarded by the public and the children's sector. Commissioners have consistently highlighted inadequacies in the performance of Oranga Tamariki and its predecessors, and have also played critical roles in bringing about change in a number of important areas (such as physical punishment of children, the age of criminal responsibility and child poverty).

Beatie stated that such was the need for increased and improved oversight of Oranga Tamariki that the government should not wait for the report of the Royal Commission of Inquiry into Historical Abuse ... then scheduled to report in over four years' time.

Oversight of the Oranga Tamariki system[1] includes the functions of:

- investigation of individual complaints (for example, by children and young people);
- monitoring the system's performance;
- wider investigations into system-level issues; and
- advocacy on behalf of children covered by the system.

The bill's origins lie in the commissioning of a review of oversight functions by the then Labour–New Zealand First government in August 2017. The review was driven by a broad desire by the government to improve the performance of Oranga Tamariki. A particular factor was the introduction (for the first time) in July 2018 of national care standards for those in care or custody. Under the Oranga Tamariki Act 1989, the responsible minister was required to appoint a monitor independent of Oranga Tamariki. There was wide agreement that these standards required a significant increase in the level of monitoring; the question was who should perform the monitoring and other oversight functions.

This review resulted in the Beatie report in August 2018 (Beatie, 2018). The Beatie report did not reach definitive conclusions about which agencies should perform each function (the report's conclusions were 'preliminary', to inform detailed analysis). However, in the broad Beatie supported co-locating the monitoring and advocacy functions within the Office of the Children's Commissioner (OCC). The report identified that changes to governance may be necessary to accommodate increased monitoring.

Beatie stated that such was the need for increased and improved oversight of Oranga Tamariki that the government should not wait for the report of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions before proceeding with changes. The royal commission was then scheduled to report in over four years' time.

Overview of the bill

The government made its decisions in relation to the bill in a number of stages, with final decisions in May 2021, two and a half years after the Beatie report. There was a long period between December 2019 and May 2021 where the policy system was focused on the issue of which agency should perform the monitoring function. By May 2021 there were two key options.

Table 1: Allocation of oversight functions before and after the bill

Function	Before the bill	After the bill
Investigation of complaints	Children's commissioner (with the power to refer to other agencies as appropriate)	Office of the Ombudsman (with the power to refer to other agencies as appropriate)
Monitoring of Oranga Tamariki	Children's commissioner	Independent monitor
System-level investigations	Children's commissioner and Office of the Ombudsman	Children and Young People's Commission and Office of the Ombudsman
Advice arising from monitoring	Children's commissioner	Independent monitor
Advocacy	Children's commissioner	Children and Young People's Commission

The first was the Children and Young People's Commission (the government had in December 2019 decided to change OCC from a commissioner-sole model to a more common Crown entity structure with a governance board). The second option was the independent monitor. The monitor was then a business unit within the Ministry of Social Development, with an in-principle decision having been made by Cabinet in March 2019 to transfer the function, once established, to the children's commissioner. However, Cabinet in the end decided that the monitoring function should be located in a new departmental agency (in effect, a government department), hosted by the Education Review Office; the chief executive of the independent monitoring agency (the monitor) would be a statutory officer.

Table 1 describes which agencies performed the various functions covered by the legislation before its enactment and which agencies will perform the functions when the legislation comes into effect (1 July 2023, or earlier by order-in-council). An additional function, advice arising from monitoring, is included in this table. An advisory function, which was not emphasised by Beatie or in public debate about the bill, was the subject of significant consideration by Cabinet alongside the monitoring function.

To understand the policy decisions given effect to in the bill, it is important to note that in regard to:

- *the complaints function*: OCC had not launched a statutory investigation since 2010, resolving most complaints informally and, where it judged it appropriate, referring others to the ombudsman or other complaints bodies; Beatie concluded that the complaints function was significantly underfunded;
- *the monitoring function*: OCC, while having a statutory function for monitoring Oranga Tamariki, had never been funded to perform the function fully and generally limited its monitoring activity to that required to meet international treaty obligations (covering only about three per cent of those in care or custody) and any system-level investigations;
- *the advocacy function*: the government's rationale for moving to a board structure was that a board could bring greater diversity to the table (including Māori and the disabled) and enable there to be a greater focus on the rights and needs of all children and not just those within the Oranga Tamariki system.

In addition to these key features of the bill, the bill also required the Children and Young People's Commission, the monitor and the ombudsman to work together and share information as appropriate.

The passage of the bill

Key stages in the passage of the bill are outlined in Table 2. The Social Services and Community Committee formally called for submissions in mid-November 2021, with submissions due on 26 January 2022. However, there was a widespread impression among submitters that the call for submissions was made on 22 December; certainly, that is when most submitters became aware of the bill, and, consequently, there was a widespread perception that the government was giving inadequate time for submissions, particularly given the holiday period.

The select committee reported back the bill with three key changes:

- naming the chair of the Children and Young People's Commission the chief children's commissioner, so that there would continue to be a visible individual recognised as the voice for children;
- inserting into the bill a specific ability for the commission to make reports directly to the prime minister (this had been contained in the Children's Commissioner Act 2003 and omitted because it was seen by officials as being allowed for regardless); and
- inserting into the bill a clause stating explicitly that the monitor was required to perform its statutory functions independently.

The government (led by the minister responsible for the bill, Carmel Sepuloni) argued that these changes showed that the select committee had listened and responded to submitters' concerns. Key submitters and other political parties argued that while these changes were welcome, their key concerns remained. They were not confident that the monitor, as a departmental agency, could be truly independent of government (it was, they said, the government monitoring itself - a 'lapdog', not a 'watchdog' – and that this had been a key factor in the past abuse in care now being examined by the royal commission). They also considered that the key functions of monitoring, complaints and advocacy should be combined within the Children and Young People's Commission, so that children and young people knew there was one place for them to go if they had concerns about their rights, interests and wellbeing.

Once the bill was reported back from select committee, it passed through its further stages very rapidly. It is clear that passing the bill was a very high priority for the government at the time.

The quality of the policy analysis

Method for assessment

In assessing the quality of the policy analysis undertaken for the bill, it is

important to acknowledge that:

- not all papers released proactively or under the Official Information Act 1982 had been reviewed at the time of writing (batches of papers were in the process of being released at that time); however, a sufficient number of key departmental and Cabinet papers had been reviewed to make an objective assessment of the policy analysis feasible;
- a high standard for policy analysis is set in assessing the papers; on matters of considerable public interest, it is not reasonable to expect anything less from the public sector or from Cabinet;
- this article draws heavily on a larger paper analysing the bill by the author and Jonathan Boston (King and Boston, 2022); this paper was produced during the passage of the bill.

Assessing the quality of the analysis is made more difficult by there being no one place where officials set out the analysis undertaken for locating the specific functions for oversight of the Oranga Tamariki system. The Treasury gave the Ministry of Social Development (the lead advisor on the bill, with support from the Public Service Commission) an exemption from requiring a regulatory impact assessment, on the basis that these were machinery of government changes and, it concluded, did not have impacts on individuals. This was clearly an error of judgement, as different options could potentially have significantly different impacts on outcomes for children and young people. As a result, the overall analysis has to be reconstructed from a large series of papers dating back to 2017.

The core analysis

The policy analysis undertaken for the bill can be expressed as follows. First, it was asserted that in order for outcomes to be maximised for children coming into contact with the Oranga Tamariki system, a learning system of continuous improvement needed to be established. Second, high-quality monitoring and advice arising from it was considered critical to system learning. Third, for the system to learn through monitoring, the entity undertaking monitoring had to be able to work effectively with ministers as a trusted and responsive advisor. Fourth, there had to be public confidence in the monitoring entity, particularly from Māori (Māori constitute well over 60% of those in care), if the entity was to be able to undertake high-quality monitoring and, therefore, to be trusted by ministers.

Table 2: Timing of the legislative process

Date	Stage in the legislative process
8 November 2021	Introduction
16 November 2021	First reading – referred to select committee
17 November 2021	Social Services and Community Committee calls for submissions
26 January 2022	Submissions to select committee close
13 June 2022	Select committee reports back to Parliament
27 July 2022	Second reading
11 August 2022	Committee of the Whole House – splits bill into two separate bills
23 August 2022	Combined third reading of the two bills
29 August 2022	Royal assent given to the two bills

Fifth, there was a balance to be struck between working effectively with ministers and being trusted by the public: the closer the monitoring entity was to ministers, the less trusted it would be, because of perceptions by the public of a lack of independence. Sixth, this balance was best achieved by creating a statutory officer position (the monitor) as chief executive of a departmental agency (effectively a government department) to undertake the monitoring function. By having statutory duties, the monitor would be seen to be sufficiently independent of ministers to enjoy adequate public confidence to undertake effective monitoring. Seventh, the balance could be further strengthened by ministers not having the power to stop the monitor undertaking any activity, but having the power to direct the monitor to undertake particular activities.

Eighth, a less effective learning system would be established if the monitoring function was located with the commission; advocacy could colour monitoring and not be useful to ministers because monitoring activity and advice arising from it may not be consistent with government policy and policy priorities (there was, in effect, a 'tension' between monitoring and advocacy).

Ninth, the complaints function was best located with the ombudsman because building capability in handling complaints (as the commission would have to do if it took on the function) was more challenging than building a child-friendly complaints process (as the ombudsman would have to do). Tenth, as previously outlined, a board structure instead of a commissioner-sole would bring greater diversity to the advocacy function as the commission focused more on the needs of all children. Finally, it was important to system learning that the monitor, ombudsman and commission worked together and shared information, including by providing clear information to children and young people about where to go for what.

The first problem to note with the policy analysis is that the above is effectively all the analysis that was done. Despite all the papers written since 2017 and the consultation undertaken (as described in the next section of this article), there was little substantive analysis undertaken to support any of these conclusions.

King and Boston (2022) agreed that it was appropriate to adopt a learning systems framework to identify the optimal policy option, and to identify monitoring and advice arising from it as critical functions to improving outcomes for children. However, they considered it crucial to model such a learning system to identify the learning channels and the impacts of different options on those channels. Their model identified the crucial importance of public confidence in monitoring and the impact of low public confidence on media and political coverage and, thereby, on what they called 'system stability'. Without system stability (i.e., Oranga Tamariki not operating in crisis mode), it would be very challenging for the system to be in a position to learn. Also, without system

stability a feedback loop would diminish public confidence further through ongoing crises and continuing media and political focus on Oranga Tamariki.

King and Boston agreed, therefore, that public confidence in the monitoring function being perceived to be sufficiently independent of ministers was critical. They did not, however, agree that it was important for the statutory monitor to be a trusted and responsive advisor to ministers. Such a monitor and advisor could not enjoy the public confidence necessary to undertake effective monitoring and provide system stability for learning to take place. Key reasons for this lack of public confidence included:

- statutory requirements notwithstanding, the monitor, as a departmental agency, could not be sufficiently independent if it played the trusted and responsive advisory role because, unlike other statutory officers, the monitor was operating in the 'purple zone',[2] where the boundary between politics and policy and administration becomes blurred;
- the monitor was in effect being in the position of monitoring the performance of fellow chief executives, among whom peer pressure was a significant influence; and
- the 'can't stop, but can direct' restraint could not work in practice, as ministerial priorities would inevitably crowd out current or planned work; officials all but agreed that in practice the monitor's work programme would be agreed between the minister and the monitor, and in King and Boston's view this meant the monitor did not enjoy meaningful political independence.

As a result, King and Boston considered that there was not a meaningful balance to be struck between two factors (ministerial confidence and public confidence), as officials and ministers argued. The two factors were to all intents and purposes irreconcilable with one another and to claim otherwise was to try to have a cake and eat it too. The result was that not only would system learning not be optimised, but there was a real risk of, at best, insufficient transparency or, at worst, abuse in care not being detected and, if detected, potentially being covered up.

... there was no substantive analysis of why monitoring and advocacy were in tension with one another, and why the government saw them to be compatible when it established the Mental Health and Wellbeing Commission ...

King and Boston concluded that the optimal solution from a learning systems perspective would be for the statutory monitoring function to be located with the commission. Ministerial confidence in the monitoring function may not be as high initially by virtue of the commission's higher degree of independence and advocacy role; however, confidence was likely to increase over time as better quality information came through by virtue of that independence.

Tellingly, there was no substantive analysis of why monitoring and advocacy were in tension with one another, and why the government saw them to be compatible when it established the Mental Health and Wellbeing Commission, but not for the Children and Young People's Commission. King and Boston identified that monitoring and advocacy were eminently compatible so long as monitoring was robust, such that advocacy was evidence-based; the commission could even play something of a trusted advisor role, only advocating publicly when its advice was not taken (strange as that may sound, the same conundrum faces the monitor – if there is to be public confidence, its most free and frank advice should be made available to the public and that is not far short of an advocacy position).

As part of their solution, King and Boston proposed that if trusted and responsive advice from a monitor was so important to ministers, then ministers should establish a non-statutory monitoring function aligned with their interests and policy, potentially in a unit within the Department of the Prime Minister and Cabinet (given its current focus on children's issues). Such a unit would not be unnecessary duplication, in effect compensating for ministers' apparent lack of trust in Oranga Tamariki's internal monitoring capability.

In addition to these analytical issues, there was also an illogical sequencing approach to the government's decision making about two key policy decisions. A robust framework would have made the decision about where to locate the complaints function – with the commission or the ombudsman – after the decision about where to locate the monitoring function; this is so the system learning impacts of the two options could have been compared. Instead, the decision was made to locate the function with the ombudsman before a decision about the location of the monitoring function. King and Boston concluded that locating the complaints function with the commission made sense on its own merits, as well as having the system benefits of children having one place to go for all their needs.

Further, the decision about whether to have a commissioner-sole or a board should also have been made after the decision about where to locate the monitoring function, as the breadth of the functions to be undertaken would have been clearer. Instead, wider Public Service Commission advice that commissioners-sole should be phased out was influential earlier in the process.

Overall, these are important and complex issues and merited deep and substantive analysis. The analysis fell below that standard. As a result, it appears that some other factor was at work in the

decision to locate the monitoring function with a departmental agency and not with the commission. This was widely perceived to be that the government was annoyed with public criticism by the children's commissioner. More charitably, a judgement may have been made, but was certainly not made explicit, that public criticism from the advocate was not helpful in enabling the Oranga Tamariki system to learn and improve.

Clearly, it is not satisfactory for there to be such a significant lack of depth in analysing a matter of such importance, and such a lack of transparency in what factors were decisive. If, as submitters suspect, this was a purely political decision, then that needs to be made obvious (at least, by omission) through clearer analysis.

Other issues

Much of the media coverage of the bill focused on the 'fact' that the government was 'getting rid of' or 'defanging' the role of the children's commissioner (in particular, by removing the statutory monitoring and complaints functions). As outlined above, there was no substantive analysis of a commissioner-sole versus a board model. In particular, there was no consideration given to how effective the single voice model had been in putting new issues on the policy agenda, the nature of commissioners' relationships with Oranga Tamariki, or the constraints a board may place on an advocacy role.

In the end, King and Boston concluded that a board model can work effectively if funded appropriately, and that a board model would better address any 'tension' between monitoring, advice and advocacy than a commissioner-sole. There remains, however, an open question about how effective the board model will be in practice; the performance of the Mental Health and Wellbeing Commission will be important in this regard and may provide useful lessons.

Another key concern of submitters was that the changes were being made in advance of the royal commission's report due in June 2023. It was necessary, they argued, to wait and consider the royal commission's recommendations for oversight arrangements so that those arrangements had legitimacy. The minister argued that Beatie had said not to wait for the royal commission. It did not seem to be relevant that Beatie had said this in 2018 when the report was years away; when the bill passed, the royal commission's final report was due in less than a year. Ironically, Oranga Tamariki appeared before the royal commission on the day of the bill's third reading, and how it was monitored was a focus of questioning.

While the minister said the bill took into account the findings of the recent Waitangi Tribunal report into childcare and protection ... there was no analysis of whether the core finding of the Tribunal, that the Crown had no role in uplifting tamariki and rangatahi .... should be accepted or not.

A further point worth highlighting is that at no time was the appropriateness of an officer of Parliament, the ombudsman, in effect working as part of the executive considered (this was the effect, in particular, of the clause requiring the ombudsman to work and share information with the commission and the monitor).

One effect of this is that when the legislation is reviewed (no later than three years after enactment) the ombudsman will commission a review of its own performance, rather than the executive commissioning the review. The incentives for a quality review do not appear to be in alignment. Another effect is that elements of the new oversight regime are now exempt from the Official Information Act (the ombudsman is not subject to the OIA).

A very important issue in the public debate (but not, it is acknowledged, a key focus of King and Boston) was whether the bill took te Tiriti o Waitangi sufficiently into account. While the minister said the bill took into account the findings of the recent Waitangi Tribunal report into childcare and protection (Waitangi Tribunal, 2021), there was no analysis of whether the core finding of the Tribunal, that the Crown had no role in uplifting tamariki and rangatahi (in effect, it was a denial of tino rangatiratanga over kāinga), should be accepted or not.

The quality of the policy process

Excellent policy processes consist of early and ongoing engagement with those who have a stake in getting the policy right. The policy is in effect co-designed, although ministers retain ultimate decision rights.

The most striking feature of the consultation process leading up to the bill is that it largely relied on the consultation undertaken by Beatie in 2018. This consultation consisted of one hui and targeted discussions with a range of stakeholders. Beatie did not talk directly with children and young people, but relied upon input from children gathered for earlier processes by Oranga Tamariki and OCC. The Ministry of Social Development did commission some consultation with a small number of mainly care-inexperienced young people, which reported post Beatie.

The children and young people's sector felt strongly that the Beatie consultation had been very preliminary in nature and that a specific problem definition and clear options were not put before them. Most importantly, the idea that monitoring and advocacy did not sit together comfortably seems to have been taken by officials to have emerged from the Beatie process. In fact, Beatie did not identify this as a particular tension, focusing largely on the organisational and financial challenges for

the commission of being required to address the interests of both all children and children within the system. Some submitters had a sense that this was actually a tension identified by officials, and which they were primed to affirm in a general sense without full information about the implications of such affirmation.

Using even a low standard for consultation, it may reasonably have been expected that a detailed discussion document would have been issued following Beatie, particularly given the preliminary nature of the Beatie report. Such a document would have fleshed out the problem definition, options for addressing the problem, the options' advantages and disadvantages, and a recommended solution. Importantly, the controversial uplift incident in Hawke's Bay occurred in May 2019 and generated a number of inquiries with adverse findings, including from the Waitangi Tribunal, the children's commissioner and the ombudsman. In this context, it seems particularly unreasonable to have relied on consultation from 2018 and earlier for decisions about the bill. Instead, the children and young people's sector were given the clear impression in March 2019 that the monitoring function was going to the children's commissioner, were not talked to any further, and were largely taken by surprise when it became clear with the introduction of the bill that a departmental agency was to perform the monitoring function.

The government did take a more nuanced approach to engagement with Māori. A number of hui were held in July and August 2019. The Ministry of Social Development also established the Kāhui Group, consisting of five Māori of standing, which it said worked with the ministry to inform its work as policy was developed and finalised. The May 2021 Cabinet paper said that the Kāhui Group would have preferred the monitoring function to be with an independent Crown entity, but 'accepted' the decision to go with a departmental agency. The minister said the Kāhui Group had been specifically involved in the drafting of te Tiriti provisions. No member of the Kāhui Group spoke in favour of the bill during its passage.

Perhaps the most striking feature of the difference between stakeholders' and the government's approach to engagement was on the need to put children and young people and their rights and voices at the centre of the policy design process. A constant theme of the children and young peoples' sector and of care-experienced young people in submissions on the bill was that the oversight system could not work if children's voices were not being listened to in its design, and consequently it did not position them to be active participants in the oversight system in the future. The minister stated consistently that the Beatie report and the bill had incorporated children's voices. All opposition parties in the third reading of the bill emphasised that the bill was fundamentally flawed, given that it did not have the trust and confidence of care-experienced young people who knew the system.

All opposition parties … emphasised that the bill was fundamentally flawed, given that it did not have the trust and confidence of care experienced young people who knew the system.

The select committee process was particularly egregious with respect to good practice. Individual submitters (many of them people of considerable expertise in the area) were given five minutes to submit orally, and organisations 15 minutes. In these time frames there was limited opportunity to have meaningful representation of views by submitters or meaningful questioning by committee members. In addition, the children's commissioner while policy decisions on the bill were being made, Judge Andrew Becroft, had returned to the bench and was, therefore, constrained from providing his views on the bill to the committee or the public.

One final point worth noting is that the minister consistently said that submitters had misunderstood the bill and that the select committee changes cleared up the confusion. Nothing could be further from the truth. Submitters clearly understood the bill and what was at stake. They understood well the select committee changes and that, while an improvement, they did not address their fundamental concerns. It is a considerable failure that at this point in the process there could be such a gap in perspectives between a minister and the sector.

Potential insights into the policy advisory system

There are a number of insights into the policy advisory system arising from this case which should be reflected upon as part of the continuous improvement of the system.

Overall quality of policy analysis and policy process

From the prior sections of this article it should be clear that, looking from the outside in, the quality of the policy analysis and policy process fell well below the standards such an important issue deserved, particularly in the lack of substantive analysis on key issues and the discontinuity in engagement with stakeholders from mid-2019 on.

Conceptualisation of the policy advisory system

This case illustrates that there is still a strong tendency by officials to view the policy advisory system to be the public sector policy advisory system, rather than a system of many participants among whom the public sector is one, admittedly very important, player. This is an outdated

conceptualisation of the system and proper conceptualisation emphasises the importance of external parties and engagement with them as an integral part of the system for policy production (Craft and Halligan, 2020). The public sector is not the only entity to think about the public interest and does not have a monopoly on wisdom, but this reality does not appear to have been internalised.

The influence of political power on the policy system

It is clear from this case study that the children and young people's sector has limited political power. Some conversations with the media and the sector indicate that there is relatively limited public interest in child abuse (despite the seemingly regular sensational stories) and that government performance in this area is not a matter on which many people's votes turn. In addition, because of dependence on government funding and its fragmented nature, the children and young people's sector faces some limits on what it can do by way of advocacy.

By comparison, it is hard to imagine that in economic policy domains, any such bill would have proceeded without a serious rethink if it had been so strongly opposed. It was also striking that the government did a rapid U-turn on the KiwiSaver fees GST proposal shortly after the passage of the bill: the hip pocket of middle New Zealand was being hit and that mattered dramatically in the government's mind.

This lack of relative power suggests that there is an obligation on the public sector element of the policy advisory ecosystem to apply extra rigour in its policy analysis and policy processes in relation to child abuse policy, not less as appears to be the case with this bill.

The obligation to give ministers full and accurate advice

It was striking to observe with fresh eyes just how often a minister defending a bill in the House and publicly avoided answering questions directly or substantively. She repeatedly communicated important information relating to the bill that appears to have been significantly in error and which had been communicated erroneously to her and the select committee by officials (considerably overstating the number of complaints OCC had referred to the ombudsman). She also stated in the House that a potentially important supplementary order paper by Jan Logie MP aimed at strengthening the independence of the monitor was 'not necessary' when she had received no advice upon it.

A long-promised review of the Official Information Act (OIA) is overdue. This case raises significant questions about whether public policy processes, including its legislative stages, are best served by the timelines the OIA (and proactive release) allow.

These circumstances suggest that even in the heat of the political battle (when officials often consider the hard work has been done and the job is now the minister's to do) it is important to provide accurate information and full advice to the minister. The risk of moving as an official from explaining policy to defending or (by omission) advocating for it could be better guarded against.

Accessibility of policy analysis

Even knowing the system well, it was extremely challenging to access and get to grips with the analysis that had been undertaken in relation to this bill. It was difficult to identify all the papers that had been publicly released (either proactively or under the Official Information) on both the Ministry of Social Development's and Public Service Commission's websites. General website design and search engine effectiveness have a long way to go before accessibility standards have been met.

In addition, there is no way the public should be required to make its way through a long sequence of papers over a number of years in order to understand what has driven policy decisions on important issues. Regulatory impact assessments, when properly done, address this issue in regard to regulatory matters. Such one-stop statements of the policy analysis should be mandatory for all significant policy issues; even where departments do not provide a preferred option, such statements generally make clear (by implication) where some other factor (potentially political) is critical in the policy decision.

Independent Crown entities

This case appears to have significant implications for independent Crown entities. In the absence of quality analysis showing otherwise, widespread suspicion exists that overt criticism of the government by children's commissioners lay behind the removal of its monitoring and complaints roles (as well as the establishment of a board). This will have a potentially chilling effect on independent Crown entities, such as the Mental Health and Wellbeing Commission. There is a leadership challenge for the public sector and ministers to accept robust advocacy from independent Crown entities; equally, independent Crown entities must ensure that such advocacy is based on solid assessment and analysis.

The effectiveness of the Official Information Act 1982

A long-promised review of the Official Information Act (OIA) is overdue. This case raises significant questions about whether public policy processes, including its legislative stages, are best served by the timelines the OIA (and proactive release) allow. Understanding the nature of advice being given to ministers matters most when an issue is being discussed or debated in the public arena and as soon as a minister has chosen to speak definitively on an issue. The OIA does not allow this to happen and proactive release remains a

prerogative. There is a significant question about whether advice should be released in real time so that it can be scrutinised as public debate takes place.

There is also a significant issue about the use of the free and frank exemption under the OIA. The public is generally entitled to know, it is suggested, what factors are taken into account in any policy decision. Withholding information under the free and frank provision of the OIA seems to be used far too much, with the result that potentially important analytical factors are not known. In addition, the argument that free and frank advice will not be provided in writing if it will be publicly released needs to be tested further. There is a prima facie case that public servants should be legally required to put all substantive advice in writing in the public interest, and that the free and frank standard should be lowered considerably.

The role of the ombudsman

There are important issues to reflect upon about the role of the ombudsman in the light of this case (in addition to the issue of the appropriateness of the ombudsman playing a role in the executive identified earlier). First, the ombudsman appears to have had a clear conflict of interest in considering appeals under the OIA in this case, given that the function of the Office of the Ombudsman (and associated resources) were at stake. The ombudsman, however, concluded that there was no conflict. This is worth further inquiry should similar circumstances arise.

Second, it appears that there are no prioritisation criteria to inform the office's work programme (the ombudsman stated that everyone considers their issue to be important). It seems likely that any such framework would prioritise appeals in regard to such a contentious matter. This also merits further inquiry.

Third, there is no substantive evaluation of the ombudsman's performance. The office's practices were observed to be slow and bureaucratic, as submitters fear will be the case in regard to children and young people's complaints. While Parliament's Officers of Parliament Committee clearly has an oversight role in regard to the ombudsman, the extent to which it actually plays this role must be questioned. Interestingly, the royal commission asked the ombudsman no questions about the office's historical performance in relation to children in state care during his appearance before the inquiry. The ombudsman should not be immune from scrutiny.

Conclusion

The starting question of this article was whether the (public sector) policy advisory system is robust enough to come up with the optimal policy solution in the face of all but universal opposition (including from across the political spectrum). The answer that emerges from the foregoing analysis should be clear: it is not. The quality of the policy analysis and of the policy process fall well short of the standards that should be met to merit the policy advisory system being described as robust.

To be clear, this judgement is not a reflection on the individuals involved, but on the level of confidence that can be had in the system as a whole. This case gives considerable occasion for the whole public sector to reflect upon itself.

As for the specific issues involved in this case, they are not settled. The royal commission reports in mid-2023, and there is a general election soon after which is unlikely to result again in a majority government (ensuring that at least one party that opposed the bill vigorously will likely be in government). The issues are, therefore, almost certain to be revisited. In the meantime, the performance of the monitor and ombudsman, and government decisions in regard to the funding and composition of the board of the Children and Young People's Commission, can be scrutinised by those who are outside the public sector policy advisory system but are committed to seeing the Oranga Tamariki system perform as well as possible for children and young people.

1 The Oranga Tamariki 'system' refers not just to the Oranga Tamariki care and protection and youth justice systems, but also to agencies, such as the ministries of Health and Education and their contracted service providers, who provide support and services under the Oranga Tamariki Act 1989.

2 The purple zone is a term first applied to the public sector in Matheson, Scanlan and Tanner, 1997.

Acknowledgements

The author thanks Jonathan Boston and Andrea Jamison for feedback on this article. However, he takes full responsibility for its contents and any errors within.

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John Boshier

Six Unique Years
why did Think Big happen?

Abstract

This article addresses the question of what caused the 1980 growth strategy which led to investment in major energy projects in New Zealand. It argues that it was a rational policy response at the time. However, the political goal of self-sufficiency in transport fuels was costly and inefficient. Pressure on construction resources and inflation led to unacceptable cost overruns and the forecasting of future prices was astray. As a result, the ventures needed financial restructuring. Some lessons for the imminent investments to combat climate change are drawn.

Keywords energy, economics, investment, climate change

New Zealand is now confronting the challenge of climate change and the need to adopt carbon-free energy. A previous crisis that faced New Zealand in 1979 and the early 1980s is relevant, when international oil shocks induced the government to embark on a massive investment programme dubbed 'Think Big'. It responded to public pressure to take control of the nation's future.

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Eight world-scale projects were undertaken, the biggest creation of infrastructure since the days of Julius Vogel in the 1870s. A total of $8.2 billion in Crown and company funds was invested in six years, equivalent to $29 billion in 2022 dollars, and Cabinet was deeply involved in the decision making.

This was a unique period in New Zealand's history, and the costs and benefits of the initiative are still debated decades afterwards. The Think Big energy projects were part of a wider economic 'growth strategy' which was conceived in 1980 as the main election platform for the National Party in 1981. This article identifies the principal reasons for the strategy.

Several outcomes became evident as the projects were completed. Overruns in capital cost, caused by inflation, industrial disputes and planning delays, plus a later collapse in oil prices, impaired their economic viability. These pressures led to a decision by the fourth Labour government to nationalise the debt of four energy corporations.

This article describes the eight major projects that are generally regarded as Think Big investments:

- ammonia-urea fertiliser, Ōaonui, Taranaki;
- chemical methanol for export, Waitara, Taranaki;

- manufacture of synthetic petrol, Motunui, Taranaki;
- expansion of oil refinery, Marsden Point, Northland;
- expansion of New Zealand Steel plant, Glenbrook, Auckland;
- new potline for aluminium smelter, Bluff, Southland;
- Clyde hydroelectric power station, Clutha, Otago;
- electrification of North Island main trunk railway from Palmerston North to Hamilton.

New Zealand's goal of energy self-sufficiency in transport fuel, previously popular, was abandoned after 1987. This article highlights the difficulty of forecasting future prices and the problem this causes for investment appraisal, before drawing some lessons for climate change policy.

To an electorate recovering from the worst economic recession for decades, worried about rising unemployment and exasperated with high petrol prices, the promise made political sense.

Was Think Big rational?

The six years from 1979 seem like a myth when seen from the present day, and it becomes difficult to grasp their real-life consequences. The National government's energy projects were heavily criticised by opponents such as Roger Douglas, who became Labour's finance minister. He believed they were an economic disaster arising from 'faulty decision-making and political opportunism' (Douglas and Callan, 1987, p.151). By contrast, a case can be made that the investments were a rational response to the situation faced in 1979, although some outcomes were undesirable.

Drivers of the energy investments

Eight economic and political drivers led to Think Big. Recovering from recession was the first. New Zealand's economic engine stalled in the third quarter of 1976 and restarting it prompted a new strategy for growth. The contagion had started in the world's major trading economies in 1973, when the shock of the Arab oil embargo imposed on Israel's allies sent the US economy into the deepest downturn since the Depression (Appelbaum, 2019, p.70). World oil prices tripled and New Zealand's terms of trade fell 38% in 1974, to the lowest level for 40 years. Inflation of nearly 18% in 1976 fuelled spiralling wage demands. Share prices fell about 47% in real terms (Reddell and Sleeman, 2008, p.11) and the cumulative loss of GDP during the 1976–78 recession was 12.8%. Unemployment doubled to 1.7%, worrying senior Cabinet ministers who had seen its devastating effects during the Great Depression (Hall and McDermott, 2014, p.36).

Without an upturn likely in the world economy, the National Cabinet decided to take matters into its own hands. Economic stimulus was needed, which it would achieve by initiating state-funded projects. The approach was common in post-war recovery and termed Keynesian. Prime Minister Robert Muldoon tabled a mini-Budget, saying, 'if we don't stimulate now, unemployment will go up' (Gustafson, 2001, p.255). Cabinet minister Hugh Templeton remarked that the 1978 election year Budget 'sought to steer between the whirlpool of reviving inflation and the rocks of recession and higher unemployment' (Templeton, 1995, p.107).

Diversifying the economy was the second driver. The need was underlined by Britain's decision to join the protectionist Common Market (the EEC) in 1973. Britain was one of New Zealand's major export markets and had made clear that traditional access for agricultural products would reduce. New export industries had to be developed. A Task Force on Economic and Social Planning identified the need for a more efficient and flexible economy, more investment and pursuit of new markets (Task Force on Economic and Social Planning, 1976, p.231). One of its recommendations was for the state to provide the foundation for this expansion. The government rapidly implemented the proposals and by 1978 new industries based on energy resources were finding favour.

This led directly to another driver, a promise made during the 1978 election campaign that New Zealand would be made as self-sufficient as possible in transport fuels (Cabinet Economic Committee, 1978). To an electorate recovering from the worst economic recession for decades, worried about rising unemployment and exasperated with high petrol prices, the promise made political sense. It fitted the nation's do-it-yourself culture and aimed to get some control over prices. Precedent existed in the United States with President Richard Nixon's Project Independence in 1973 (Nixon, 1973).

The radical new policy was announced by Muldoon on 1 September 1978. He was satisfied that it had 'a real prospect of worthwhile achievement' (Neville, 1978). The cost of imported oil had become one of the most serious problems facing the nation, he said, costing nearly 4% of gross national product. Editorials called the go-ahead 'timely and forward looking' (Evening Post, 1978), while the Labour opposition observed that it had taken 'too long to reach the obvious conclusion' (Neville, 1978).

The next imperative was a change in priorities for electricity generation. When development of the Maui natural gas field was negotiated in 1973, the developers, Shell, BP and Todd, needed a steady cash flow to pay for the offshore platform to extract the gas and oil. They obtained a 'take-or-pay' obligation, which committed the government as the buyer to either use specified annual quantities of gas or pay

regardless. (Freer, 1973, p.236). The amount started at $22 million a year in 1980, and by 1989 would have reached over $100 million a year in the absence of gas flow.

The original plan was to use natural gas in three large electricity generators located in Huntly and South Auckland. However, in 1978 the Ministry of Works and Development persuaded Cabinet that the previous programme of building hydroelectric power stations in the South Island should continue, to avoid disbanding the skilled workforce (Electricity Department, 1978, p.3). Part of the logic was that hydroelectricity was a renewable energy resource and gas could be used for petrochemicals. Time has demonstrated the wisdom of this call, but its value in achieving zero-carbon goals was not contemplated in 1978.

This landmark decision led directly to the next driver for the expansion of the energy industries: a surplus of natural gas from 1979. The need for a new strategy for how to use this resource led to the creation of the Liquid Fuels Trust Board, an interdepartmental committee to look at ways to reduce reliance on imported fuels for transport (Liquid Fuels Trust Board, 1980). After extensive research, it recommended keeping the rate of depletion of the Maui gas field at the take-or-pay quantities.

It proposed improving transport fuel self-sufficiency in many different ways. Compressed natural gas (CNG) should be used to power vehicles in the North Island. Liquefied petroleum gas (LPG) could also supply vehicles nationwide. A plant to produce chemical methanol from natural gas could supply transport fuel. A synthetic liquid fuel venture should use a quarter of the natural gas, leaving enough for electricity generation. Gas would be reticulated around the North Island.

The sixth driver for Think Big was an apparent electricity surplus in the South Island. A substantial programme of power station construction had been under way, following previously reliable forecasts of 7% per year growth in demand. But the 1976–78 recession dropped this growth to just 2% for the year ended March 1977 (Electricity Department, 1977, p.5). Power forecasters predicted that surplus electricity in the South Island was likely throughout the 1980s as new hydroelectricity stations were completed (Electricity Department, 1979, p.12), with surpluses of 2,000 GWh a year. (Each year's surplus would be enough to power Christchurch.) To encourage industry and cut the surplus, South Island power prices were reduced by 25% until 1987.

The next boost to the major energy projects was National's growth strategy of 1980, which was spearheaded by the minister of national development, Bill Birch. It aimed to identify industry sectors which could have a competitive advantage and improve the balance of payments through export-led growth. Birch sent a new publication, *Growth Opportunities in New Zealand* (Birch, 1980), to diplomatic representatives around the world.

This initiative was doing what the New Zealand Planning Council and Treasury were advising: to restructure the economy into more industrial sectors using New Zealand's resources, with a broad span of activity in private enterprise. Its central plank was a policy of import substitution through industrialisation (Easton, 1997, p.155ff). The growth strategy became a clear National Party policy in the 1981 general election. However, the private sector was slow to respond, partly because venture capital was scarce.

The final impetus for self-sufficiency was the most immediate. A second international oil shock was triggered in 1979 by the Iranian revolution, which halved Iran's supply to the world market. New Zealand had imported 40% of its oil from Iran (Birch, 1979, p.16) and, although supply contracts were hastily rearranged with other countries, a shortfall of 18% was imminent. Oil's spot price increased from US$14.50 per barrel throughout 1978 to $21.80 in July 1979. Lamb exports to Iran ceased. Templeton recalled that, for Prime Minister Muldoon, 'the oil shock really caught him by the throat when he learned that BP, with its huge stake in Iran, was at risk' (Templeton, 1995, p.117).

Intelligence reports provided under the ANZUS alliance then reached Muldoon with the warning that Iraq was about to invade Iran and bomb its oil export hub. At the same time, insurrection in Saudi Arabia was possible and the world oil price could rise to US$50 a barrel. The briefing confirmed to Muldoon and the energy minister, Birch, that energy security and investment was a top priority (Boshier, 2022, p.62).

Bernie Galvin, then head of the Prime Minister's Department, suggested to Muldoon that he 'could take the four or five energy projects and say okay, let's put them as a package to try to restore confidence'

All these drivers meant that one industry was being delivered to Cabinet on a plate – energy. Attention turned to the best uses for natural gas, electricity and coal.

The birth of Think Big

Bernie Galvin, then head of the Prime Minister's Department, suggested to Muldoon that he 'could take the four or five energy projects and say okay, let's put them as a package to try to restore confidence' (Roberts and Callan, 1984). In this he was supported by business interests such as Fletcher Holdings, which advocated being involved in new industry at world scale.

The prime minister exhorted the 1980 National Party conference:

> We've got to say no to negative thinking. We are going to take the big decisions

National Government speeds up 'fast track' planning procedures. (Open Government Report, December 1982)

Cartoon by Tom Scott, used with permission

> and we're going to push them through … We've got to *think big* and we are going to train the extra skilled men needed to put these projects in place … Restructuring is the only way out. (Nicolaidi, 1980)

The major energy projects

The first project, based on Maui gas, was to make ammonia-urea fertiliser for local farms and exports. The Environmental Defence Society opposed the plans on the grounds that using nitrogenous fertiliser caused more nitrate pollution than other options, such as superphosphate.

The second project was a stand-alone world-scale methanol plant. Its products would mainly be exported, with some blended into petrol for the domestic market. Cabinet decided on a proposal by state-owned gas company Petrocorp, in association with Canada's Alberta Gas. It could be implemented quickly, and Muldoon also preferred state ownership.

Another project, a world-leading synthetic petrol plant in Taranaki near the separate methanol plant, was built. It made a third of New Zealand's petrol by converting Maui gas into methanol and then processing it into gasoline using technology developed by Mobil. Synfuel was owned 75% by the Crown and 25% by Mobil, after other oil companies declined to participate (Boshier, 2022, p.72).

The Synfuel plant was controversial, with environment groups and Labour advocating more efficient ways of supplying transport fuel, such as CNG and LPG. Birch's view was that these options were complementary to improving self-sufficiency, and that all should be implemented. Formal objections delayed the planning procedures, and frustrated the Cabinet, which then promoted the controversial National Development Act to streamline projects of national importance. On the other hand, Māori claims to coastal rights at Waitara under the Treaty of Waitangi were given fresh impetus (Waitangi Tribunal, 1989).

The synthetic fuel investment was heavily criticised by Roger Douglas, Labour's later finance minister, who claimed that 'there had been no detailed economic analysis of all the available ways in which the gas could be used' (Douglas and Callan, 1987, p.155). However, the Cabinet Economic Committee did discuss the economics of three alternative packages on 14 August 1981 before committing to the Synfuel plant. Export of liquefied natural gas (LNG) was examined in detail.

In July 1984 Labour won the general election, after which it discredited the growth strategy. Prices for Saudi light crude oil fell from US$33.57 a barrel in 1982 to a low of US$13.93 in 1986 and the Crown made substantial losses at Synfuel. In 1988 the finance minister decided to sell Petrocorp and Synfuel, which Fletcher Challenge then bought, making a substantial windfall gain. Later, Fletcher Challenge had to sell both companies to reduce its own debt (Wallace, 2001, 216ff) and they were bought by Methanex, a Canadian firm. Methanex decided to close the methanol-to-petrol reactors at Synfuel and export pure methanol, which currently earns over $1 billion per year.

The Marsden Point oil refinery was another Think Big project, aiming to lessen dependence on imported refined fuel. Complementing the production of synthetic petrol, it was expanded with a hydrocracker to make diesel. Construction was dogged by cost escalation due to changes of scope, inflation and industrial strife, during which the entire workforce was sacked. The expansion into diesel was commissioned in 1986. In 2022, after 36 years of successful operation, the board of New Zealand Refining decided to close operations because of competition from more efficient overseas refineries. The site is now a shipping and storage facility for imported refined fuels.

Another project caused major headaches for officials and ministers: the expansion of the steelworks at Glenbrook. It aimed to improve the process of making steel from iron sand, followed by hot and cold rolling mills for flat products (Douglas and Callan, 1987, p.167). Treasury and the Ministry of Energy opposed the expansion, but the board of New Zealand Steel persisted and Cabinet agreed to it. However, faulty cost estimates and industrial strife caused massive cost overruns, later

requiring Cabinet to inject cash and increase its shareholding from 50% to over 90%. The Labour government later sold it in a controversial deal with Equiticorp. It now operates commercially under the ownership of Australia's Blue Scope, which bought it in 1992.

A new high-current potline at the Tiwai Point aluminium smelter was another major project. Opened in 1982, its 1,350 GWh per year demand used up most of the South Island's 2,000 GWh electricity surplus. For 40 years it has benefited the economy, but in 2021 fluctuating aluminium prices caused majority owner Rio Tinto to announce its closure in 2024. (This is now being reviewed.) In 1980 Fletcher Challenge had made a separate bid for another 3,140 GWh/y to supply a new smelter at Aramoana near Dunedin, provoking considerable public outcry. The idea was abandoned after Fletcher Challenge's partners decided to go elsewhere.

The building of the Clyde high dam and power station was another controversial project. Public opposition was fierce and prolonged, because orchards in the Cromwell Gorge would be drowned. While objectors such as Paul van Moeseke linked the need for the dam to the proposed second aluminium smelter, the Crown's case to the Planning Tribunal was that the high dam was the most economical way of supplying power to the national grid (Boshier, 2022, p.99). Special legislation had to be passed to overcome lengthy delays in getting construction started.

Think Big also saw the North Island's main trunk railway electrified between Palmerston North and Hamilton, increasing haulage capacity and cutting diesel usage. Considerable track improvement was also completed. In 2017 the KiwiRail board decided to scrap the electric locomotives, but lobbying to reduce carbon emissions led the Labour–New Zealand First Cabinet to intervene and fund their refurbishment. With this, the option has been created to electrify the track from Pukekohe to Te Rapa near Hamilton and further reduce carbon emissions.

Table 1: Think Big project cost outcomes

Project	Final cost	Overrun
Ammonia-urea	$125m	94%
Methanol Waitara	$262m	102%
Tiwai Point potline	$237m	35%
Synthetic fuels	$1,887m	37%
Refinery expansion	$1,840m	102%
Steel expansion	$2,250m	61%
Rail electrification	$250m	150%
Clyde high dam	$1,400m	142%

Capital cost overruns

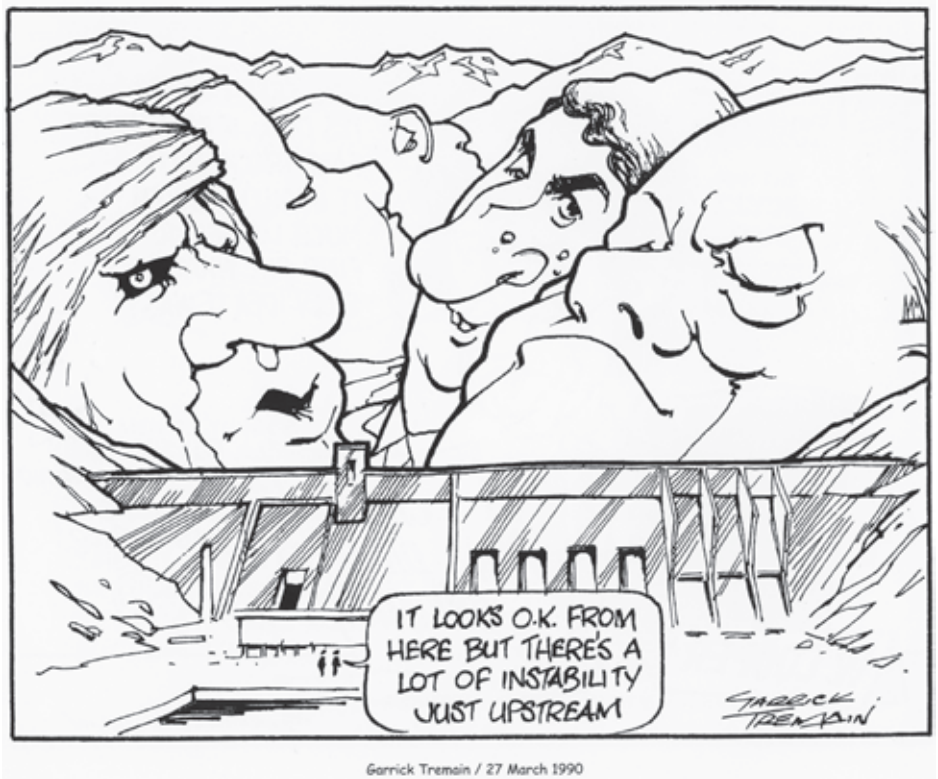
Notable features of Think Big are now explored, some of which are relevant to future investment programmes – for example, to reduce carbon emissions.

The first is capital cost escalation. Seriously high overruns plagued most of the eight projects built between 1980 and 1985. Table 1 shows that the completion cost of some was double the approved capital cost in dollars of the day (Boshier, 2022, p.260). Chronic inflation, averaging 13% a year from 1978 to 1988, was at the core. It meant that original estimates using real dollars resulted in a misleading and inconsistent cash flow.

Planning appeals delayed the ammonia-urea plant and the Clyde high dam by more than two years. Civil engineering problems and increases in scope raised the costs of electrifying the main trunk railway line and building the Clyde dam, where expensive remediation was needed. Upstream of the dam, artesian water was found in what were previously considered the dry landslides in the Cromwell Gorge. Industrial disputes increased the costs and severely damaged the economics of New Zealand Steel and the oil refinery.

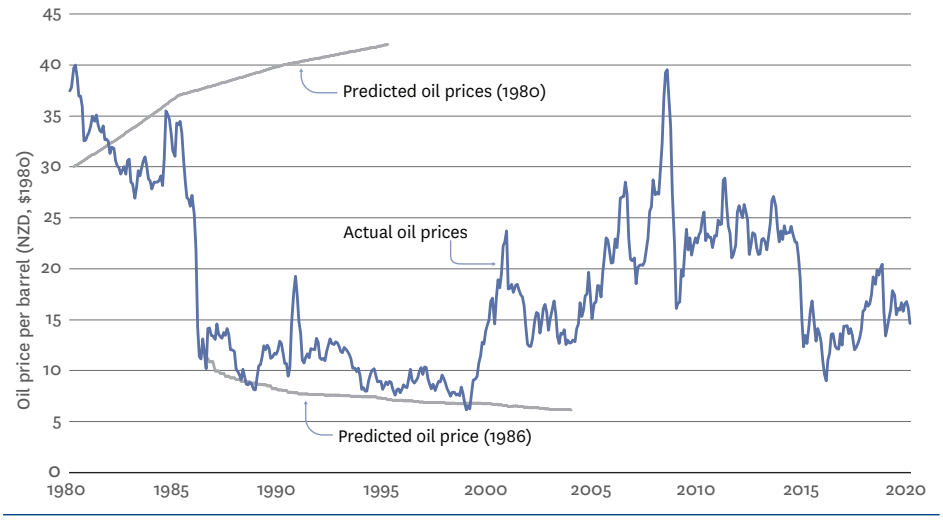
By contrast, cost estimates for the Taranaki synthetic petrol plant and Tiwai Point incorporated inflation and interest during construction, resulting in an increase of only 35–37% from the base cost. They were both funded by international banks and built by Bechtel of the United States.

Overruns in capital cost during the 1980s were highly damaging to the financial performance of these ventures. For some, expectations of proponents were overly optimistic. The culture at the time was that ministers wanted the projects built, so engineers got on and did them. Too many were constructed at the same time, causing



Cartoon by Garrick Tremain, used with permission

Figure 1: Oil prices, 1980–2020 (NZ$, 1980)



Source: TDB Advisory Ltd, Wellington, with data courtesy of US Energy Information Administration

pressure on planning approval processes and construction resources such as materials and skilled labour. Costs were forced up and coordination was difficult.

Such problems were not confined to New Zealand: Europe's rail infrastructure cost on average 45% more than projected (Flyvbjeg, Priemus and van Wee, 2008).

Budget support in 1986

Compounding the problem, as if on cue with the synthetic petrol plant and refinery being commissioned, the world oil price suddenly halved from US$27 per barrel in 1985 to US$14 in early 1986. The Labour Cabinet was meanwhile deregulating the petroleum market to remove industry protection and encourage competition. Its new Commerce Act 1986 now required Synfuel and the refinery to compete with imports, which had become cheaper, so the Crown's trading account for Synfuel started showing substantial losses.

The new policy also meant removal of the previous protections enjoyed by New Zealand Refining, which had been given assurance in deciding on the expensive hydrocracker. The refinery now had to compete with cheaper imported product and faced financial peril. The Labour Cabinet also removed tariff protection for New Zealand Steel, meaning it had to compete with imports from the fluctuating world market. Cost overrun on the Glenbrook expansion had meant debt repayment was much higher than forecast, causing a big reduction in its economic return.

Finance Minister Roger Douglas recognised that he could not change the regulatory and operating environment without accepting responsibility for four of the Think Big projects' debt, which was secured against previous commitments (Douglas, 1986). In the 1986 Budget, Treasury took responsibility for $5.6 billion in debts of four energy companies: New Zealand Steel Development Ltd ($940m); Petroleum Corporation of New Zealand ($800m); New Zealand Refining Company Ltd ($2,050m); and New Zealand Synthetic Fuels Corporation ($1,850m).

For the refinery, the $2 billion debt was repaid by an excise tax on fuel, which was subsequently converted to a land transport fund for road construction. It continues to this day. The 'bailout' had integrity and the programme of liberalising markets was able to continue unabated. In 1992 the ratio of government net debt to GDP reached an all-time high of 54.8%; it then steadily declined over the next ten years.

The end of self-sufficiency

The National government's grand goal in the early 1980s of domestic self-sufficiency in transport fuels appealed to the public and was politically useful. It drove energy policy, with a focus on developing natural gas for domestic use. But one proposal quickly ruled out was exports of LNG, which would have been financed by the private sector.

For the Synfuel venture, a fallback strategy from the beginning was the potential export of methanol instead of using it to make petrol. This option enabled it to be funded by international banks without recourse to the Crown. Project analysis should always, where practicable, include fallbacks that are realistic. The creation of such strategies can be viewed as financial options which can have significant value and can be quantified (Grimes, 2010). The benefit of these options could be far-reaching: for example, the Clyde dam helped reduce carbon emissions in electricity, although the value was not properly recognised until decades later.

The goal of self-sufficiency in transport fuels was ultimately seen as a false god, because it was too costly for the benefit it delivered. Another grand goal has now been accepted – net zero carbon emissions – but it carries the policy risk of alienating the public if energy prices rise too much.

Forecasting future prices

Forecasting the future is highly uncertain and exploring the 'unthinkable' is essential. In the 1980s, forecasts of oil prices were needed to evaluate the merits of synthetic fuels. Figure 1 dramatically shows the difference between forecasts and what actually happened. World oil prices are shown in 'real dollars per barrel', excluding inflation, for 40 years.

In 1980 prices were expected to rise as crude oil was depleted. It was thought that unconventional oil from shale and tar sands could cost $42 a barrel by 1995, and set the marginal world price. But the oil market crashed in 1986. When prices did rise, it was suddenly, and 20 years later.

The importance of this came home in 1986 when the future of the Synfuel plant was in question after the production cost of its petrol exceeded the price of imported fuel. It was then thought oil prices would stay low, as supply was plentiful. The venture was sold in 1990 to Fletcher Challenge at a rock-bottom price, so when oil prices recovered it became very profitable.

Today, forecasting future carbon prices in the emissions trading scheme is needed for the cost–benefit analysis of renewable energy projects. The carbon market could be volatile – like oil – and likely to be influenced by sentiment. A world price does not make it more stable. Investing on the assumption of a high price will result in financial distress if the price drops significantly and for a sustained period.

Conclusions for climate change policy

Another period of substantial investment is in prospect as New Zealand confronts the challenge of climate change, as required by the Climate Change Response (Zero Carbon) Amendment Act 2019. All sectors of society will be affected by this grand goal. If managed well, the transition will not harm the economy and employment (Climate Change Commission, 2021a, p.147), but if prices rise too much there is a risk of alienating the public.

There is a difference between the motivations for Think Big in the 1980s and those relating to the even bigger 'Think Big' of decarbonisation. The new goal is not driven by a quest for energy security, or to reduce the impacts of fluctuations in world oil prices; it is about mitigating climate change. Yet fully decarbonising the New Zealand economy would provide a much greater measure of energy independence, and global fluctuations in fossil fuel prices would be less relevant.

Outcomes from the Think Big era have relevance as the nation embarks on investment in low-carbon energy alternatives. Financial viability is vital, so decisions need to be resilient to unexpected variations in carbon's future price. It is very costly to convert a fossil-fuel energy system to zero-carbon, so a reliable market for offsets is essential. In particular, the strategy and costs of tree planting in New Zealand need to be resolved.

A planning system would be useful to the energy and carbon markets. It would not be a return to central planning, but would aim to provide waypoints to help investors evaluate opportunity and risk. In particular, the biggest industry in New Zealand, agriculture, has yet to fully accept widespread mitigation measures.

This is the logic underpinning the establishment of the independent Climate Change Commission, which produces regular detailed analyses subject to peer review. The commission recommends proceeding systematically in a fair and sustainable transition, recognising that a 'big bang' approach can be very costly in spending the wrong amount at the wrong time (ibid., p.14). We don't have time or money to waste.

The commission's early work estimated that $12.5 billion needs to be invested until 2030 to achieve national carbon reduction targets. Some of this investment will be private and decentralised: for example, as the motor vehicle fleet is electrified. From 2031 to 2035, $4.3 billion a year will be required to decarbonise energy supply – a total of $33 billion (Climate Change Commission, 2021b, p.87).

In the electricity sector, a separate recent estimate is that $42 billion needs to be invested over the next ten years. (Boston Consulting Group, 2022). Projects now being investigated include major offshore wind farms in Taranaki, and the Lake Onslow pumped storage scheme, involving a $4 billion underground power station above Lake Roxburgh on the Clutha River, to solve the 'dry year' problem, which causes electricity prices to spike.

Borrowing will clearly fund much of this new investment, because its benefits are in the future. Power generators will also need to use retained earnings, so electricity prices could rise. The Climate Change Commission warns that moving from 98% renewable electricity to 100% would cost about $1,280 for every tonne of carbon dioxide abated. Higher electricity prices would result and reduce the attractiveness of electricity as a low-emissions fuel. For this reason, talk of a 100% renewable electricity target should be regarded as aspirational; it is a grand goal (Climate Change Commission, 2021a, p.279).

Excellent cost control (such as the gateway approval process used by Treasury) and improved public–private partnerships must be used to reduce budget blowouts of a type seen in the Think Big era. Major earthworks have a habit of financially biting the constructor. In the private sector, costs are controlled by the discipline of borrowing and cash flow control by a vigilant board. For a proposal such as Lake Onslow power station, risks could be mitigated by a range of measures, including independent governance, expert review of costings, exemplary project management, good industrial relations with skilled labour, and so on.

Other approaches include stockpiling torrefied wood (heated in the absence of oxygen) and burning it at the Huntly power station in dry years. Extending the storage ranges of existing hydro reservoirs can be explored.

Perhaps the biggest problem is to change people's consumption patterns. The Climate Change Commission hopes that reductions in carbon emissions will be achieved by a societal shift in attitude as their costs begin to bite through the emissions trading scheme. Its approach is that no one will be forced to sell their petrol car or install solar electricity, for example. We can but hope this is the case and that deep intervention by government, as seen with Think Big, can be avoided.

Acknowledgements

Thanks to Jonathan Boston and Stephen Stewart for their assistance in the preparation of this article, Tom Scott and Garrick Tremain for permission to publish their cartoons, and TDB Advisory Ltd for preparation of the graph of oil prices.

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Katherine Ravenswood

‘Try, Learn, Adjust’

it’s time to bring workers into disability support policy

Abstract

Aotearoa New Zealand is on the verge of significant change aimed at increasing disabled people’s access to and control and choice over the support they receive in order to have the flexible, high-quality care that enables them to lead ‘good’ lives. However, the system changes – Mana Whaikaha – designed to enact the Enabling Good Lives policy has its roots in neo-liberal funding and policy approaches that undervalue support work, and has largely overlooked workers and workforce development. The lack of recognition of the disability support workforce in this policy development threatens the success of the programme to provide quality support to disabled people.

Keywords individual funding, disability support, support workforce, marketisation of care, care and support workforce planning

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When considering disability support, it is important to recognise how disadvantage is created for people with disability: it is the context, our society and health systems, that creates disadvantage (Murray and Loveless, 2021). These disadvantages are significant for disabled people, with disability linked to increased experience of poverty and unemployment. These disadvantages are exacerbated by an assumption in our health and support system that shifts the costs of disability support onto individuals and whānau (ibid.). This assumption, and the way in which disability support tends to shift costs to individuals rather than the state, is part of systemic and ongoing discrimination that limits disabled people’s sense of empowerment and their ability to thrive and take part in society (Fleming et al., 2019).

Individualised funding developments in Aotearoa New Zealand have been introduced within the context of an already underfunded disability support system. The Ministry of Health and Ministry of Social Development spend approximately $1.4 billion to fund support services for around 60,000 disabled people and their families (New Zealand

Disability Support Network, 2020). However, while this seems a large amount of money, it does not provide the full amount required for the people currently receiving support, and it is estimated that around 25% of disabled people do not have access to disability support and could be eligible for it (ibid.). Furthermore, funding from government has not kept up with current cost pressures, and there is a significant gap when considering projected demand for disability support (Deloitte, 2018). Rosenberg (2015) points out that governments in the past have manipulated perceptions of policy development by referring to essentially cost-reducing policy as an 'investment approach'. Murray and Loveless (2021) find that a reluctance to increase funding for disability support services is informed by a reluctance to shift from a privately funded and invisible cost model to a public one. When disability support services are underfunded, those who will shoulder the burden of cost (or lack of support) are disabled individuals and their whānau, and support workers.

Hellowell, Appleby and Taylor (2018) point out that a best practice approach to healthcare and support funding would be to begin by costing out what was needed, and then financing it accordingly. In contrast, current models are confined by a budget from inception, without considering how that impacts on individuals and society. This leads to built-in oppression of a poorly resourced system, which creates potential tensions between the support workforce and those living with disability and needing support, each of which groups bears the burden of an underfunded disability support system (Kelly, 2017).

Although the nationwide Mana Whaikaha programme announced in the 2022 Budget is new, individualised funding is not a new phenomenon in Aotearoa New Zealand or internationally. Individualised funding policy ostensibly shifts away from the paternalistic approach to disability support to a model in which disabled people and their whānau have more ability to identify and access the type of support they need through devolved budgets (Fleming et al., 2019). It is available throughout New Zealand for eligible people who have either home and community support services or respite services. It was designed to address the issue of disabled people not having enough choice and control over who provides the support they need, and how and when it is to take place. Options for those using individualised funding include employing support workers and planning what support they need themselves, through to arranging for a care provider to manage all aspects of service delivery (Ministry of Health, 2021c).

Individualised funding policy ostensibly shifts away from the paternalistic approach to disability support to a model in which disabled people and their whānau have more ability to identify and access the type of support they need through devolved budgets ...

Support workers are key to the provision of individualised funding, which is often expected to be more flexible and more personally responsive than previous models of disability support. However, the workforce has been largely overlooked in policy development. This is not surprising: as Wright (2022) argues, labour policy in liberal market economies views labour as a 'problem' to be controlled and with least cost. This policy approach is particularly problematic in the development of individualised funding through the Mana Whaikaha programme in Aotearoa New Zealand. It is problematic because of the inequities that already exist in the disability support workforce, and the lack of intent to address these inequities in the disability support system through the system transformation currently underway. This article argues that the flexible, high-quality and personally responsive support promised by Mana Whaikaha is under threat because of the lack of regard for the impacts on the workforce, including attention to workforce planning to support this initiative. The article is set out as follows: the impact of individualised funding on the workforce, as evidenced internationally, is reviewed; the historical background to individualised funding in Aotearoa New Zealand is then presented; the article then discusses how the way in which Mana Whaikaha has been developed and implemented may have negative impacts on the workforce, and subsequently the success of the programme itself.

International experiences of individualised funding

Care and support work has been treated as a physical interaction – providing the basic physical support people need to survive. This is due to increasing policy focus on efficiency and cost reduction arising from the marketisation of care work (Macdonald, 2021). Part of the focus on physical and transactional support has been the removal of the sense of how the person providing support and the person receiving it are, in fact, working reciprocally, thus overlooking the importance of relational care (Dew et al., 2013). Indeed, support could be viewed as a production process, in which both parties are co-producers of the end product (Austen and Jefferson, 2019). Arguably, the care and support system that we have in Aotearoa New Zealand, and other countries, removes the agency of both disabled people and the support worker to work together, and in a reciprocal manner that respects each party, thereby disempowering workers and people with a disability.

The work of disability activists to gain more control and choice for people with a disability is part of reclaiming the relational part of care and support. As Cortis et al. note, individualised funding has been introduced after 'decades of activism aimed at: promoting the self-determination of people with a disability; transforming paternalistic, inequitable and unresponsive service delivery models; and expanding services to people whose needs were poorly met under previous arrangements' (Cortis et al., 2018, p.587). Individualised funding is a 'new' approach to funding disability support in which, to varying extents, person-centred care is key. Under individualised funding, people with a disability are empowered to determine what type of support they need and how it is provided (Fisher et al., 2010). Ideally, individualised funding takes into account the disabled person's circumstances, their strengths and the context of their family and social networks (Dew et al., 2013).

Individualised funding, therefore, responds to the human rights concerns of disabled people, enabling them to be self-determining, empowered and to take part in life (ibid.; Macdonald, 2021). However, individualised funding for people with a disability has also arisen within the policy environment that marketised care, focusing on efficiency and cost reduction. Thus, current versions of individualised funding have emerged out of two parallel arguments that can be taken to focus on individuals: first, the marketisation of care that has been driven by women's entry into the labour market (and therefore lack of 'free' care) and neo-liberal policy drivers since the 1980s; and arguments based on human rights (Macdonald, 2021) which can be misconstrued to be about individuals only, rather than the collective rights of groups of people who have been historically marginalised.

Support provision under individualised funding internationally has remained stuck in neo-liberal concepts of individual choice. This has been done without consideration of the context in which many will not be resourced to manage their own support and care, and in which large for-profit companies are often the dominant care and support providers (Austen and Jefferson, 2019). Indeed, individualised funding as it has been implemented in various countries holds the prospect of further marketisation of care and support, reducing costs for government as it steps further out of the provision of care and support (Macdonald, 2021). Individualised funding, therefore, entails inherent conflict between the radical personalisation and empowerment aims of disability advocates and the ongoing neo-liberal policy approach to care and support (Williams and Dickinson, 2016).

Individualised funding policy changes have been promoted on the basis that they increase choice and flexibility, but this is a rhetoric that does not always play out in actual funding. Most indications are that individualised funding improves the quality of life of many of those disabled people who engage with it. However, individualised funding is also constrained by the pricing models set by funders. In Australia, pricing models were set without inclusion of disabled people or unions and based on the cost of engaging 'entry-level' support workers with little or no training and experience (Cortis et al., 2018; Hall and Brabazon, 2020). Entry-level care does not include relational elements of care and support, nor the skill and knowledge required of support workers to note and respond to a service user's emotional state and needs, and to personalise and adjust the care accordingly. Furthermore, the pricing and resourcing of individualised funding often does not include the time and skill involved in workers' regulatory labour, such as administrative tasks, incident reporting, training and supervision (Van Toorn and Cortis, 2022). There is some evidence that the introduction of individualised funding models is associated with greater demand for support workers that has not been planned for by funders, thus reducing the possibility of the promised flexible support (Macdonald, 2021). Research indicates that, at least in the short term, disabled people may not be getting what they need from services (Cortis and van Toorn, 2020).

Just as individualised funding models have underpriced the relational elements of care and support work at the micro level, they have also threatened existing community networks and relationships, as evidenced in Australia. Funding models in Australia have encouraged larger providers to move into the market, thereby squeezing out some more local providers (Stampoulis-Lyttle, 2019). As smaller, often not-for-profit providers have been pushed out of the market (Macdonald, 2021), their working relationships and networks with community and other organisations have been lost (Austen and Jefferson, 2019; Stampoulis-Lyttle, 2019). The shift away from smaller, local providers to larger providers, alongside increased demand, has had immediate impacts on the workforce and ability to provide the kind of support promised by individualised funding.

Support workers in an individualised funding environment need a range of skills

Entry-level care does not include relational elements of care and support, nor the skill and knowledge required of support workers to note and respond to a service user's emotional state and needs, and to personalise and adjust the care accordingly.

that are not covered by 'basic work' costing models. Skills such as service user-focused skills, decision making and risk management, as well as the above-mentioned regulatory labour, become more important under individualised funding (Moskos and Isherwood, 2019; Cortis et al., 2018). Support workers also have an important role in 'safeguarding' and reporting on behalf of their service users, which is not recognised in pricing and funding models (Cortis and van Toorn, 2022). Disabled people are more likely than abled people to experience family or intimate partner violence, and are less likely to know how or be able to access information and support should they experience family violence (Ministry of Justice, 2022). This means that support workers, especially under individualised funding, can have an important role to play that requires skill, judgement and knowledge in order to know how to respond to and support disabled service users where there is family violence. This requires training and ongoing organisational support, which is not recognised in low-cost pricing models.

There is emerging evidence that in Australia, while some providers do provide additional training, it is sporadic (Moskos and Isherwood, 2019). Furthermore, evidence suggests that due to demand for support workers, and perhaps also to minimise costs, inexperienced and untrained workers are recruited to fill shortages (Macdonald, 2021). These recent findings in Australia echo earlier work that found that individualised funding with flexible support worked best in areas that had high migrant numbers – in other words, a greater pool of workers whose choices are constrained enough to encourage them into low-paid work that has uncertain or anti-social hours (Ungerson, 2004).

As mentioned above, funding models for individualised funding in Australia, and in the United Kingdom, have been introduced at a low-cost level, not taking into account the full costs of providing a highly skilled, trained and flexible workforce. This has an impact on quality of care in the short term, but also the longer term, especially as individualised funding models are often implemented without national oversight for workforce development and planning (Macdonald, 2021; Moskos and Isherwood, 2019). Importantly, pricing has not factored gender discrimination into costing of wages (Cortis et al., 2018). In practical terms for workers, aside from greater health and safety risk, there is a greater financial cost as they may need to spend personal money on work-related costs – such as phones and internet plans, purchasing things they wouldn't otherwise purchase when accompanying service users (such as food, parking, activities), and buying things for service users – that is not always reimbursed. Unsurprisingly, 2020 research indicated that nearly half of disability support workers surveyed in Australia disagreed with the statement that 'the NDIS has been positive for me as a worker' (Cortin and van Toorn, 2020).

Through a shift to 'individual responsibility, funders' role in workforce planning and development is often abdicated… This has both short-term and long-term consequences for how much individualised funding can actually empower disabled people.

Individualised funding as a result of collective action for the rights of disabled people is a huge step forward for disability support. However, when taken up by policymakers in our neo-liberal policy environment of marketised care, 'individualised' is used to sell a sense of choice of high-quality support that may not be backed up by adequate funding, resourcing and workforce. This is underpinned by funding models that underestimate the cost of care, and of flexible, high-quality support. Indeed, it could be argued that rather than address the needs of disabled people, in this environment models of individualised funding become another vehicle to reduce the costs and responsibility of state-funded care and support (Macdonald, 2021). International research already shows that individualised funding is more often than not implemented on a low-cost basis, and fails to take into account how a trained, well-supported workforce is integral to high-quality, flexible support. Through a shift to 'individual' responsibility, funders' role in workforce planning and development is often abdicated with the introduction of individualised funding, and a shift away from national oversight of the implementation of its policy. This has had both short-term and long-term consequences for how much individualised funding can actually empower disabled people.

Aotearoa New Zealand's path to individualised funding

New Zealand has been on a long path towards supporting people with a disability to live in the community, beginning in the early 1970s with the deinstitutionalisation of disability support. Key to these developments was the 1972 introduction of the accident compensation (ACC) scheme, with individually targeted assistance to those people with a disability caused by an accident. A second important milestone was the passing of the Disabled Persons Community Welfare Act in 1975. This Act provided the statutory right to support for disabled people, who were not ACC claimants, to enable them to

access services and help them stay in the community through respite care, home help, the provision of aids and appliances and vocational training. Little has changed, it seems, in how funding is devolved by way of service contracts through a government ministry or agency to regional health boards and to private providers of disability support services, setting in place a lack of central oversight, and some distancing of government from responsibility for the service.

Attempts at individualised funding have been underway since 1998, when individualised funding for some people with disabilities who have high health needs was introduced. However, this was stopped by the Ministry of Health following an inquiry because of concerns about inconsistent management and use of the funds (Social Services Select Committee, 2008). The same inquiry revealed that under this iteration of individualised funding, disabled people reported feeling that they had little control over the services they received, and the funding was relatively inflexible. The inquiry also reported that the Ministry of Health was considering expanding individualised funding and improving access to it. It noted that individualised funding requires greater involvement of disabled people and their families in decision making, and that it does not resolve all issues with disability support, particularly the availability of 'good' support workers.

Further work by the Ministry of Health resulted in the implementation of several trial projects: the 2011 New Model for Supporting People with Disabilities demonstration project in the western Bay of Plenty, followed by Choices in Community Living projects in Auckland and Waikato. This process resulted in the Enabling Good Lives report (Ministry of Social Development and Ministry of Health, 2011) and model of individualised funding, which was trialled in Christchurch in 2013 and in Waikato the following year. In February 2017, Cabinet directed the ministries of Health and Social Development 'to work alongside the disability community to design a process for a nationwide transformation of the disability support system that would be based on the EGL vision and principles, and underpinned by a social investment approach' (Office of the Minister for Disability Issues and Office of the Associate Minister of Health, 2017a). It is worth noting that these initiatives were under a National-led government, whose approach to social investment was not one of fully funding services, but instead included a narrow 'cost' versus investment approach (Rosenburg, 2015).

The roll-out of the new system commenced in Manawatū in October 2018, under a Labour-led government. In November 2021 the government announced the setting up of a Ministry for Disabled People and the national roll-out of the Enabling Good Lives programme as Mana Whaikaha. This has been cemented through funding allocated in the 2022 Budget for the roll-out of Enabling Good Lives, and through extra funding for disability support services and the establishment of the ministry (Sepuloni, 2022).

The aim of Mana Whaikaha ... purports to use a 'try, learn, adjust' approach to implementation, implying that it is flexible if implementation does not work as anticipated.

The aim of Mana Whaikaha is to create greater choice and control for people, and 'universally available' support. It purports to use a 'try, learn, adjust' approach to implementation, implying that it is flexible if implementation does not work as anticipated. Although Mana Whaikaha is presented as a single 'system', it comprises several government and other agencies. Prior to its national implementation, Mana Whaikaha comprised two teams located in different government agencies: the kaitūhono/connectors team, employed directly by the Ministry of Health, and the tari/system team, who are employed by Enable New Zealand (contracted by the Ministry of Health). Connectors work with the disabled person to develop their goals and plans and identify the government agencies and support that will enable them. Mana Whaikaha itself does not provide support; rather, it offers a single point of contact, information and funding (combining funding from the ministries of Health, Social Development and Education) for disabled people. Therefore, multiple for-profit and not-for-profit organisations are identified that can be contacted to provide disability support. Additionally, disabled people can choose to use a 'broker' organisation to manage their support provision.

One core element that has been neglected in the development of these programmes is the workforce. Evaluations of the earlier Enabling Good Lives projects (Office for Disability Issues, 2014) identified employment challenges, but did not seek any involvement or feedback from support workers or their unions. Rather than being seen as core to providing flexible, high-quality support, support workers have been on the periphery of considerations in the system transformation. Indeed, clear involvement of support workers and their unions in the development of individualised funding was not started until the instigation of the workforce working group in 2018, which included the Council of Trade Unions, E tū and the Public Service Association. This working group was then suspended in 2020 until late 2021, the two years prior to national implementation of Mana Whaikaha. The lack of consultation, as a minimum, with support workers is particularly startling given that the need to protect workers' rights was noted early in the development of Enabling Good Lives (Office of the Minister for Disability Issues

and Office of the Associate Minister of Health, 2017b) and that the Health and Disability System Review (Health and Disability System Review, 2020) also noted that poor working conditions, low wages and low qualification levels were key issues for the care and support workforce.

The impact of individualised funding on the care and support workforce in Aotearoa New Zealand

Disability support workers have struggled to gain decent work conditions. Their unions have represented them in legal actions, including: the 2011 sleepover case, which saw support workers doing sleepover shifts being paid at the minimum wage for every hour worked rather than a $30 allowance, and sleepovers recognised as work; the in-between travel settlement which guaranteed home and community support workers at least the minimum wage for their travel time between service users' homes (extended in Budget 2021 to be their regular wage for this time) (Ministry of Health, 2021a); and the pay equity settlement, which saw raises for the predominantly female workforce of between 15% and 50% (Ministry of Health, 2021b). Additionally, collective agreements include provisions superior to the minima that are legislated for, and unions provide advocacy and dedicated support for workers who are invisible in other respects.

However, implementation of some of these legal initiatives has not been consistent, nor to the letter of the law (Douglas and Ravenswood, 2019; Ravenswood and Douglas, 2021). Indeed, as this was being written, support workers had to fight again (as yet unsuccessfully) to have their wages won through the 2017 pay equity settlement maintain relativity with the minimum wage, let alone gender equity, and avoid another entire pay equity process under the amended Equal Pay Act (Ravenswood, 2022). These struggles are for workers employed under the current system of disability support, not under individualised funding, where support workers risk working as 'contractors' and therefore without the protections afforded employees under the Employment Relations Act 2000, and potentially unable to access gender-equal wages resulting from settlements for employees.

Providing flexible, empowering care not only creates better life opportunities for disabled people; it is also rewarding for support workers, who often feel that funding and organisational constraints prevent them from delivering high-quality care (Macdonald, 2021; Ravenswood, Douglas and Ewertowska, 2021). Unions, such as the PSA, support the Enabling Good Lives principles (Public Service Association, 2018) and have recommended that a well-trained and properly paid workforce is critical for this programme to provide the high-quality support it promises. E tū recommended that the funding model both increase the flexibility for people with disabilities and health conditions towards a more person-directed approach, and retain a workforce that provides these services that has not been either casualised or required to be contract workers (E tū, 2020).

> Relational elements of disability support are key to individualised funding, and this is often overlooked in costing out funding models ...

In addition to the above, some other examples also suggest that individualised funding will worsen the situation of support workers. First, there is evidence that family carers are often forced to work for below the minimum wage and need to top up the funding from their own resources (Murray and Loveless, 2021). Second, anecdotal evidence suggests that disability support providers offering individualised funding are experiencing labour and skills shortages and that there has been little ability to cover planned or unplanned absences, with the consequence that service users do not receive the support they need, and indeed have funded. Finally, there is little, if any, consideration or inclusion of the disability support workforce in the development of the funding model for Mana Whaikaha.

Conclusion

As outlined above, evidence from Australia and the UK shows that social justice goals will not be met if pricing models are underpinned by an approach that focuses on cost efficiency, and a gendered view of care as low-skill, low-cost (Cortis et al., 2018). Relational elements of disability support are key to individualised funding, and this is often overlooked in costing out funding models (Dew et al., 2013). Indeed, consideration of the workforce, gender equity, training and workforce planning have often been left out of the development of individualised funding models (Cortis et al., 2018; Macdonald, 2021; Moskos and Isherwood, 2019). This has resulted in labour and skills shortages, some of which has been noted already in the Enabling Good Lives trial projects in Aotearoa New Zealand, and consequently in a lack of available support for disabled people.

Mana Whaikaha is set up with a 'try, learn, adjust' approach. It is crucial at this juncture that early lessons around funding caps and central coordination of support workers are addressed. The new system change for healthcare and the creation of the Ministry for Disabled Persons is the perfect opportunity to ensure that funding for Mana Whaikaha is based on what is needed to provide high-quality, individualised support, including good working conditions, workforce planning and development. It provides the opportunity to also begin to shift these services to a more centralised operation, perhaps moving away from multiple for-profit funders that operate on contract to various government agencies and ministries. However, a shift to centralised services should take into account the need for local delivery, and the relationships and knowledge that are built up by small, locally based not-for-profit providers. This is an important issue which must be addressed

in policy development, but is outside of the workforce focus of this article. These changes would address the lessons learned internationally, and here, that individualised funding can increase the number of for-profit operators in the market, which is associated with a loss of community knowledge and networks (Austen and Jefferson, 2019; Stampoulis-Lyttle, 2019), worsening work conditions and increasing casualisation of the workforce (Macdonald, 2021), with subsequent impacts on quality of support when untrained, inexperienced and underpaid support workers are the main source of disability support.

When individualised funding is sold as flexible, empowering and new, but underpinned by an approach that is really aimed at cost efficiency (Macdonald, 2021; Williams and Dickinson, 2016), it shifts considerable risk onto individuals: people with disability and their family, and support workers, all of whom subsidise underfunded state care with their own skills, knowledge and time. Furthermore, workforce issues such as coordinated, quality training, general oversight and coordination, which are barely achieved currently, are further overlooked under these kinds of models. Now is the time to adjust the approach through: ensuring that support workers' voices are included in the development and implementation of Mana Whaikaha; reassessing the pricing and funding models to recognise the value and costs of a skilled workforce to provide high-quality, flexible and personalised support; and creating national systems for workforce planning and development, as well as for monitoring employment conditions of this workforce. Constrained funding sold as greater choice and flexibility risks pitting disabled peoples' rights against workers' rights without addressing the elephant in the room, that the funding is not sufficient to create the environment needed for disabled people and support workers to enjoy quality of life, economic and social opportunity and social justice.

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Jasmine Freemantle

From the Horse's Mouth: a focus on bread-and-butter reforms for jobseeker support recipients without dependants

Abstract

Successive governments have made efforts to reduce poverty amongst some specific population groups, such as children, families and the elderly. However, their focus on poverty alleviation has not been evenly applied across the New Zealand population. Certain groups, notably single and partnered adults without dependants, are yet to receive the same level of attention. This article considers poverty amongst 18–64-year-old beneficiaries, including jobseeker support–work ready (JS–WR) and jobseeker support–health condition or disability (JS–HCD) recipients without dependants. Rather than focusing on big ticket reforms commonly put forward, this article highlights some often overlooked aspects contributing to poverty and other unnecessary hardship amongst this group, and seeks to identify some policy improvements that could be made within existing frameworks. These are discussed with examples primarily from my own experience as a JS–HCD recipient, and informed by others on JS who provided first-hand experience.

Keywords jobseeker support–work ready, jobseeker support–health condition or disability, poverty, Ministry of Social Development, beneficiaries without dependants, policy options

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Poverty in New Zealand is not a new problem; nor are government efforts to reduce it. While the Old Age Pensions Act 1898 was the first legislation to address welfare needs amongst a specific population group, the Social Security Act in 1938 provided a more secure foundation for New Zealand's welfare state. Wider changes to society and policy frameworks mean the welfare system has had different emphasises and priorities at different times (Welfare Expert Advisory Group, 2018).

While both National and Labour-led governments have established measures to reduce poverty, the focus has been significantly on second-tier initiatives. In particular, these include: the long-running increasing reliance on the accommodation supplement as an add-on to inadequate first-tier benefit rates; and assistance, notably Working for Families and Best Start, that recipients of jobseeker support (JS) without dependants are not entitled to. These policy initiatives have grown quite significantly in their generosity, at least relative to previous arrangements, under the last two Labour governments. The latter reflects the focus on children and families, and a corresponding lack of

focus on single people and those without dependants. An isolated exception (although with a year-long lag) was the 2019 extension of the winter energy payment to main benefit recipients, initially introduced as part of the Families Package in 2018 exclusively to seniors and some families with dependants (Ardern, 2019).[1]

Alongside such policies, governments have utilised other levers, such as setting targets, most notably through legislation addressing child poverty (the Child Poverty Reduction Act 2018 and Children's Amendment Act 2018). Such initiatives, while welcome, have brought little direct benefit to JS recipients without dependants.

The 2017–20 Labour-led government took steps to improve conditions for JS recipients without dependants. Selected aspects of the Welfare Expert Advisory Group's recommendations were implemented, including a $25 increase to first-tier benefits (the second of two modest non-CPI-related increases since the early 1990s) and indexing future main benefit increases to movement in average wages (New Zealand Labour Party, 2020, p.14, 2021, pp.1, 4–5), both of assistance to JS recipients without dependants. During their current, 2020–23 term, Labour increased (from 1 April 2021) the amount main benefit recipients can earn before a steep abatement rate applies, with an increase in the abatement threshold from $90 to $160 per week before tax for JS recipients without dependants.

Also, in May 2021 the government announced increases to main benefit rates. These included a $20 per week increase effective 1 July 2021, and, from 1 April 2022, increases to the net rates of main benefits, amounting to an increase of between $32.84 and $36.50 per week for single JS recipients without dependants, and $82.38 (in total) for couples, compared to 1 July 2021 (Community Law, 2022; Sepuloni and Wood, 2022).

On the face of it, these policy changes appear to be positive for JS recipients; they are also broadly consistent with (in the case of abatement threshold earnings, surpassing) the increases recommended by the Welfare Expert Advisory Group (2019b, p.99). Indeed, while improvements (e.g., annual indexing) to the accommodation supplement are yet to materialise, amongst calls for reform by academics and advocates alike is widespread support for adjustments and increases in two particular areas: main benefit rates and the accommodation supplement (e.g., Auckland City Mission, 2020a, 2020b; Barber, 2022, p.7, 2019, p.11; Boston, 2019, pp.173, 180).[2] Such calls reflect how the inadequacy of main benefits and the accommodation supplement has increased reliance on other, third-tier assistance, such as temporary additional support – an outcome which is unfair and inefficient (see below).

The fact that consecutive governments have failed to provide adequate support to JS recipients without dependants – both independently, and when compared to others receiving state support – is certainly not due to a lack of available evidence, or reputable advice.

Furthermore, these seemingly positive changes can be deceptive. First, main benefit increases may reduce other payments, such as the accommodation supplement and/or temporary additional support, as can participation in paid work, even under the abatement threshold. Second, coupled JS recipients without dependants can jointly earn up to $160 per week (thus, they share the same abatement threshold as single recipients), with each person's benefit being reduced by 35% for income they or their partner earn over the $160 threshold.

This can be compared with the situation for recipients of other main benefits, such as jobseeker support–sole parent, sole parent support and the supported living payment. Jobseeker support–sole parent and sole parent support recipients share the same initial abatement threshold as JS recipients without children; however, their subsequent abatement thresholds and accompanying rates are comparatively generous: 30% for earnings of $160–$250, increasing to the JS without dependant's abatement rate of 70% for earnings over $250. Supported living payment recipients have the same abatement threshold and abatement rates, although these rates only apply to income generated from sources other than paid work, with an abatement threshold of $180 on personal earnings.

Moreover, the Welfare Expert Advisory Group's recommendations for increases to the main benefit and abatement threshold were put forward as 'immediate steps towards adequacy', developed as a package of changes to increase income support, with the intention that increases would not be offset by reductions in other payments, such as the accommodation supplement and temporary additional support (Welfare Expert Advisory Group, 2019b, p.98). Rashbrooke (2021) reported cases of people being worse off following the 2021 main benefit 'increase'. Likewise, Fletcher (2021) has highlighted the ongoing shortfall in income to meet basic needs despite such increases.

The fact that consecutive governments have failed to provide adequate support to JS recipients without dependants – both independently, and when compared to others receiving state support – is certainly not due to a lack of available evidence, or reputable advice. Calls for adequate and appropriate reform, including from the government's own expert advisory group, have largely been ignored, or implemented in a manner providing negligible benefit.

JS recipients need a greater increase in overall payments, in order both to live and, ultimately, to thrive and participate in society. However, the most useful contribution I can make is drawing attention to some areas that may alleviate poverty and hardship amongst this group within existing frameworks, albeit in seemingly small ways. My approach is thus somewhat different from that of articles normally found in *Policy Quarterly*. First, it is personal, based on my own experience, together with the experiences, and priorities, of many other JS recipients. Second, proposed reforms are modest and, in general, different from those often put forward by other authors on the topic.

In what follows, the article provides a brief outline of the nature of JS recipients. Next, it describes how support for this group is structured, utilising my own payments to illustrate. Following this, five focus areas for reform are presented. These have been selected because they were the most prevalent issues of concern, both from my own experience and that of many JS recipients I have consulted in preparing this article. Each issue is discussed, with suggested reforms for improvement. Arguably, all these reforms are politically palatable and could reasonably receive multi-party support. All are implementable within existing frameworks, independently or together, within a short period. Further, the suggested reforms require relatively minimal (or no) government investment; some may reap savings. Some concern operational policy.

Policy issues relating specifically to other beneficiaries, such as those with children, fall outside the scope of this article. However, while the focus is on JS recipients without dependants, most of the proposed reforms could be applied to other main benefit holders (such as those with children) and, in some cases, low-income earners.

Not all deserving areas are discussed. Emergency housing, sanctions, increased support for prisoners, including surrounding release, and reforming the outdated definition and application of relationship status are amongst other important aspects particularly affecting some JS recipients without dependants that are worthy of dedicated focus.

> Rather than encouraging participation in work, the design of [the $160 per week] policy can function to disincentivise employment, by financially penalising recipients through reductions in second- and third-tier payments, even when earnings are under the abatement threshold.

The recipients of jobseeker support

The concern here is with beneficiaries aged 18–64, single and partnered, without dependant children. While this group may have children, they are considered to not have dependants due to ineligibility for government transfers available to those with dependant children. There are various reasons for this: for instance, they are not the primary caregiver; their child is in Oranga Tamariki care; or their child is receiving a benefit, such as the young parent payment. Some JS recipients do have dependants; however, they are not the focus here. Herein, unless otherwise specified, 'jobseeker support' or JS is used to refer to recipients of both jobseeker support–work ready (JS–WR) and jobseeker support–health condition or disability (JS–HCD) without dependants.

JS is a weekly payment to those who: are unemployed and looking for work; are in part-time employment looking for additional work; or have a health condition or disability requiring reduced working hours or temporary cessation of work. Essentially, JS–WR and JS–HCD are, respectively, the pre-2013 unemployment and sickness benefits. All JS recipients must accept offers of suitable employment (unless their work-test requirements are removed or reduced for health or disability reasons), be 18 years old or over, be a New Zealand citizen or permanent resident, and have lived in New Zealand for two years.

The structure of jobseeker support

The current benefit system, for JS and other state support recipients, comprises three components: a main benefit (or first-tier assistance); supplementary (or second-tier) assistance; and hardship (or third-tier) assistance (Welfare Expert Advisory group, 2019a, pp.5–6). The main benefit is meant to cover basic living costs. The nuclear family is used to categorise recipients' eligibility for assistance: adults are categorised as a 'family type', either 'single' or a 'couple'. 'Couple' includes those who are married, in a civil union or in a de-facto relationship (ibid., pp.7–8). JS–HCD recipients require a current medical certificate, normally needing renewal every 13 weeks (ibid., p.10).

Second-tier assistance consists of payments for particular additional and ongoing costs: accommodation (the accommodation supplement or income-related rent subsidy), having a disability (the disability allowance) and heating (the winter energy payment). Payments usually provide a contribution towards the cost, rather than meeting it in full. Assistance is generally income-tested, and, in some cases, cash asset-tested (ibid., p.6). A raft of other second-tier assistance is available to some other state support recipients for which JS recipients are not entitled.

Third-tier assistance is intended to help meet essential urgent or unexpected living costs. Assistance potentially available to JS

Table 1: Author's benefit payment details (p/wk)

Jobseeker support	$315.00
Accommodation supplement	$70.00
Temporary additional support	$56.64
Deductions	
Advance repayments	–$8.00
Total payment	$433.64

recipients includes temporary additional support, special needs grants and benefit advances. Temporary additional support is a weekly payment to assist with essential living costs that cannot be met by income or other means, rather than for a specific cost).[3] Special needs grants are one-off, non-taxable assistance for urgent costs, which may be recoverable or non-recoverable. JS recipients may access special needs grants for a range of costs.[4] Strict income and asset limits are applied (ibid. p.6), as are criteria for receiving a special needs grant. To receive a food grant, for instance, the recipient must demonstrate having to pay for an alternative essential cost with money they otherwise would have used for food. Main benefit recipients requiring help for an urgent, essential cost may get a benefit advance, which is recoverable: up to six weeks of net benefit entitlement may be advanced, recoverable from future benefit payments (ibid., p.31).

To illustrate, I receive a total of $433.64 per week, comprising payment components shown in Table 1.[5]

Issues of concern and potential reform options

Incentives to work

The current government's move to increase the amount JS recipients can earn up to $160 per week without their benefit being affected had the potential to reduce poverty significantly amongst this group. Such a policy could provide not only greater incentives to participate in employment, but also opportunities to do so in a sustainable way without harsh financial penalties. Moreover, paid employment can provide not just greater adequacy of living standards, but also a sense of purpose, social inclusion and dignity. This makes it all the more important to get such policies right.

Unfortunately, while the policy intention could have made a significant difference to the lives of all work-ready JS recipients, this is not necessarily the case. Rather than encouraging participation in work, the design of this policy can function to disincentivise employment, by financially penalising recipients through reductions in second- and third-tier payments, even when earnings are under the abatement threshold. As may be evident from my current payments, taking a short-term 'pay cut' in the hope that part-time work eventually leads to full-time employment would not be possible on such a restricted budget. Worse, those receiving additional assistance over and above a main benefit receive it in order to meet essential costs. Eligibility requirements for temporary additional support, for instance, are explicitly based on having insufficient income to cover even the most basic needs that can otherwise not be met. Just as Rashbrooke (2021) found cases of main benefit recipients being worse off after the 2021 increases, I too have spoken with JS recipients who have experienced similar situations due to reductions in assistance from working where their total earnings are under $160. Clawing back essential support because people are attempting to improve their situation by taking up paid employment (or working longer hours) puts vulnerable people at further risk; it is also contrary to the goal of supporting those on benefits into sustainable work.

As such, JS recipients would more likely be incentivised into work if they had the ability to earn up to $160 per week in paid employment without it affecting their main benefit or second- or third-tier eligibility. Given the reliance on second- and third-tier payments to meet basic costs such as housing, reductions in such payments may disincentivise engagement in part-time work, especially if work-related costs (e.g., travel expenses) are taken into account. Such a scenario may be even more likely to have a negative impact on couples, given the way the abatement thresholds are currently designed.

Thus, consideration should be given to aligning the abatement thresholds and rates to enable all JS recipients – regardless of relationship status – to earn the same amount. Alternatively, consideration could be given to aligning the abatement thresholds and rates for JS recipients to those of others on a main benefit, such as jobseeker support–sole parent and sole parent support.

Another possible way to address the issue and encourage workforce participation would be to enable JS recipients to earn up to $160 per week spread over a longer time period (say, a maximum of 12 months) as average earnings per week. Flexibility in calculating the abatement period would especially incentivise, rather than penalise, those in casualised or seasonal work, whose weekly earnings may vary greatly throughout the year.

There are other approaches to encouraging work. For instance, the leader of the National Party, Christopher Luxon, has prioritised those under 25 years of age receiving JS for three months or longer: this group, he argues, should be strongly encouraged into full-time work. To this end, under a National-led government this group would be provided (whether they request it or not) with a dedicated job coach to get them into employment. Job coaches would be contracted via community providers if the Ministry of Social Development (MSD) 'can't deliver' (Luxon, 2022).

Luxon does not make it clear whether his proposed policy includes JS–HCD recipients, but in his speech (to the National Party annual conference) it appears both JS–WR and JS–HCD recipients are grouped together as 'on the Jobseeker benefit'. He quotes figures suggesting that there has been an increase of 50,000 in JS recipients since National lost office, and these data include JS–HCD recipients. Yet requiring JS–HCD recipients to undertake paid employment, regardless of their health and disability issues, is of very real concern.

Be that as it may, dedicated job coaches or similar have merit. This applies both for those under 25 and for other work-ready

JS recipients. Indeed, the Welfare Expert Advisory Group's report included the following recommendation: 'Provide sufficient numbers of well-trained, well-resourced, regional labour market managers and specialist employment case managers in MSD' (Welfare Expert Advisory Group, 2019b, pp.141, 204). Certainly, in my experience, there appears to be a shortage of resources. As part of my latest JS renewal I expressed interest in working part-time at a local winery. The case manager specialising in the industry was to call me the following week. That was over two months ago, and the person still has not called. Appropriate numbers of sufficiently resourced job coaches, specialist case managers, or other staff who can assist JS recipients prepare for, enter and continue in suitable employment should be considered to help recipients find and retain sustainable work.

Housing

Shortly into a nationwide Covid-19 lockdown, my flatmate left, and did so without notice or advance payments to compensate for rent and utilities. When I explained the situation to MSD, I was told there was nothing they could do. As I was to learn later, this was not accurate. In this situation (and the following), I was eligible for a recoverable benefit advance of up to six weeks of my normal payment. The MSD staff involved did not tell me this.

Regardless, under the Covid-19 regulations I was legally unable to enter part-time work, or to show potential flatmates the property. This resulted in a shortfall between my weekly payment and rental payments: there was insufficient money for the landlord, and much less for other necessities. I attempted to find a flatmate; however, Zoom virtual tours are not popular. More distressing was the ministry's awareness over a period of months that I lacked sufficient income for rent, let alone to eat. Unfortunately, this was not the only time I would be in such a situation. Nor was it the last time I would receive an unhelpful response from MSD.

A little later I rented a property with someone I thought I knew reasonably well. Shortly afterwards, that person attempted to kill me, inflicting significant injuries. After leaving hospital, I called MSD to explain the situation. But even I was gobsmacked by the response. I had been in hospital, then in Women's Refuge. At that point, no one (including the police or courts) knew if, or when, the person might be released on bail. When I informed MSD that my benefit was insufficient to cover even the rent, I was advised to find random people to stay on a night-by-night basis to cover the shortfall and other expenses, until I had a better idea about when the person would be released from custody. Meanwhile, my net benefit was increased by $10 per week. MSD also suggested taking the person to court upon their release (despite a lifetime protection order) to secure reimbursement for lost rent and utilities.

> In my case, [the JS renewal] has meant recounting a hugely traumatic event – an attempt to kill me – along with how I am tracking in terms of the medically diagnosed anxiety, depression and PTSD arising from that experience.

There are many (often complicated and interrelated) factors to address in such situations. Concern for how to pay immediate and essential costs of living should not be amongst them. Currently, temporary additional support recipients are paid up to 30% of the net JS rate (or other main benefit) to make up (at least some of) the gap between essential living costs and income (Welfare Expert Advisory Group, 2019a, p.30). Any shortfall between costs and income over the 30% will not be met (aside from a one-off benefit advance). This means a JS recipient may receive both the accommodation supplement and temporary additional support in addition to a main benefit, and still have essential costs (e.g., rent) greater than their entire weekly payment. One possible way to address this issue would be for any shortfall in rent and other basic utilities costs to be available as a non-recoverable grant in specified circumstances (e.g., domestic violence, incarceration, hospitalisation, and abandonment concerning a flatmate or partner). The grant could be available for an initial period (e.g., up to three months) and extendable on an as-needed basis.

Jobseeker support–health condition or disability recipients

Those seeking or receiving JS–HCD face additional hurdles. For instance, after initial acceptance, 13-weekly renewals are required. This is in addition to 12-monthly renewals for JS and six-monthly disability allowance renewals.

These requirements impose significant costs on those administering the welfare system and the healthcare system, not to mention the support recipients themselves. The medical professionals generally certifying JS–HCD and disability allowance applications and renewals (i.e., general practitioners and nurse practitioners) are currently under considerable strain with severe staffing shortages, exacerbated in many cases by the Covid-19 pandemic. Reflecting this situation, I recently faced a wait of almost 12 months before it was possible to register at my local medical practice.

As it stands, the disability allowance application form is six pages long. It requires detailed information and evidence (e.g., concerning pharmaceuticals, treatments and verified evidence of costs).

The form must be completed by the applicant and a medical professional. Additional paperwork may be required; for instance, if the disability requires a counsellor. To compound matters, the processes for applications and renewals of the disability allowance and JS–HCD are poorly integrated.

There is a further problem. The current processes require the (potential) recipient of JS–HCD to discuss their current health condition or disability with MSD staff, notably for a JS application or renewal. This includes progress towards reductions in and/or no longer requiring such state support. In my case, this has meant recounting a hugely traumatic event – an attempt to kill me – along with how I am tracking in terms of the medically diagnosed anxiety, depression and PTSD arising from that experience. For my most recent JS–HCD renewals, I have had to recount this information to a different person each time, none of whom I had met before.

Plainly, such arrangements can be stressful and have a detrimental psychological impact, both on benefit recipients and MSD staff. From the reactions I have experienced, not all MSD staff are well equipped to deal with traumatic events. And they should not be expected to do so without appropriate training and supervision. Other government departments, such as ACC, have long recognised this – for example, through the establishment of a dedicated sensitive claims team. Moreover, it is not clear that all MSD staff have sufficient training or supervision to make judgement calls on JS–HCD.

Well-designed reforms in this area could significantly reduce the administrative burden on MSD and the health system. First, it would make sense to align the medical certification required for JS–HCD with the disability allowance and JS applications and renewals: all three should be on a 12-monthly cycle, as per the current JS renewal process.

Second, the costs associated with applying for, or renewing, JS–HCD and/or the disability allowance add an additional burden on recipients. The cost of medical appointments mandated by government to apply for, or renew, JS–HCD and/or the disability allowance should be available as non-recoverable grants.

Tight, unrealistic policies around assistance, concerning basic necessities of life, make it even more difficult to survive, much less thrive.

Third, there is a case for establishing a dedicated team within MSD to focus on JS–HCD recipients, particularly those receiving JS–HCD on mental health grounds. This team should have specialist training and supervision relevant to recipients and their particular experiences. In the interim, a flag system or similar could be established, identifying those applying for or receiving JS–HCD, along with the disability allowance, especially on mental health or other sensitive grounds. Appropriate security measures would be necessary, given the nature of such personal information. It is assumed that something of this nature is already in place, given that medical professionals are required to collect and supply this information to MSD.[6]

Third-tier assistance

Most payment rates for third-tier assistance have not been adjusted for some time. Non-recoverable food grants, for instance, are set at a maximum of $200 for single people and $300 for couples without dependants every six months. While, theoretically, additional grants are possible, the bar is set high (I was not eligible in either of the situations described above). Current rates for food, as with other grants and benefit advances (e.g., for electricity and gas, water and glasses) are poorly aligned to current prices. Also, much assistance of this nature is (or may be) recoverable, requiring the recipient to pay it back from already lean weekly entitlements.

It is encouraging that the government has started making improvements with respect to third-tier assistance. As part of Budget 2022, it was announced that those on a main benefit or a low income can apply for up to $1,000 every year for essential dental treatment. Importantly, this is not just an increase of $700, but is also now a non-recoverable grant.

Reforms in other areas of third-tier assistance should be considered. One of these relates to MSD's whiteware policy. Currently, benefit recipients may purchase via a recoverable advance a new whiteware product (fridge-freezer or washing machine). MSD decides what model and size appliance the recipient may have, based on family size. In my case, for a household of two, the available fridge-freezer is 198 litres. At a push this is adequate for day-to-day living; however, it certainly curtails opportunities to increase food security. The policy is also inconsistent with MSD's own expectations that recipients should take steps – e.g., by stocking up at the local vegetable market – to increase income and/or reduce costs as part of eligibility for JS and temporary additional support renewals. We have put down a vegetable garden to reduce costs and have healthier diets. Were MSD to alter its policy so recipients have the option to purchase whiteware most appropriate to their household's needs, we would be able to store our produce for future use, rather than giving away what we cannot consume upon harvest.

Tight, unrealistic policies around assistance, concerning basic necessities of life, make it even more difficult to survive, much less thrive. Moreover, they hardly fit well with the government's commitment to numerous international agreements: e.g., adoption of the United Nations Sustainable Development Goals. Of specific relevance here are goals 1: no poverty; 2: zero hunger; 3: good health and well-being; 6: clean water and sanitation; and 7: affordable and clean energy (United Nations, 2015).

Consuming a healthy diet, being able to see, and having heating and clean water should not be considered luxuries.

Last summer, when my household's tank ran dry, our only source of water for drinking, cooking, cleaning and bathing was a nearby stream. I did not feel able to borrow money from MSD for water; I am already paying back money for several other necessities (e.g., glasses, fridge-freezer and moving costs). The pay-back rate would be equivalent to a loaf of bread per week, which for me and other JS recipients might be the difference between eating and going without. While the situation was only short-term, insufficient government support concerning situations that third-tier assistance is meant to help prevent – like potential poisoning from contaminated water – seems most unlikely to support work-ready people able to move into employment.

A possible solution to such situations would be making grants for food, electricity, gas, water bills and glasses non-recoverable, and available on an as-needed basis. Recipients would be expected to provide appropriate evidence that these costs are unable to be met within their existing budget. Grants should be adjusted and indexed, to represent the actual costs involved. Food grants, for instance, could be indexed using the annual University of Otago Food Cost Survey's[7] 'basic' food costs calculation as a minimum. Consideration should also be given to grants for basic necessities, such as food, being at the same rate regardless of relationship status (savings that couples may make via bulk purchasing are negligible). Were food grants not to be available on an as-needed basis, another option, requiring no additional investment, would be to extend the current six-monthly entitlement to 12 months, increasing flexibility and providing greater assistance during times when recipients may need it most (e.g., Christmas, or during a reduction in part-time work hours).

Administrative blunders

Government departments, particularly larger ones like MSD, are responsible for administering significant processes and functions, along with the accompanying paperwork. However, responsibility for important administrative duties by no means excuses administrative blunders. In fact, given the large and often vulnerable population that MSD is designed to serve, it makes the responsibility for accuracy even more vital.

> Domestic violence, self-harm and suicide attempts are amongst the side-effects I am aware of resulting from such MSD blunders.

To illustrate the problem of administrative mistakes, I received a letter from MSD dated 16 July 2022, saying that my medical certificate for HCD accreditation would expire on 20 August. Accordingly, I needed to renew my certificate or let MSD know I was ready to look for work. In response, I booked an appointment to renew the HCD accreditation for 15 August. However, on 12 August I received another letter from MSD. This said that my payments would be stopped, effective from 21 August. The letter was written in the past tense. It said that my medical certificate had expired on 20 August, and that, because I had neither renewed it nor advised MSD that I was work-ready, my eligibility for JS had been reviewed and it had been decided that I no longer qualified for anything at all.

I was confused and upset. I called MSD's 0800 number for general enquiries for under-65-year-olds twice in an effort to resolve the issue. I was on hold for 90 minutes the first time and almost two hours the second time, both times without actually getting through to anyone. I understand this is an issue common with MSD 0800 numbers.

I kept my 15 August appointment. The nurse practitioner completed the assessment and filed the paperwork the same day. Later that day, I received yet another MSD letter. This one stated that my JS had been reviewed. Based on the medical certificate and other information, it had been decided that I did not need to look for work and my payments would continue.

My experience is not unique. Fortunately, despite significant unnecessary stress, the long-term impact on me has not been severe. But not all JS recipients have had the same outcome. I have spoken to several who have had similar experiences. In some cases it has been the final straw. Domestic violence, self-harm and suicide attempts are amongst the side-effects I am aware of resulting from such MSD blunders.

Clearly, greater care in administration, with properly trained and resourced staff, is necessary. To compare, when I drafted external correspondence at the Ministry of Education, a minimum of two other (senior) staffers proofread each letter. For ministerial correspondence, the sets of eyes at least doubled before it even reached the minister's office. In the case of correspondence to JS recipients, it would be a vast improvement if at least one other person actually read the letters before they were sent.

It would seem appropriate, then, for MSD administrative processes to be reviewed, with checks and balances put in place to ensure that JS recipients receive the correct information and in a timely manner. Also worthy of consideration would be increasing the efficiency of MSD's 0800 service.[8] One possibility would be adding the option of a call-back service on all MSD 0800 numbers, as used by some other government departments. For instance, Inland Revenue's call-back option kicks in when comparatively high caller volumes result in a long wait time (Inland Revenue, 2022). This would reduce both the wait time and associated stress for those attempting to make contact with MSD, at minimal cost to government.

Conclusion

This article has highlighted some key issues facing jobseeker support recipients without dependants. It has outlined several easy and

relatively cheap improvements that could be made within existing policy frameworks. If implemented, whether individually or collectively, the suggested changes would go some way towards relieving unnecessary poverty and hardship. Indeed, while the associated costs to government would likely be modest, their beneficial impact on the lives of many jobseeker support recipients could be very significant.

1 The winter energy payment is an additional payment to assist with heating costs during winter, paid 1 May–1 October, at $20.46 per week for single people without dependants; couples and those with dependants receive $31.82.

2 Some have put forward for discussion other possible means to increase income support: e.g., social insurance (Boston, 2019) and a universal basic income (New Zealand Council of Christian Social Services, 2022a, 2022b).

3 This article categorises temporary additional support as third-tier assistance, as other commentators commonly do (e.g., Welfare Expert Advisory Group, 2019a, pp.29–30). Note, however, some MSD publications – e.g., their benefit fact sheets – categorise temporary additional support as second-tier assistance; this is long-standing practice.

4 These include: food; accommodation (rent, mortgage, board); electricity, gas and water bills or heating; dental treatment; glasses; whiteware (fridge-freezer, washing machine); medical costs; home repairs and maintenance; car repairs; bereavement; and losses from fire or theft. Other costs (e.g., bedding) may be available.

5 During winter I receive a winter energy payment. My advance repayments are for third-tier assistance. I owe $251.60. I am eligible for a disability allowance for counselling; this is on hold until I can find a counsellor. The disability allowance is a maximum of $70.04 per week.

6 For instance, as part of disability allowance applications and renewals, medical professionals are required to identify the nature of the person's disability. 'Psychological or psychiatric conditions', for example, include: stress, depression, bipolar disorder, schizophrenia, and other psychological/psychiatric.

7 The latest Food Cost Survey (Department of Human Nutrition, 2020, 2021, p.12) puts the relevant weekly food cost at a minimum of $67.50 ($73 for an adult male, and $62 for an adult female). This would require adjustments to current costs. Alternatively, the Consumers Price Index, which includes the monthly Food Price Index, could be utilised (see, e.g., Statistics New Zealand, 2022).

8 MSD has a 'Service Express' 0800 number, but this is limited to checking one's upcoming payments and current debts, so is of little use for many necessary communications.

Acknowledgements

Thank you to the many JS recipients who contributed their experiences and ideas to this article. Special thanks to Dion Moss for being my sounding board throughout its development.

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Kevin Counsell

The Demise of Effects-based Resource Management

what went wrong with internalising the externality?

Abstract

A core principle underlying the Resource Management Act 1991 (RMA) is that of effects-based resource management: managing the effects of activities on the environment, rather than the activities themselves. In economics parlance, this has strong links to the concept of internalising the externality, where the costs or benefits of activities are borne by those undertaking the activities, rather than by third parties. When externalities are internalised, society's wellbeing is improved. However, the widely held view is that the RMA has not made society any better off. A contributor to this was the poor implementation of the internalisation principle in the RMA, particularly the limited use of price signals, high transaction costs, and the poor application of cost–benefit analysis. The replacement for the RMA, the Natural and Built Environment Act (NBEA), proposes to shift the focus away from an effects-based approach to an outcomes-based one. While the NBEA could be used to better implement an internalisation principle, its proposed drafting does not always attempt to do so, and its explicit shift to an outcomes-based approach is likely to make it even more difficult for externalities to be internalised.

Keywords Resource Management Act, effects-based, externalities, internalisation, Natural and Built Environment Act

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When the Resource Management Act (RMA) was enacted in 1991, it was based around a principle of effects-based resource management. In broad terms, an effects-based approach seeks to manage the adverse effects of activities on the environment, and contrasts with an outcomes-based approach, which seeks to designate the desired outcomes from activities. In an effects-based approach, people and communities are left to undertake activities that provide for their own wellbeing, provided any adverse effects of those activities on the environment are, to use the language of the RMA, avoided, remedied or mitigated.

The effects-based approach of the RMA has strong links to economic theory, particularly the economic concept of 'internalising the externality'. When an action by one party has an adverse effect on other parties not involved in the original action (an 'externality'), the costs of those adverse effects should be borne (or 'internalised') by the party generating the externality. When externalities are internalised in decentralised and competitive markets, economic theory holds that the overall net wellbeing of society is maximised.

In theory, therefore, if the effects-based approach of the RMA had led to externalities being internalised, society should be better off. However, the widely held view is that the RMA has not enhanced society's wellbeing, in terms both of protecting the environment and fostering urban development. In late 2022 the government introduced legislation to repeal and replace the RMA, the Natural and Built Environment Act (NBEA), which has an outcomes-based, rather than an effects-based, approach to resource management. In the NBEA, an outcomes-based focus is on specifying and promoting positive environmental outcomes from human activity, rather than managing the effects of that activity. While the effects-based approach would still be an element of the NBEA, the intention is to shift away from solely managing effects to focusing more on outcomes.

The RMA's perceived lack of success and the move away from the effects-based approach begs the question: did something go wrong with the approach of internalising the externality? It is apparent that an internalisation principle has not worked well, and that socially beneficial outcomes have not been achieved. This might be attributed in part to the RMA having objectives beyond just managing adverse effects (such as the matters listed in parts 6 and 7 of the RMA), or to the difficulties in managing effects when responsibilities are split between central and local government. However, as I explain in this article, a supporting factor is that the practical implementation of the internalisation principle in the RMA has been unsatisfactory, and it is this poor implementation that has contributed to the RMA not achieving socially beneficial outcomes.

The effects-based approach of the RMA focuses on allowing people to undertake activities that are in their own best interest, provided that the adverse effects of those activities are appropriately addressed.

After discussing in the next section the nature of the RMA and the internalisation principle in more detail, I will explain how there are three issues with the way in which this principle was applied: (1) there was very limited use of price signals to reflect the costs of externalities within the actions that generate them; (2) the RMA process made it costly and time consuming for affected parties to negotiate between themselves to resolve externality problems; and (3) the poor application of cost–benefit analysis meant that it was difficult to assess socially beneficial outcomes when price signals or negotiation were not available.

These three issues have meant that externalities have not been internalised to an appropriate extent, and this in turn has contributed to poor environmental and urban development outcomes. The proposed new legislation, the NBEA, has the potential to address each of these issues. Nonetheless, as I discuss in my concluding section, attempts to resolve at least some of these issues through the NBEA are limited, and the need to address them has been undermined by the new legislation's shift away from an effects-based approach.

The RMA and an internalisation principle

The effects-based approach of the RMA focuses on allowing people[1] to undertake activities that are in their own best interest, provided that the adverse effects of those activities are appropriately addressed. This approach has strong links to economic theory. Within a branch of economics known as welfare economics, which is concerned with people's wellbeing (welfare), economic theory holds that the overall net wellbeing of society will be maximised by allowing people to make their own decisions in a decentralised and competitive market setting.

However, this theory is subject to some specific conditions. One of those conditions relates to the concept of an externality. An externality is a cost or benefit imposed by the actions of one party on a bystander – a person not involved in the original action, and who did not choose to incur a cost or benefit. A common example is that of pollution: one person's actions may pollute the environment, which imposes costs on others who use the environment, but are not involved in the original polluting action. For the aforementioned welfare economics theory to hold, externalities need to be internalised. That is, the costs or benefits associated with externalities should be borne by the person undertaking the action that generates the externalities, rather than the bystander.[2]

The language of the RMA is consistent with this theory. The section 5 purpose statement refers to 'enabl[ing] people and communities to provide for their social, economic, and cultural well-being and for their health and safety' – that is, people can act in their own best interest. Under the RMA, this is to be done 'while … avoiding, remedying, or mitigating any adverse effects of activities on the environment' – that is, externalities are to be internalised.

Consistent with this, in a lecture published in 1995 describing the legislative evolution of the RMA, Simon Upton discusses the effects-based approach of the RMA. He states that 'the further we went the more we realised an effects-based view of the statute made an internalisation principle the logical approach to resource management' (Upton, 1995, p.37). While other concepts (such as that of sustainable management) were ultimately also incorporated into the RMA, Upton states that the view taken in developing the RMA was one 'in which the Government's proper statutory concern was with the externalities of market outcomes and … seeking to create incentives to internalise those externalities wherever possible' (ibid.).

If the effects-based approach of the RMA had led to externalities being appropriately internalised, then economic theory would suggest that the allocation and management of resources under the RMA would have maximised the net wellbeing of society. However, the widely held view is that the RMA has not made New Zealanders any better off. A 2020 review of the RMA by the Resource Management Review Panel, chaired by Tony Randerson, found that the RMA has (among other issues) not sufficiently protected the natural environment and not achieved good outcomes for urban areas. The Randerson Review also concluded that '[t]hirty years on it is clear the "effects-based" approach was not implemented as intended in relation to both maintaining environmental standards and providing an enabling approach for development in urban areas' (Resource Management Review Panel, 2020, pp.16–17, 57).

Geoffrey Palmer and Richard Clarke, in discussing 'why the RMA failed', make similar points, noting that the RMA did not produce sound environmental outcomes, and nor was urban development handled well. Of specific relevance, they also state that '[e]xternalities adversely impacting on the environment were not sheeted home to and reflected in the costs of the activities that engendered them' (Palmer and Clarke, 2022, p.4).

The perceived failure of the RMA has led to a shift away from the effects-based approach. The RMA's intended replacement, the Natural and Built Environment Act, is focused on promoting positive outcomes. The explanatory note to the Natural and Built Environment Bill states that 'The NBE Bill shifts the focus of the current resource management system away from managing adverse effects to promoting positive outcomes'.[3] An important reason for the failure of the RMA is what both Palmer and Clarke and the Randerson Review touch on: the effects-based approach of the RMA was not properly implemented, which meant that externalities were not being internalised.

An important reason for the failure of the RMA is what both Palmer and Clarke and the Randerson Review touch on: the effects-based approach of the RMA was not properly implemented, which meant that externalities were not being internalised.

But why was this the case? After all, the RMA did implement an 'avoid, remedy, mitigate' principle as a means of internalising externalities. If people had been appropriately avoiding, remedying or mitigating externalities, then would this not have led to an appropriate level of internalisation, producing better environmental and urban development outcomes? In the following sections I set out three reasons why externalities have not been appropriately internalised, despite the language of the RMA.

Few, if any, price signals

In any undergraduate microeconomics textbook, a standard approach to internalising externalities is to use a price signal to reflect the social costs (or benefits) of the externality. Indeed, externalities themselves can be considered as unpriced (or mispriced) transactions, because the costs/benefits of those transactions fall on third parties rather than those involved in the transaction. As an example of the price signal approach, in the case of negative externalities from pollution, a price signal may involve imposing a tax on the polluter, or implementing a cap-and-trade regime, where the polluter must purchase tradable permits sufficient to cover its pollution. Such approaches take the cost of the externality, and through a pollution tax or the price of tradable permits they impose that cost on the person whose actions generate that externality (rather than on third parties), thereby internalising the externality.

A well-designed and implemented price signal framework strengthens incentives for environmental enhancement. Using the pollution example again, if a polluter faces a tax or is required to purchase permits to cover its pollution, the polluter has a strong incentive to lower its costs by reducing the amount it pollutes. Investment in new, 'greener' technologies would also be incentivised by such price signals – for example, where such investment allows private investors to avoid environmental taxes. In this way, price signals incorporate environmental improvement objectives in

the financial incentives of individuals and businesses.

Since its enactment, the RMA has always contemplated the use of price signals, referred to in the Act as 'economic instruments'. Section 24(h) empowers the minister for the environment to consider and investigate 'the use of economic instruments (including charges, levies, other fiscal measures, and incentives) to achieve the purpose of this Act'. Other sections of the RMA also provide for economic instruments in specific cases. For example, sections 135, 136 and 137 allow for, respectively, a tradable permit regime for coastal permits, water permits and discharge permits. Section 112 allows regional councils to charge royalties for the use of geothermal resources and coastal extraction of resources such as sand and shingle.

Despite these provisions, there has been limited investigation, and even less implementation, of price signals as a means of addressing externalities under the RMA. Indeed, the Randerson Review found that, while there was some progress in the use of price signals for climate change and waste disposal, economic instruments were 'underused' (Resource Management Review Panel, 2020, p.332). There have certainly been enough suitable candidates for the use of price signals. The Randerson Review refers to, among others, resource royalties (e.g., for mineral extraction), environmental bonds, and user charges in respect of water, waste water and congestion (ibid., pp.360–2). Other examples that have been used overseas include price signals in respect of wetlands (wetland mitigation banking, which effectively provides compensation for land development of wetlands) and endangered species preservation (conservation banking, involving the purchase of credits where development can adversely affect threatened or endangered species) (Keohane and Olmstead, 2016, pp.224–8).

It is also clear that the 'avoid, remedy, mitigate' approach of the RMA does not utilise a price signal to internalise externalities. Where externalities arise, people are effectively being asked to internalise externalities, rather than incentivised to do so via a price mechanism. While the former may achieve some level of internalisation (and I return to the way in which this is assessed later in this article), it is unlikely to be to the same extent as would be achieved by a price level. Indeed, where price signals are a viable approach, regulatory approaches that do not utilise price signals are, in most cases, inferior to using prices to cost-effectively address externality problems (see, for example, Keohane and Olmstead, 2016, ch.9).

> … throughout the life of the RMA, the process for obtaining a resource consent has been 'complex, costly and slow', with 'unnecessary debate, litigation and process involved' in consent applications that are publicly notified …

In short, the absence of price signals has meant that those generating externalities from resource management activities in New Zealand have not faced the full costs of those externalities. This has limited the efficacy of an internalisation principle, and likely contributed to the poor environmental and urban development outcomes under the RMA.

High transaction costs hampering negotiated solutions

Price signals may not be the best way of internalising externalities in all circumstances. Many examples of negative externalities under the RMA arise from relatively unique circumstances that might not be amendable to a standardised pricing mechanism. For example, it could be difficult to use a price signal framework to internalise the adverse effects on a property owner's views of a neighbour building a high fence that blocks those views,[4] or to price the adverse effects on historic heritage values of building a new road.[5] These examples contrast with externalities arising from, say, water quality or air pollution, where the adverse effect is relatively standardised (e.g., nitrogen pollution or carbon emissions) and more suitable to a pricing framework.

There is, however, an alternative approach for internalising externalities when price signals may not be appropriate, which is to allow the affected parties to negotiate or bargain to achieve the efficient solution. Using the example of a property owner who builds a high fence which impedes a neighbour's views, the fence-building property owner can offer compensation to their neighbour in an amount sufficient to offset the value loss from the impeded views. The result is that the party building the fence bears the costs of the adverse effects of their actions on the neighbour's view: i.e., it internalises the externality with the fence-building property owner.

To internalise externalities using negotiated solutions, the transaction costs of negotiation need to be low. That is, it should be sufficiently low cost for parties to come together to negotiate, including the costs of spending time in discussions, and having lawyers draft and enforce contracts. It should also be difficult for parties to behave opportunistically and attempt to 'hold up' negotiations to reach a better deal, or to free-ride on the benefits of the negotiations of others without bearing any of the costs.

However, a well-documented problem with the RMA is that it imposes significant costs on parties. The Randerson Review found that, throughout the life of the RMA, the process for obtaining a resource consent has been 'complex, costly and slow', with 'unnecessary debate, litigation and process involved' in consent applications that are

publicly notified (Resource Management Review Panel, 2020, pp.263, 266).

The potential for a small number of people to hold up decision making through a complex litigious process is also an issue in RMA decision making. The RMA permitted a wide range of interested parties to object to a proposed activity. This allowed those that may well have been engaged in opportunistic behaviour, rather than necessarily being adversely affected by an activity, to hold up the decision-making process, driving up transaction costs.

The Randerson Review appears to contemplate the potential for a negotiation framework to internalise externalities. The review noted that minor issues under the RMA could be resolved 'more simply, quickly and cheaply' if a dispute resolution process was utilised, rather than the normal resource consent hearing process (ibid., p.284). Nonetheless, such simple, quick or cheap negotiation processes have not been a feature of the RMA. It is the high transaction costs and the complex nature of decision making under the RMA that have likely made it very difficult for parties to reach negotiated solutions. This, in turn, is another reason for the poor implementation of the RMA's internalisation approach.

Poor application of cost–benefit analysis

Rather than using price signals or negotiated solutions to internalise externalities (or in instances where unique circumstances and multiple parties make such solutions more challenging to implement), the 'avoid, remedy, mitigate' language of the RMA might be interpreted as putting the onus on people themselves to internalise the costs of any adverse external effects that their actions generate. The RMA then goes to the next step by providing for a means of approval that external effects have been accounted for. For example, an application for a resource consent would require the approval by a decision maker (such as a council, independent hearings panel or the Environment Court) to confirm that the adverse effects have indeed been addressed to the appropriate extent.

Decision makers typically use a range of qualitative information to make such decisions, such as the views of qualified experts in various fields related to the externalities (e.g., traffic, noise, biodiversity, landscape, etc.). It may be that this information is sufficient for decision makers to rigorously assess whether externalities have been appropriately internalised. However, the views set out earlier in this article suggest that this has not been the case; that is, that the internalisation of externalities has not occurred to the desired extent. One likely contributing factor to this is the poor application of the tool of cost–benefit analysis.

Cost–benefit analysis is a widely used economic technique that provides for the systematic identification and quantification (in monetary terms) of costs and benefits. Cost–benefit analysis provides a way of assessing whether externalities have been appropriately internalised. It does so by analysing both the benefits from an activity and the costs of the externalities arising from the activity (along with any other relevant benefits and costs), allowing for an assessment of whether an activity's overall benefits exceed its costs.

However, cost–benefit analysis has been either poorly applied in RMA proceedings, or completely absent. It is often used in evaluating plans, plan changes and policy statements (as per the requirement of section 32(2) of the RMA). However, such evaluations often make no attempt at quantification, even where it is possible or useful to do so. The Resource Management Review Panel, in its issues and options paper, stated that '[t]here has often been poor application of cost benefit analysis as part of the regulatory process' (Resource Management Review Panel, 2019, p.35).

The RMA also refers in section 7(b) to 'the efficient use and development of natural and physical resources', and the case law has found it useful to apply the concept of economic efficiency under these provisions.[6] Economists use the technique of cost–benefit analysis to measure economic efficiency. Despite this, the case law gives contradictory views on its application as a way of assessing efficient resource use. For example, in *Meridian Energy Ltd v Central Otago District Council*, the High Court found that the RMA does not expressly require the use of cost–benefit analysis.[7] In contrast, in *Bunnings Limited v Queenstown Lakes District Council*, the Environment Court found that the 'correct test' of an efficient use under the RMA was one that measures costs and benefits.[8]

> The poor application of cost–benefit analysis in RMA decision making, and the contradictory decisions as to its applicability, have contributed to the poor implementation of an internalisation principle in the RMA.

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Conclusions

The effects-based approach of the RMA has strong links to the economic concept of internalising externalities; that is, ensuring that those whose activities generate adverse effects face the costs and benefits of those effects, including those costs/benefits that would have otherwise been borne by third parties. If implemented properly, this internalisation principle would result in outcomes that maximise the net wellbeing of society. The wellbeing of society includes not just the wellbeing that people get from undertaking economic activities of production and consumption, but also the wellbeing that they obtain from their use and appreciation of the environment.

However, the RMA has not achieved outcomes that maximise wellbeing, both in protecting the environment and fostering urban development. A contributor to this is that the RMA's internalisation principle has not been implemented properly, due to the limited use of price signals, high transaction costs preventing negotiated solutions, and the poor application of cost–benefit analysis. The result is that the cost of unpriced or mispriced externalities is being carried by third parties, rather than those whose activities engender the externalities.

Given that there is new legislation being drafted to replace the RMA, the Natural and Built Environment Act, there is the potential to correct this problem. Indeed, the environment minister's media release accompanying the introduction of the proposed legislation states that the legislation will 'cut red tape, lower costs and shorten the time it takes to approve new homes and key infrastructure projects' (Parker, 2022), which suggests an approach that lowers transaction costs. The legislation includes provisions for mediation (Natural and Built Environment Bill, s214), arbitration (s815) and alternative dispute resolution process (s244), all of which may also lower transaction costs to facilitate negotiated solutions. The proposed NBEA also includes provisions for internalising externalities through the 'polluter pays principle', defined as 'the principle that those who produce pollution should bear the costs of managing it to prevent damage to human health and the environment' (s417).

On the other hand, the proposed NBEA has shifted its focus away from the effects-based approach towards an outcomes-based approach. The legislation does retain some aspects of the effects-based approach: the purpose statement specifies not only that positive outcomes be achieved, but also that adverse effects be managed. However, the explicit shift in focus away from effects seems likely to undermine the legislative basis for internalising externalities. Moreover, there are likely to be cases where an outcomes-based approach conflicts with an effects-based approach, yet there is no guidance on how to manage such conflicts.

It is also not clear that the proposed [Natural and Built Environment Act] has appropriately corrected the various problems with the implementation of the effects-based approach in the RMA, particularly regarding price signals and cost–benefit analysis.

It is also not clear that the proposed NBEA has appropriately corrected the various problems with the implementation of the effects-based approach in the RMA, particularly regarding price signals and cost–benefit analysis. For example, the proposed NBEA refers only to the minister for the environment having the power to consider and investigate the use of economic instruments. This is similar to the language regarding economic instruments in the RMA, which, as noted above, has not led to any meaningful investigation or implementation of these instruments. In addition, the polluter pays principle in the proposed NBEA only applies in respect of contaminated land, and not other activities that might generate externalities for which a price signal approach is appropriate.

Regarding cost–benefit analysis, on a positive note, there is reference in the proposed NBEA to an assessment of benefits and costs in requests for independent plan changes (schedule 7, s71), and there is also inclusion of efficiency as a 'resource allocation principle' (s36). However, there is nothing in the legislation that looks to clarify the current contradictions in the case law as to whether cost–benefit analysis should be used to assess efficiency. Moreover, plans are guided at a higher level by a proposed national planning framework, and there is no requirement for an assessment of the costs and benefits of this framework (schedule 6, s6). The wording in the proposed NBEA for evaluating the national planning framework borrows some of its language from section 32 of the RMA, yet the wording related to a benefit–cost assessment in section 32 is conspicuous in its absence from the new legislation. The proposed NBEA also includes a list of 18 outcomes that must be provided for to achieve the purpose of the Act (part 1, s5), but provides no guidance on how to weight trade-offs between these outcomes (for which cost–benefit analysis would be a useful approach).

Therefore, despite its inclusion in the NBEA, we may well have witnessed the demise of the effects-based approach to resource management in New Zealand. A shift in focus to producing positive outcomes is a laudable goal, and this shift is perhaps not surprising given the failure of the effects-based approach to achieve desirable environmental and urban development outcomes. But in the NBEA's focus on positive outcomes there is a risk of conflicting views over what outcomes are considered to be beneficial, and of difficulties in managing the trade-offs between different outcomes. While there are some encouraging attempts in the NBEA to lower transaction costs, the NBEA could better seek to internalise externalities by improving the use of price signals and strengthening the application of cost–benefit analysis.

On balance, the NBEA's approach seems likely to make it even more difficult for externalities to be internalised. If

implemented properly, an approach that internalises externalities recognises the trade-offs inherent in human activities that affect the environment, which can lead to outcomes that are net beneficial to people's overall wellbeing. Unfortunately, if we move away from seeking to internalise externalities, we are likely to also move away from using, maintaining, protecting and enhancing our environment in a way that best maximises the overall wellbeing of all New Zealanders.

1 I refer to 'people' here and throughout this article, but it has a generic meaning, including individuals, businesses, households, communities, etc.
2 There are some nuances to this, in that externalities arise because of the conflicting use of resources, and in some cases it can be more efficient for the costs to be internalised with the third parties. I explore this in more detail in Counsell, 2018. For ease of exposition throughout this article, I refer to the costs being internalised with the party that generates the externality.
3 At the time of writing (late 2022) the bill had been introduced to Parliament and was before a select committee.
4 An example of this situation is the 'Oriental Bay fence case' of *Aitchison v Walmsley* from 2015. I consider this case in more detail in Counsell, 2018.
5 An example of this situation is the Basin Bridge proposal to develop the roading network around Wellington's Basin Reserve: see Board of Inquiry, 2014.
6 *Federated Farmers of New Zealand (Inc) Mackenzie Branch v Mackenzie District Council* [2017] NZEnvC 53 at [456].
7 *Meridian Energy Ltd v Central Otago District Council and Ors* HC Dun CIV-2009-412-000980, 16 August 2010, at [95]–[116].
8 *Bunnings Limited v Queenstown Lakes District Council* [2019] NZEnvC 59 at [181].

Acknowledgements

The author acknowledges the helpful comments of Geoffrey Palmer, Lewis Evans and an anonymous reviewer.

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Sylvia Allan, Rob Bell and Annet Forkink

Coastal Realignment
another coastal challenge

Abstract

While the concept of managed coastal retreat is now familiar to many, the future for rural coastal lowlands has received less attention. Planned processes of coastal realignment can create opportunities, including carbon sequestration, nature-based transformation of coastal interfaces, and evolution of increasingly unproductive farmland towards other beneficial activities. Our present planning system provides high-level policy support for these changes but is mired in detail and short on recognition that the coastal edge will advance inland. While the challenges are being addressed positively in some areas, including by, or in partnership with, iwi/hapū, there is a national lack of leadership in integrated management across the changing land–sea interface, land ownership remains problematic, and funding requirements remain unresolved. New legislation promises improved approaches and is urgently needed.

Keywords coastal planning, managed realignment, sea level rise, wetlands, coastal adaptation

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Most planners in Aotearoa New Zealand will be familiar with the concept of managed coastal retreat. This is the future facing many of our coastal communities because of rising seas due to climate change. However, little emphasis has been placed on the changes which are beginning to be faced in the non-urban parts of our coastal lowlands – our estuaries, foreshores, coastal reserves and wetlands, forests and low-lying farmland. Here, physical changes are starting to occur, with more flooding and salinisation. These changes are encompassed by the term 'coastal realignment'. This term implies allowing space for rising seas, rising groundwater on land, shorelines that are actively moving inland and the adjustments needed in drainage systems near to the coast – to rivers, streams, estuaries, coastal lakes and wetlands.

These are extensive areas. A 2019 Deep South Science Challenge report (Paulik et al., 2019) estimated that just over 4,000 km^2 of production land and 2,100 km^2 of natural or undeveloped land are at risk from coastal flooding in New Zealand. In

contrast, 265 km^2 of urban and transport land are similarly exposed.[1]

The length of our coastline, cost, policy and practicality mean that very few coastal lowland areas will be subject to any form of hard protection from sea walls, bunds or revetments over time. Rather, communities, landowners and government agencies will have to turn their minds to adaptation and adjustment as coastal realignment occurs. This article looks at the basic concepts of coastal realignment, gives some examples of early responses to the changes at the coast, and outlines some planning implications of these changes.

Basic concepts

Sea level rise, and its direct effects such as erosion and flooding in coastal areas, is now recognised globally as an adaptation challenge. Less well recognised is the effect sea level has on groundwater level and salinity close to the coast. Rising seas mean rising groundwater, resulting in changes to drainage patterns in low-lying coastal areas, saltwater intrusion into coastal aquifers, the expansion of estuaries (if not constrained), and more extensive and frequent saltwater flooding of coastal land.[2] This affects coastal and, increasingly, lowland freshwater habitats and the range of species which thrive in them, as well as the commercial productivity of coastal land.

Estuaries, where land drainage systems meet the sea, are particular foci of change. Higher sea levels mean more ponding of fresh water on its way to the sea, and higher tidal wedges extending through estuaries further up rivers, depending on their gradients. Estuaries will expand in response, depending on detailed local topography, presence of flood defences and road causeways, and how sediment supply from land will alter as the climate changes. Estuaries and wetlands are now recognised as among Earth's most dynamic and productive environments, with major roles in the processing of organic matter, including blue carbon (Box 1), nutrient cycling and primary production, which will undergo gradual modification from rising sea levels and climate change.

Coastal squeeze, where there is a man-made barrier such as a revetment or sea wall, and coastal narrowing because of adjacent high coastal topography, prevents or constrains the inland migration of natural coastal systems as sea level rises. This results in the loss or drowning of intertidal habitat, loss of buffering against erosion, inundation of marshes and wetlands, and loss or reduction of other ecosystem services these areas provide. Similar coastal squeeze arises where the lower reaches of rivers and parts of estuaries have been modified and constrained by stopbanks and other structures, which will eventually compromise flood and drainage schemes. Figure 1 shows coastal habitat responses to a rise in relative sea level.[7]

To prepare for these changes in coastal and freshwater lowlands, communities, planners and decision makers need to

BOX 1 Blue carbon sequestration: opportunity to incentivise managed realignment

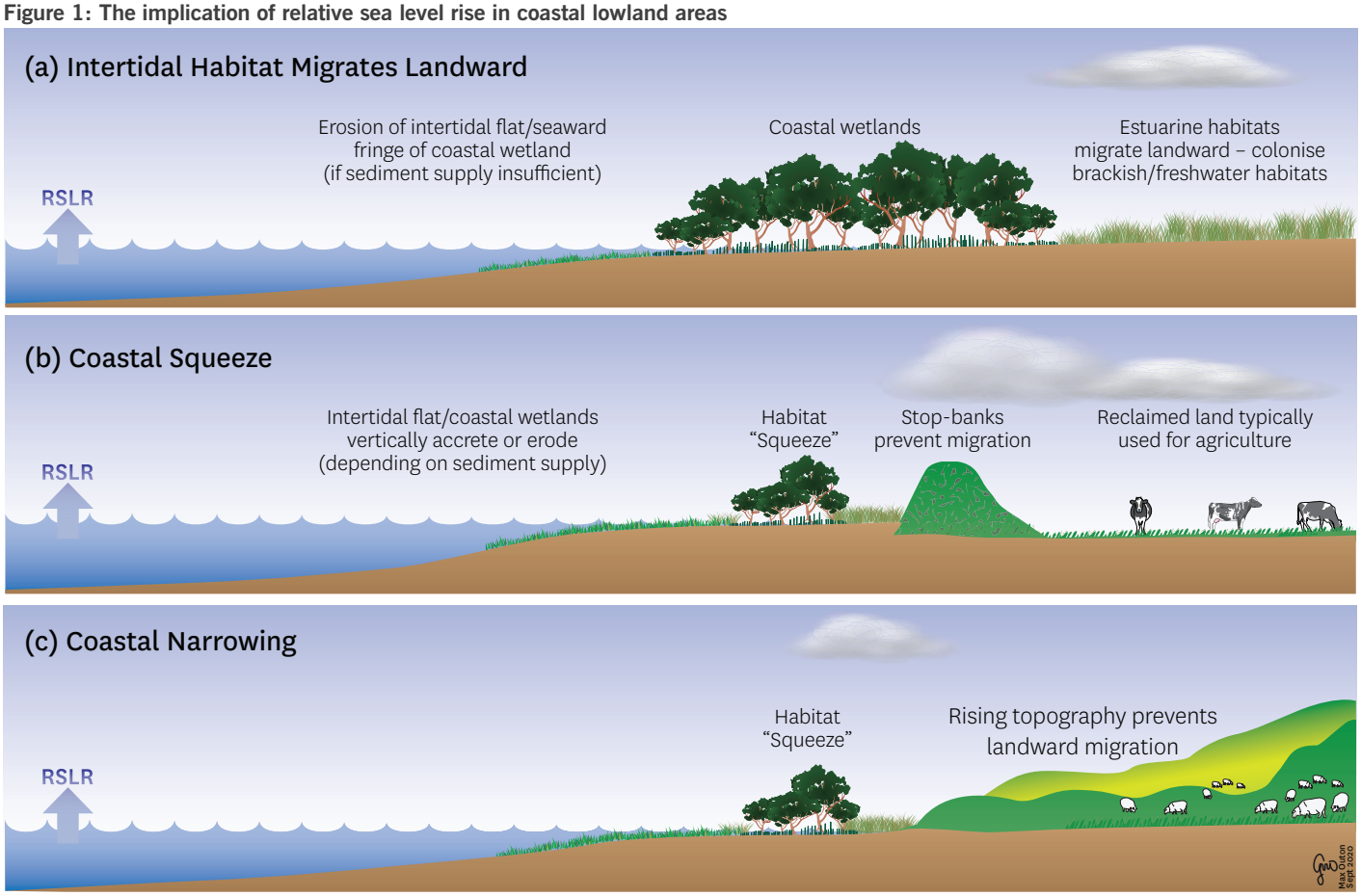
Coastal wetlands, marshes and intertidal estuarine habitats contain large amounts of water and act as significant 'blue carbon'[3] sinks through plant photosynthesis and sedimentation (Lovelock and Reef, 2020; Swales, Bell and Lohrer, 2020). Coastal saltmarshes and wetlands are among the most productive ecosystems in the world, sequestering and storing substantial carbon in their soils, where it may remain for millennia if undisturbed: they have rates of carbon sequestration in their sediments per area of habitat that are up to ten times that of terrestrial ecosystems. Accounting for blue carbon provides opportunities for both mitigation of climate change and climate adaptation, while increasing biodiversity and ecosystem services for coastal areas, including flood protection and improved water quality. Conversely, coastal wetlands and marshes that were historically drained to provide land for agriculture or housing have become long-term sources of carbon dioxide emissions, so avoiding any further loss of these ecosystems would avoid further emissions (Climate Change Commission, 2021).

At this stage, Aotearoa New Zealand only recognises the potential contribution of coastal wetlands, marshes and estuaries in our nationally determined contribution (under the Paris Agreement)[4] and the government's first emissions reduction plan (Ministry for the Environment, 2022b).[5] Blue carbon contributions have not been sufficiently investigated to be included in the national inventory at this stage. However, research is underway: for example, NIWA's Future Coasts Aotearoa science challenge, Tasman Environmental Trust's Blue Carbon Core and Restore project, and GNS-led research on the blue carbon potential of coastal saltmarshes,[6] while the Department of Conservation in the biodiversity strategy (under objective 13) has set a goal that by 2030 'carbon storage from the restoration of indigenous ecosystems, including wetlands, forests, and coastal and marine ecosystems (blue carbon), contribute to our net emissions targets' (Department of Conservation, 2020).

Australia is further ahead, with a blue carbon method introduced in January 2022 for restoration of coastal marshes and wetlands, which includes lowland freshwater habitats likely to be affected by sea level rise in the next 100 years. The new method (Australian Government Clean Energy Regulator, 2022) covers projects that introduce tidal flows to allow the establishment of coastal wetland ecosystems, including supratidal forests, mangroves, saltmarshes and seagrass, through the removal or modification of a tidal restriction mechanism. The sequestration of carbon and avoidance of emissions earns Australian carbon credit units.

Coastal lowland ecosystems are vulnerable to climate change themselves, leading to uncertainties in the future efficacy of these ecosystems, especially if squeezed against land barriers by rising sea level. Blue carbon sequestration in estuarine and wetland ecosystems is enhanced if landward migration of these habitats is purposefully enabled as sea level rises. Managed coastal realignment provides opportunities for both mitigation of climate change (through increasing blue carbon storage) and adaptation of squeezed coastal lowland hydrosystems and adjoining land, enhancing ecosystem services and reversing declining wetland biodiversity.

Figure 1: The implication of relative sea level rise in coastal lowland areas



Source: Swales et al., 2020 Graphics: Max Oulton

understand the local impacts of climate change, and what responses may be possible (see Ministry for the Environment, 2017). A broad understanding of the processes needs to be accompanied by a more detailed understanding of the characteristics of the local area, including how it might have been modified since human occupation. A range of future response options, including allowing space for estuaries and wetlands to change over time, and accompanying land use adjustments, can then be assessed against a range of future climate and relative sea level rise scenarios as part of developing an adaptive strategy. Long-term monitoring of actual changes is essential to signal the emergence of flooding and salinisation thresholds, to assist decision makers to respond with sufficient lead time.

In general terms, decisions that involve nature-based solutions (Box 2), that seek to capitalise on unavoidable trends and achieve environmental, social and cultural benefits, are to be preferred over options that are expensive to communities, that require maintenance and eventually will fail to provide benefits as sea rise continues. Similarly, pastoral production can be expected to have to withdraw from extensive lowland areas as part of coastal realignment as areas become increasingly marshy and salty. There is still uncertainty about the ability of existing terrestrial systems to transition to intertidal geomorphological and ecological (wetland/marsh) systems, and how long this might take (Rullens et al., 2022). For future generations, it is important that our planning systems start to help facilitate these transitions now and do not impede them.

Examples of coastal realignment

There are already examples of areas in New Zealand where decisions have resulted in steps towards effecting coastal realignment. These have not necessarily been driven by climate change concerns, but rather by a desire to restore natural systems, often iwi- or hapū-led.

The Kaituna River rediversion and Ōngātoro/ Maketū Estuary enhancement project

This project aimed to address the ongoing and cumulative adverse effects which resulted from works originally undertaken in 1956 to provide for direct discharge from the Kaituna River to the sea through the Te Tumu Cut. These works meant that the river was largely disconnected from its estuary. Later works involved stopbanks, reclamation and land drainage, with the effects on the estuary being compounded by agricultural runoff. The project involved re-establishing the river's connection to and through the estuary, removing stopbanks, creating new wetland areas and enhancing existing ones. The project was an important component of a 2009 community-based strategy which aimed to achieve multiple benefits for the area, including healthy functioning ecosystems, restoring the mauri of the river and the estuary, replenishing natural sources of food and fibre, and enabling kaitiakitanga and local people's stewardship.[9] The project involved the designation of 46 ha of mostly private land and multiple resource consents. Among the purposes of the designation was to 'improve the resilience of the estuary and its various ecosystems to the effects of projected climate change'. Twenty hectares of former wetland were reinstated and restored. Project construction was completed in

2020, and monitoring is showing that the physical and ecological health of the estuary is improving, and restored habitats are thriving.

Coastal land between the Ōhau River and the Waikawa River, Horowhenua

This area is being managed as part of a long-term, Māori-led, evidence-based and action-orientated research project. Since 2002, local hapū, alongside the Kei Uta Collective, have been investigating and documenting options to adapt to the changing climate and rising seas along approximately 5 km of coast. The project encompasses two Māori farming incorporations and whānau coastal blocks. Initially, hapū-led teams worked on revegetating a coastal wetland forest, while also seeking to improve water quality in the lower reaches of the rivers. More recently, climate change risks and response options have been identified. This is now leading to work on diversification of farming economies and operations, focusing on more water-based land uses (paludiculture) and enhancement of habitats for taonga species, such as tuna and īnanga. This will involve gradual transition from dairying to recreated constructed wetland habitats, beginning in 2023. Key elements have involved consultation with and the agreement of shareholders and the farm board, obtaining science input to understand and model future changes, and the design of ponds and wetlands. Initially the transformation will be pioneered on the most unproductive farmland. The wetland systems and pond areas have been designed to be resilient and protected from river flooding during the critical spawning period of March to the end of May.

The project is long-term and open-ended. It is based on Māori systems, values and cultural precepts as a demonstration of how local indigenous knowledge can effectively underpin responses to the impacts of changing climate in coastal areas. Overall, the project is intended to contribute to cultural and economic well-being within an adaptive context (Smith et al., 2022).

International experience

Internationally, particularly in the United Kingdom and some European Union countries, small-scale coastal realignment projects have been undertaken to enable landward extension of estuaries and wetland extension further inland (often abandoning coastal defences or causeways). One example is the River Otter Estuary in Devon, where 200-year-old sea defences are now starting to fail and becoming increasingly hard to maintain. The Lower Otter Restoration Project is working with local people and partner organisations to adapt and enhance the downstream part of the River Otter, its estuary and its immediate surroundings for future generations in the face of a rapidly changing climate.[10]

A similar situation has been evolving at Abbotts Hall, Essex, where almost 300ha of high-grade agricultural land was protected by a 3.5 km sea wall. The topography of the area was considered optimal for salt marsh creation. Community concerns were overcome through numerical modelling of proposed sea wall breaches, development of feeder creeks, inland relocation of sea defences and creation of spur walls. The availability of national funding mechanisms and the involvement of the Essex Wildlife Trust were vital to the project's success.

Another significant realignment project has been taking place on the south bank of the Humber Estuary in Lincolnshire. Here, more than 90,000 ha of land are already below the current level of the highest tides, and relative sea level rise of 1.2 m by 2100 is expected. The rise in sea level would place major industries, power stations, the country's largest shipping complex, extensive farmland and the homes of 400,000 people at risk. The realignment project at Alkborough Flats aims to create a large capacity for water storage through managed coastal breaches and the creation of new habitat. The scheme increases the level of protection by reducing the high tide levels in the upper estuary. It is regarded as a cost-effective project with numerous community and ecological benefits (NCCARF, 2017).

BOX 2: Nature-based solutions: what are they?

Like other countries, Aotearoa New Zealand has traditionally relied on hard engineering solutions, such as sea walls and stopbanks, to protect land against floodwater intrusion from rivers and the coast. Lately, there has been a growing interest in responses to coastal change that involve working with nature.

Applying a nature-based solutions approach to address the impacts of climate change is not a new concept. However, the term 'nature-based solutions' is relatively new and can cover a variety of concepts, such as ecosystem-based adaptation, ecosystem-based climate adaptation/mitigation, hazard risk reduction, ecological engineering, and green/blue infrastructure (Nesshover et al., 2017; Schaubroeck, 2017; Seddon et al., 2020). The Department of Conservation defines nature-based solutions as solutions 'that are inspired and supported by nature, cost-effective, and simultaneously provide environmental, social and economic benefits and help build resilience' (Department of Conservation, 2020, p.62).

When nature-based solutions work well, ecosystems thrive and negative impacts of hard engineering options, such as coastal squeeze and increased surface runoff, are avoided. For example, when mangroves are established along shorelines to reduce the impacts of waves and storms, biodiversity can be restored. This can enhance a community's climate resilience, as other ecosystem services benefits improve, such as mahinga kai, fisheries, carbon sequestration, recreational and paludiculture opportunities.

In general, nature-based solutions aim to address societal challenges effectively and adaptively, while striving to improve both human well-being and biodiversity. Effective nature-based solutions are inclusive, transparent and empower communities. This means that nature-based solutions should incorporate multi-stakeholders' participation and weave in different types of mātauranga and te ao Māori perspectives so that solutions address local needs and improve a community's resilience in a changing climate.

Does the current resource management system help or hinder coastal realignment?

The answer to this question is complex. Starting from the highest policy level, the system appears to have all the elements to identify and respond to the changes we are facing. The Resource Management Act 1991 (RMA) itself has among its purposes 'sustaining the potential of natural and physical resources … to meet the reasonably foreseeable needs of future generations' as part of managing their use, development and protection (s5(2)(a)). The 'coastal environment' is a recognised concept which includes both the coastal marine area and adjacent land where coastal processes or influences are significant (including climate change effects) (Department of Conservation, 2010, policy 1). Its natural character must be preserved and wetlands and rivers and their margins (including those in the lower reaches within the coastal environment, estuaries and other land/sea interfaces) must be protected from inappropriate subdivision, use and development (RMA s6(a)). These are dynamic concepts, and the planning challenge is to foresee change and ensure that what we plan for and do now does not become a limitation and burden on future communities.

As national direction, the *New Zealand Coastal Policy Statement 2010* (Department of Conservation, 2010) requires integrated management across mean high water springs, with particular consideration of situations where development or land management practices may be affected by physical changes or potential inundation, including as a result of climate change (policy 4). Areas potentially at risk of coastal hazards over at least the next 100 years must be identified and their risks assessed (policy 24). In addition, natural defences that protect coastal land uses are to be protected, restored and enhanced (policy 26). A precautionary approach to the use and management of coastal resources is needed in areas vulnerable to the effects of climate change so that natural adjustments of processes, natural defences, ecosystems, habitats and species can occur (policy 3). Regional policy statements and regional and district plans are required to give effect to these policies.

> While the national environmental standards for freshwater appear likely to deliver improvements to many parts of hydrological and associated ecological systems through integrated management, estuaries and coastal wetlands are not well served by the national policy statement …

Many local authorities have not made the changes needed to reflect these policies, even though they were required to do so 'as soon as practicable' after 2010.[11] It is, however, debatable whether plan reviews or changes would have made much difference to rural coastal realignment practices, as the major focus of coastal planning since the *New Zealand Coastal Policy Statement* was published has been on coastal urban areas and settlements and the management of hazards and risk in that context. Where consents are required to achieve realignment projects, unless the activity is permitted, controlled or restricted discretionary, in the absence of relevant policy in regional policy statements and regional or district plans, the national policy statement must be referred to when making decisions.

Nevertheless, coastal realignment projects must face a plethora of consent requirements. Despite what would seem to be favourable national policy, the detail of the RMA includes consent requirements for almost all the steps that may be needed to facilitate coastal adjustment to sea level and ground water changes. Seemingly simple aspects, such as removing or enlarging culverts, reinstating drained land to wetlands, removing stopbanks and structures, creating ponds and drainage areas, and realigning watercourses or artificial drains, all involve complex disturbance, discharge and modification consent requirements relating to land, water, river or stream bed or the coastal marine area. Straight rural land use changes, such as a change from intensive dairying to extensive grazing, do not require consents. With the transitory line of mean high water springs forming a planning demarcation between the responsibilities of regional and territorial authorities, there is often added complexity in interpretation of rules and management through conditions across the line.[12] The demarcation of mean high water springs in estuaries[13] is often not entirely in line with natural processes, and, as a management tool, may date over time with sedimentation, sea level rise, salinisation and groundwater rise.

Designations, which have proved a useful tool[14] in projects such as the Kaituna River rediversion, cannot be applied in the coastal marine area.

The *National Policy Statement for Freshwater Management 2020* (Ministry for the Environment, 2020) and the national environmental standards for freshwater involve catchment-based planning for freshwater and acknowledge the coastal marine area, including estuaries, as part of the receiving environment of freshwater management units. The purpose of the *National Policy Statement for Freshwater Management* is to drive improvements in river water quality over time, through setting target attribute states and time frames to achieve them. The net loss of natural inland wetlands[15] must be avoided, and an effects management hierarchy is applied to their management. There are, however, exceptions for natural hazard works and for flood control, flood protection and land drainage works. While the national environmental standards for

freshwater appear likely to deliver improvements to many parts of hydrological and associated ecological systems through integrated management, estuaries and coastal wetlands are not well served by the national policy statement, and consideration of climate change effects in the lower reaches of catchments through sea level and groundwater rise over time appears to be absent. In late 2021, the national environmental standards were found to apply to coastal wetlands within the coastal marine area.[16] Following consultation, the minister for the environment has now modified the standards so that they apply to inland natural wetlands only.[17] This highlights the lack of consideration of the coastal interface (both current and with sea level rise) in detailed policy and the national requirements for wetlands inland of the coastal margin, including in rural areas where the inland migration of such systems could be facilitated by more enabling provisions.

When detailed analysis is undertaken, such as the investigation of the planning context of Brooklands Lagoon at the mouth of the Waimakariri River near Christchurch/Ōtautahi (Urlich and Hodder-Swain, 2022), a planning and management system of great complexity, but also with problematic gaps, emerges. The study concludes that 'the issue is perhaps not more science, additional policy, or more lengthy collaborative processes, but the effective implementation and monitoring of existing policy, and convincing those who are contributing to cumulative effects that change is necessary'. While that study focused on estuaries and the need to enable their future expansion and migration, the same can be said of coastal wetlands and tidal flats, beaches and the lower reaches of rivers in many parts of the country.

The RMA can be said to provide policy which should assist with coastal realignment, even though the emphasis is on a natural hazard and risk management approach. However, it is unlikely that at the local level, detailed policy and plan provisions will provide easy routes through the organisational, integration and consenting regimes necessary to achieve on-the-ground transition to coastal systems that are more natural and able to adapt to the changes ahead. The RMA, however, has not prevented planning, often through non-statutory means, and consenting to achieve the first steps in a coastal realignment response to rising seas in the examples outlined above, and others in the Bay of Plenty (Crawshaw et al., 2022).

BOX 3: Who should pay?

Some work has been done in Aotearoa New Zealand to explore funding strategies for climate change adaptation (Boston and Lawrence, 2018; Boston, 2019). This has focused on issues of relocating people and built environments, including infrastructure, and has proposed a range of mechanisms, including national pre-funding to compensate (in full or in part) for the inevitable change and to help prepare communities. By contrast, coastal realignment, without the pressure of large affected human populations, may be able to draw on a wider range of funding sources. To date, local authorities have identified benefits from public works based on nature-based solutions (Box 2) for coastal resilience and have drawn on their rating bases to purchase necessary land. They have chosen to fund planting and coast care programmes, undertaken alongside communities who also see ecological benefits from the work they do. Landowners may act altruistically and gift land for coastal realignment, also recognising wider public benefits.[20] If the role of wetlands and other coastal carbon sinks (Box 1) is recognised, this may also provide incentives and sources of income. Some seed funding provided by central government to change to new productive systems, such as paludiculture, and other adjustment strategies, including biodiversity enhancements, may also be necessary. While these options might be a small component of the larger climate adaptation challenges and costs facing the nation, they should not be lost sight of within that broader context.

Land ownership

One of the most problematic aspects to be addressed in coastal realignment is the matter of land ownership. Many, but not all, of our coasts are fringed by esplanade reserves (the Queen's chain) or road reserve. Beyond this is land held privately or communally, under a range of ownership types, or by public bodies. The Marine and Coastal Area (Takutai Moana) Act 2011 made provision for the title of all land which was within the coastal marine area to be part of the common marine and coastal area.[18] Specific provision is made for loss of land which is road or owned by the Crown or a local authority. Freehold land which becomes part of the coastal marine area due to 'a natural occurrence or process', however, unless purchased[19] by the Crown or a local authority appears to retain its title as freehold land. The planning framework nevertheless sees land which is overtaken by sea level rise as within the coastal marine area and subject to the limitations of the RMA. This situation is likely to lead to pressure for coastal protection (and hence coastal squeeze), or purchase by a public agency, a situation which is generally at present not funded.

Low-lying land landward of mean high water springs which is being affected by rising seas can be expected to lose productive value. In the transfer to a more sustainable use, whether to lower intensity farming, paludiculture, or to wetlands or other more sustainable purposes, including natural coastal defence purposes (which arguably have a wider public benefit) and the opportunity to increase blue carbon sequestration, owners may expect some form of financial compensation. This issue has not yet been resolved, but is increasingly raised in relation to policies for coastal managed retreat and the relocation of at-risk communities (Box 3).

What changes are ahead?

The current review of resource management legislation is expected to bring a 'sea change' over the next decade in how many current environmental challenges are addressed. The new legislation rests on an ethos of environmental responsibility and recognition of the concept of 'te oranga o te taiao' – supporting the health and ability of the natural environment to sustain life, recognising the interconnectedness of all

parts of the environment and the intrinsic relationships between indigenous people (iwi and hapū) and the natural world, and environmental management through good practice and restoration where the environment is currently degraded.

The three proposed new legislative instruments – the Spatial Planning Act, the Natural and Built Environment Act and the Climate Adaptation Act – together should enable a more purposeful approach to planning for changes in coastal lowlands, including risk management for coastal communities and enabling adaptive changes and coastal realignment in the nation's more rural areas. The national planning framework within the Natural and Built Environment Act is likely to contain national direction, including policy to manage climate (and other natural hazard) risks and coastal change. Regional spatial strategies should identify areas of greatest community risk and areas where resilience-based adaptive change is needed. They should develop policy targeted at such areas and ensure that these do not become more developed. They need to consider future infrastructure needs and relocation of existing infrastructure where necessary, which could pave the way for coastal realignment projects. They should provide a positive regional framework to support change that provides for resilience in coastal areas and enables natural defences against sea level rise through coastal realignment. Under the Natural and Built Environment Act, plans must be consistent with national direction and regional spatial strategies, and also with the emissions reduction plan and the national adaptation plan.[21] Expectations for the Climate Adaptation Act are that this legislation will address the complex issues of funding, property ownership and compensation.

National responsibility for policy towards the coastal environment is expected to shift from the minister of conservation to the minister for the environment, with the minister of conservation retaining responsibility in the coastal marine area only. A consultative arrangement will remain across the land–sea interface between the two ministers.

Those who work and plan in the coastal edge, from local authorities to landowners to New Zealand's many coast care groups, will be looking for stronger, more integrated and more enabling policy for managing change at coastal margins. This should be directed at avoiding coastal squeeze wherever possible, and should recognise the co-benefits of coastal ecosystems in providing ecosystem services, providing habitat, sequestering carbon, providing nature-based coastal defences and flood detention, and underpinning many of the resources on which people and communities rely. There is no shortage of knowledge now; the challenge is to get moving and act on coastal realignment and achieve the benefits and opportunities which lie there.

1 This is conservatively estimated, taking into account up to 3m of sea level rise to allow for inaccuracies in topographical information from satellites. However, it does not include the more recent information on vertical land movement, which indicates relatively higher levels of inundation around many parts of New Zealand's coasts: see www.nzsearise.nz
2 New Zealand has a wide range of types of coasts, and coastal hydrosystems, each affected by tidal range, wave energy and climate: see Hume et al., 2016.
3 Blue carbon is carbon dioxide removed from the atmosphere by ocean and coastal ecosystems (including mangrove and other coastal forests, wetlands and marshes).
4 New Zealand's first nationally determined contribution was updated on 31 October 2021: https://unfccc.int/NDCREG.
5 https://environment.govt.nz/publications/aotearoa-new-zealands-first-emissions-reduction-plan/
6 https://niwa.co.nz/natural-hazards/research-projects/future-coasts-aotearoa; https://www.tet.org.nz/projects/blue-carbon-core-and-restore/; https://www.gns.cri.nz/research-projects/blue-carbon-potential-of-new-zealand-coastal-saltmarshes/.
7 Relative sea level includes sea level rise and any vertical land movement component.
8 Wet horticulture – e.g., harakeke (flax).
9 The Kaituna River and Ōngātoro/Maketū Estuary strategy, adopted by the Bay of Plenty Regional Council, was developed to 'provide a framework for local authorities, government agencies, tangata whenua, local communities, industry organisations, and non-governmental organisations to co-ordinate and prioritise their actions that will achieve the vision and outcomes of the Strategy'.
10 https://www.lowerotterrestorationproject.co.uk
11 Over half of the regional and unitary councils have still not changed their regional policy statements or regional plans to reflect the *New Zealand Coastal Policy Statement* requirements (Department of Conservation, 2017; Urlich, White and Rennie, 2022). District councils' practice varies considerably.
12 For example, structures such as fences and low retaining walls, which are permitted on the land side of mean high water springs, may be built to function as future sea walls, in opposition to policy and rules which would make such structures impossible to consent within the coastal marine area. With sea level rise, these can cause coastal squeeze, or become stranded assets with unclear responsibilities for their removal.
13 Defined in the RMA as either a kilometre upstream from the river mouth, or a distance upstream five times the width of the mouth and mapped in regional coastal plans.
14 Through integrating project purposes and addressing land use consent requirements.
15 Excluding artificial wetlands (unless constructed as part of an offset or a restoration of a pre-existing wetland), a geothermal wetland, or a wetland in the coastal marine area.
16 *Minister of Conservation v Mangawhai Harbour Restoration Society Incorporated* [2021] NZHC 3113; see also Ministry for the Environment, 2022a.
17 Changes to the definition of 'natural inland wetland' in the National Policy Statement for Freshwater Management, and to a range of provisions in the national environmental standards for freshwater, took effect on 5 January 2023.
18 Common law relating to accretions and erosion was, however, not affected.
19 Section 17: 'whether by purchase, gift, exchange, or by operation of law'. A 'knock-on' provision in section 25 provides that where a council has purchased parts of titles below mean high water springs which are then divested of title, it can seek financial redress from the minister of conservation on the same basis as it originally acquired the land.
20 The QEII National Trust provides a model for this type of landowner contribution towards intangible, but very valuable, national benefits.
21 Recently implemented provisions of the RMA (under the RMA Amendment Act 2020, ss17–18, 21) add the emissions reduction plan and the national adaptation plan to matters which local government must 'have regard to' in developing policies and plans.

Acknowledgements

Funding was provided from the Future Coasts Aotearoa Endeavour project (C01X2107), funded by the Ministry of Business, Innovation and Employment and coordinated by NIWA.

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David Wither, Caroline Orchiston
and Etienne Nel

Using the Living Standards Framework to Analyse the Drivers of Social Resilience in a Disaster Management Context

Abstract

Resilience concepts now underpin the global strategic approach to risk mitigation. However, operational challenges have emerged which stem from problems with measurement. Many key drivers of social resilience are intangible and difficult to measure, which can result in their exclusion from consideration in institutional decision-making structures. Drawing upon a case study – the Hurunui district – which recently experienced multiple adverse events, we argue two points. First, disaster management outcomes can be improved by better accounting for intangible factors in decision-making processes. Second, the Living Standards Framework, and the capital concepts embedded within it, provide a solid foundation for systematically categorising intangible factors and rendering them visible to policymakers.

Keywords resilience, disaster management, wellbeing, measurement, multi-capital frameworks

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Modern institutions traditionally rely upon measurement – targets and indicators – to demonstrate progress and accountability (Stiglitz, Fitoussi and Durand, 2018; Hallegatte and Engle, 2019; Copeland et al., 2020). Applying such an approach to operationalise resilience concepts has resulted in the realisation that many drivers of resilience, especially in a social context, are intangible and difficult to measure (Cutter et al., 2008; Cutter, 2016; Copeland et al., 2020). This presents a significant challenge for the institutional operationalisation of resilience concepts for disaster risk reduction (Wither et al., 2021; Wither, 2021).

One promising solution to the problem of measurement is the use of multi-capital frameworks, which synergise with resilience approaches, to account for intangible sources of value (Tanner et al., 2015, Wither et al., 2021). Multi-capital frameworks aim to capture all types of value that drive human development by subdividing value into social, human, natural and physical capital domains. Thus, intangible sources of value can be

given visibility, providing an evidence base for effective and holistic policy development.

Drawing upon the experiences of a rural community in the Hurunui, North Canterbury, which recently lived through multiple adverse events in short succession, we illustrate the 'problem of measurement' in a New Zealand context and analyse the value of the use of multi-capital frameworks as a tool for systematically accounting for intangible qualitative phenomena. The first section covers resilience, the use of measurement for accountability, and the role multi-capital frameworks can play in addressing the problem of measurement. The study design is then described, followed by two results sections. In the discussion, we first demonstrate that accounting for intangible sources of value in institutional decision-making processes improves resilience outcomes. Second, we argue that multi-capital frameworks hold significant potential for systematically addressing the challenges of measuring social resilience. We conclude that the implications of this research reach beyond disaster management and have significance for institutional decision-making processes more generally.

Table 1: Indicators of social resilience

Structural indicators	Cognitive indicators
Educational attainment	Outcome expectancy
Pre-retirement age	Action coping/self-efficacy
Transportation access	Critical awareness
Communication capacity	Responsibility
(English) language competency	Trust
Food provisioning capacity	Place attachment
Non-special needs	Sense of community
Health insurance coverage	Community participation
Health care capacity	Empowerment

Source: Kwok et al., 2016

Background

Resilience describes the long-term persistence of a system in the face of unexpected shocks (Holling, 1973). In essence it illustrates how a system must adapt, change and transform in the face of adversity, so as to maintain its functions and feedbacks (Folke, 2016). Social resilience focuses on the human dimensions of resilience (Ungar, 2018). Importantly, early resilience research placed significant emphasis on accounting for qualitative factors – such as intangible relationships – alongside the quantitative (Holling, 1973). However, the institutional implementation of resilience thinking has been dominated by a quantitative orientation, with little emphasis placed upon the qualitative (Hallegatte and Engle, 2019; Copeland et al., 2020; Wither et al., 2021). Consequently, challenges related to normative factors have emerged (Cote and Nightingale, 2012; Cretney, 2014; Brown, 2014), which are collectively referred to as the 'problem of measurement' (Wither et al., 2021). In addition to the inability to measure key factors, the problem of measurement also problematises the mindset a singular focus on quantification has engendered.

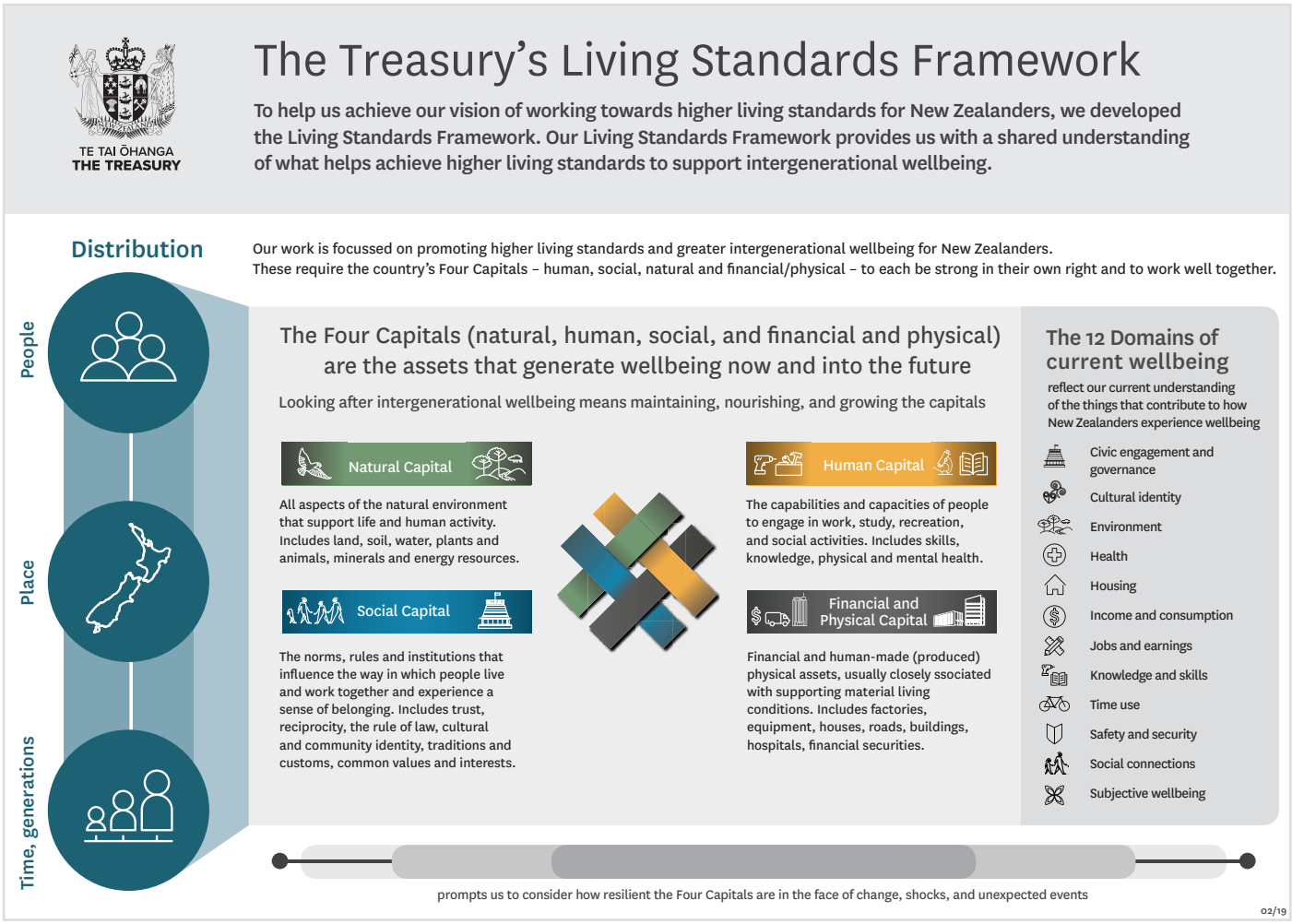
Not all drivers of resilience are easily quantifiable, which commonly results in the omission of key social considerations from decision-making processes. Various social resilience metrics have been proposed to address this shortcoming (Cutter, 2016). Kwok et al. (2016) synthesised common indicators for social resilience and divided them into two categories, structural and cognitive (Table 1). Structural factors tend to be more easily quantifiable, while cognitive factors are often intangible and more difficult to measure. Challenges in measuring what we value have significant implications for how we operationalise resilience, which is reflected in the latest Global Assessment Report on Disaster Risk Reduction. The summary for policymakers states: 'when systems are not collecting the right data, key assets are undervalued in decision-making and learning opportunities are missed' (United Nations Office for Disaster Risk Reduction, 2022b, p.12). This is further emphasised in the full report as a 'tendency to exclude key values … from economic balance sheets and governance decision-making' (United Nations Office for Disaster Risk Reduction, 2022a, p.5).

Kahneman (2012) describes a cognitive bias – 'what you see is all there is' – which provides a mechanistic explanation for 'the problem of measurement'. Kahneman demonstrated that humans generally only consider what they know or 'see' right in front of them in their decision making. This is particularly problematic in a policy context reliant on quantifiable indicators. As Stiglitz (2018, p.13) notes: 'What we measure affects what we do. If we measure the wrong thing, we will do the wrong thing. If we don't measure something, it becomes neglected, as if the problem didn't exist.' The broad implication is that the inability to 'see' intangible sources of value results in their exclusion from consideration in decision-making structures, which, as this article will demonstrate, is problematic in disaster response scenarios.

Contemporary thinking about measurement as a primary tool for governance had its institutional genesis in the New Public Management, which emerged as the favoured approach to public management during the neo-liberal structural reforms of the 1980s (Hood and Lodge, 2006; Larner, 1997). Many countries significantly transformed their public services to focus on evidence-based decision making during this period, and New Zealand pursued the reforms with a speed, breadth and depth that was unparalleled in the developed world (Kelsey, 1995). Consequently, decision making in New Zealand's public services became contingent on measurement to inform policymaking, and to establish the success or failure of new policies. However, this reliance on objectivity and standard transferable ways of thinking has resulted in a lack of consideration for context at an institutional level.

In the 40 years since these reforms were initiated, significant concerns about livelihoods and wellbeing have prompted political pressure for the New Zealand Treasury to better account for social, human and environmental value alongside economic value in policy design (Robertson, 2019). As a part of that effort, the Treasury developed a policy framework – the Living Standards Framework – based on a multi-

Figure 1: The Living Standards Framework[1]



Source: New Zealand Treasury, 2018

capital approach (Figure 1). Multi-capital frameworks emerged from development studies as a practical solution to account for the needs of populations to which aid was being provided and have strong synergies with a resilience approach (Scoones, 1998; Morse and McNamara, 2013; Tanner et al, 2015; Frieling, 2018; Wither et al., 2021). Noting that development aid rarely generated desirable outcomes (Morse and McNamara, 2013), multi-capital frameworks sought to encapsulate what was valuable for human development (Scoones, 1998) and generalise it into a heuristic comprised of separate 'capitals'. At the top level, these capitals generally comprise social, human, natural and physical capital, and can also include cultural, political and other capitals as contextually required (Frieling, 2018). Importantly, the framework accounts for both qualitative and quantitative dimensions, which helps institutions 'see' intangible factors when quantification is difficult.

In this article, we draw specifically on social and human capital concepts because they are best able to represent and account for the intangible sources of value related to social resilience. Social capital refers to connections between people, and is categorised into three types, bonding, bridging and linking (Field, 2016). Bonding social capital refers to close connections such as family, and bridging social capital describes broader community connections (Putnam, 2000). Linking social capital refers to connections between people operating in different contexts which gives access to resources otherwise unavailable (Woolcock, 2001): for example, connections between a community affected by an adverse event and a government agency or official overseeing the response. Linking social capital has been described as a critical factor for positive outcomes in disaster response scenarios (Aldrich, 2012; Aldrich and Meyer, 2014). Human capital refers to people's physical and mental health, as well as their knowledge, skills and capacity to enact change (Morse and McNamara, 2013). In a resilience context, the multi-capital framework helps delineate the factors that affect people's capacity to act and adapt (Tanner et al., 2015; Wither et al., 2021). Lastly, while we draw upon social and human capital, in reality, all 'capitals' are intertwined and related.

Study design

We present empirical data from research designed to understand how institutional responses to adverse events affected the social resilience of a farming district in North Canterbury. The Hurunui district (Figure 2), encompassing an area of 8,646 km^2 with a population of approximately 12,000 people, experienced two proximate adverse events – a drought and a coincident earthquake.[2] Both events, and the responses to them, were unique, which provides a basis for comparison allowing for deep insights into the drivers that led to a range of positive and negative outcomes.

The research approach applied a vertical analysis which sought to understand the perspectives of those directly affected at the local community level alongside those of the agencies and organisations that responded in a disaster management capacity. Insights were sought from three groups: affected farmers in the Hurunui; response agencies at the local and regional level; and national-level response and support agencies. Fieldwork was conducted in 2018–19, with semi-structured interviews (n = 47) and one focus group (n = 9) providing the data. The focus group was conducted at the local level and made up of farmers and local government representatives. Interview questions differed between groups, but generally all were asked to reflect on their experience of the adverse events and the responses which were put in place, with a focus on what went well and where improvements could be made. Interview data was analysed thematically, and this article discusses emergent themes related to the role which social capital played in these outcomes. Comprehensive analysis of all themes is available in Wither (2021).

Table 2 describes the participants and organisations interviewed, but omits certain small-scale organisations to preserve respondent confidentiality. Gender distribution was 40% women and 60% men. In the table, the number of participants in each group does not add up to the total number of participants, because many held multiple roles (for example, local government representatives were often also farmers).

Research participants were identified using purposive and snowball sampling methods which reflected a social-ecological inventory of the local players and organisations (Cradock-Henry, Buelow and Fountain, 2019). The approach was inductive and sought to identify key actors across all scales. Existing networks were used to identify two key informants in each group prior to data collection; they were interviewed first, and were asked to provide a list of people whom they thought would be suitable for the research. Those whose names were mentioned frequently or emphasised by others were selected for interviews. Referrals to others were often

Figure 2: Map of the Hurunui district

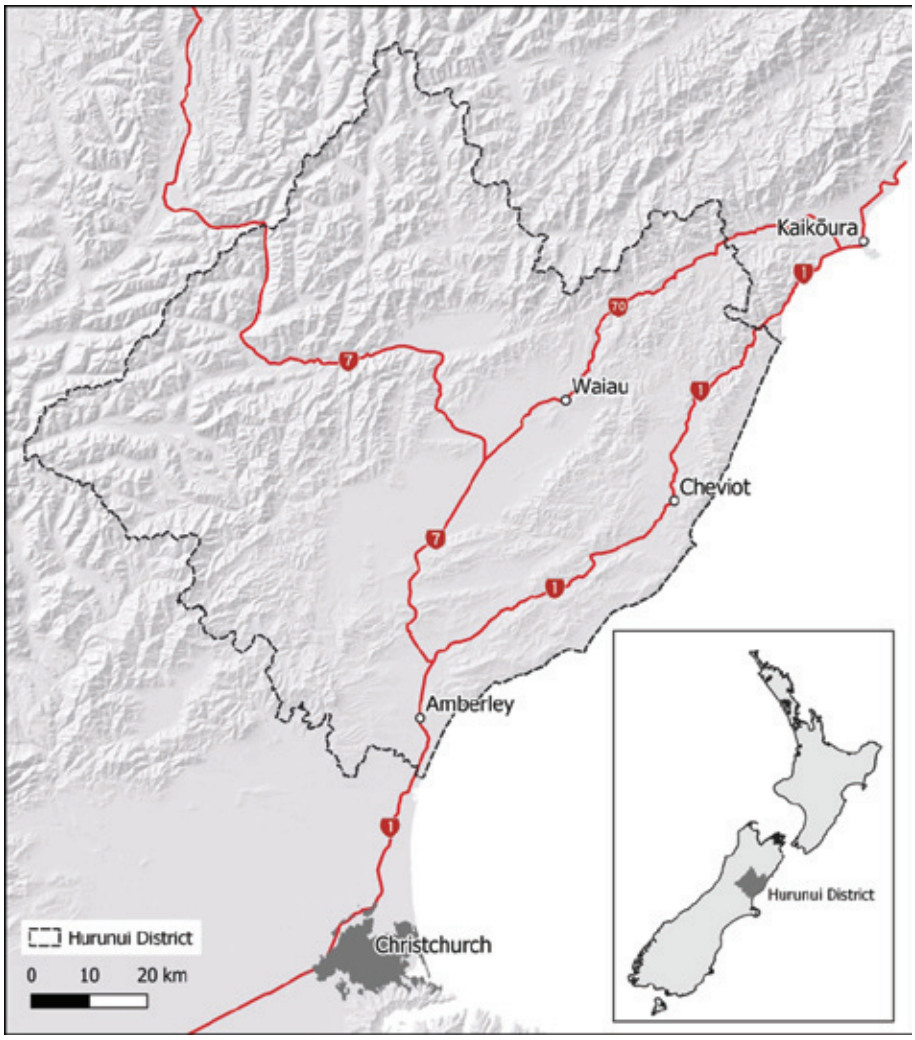


Table 2: Vertical clusters of research participants across local, regional and national scales

Groups	Participants	Types of organisations
Group 1 – farmer households	20	Farmers
Group 2 – local and regional government agencies, public and private support agencies, and farmer advocacy organisations	28	Rural Support Trust, local councils, regional councils, Civil Defence Emergency Management, farmer advocacy organisations
Group 3 – national government and farmer advocacy organisations	23	MPI, Treasury, NEMA (formerly MCDEM), Beef + Lamb New Zealand, DairyNZ, Federated Farmers

across scales: for example, contact with one farmer participant led to contact with a regional expert, which then led to a central government official, which in turn led to a key informant at the highest levels of government. Many of these informants would not have been accessible through formal communication channels.

The next two sections will demonstrate the role social and human capital played in each of the disruptive events in the Hurunui. The social and physical impacts of each event are first briefly described, followed by a discussion of the drivers of positive and negative outcomes during the disaster response.

Drought

The 2014–17 Hurunui drought persisted through two winters, making it one of the longest droughts in recent history. Local precipitation fell from an average of 200+ mm per year to 60 mm; grass growth slowed, and the cost of supplemental feed rose dramatically due to increased demand. Farmers substantially reduced stock numbers due to feed shortages, and in some instances completely destocked

(Mol, Tait and Macara, 2017). The financial implications of the drought, combined with significant impact on animal welfare, resulted in considerable personal and household stress for farmers, which intertwined to create a complex set of challenges.

The experience of farming during a drought was described by research participants as one of the most challenging adverse events to deal with because of the lack of predictability of rainfall and the impacts that uncertainty had on decision making. The New Zealand government, in conjunction with local stakeholders, played an important role in supporting farmers and farming communities both during and after the drought. There were two primary response mechanisms: the Ministry of Primary Industries (MPI) provision of funding for the Rural Support Trust; and the establishment of a Drought Committee to coordinate the response at the local and regional levels. Importantly, while some funding came from the national level, both the Rural Support Trust and the Drought Committee were focused on supporting farmer and community wellbeing and did not seek to apply quantitative approaches to measure and evaluate their progress. Local and regional-level organisations worked in close coordination with the community and stakeholders and, as will be demonstrated, proactively accounted for intangible factors during the response.

The Rural Support Trust is a network of farmer support groups that operate independently nationwide, with 14 chapters, made up of volunteers who are often retired farmers. They are primarily funded by the government to provide support where needed during business as usual, and especially in times of crisis. While additional support is provided during and after adverse events, the government also funds the Rural Support Trust to maintain the capacity (human capital) to respond. Under the Primary Sector Recovery policy, MPI classified the drought as a medium-scale event, which triggered $400,000 in funding support for the local Rural Support Trust to use for response activities.

> The contrast between the drought and earthquake responses clearly illustrates that accessing and utilising intangible sources of value – such as local knowledge and networks – improved response outcomes.

A representative from the North Canterbury Rural Support Trust described the nature and ethos of their work: 'Our philosophy in the trust is that we have an 0800 number, and if someone calls that, we have someone there in person within an hour.' During the drought the trust conducted approximately 1,100 farm visits to support farmers, with a focus on the people rather than the business. Many farmers described having someone to help work through their challenges as invaluable. The support provided was holistic and addressed many types of need, including emotional support, drought management strategies, stock management, feed provisioning and financial considerations. The impact, importance and effectiveness of the Rural Support Trust was noted by many participants at all levels, local, regional and national. Participants described the trust's local knowledge, capacity (human capital) and connections (social capital) as a crucial component of the drought response, all of which are intangible or difficult to measure.

In addition to the work done by the Rural Support Trust, a Drought Committee was established which brought together all major stakeholders, such as Federated Farmers, Beef + Lamb New Zealand, DairyNZ, the Rural Support Trust and MPI. The purpose of the Drought Committee was to provide a coordinated approach to decision making that was inclusive of local rural voices. The Drought Committee met weekly or fortnightly to discuss emerging problems faced by farmers and work towards finding solutions. Its role involved developing needs assessments, advising farmers on drought mitigation and destocking, and coordinating with the Rural Support Trust to ensure that those in difficult situations received mental health support. It organised highly effective local events to facilitate knowledge sharing by farmers with past experience of droughts, which was then distributed through community networks to build human and social capital resources within the farming community.

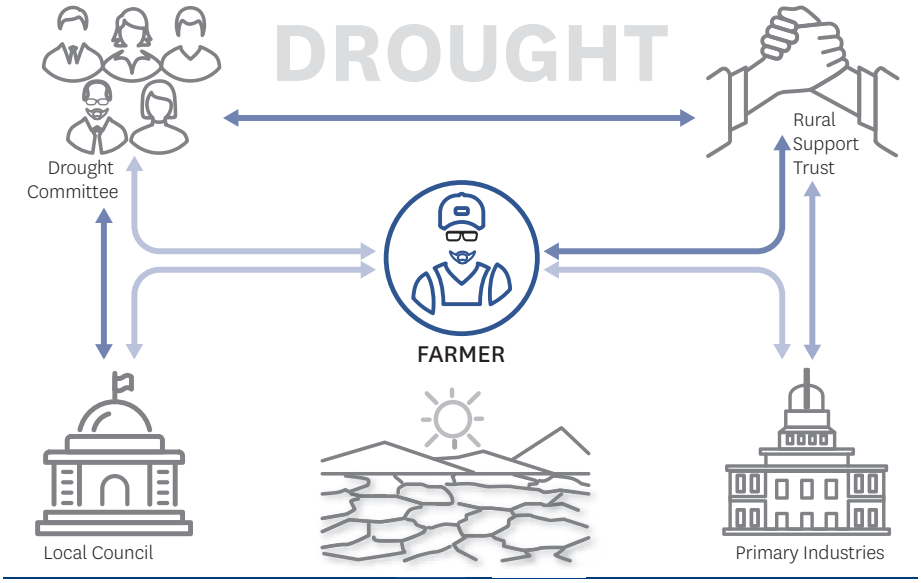
Most farmer participants described the drought response as effective, especially in contrast to the earthquake response. The rallying of the community and the sustained effort to ensure effective adaptation helped many farmers pull through with their businesses intact. Crucially, response activities provided support that brought together knowledge and skills (human capital) and coordination between multiple stakeholder groups (linking social capital). One regional-level respondent compared the response to a similar drought in Waimate:

> Now, the outcome from that was disastrous, there was a collapse in families, a lot of people went broke. A heap of psych and related medical problems. All told, financially it was a disaster for the district. These things didn't happen up here in a virtually similar drought situation, and I'm convinced that the difference is [the way the response was enacted].

Figure 3 presents the organisational network involved in the Hurunui response, illustrating the importance of strong, positive relationships, as depicted by the arrows. The different shades of the arrows draws on a subjective interpretation of the interviews to represent the importance of the connections during the response.

The drought response also demonstrated how capital stocks are intertwined. The Rural Support Trust and Drought Committee were highly effective conduits for the transfer and co-development of considerable knowledge and expertise (human capital) to support farmers, as well as providing strong connections into the Hurunui community (bridging and linking social capital) to underpin government response efforts. Establishing the drivers of the positive outcomes during the drought response provides a basis for comparison. The next section outlines the earthquake response, which contrasted with the approach taken to the drought in a number of important ways.

Figure 3: Connections between different organisations during the drought response (stronger relationships have bolder arrows)



Earthquake

At two minutes after midnight on 14 November 2016, a major (M_w7.8) earthquake struck the Hurunui region. The timing of the earthquake during the height of the drought led to compounding physical and social impacts for the community. The Hurunui–Kaikōura earthquake, as it became known, had its epicentre in the district and involved 21 faults rupturing over an area of 200 km^2 (Kaiser et al., 2017). Large ground motions resulted in significant damage, with thousands of co-seismic landslides, resulting in the closure of much of the main arterial route through the district – State Highway 1 – for over a year (Stevenson et al., 2017). Distributed infrastructure such as water and electricity was also disrupted, including a significant quantity of stored stock water, with damage to pipes and tanks. There were significant flow-on effects for the entire economy, in particular tourism, primary sector productivity and wellbeing (ibid.; Fountain and Cradock-Henry, 2019; Cradock-Henry, Buelow and Fountain, 2019).

The sheer scale of damage to infrastructure and farms across the upper South Island demanded a coordinated response by multiple government agencies, to a much greater extent compared with the drought response (Trotter and Ivory, 2019). The Ministry of Civil Defence and Emergency Management (MCDEM, now the National Emergency Management Agency) activated the National Crisis Management Centre to support the Civil Defence Emergency Management (CDEM) groups' response to the earthquake. Canterbury CDEM delivered the regional response, supported by the National Crisis Management Centre. The CDEM response was coordinated in Christchurch, without strong pre-existing connections into the Hurunui district, unlike the locally driven drought response.

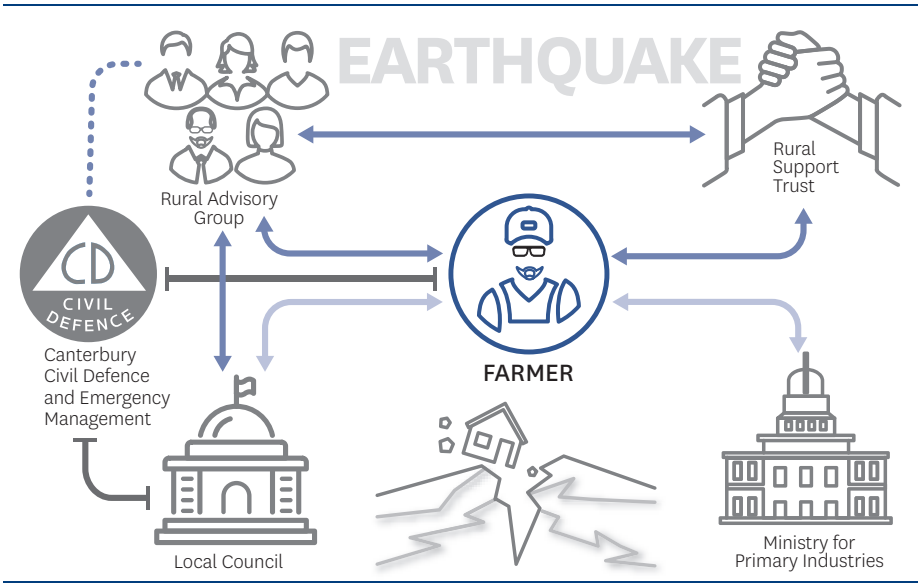
From the beginning, the CDEM response caused friction with local communities. While local participants praised the initial community response to the earthquake, the decision making by regional and national-level agencies was seen as frustrating and confusing. Respondents in our study described a systematic lack of engagement by response agencies with the local community. One local participant who was actively engaged in the immediate response described how multiple attempts to coordinate with the regional CDEM response were left frustrated. Notably, the regional response displayed no understanding of the local context and often created more problems than it solved. The inability to establish linking social capital generated significant problems across the district in the early days.

One example was road access across the district, which became strictly controlled by CDEM one week after the event. Some members of the local community were suddenly unable to access their properties by road, which caused significant stress, particularly for families who were separated and for farmers trying to provide stock welfare. The mayor of the district, Winton Dalley, described the problem from his perspective:

> They had absolutely zero understanding of what we were doing. They had quite a bit of understanding about what was happening in Kaikōura village, because it was kind of an urban event … But all the rural areas in this district, Marlborough, Kaikōura and ourselves … CDEM didn't really have a clue about us. We actually were fighting them because they were stopping us from doing stuff and creating access issues, including cordons, because they believed they knew what they were doing, but they didn't know what the effect of their actions were having on the rural areas. So we had a lot of scraps.

Representatives from Canterbury CDEM and the ministry acknowledged the initial lack of linking social capital, the subsequent problems this caused, and the eventual successes when connections were established. With time and persistence, the local community eventually managed to establish a channel of communication with response leaders, which allowed for problems at the local level to be addressed in a manner suitable to both parties. For example, problems with the road closure were solved by having community

Figure 4: Connections between different organisations during the earthquake response



representatives help staff the checkpoint so that safe access to property was available for locals. Local community members described their gratitude when these communication problems were resolved.

The CDEM response to the earthquake highlights how the initial inability to integrate local knowledge into institutional decision-making processes resulted in negative outcomes for the local community. It also provided an example of how rapid incorporation of local knowledge can occur in an adaptive and agile manner, which improves the response as it unfolds. Over time, there were common and consistent examples where both sides communicated with each other, resolved differences, and generated better outcomes by developing working relationships (bridging and linking social capital). A major initiative was the transformation of the Drought Committee into the Rural Advisory Group to create a connection between the local communities and the responders. The Rural Advisory Group was given a formal seat at the decision-making table with CDEM, as a rural voice with a mandate to provide the same connection and stakeholder coordination services as it did during the drought response. The effectiveness of this specific integration was widely recognised and has subsequently led to a nationwide programme of rural advisory groups in districts around the country to serve the same purpose. The value this provides is not easily quantifiable, but it can be captured at an institutional level using social and human capital concepts.

Figure 4 illustrates the connections between the different actors across the earthquake response. The arrows show connections, with the different shades of the arrows again denoting importance. The lines with bars at the end show relationships that lacked connection, and the dotted line highlights how the Hurunui Rural Advisory Group was formally integrated into Canterbury CDEM in order to bring local knowledge into decision-making processes.

Lastly, the institutional challenges that emerged for government during the two adverse events were described by several high-level respondents as a reflection of the institutions' inability to learn past lessons. Two participants with significant central government experience described how government responses often failed to connect bottom-up and top-down approaches during decision making. One participant reflected that 'we never seem to get the people side of responses right', while another confided that they were 'deeply concerned about New Zealand's inability to learn from past mistakes'. These comments from participants with a long history in disaster management suggest that the problem of measurement is a systemic issue in need of a structural solution.

Discussion and conclusions

The New Zealand institutions charged with implementing a resilience approach to managing disaster risk have traditionally had a strong quantitative orientation. Consequently, attempts to operationalise resilience have met with challenges related to the problem of measurement – an inability to account for intangible factors. We make two key contributions in this article. First, we have demonstrated that accounting for intangible sources of value can improve adverse event responses; and second, we argue that multi-capital frameworks hold significant potential for systematically addressing the challenges posed by the problem of measurement.

The contrast between the drought and earthquake responses clearly illustrates that accessing and utilising intangible sources of value – such as local knowledge and networks – improved response outcomes. The drought response was supported and driven by organisations that prioritised social wellbeing, knowledge sharing, and using strong local and regional networks. In contrast, the earthquake response was primarily driven from a national and regional level without access to pre-existing networks, and showed how an inability to account for intangible factors generated negative outcomes. Subsequent adaptations during the response, such as the integration of the Rural Advisory Group into Canterbury CDEM, reprioritised linking social capital, which generated more positive outcomes.

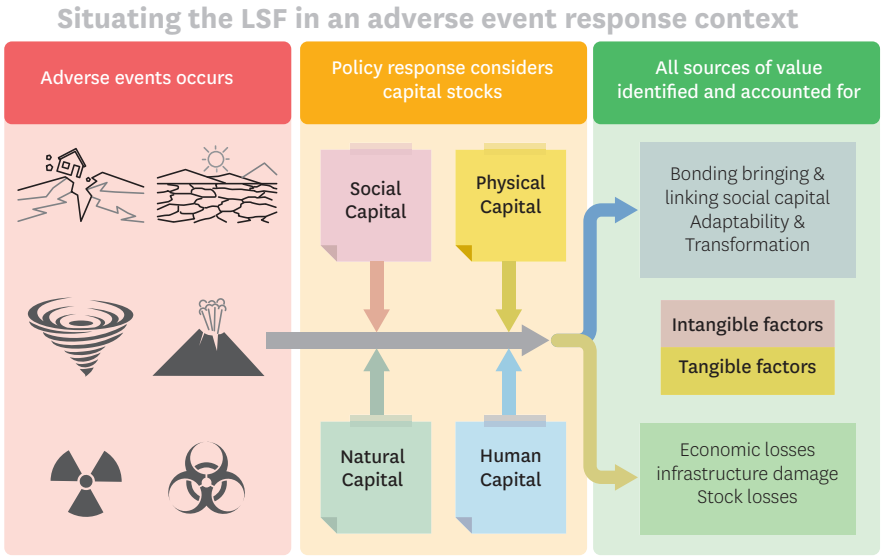
The problem of measurement stems from a cognitive bias – 'what you see is all there is' (Kahneman, 2012; Wither et al., 2021). Modern institutions have traditionally relied upon measurement – targets and indicators – to demonstrate progress and accountability, which is problematic when key drivers of resilience are intangible. At the institutional level, new tools are required to better 'see' and recognise intangible factors proactively and reactively. We propose that multi-capital frameworks – already adopted by the New Zealand government through the Living Standards Framework – hold significant potential to render these intangible factors visible on a structural level. All the intangible factors present in the drought and earthquake responses were able to be described and analysed using the social and human capital concepts within the Living Standards Framework, despite an inability to quantify them.

Figure 5 presents how the Living Standards Framework can be incorporated into decision-making processes as an abstraction layer which guides attention to key sources of value. With the Living Standards Framework, decision makers do not need to quantify all aspects of resilience or understand resilience theory; rather, they simply need an appreciation of the importance of social and human capital, and willingness to consider related intangible factors.

The most significant limitation of this study, and an area where further research would be useful, is that interview data at the local level was limited to one region. Participants from all groups identified the Hurunui as having strong pre-existing social and human capital stocks prior to these adverse events, which may not be the case in other regions. Repeating this research in regional communities with different levels of capital stocks – and different demographic and cultural attributes – would provide useful information about the importance of intangible factors in different contexts.

Resilience broadly refers to the long-term persistence of a system in the face of change. The Sendai Framework for Disaster Risk Reduction (United Nations Office for Disaster Risk Reduction, 2015) calls for engagement from all of society, and all state institutions, for implementing a resilience approach, because all sectors have a role to play. Qualitative intangible factors, represented through the Living Standards Framework, have proven value in underpinning effective response to adverse events. However, the challenges associated with the problem of measurement are not unique to disaster management; similar issues exist in other institutional contexts (Stiglitz, Fitoussi and Durand, 2018). Our research approach and framing using the Living Standards Framework is designed to be transferable between contexts and applicable beyond disaster management. We illustrate the problem of measurement as a systemic problem for institutions generally, and multi-capital frameworks as a foundation to enable a promising, transferable set of solutions. As we move into an increasingly uncertain future, beset by geopolitical and climate challenges, we must design better institutional approaches to decision making which account for qualitative, intangible factors across all of society.

Figure 5: The Living Standards Framework as an abstraction layer for policy development



1 The Living Standards Framework has been updated since this research was conducted: explicit capital framing has been removed, but the underlying concepts they represent remain.

2 Additionally, the Hurunui (and rural New Zealand more broadly) experienced a third major event after the drought and earthquake, the *Mycoplasma bovis* outbreak, which is beyond the scope of this article. The full analysis of the M. bovis response is provided by Wither, 2021, and summarised in Wither et al., 2021.

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Marcus Roberts

Lowering the Voting Age
it's all about competency

Abstract

This article explores the recent high-profile debate around the current voting age of 18 in New Zealand. It examines the Supreme Court case brought by the 'Make it 16' campaign and then seeks to uncover the normative arguments for setting a minimum voting age. While the most common arguments for lowering the voting age have rhetorical force, they do not demonstrate why the voting age should be 16 rather than 18. The public debate does not address the key question: when do young people become competent so that they can responsibly and reasonably exercise the right to vote? This article concludes that a voting age of 18 is a better proxy for competency than 16 and that the voting age should not be lowered.

Keywords voting rights, Bill of Rights Act 1990, Human Rights Act 1993, Independent Electoral Review

There are very few parts of New Zealand's legislation which are 'entrenched' and thus unable to be amended or repealed by Parliament by a bare majority (Joseph, 2007, p.561). One of these rare parts is made up of a trio of provisions in the Electoral Act 1993 (sections 74, 3(1) and 60(f)), which together provide that only those aged 18 years and older can vote in New Zealand general elections. According to section 268 of the same Act, these three sections can only be amended or repealed by a 75% majority of Parliament or by a majority of voters in a referendum. Parliament entrenched these provisions to make it clear that any alteration to them is a major constitutional change and should only occur with broad support across the political community. As it stands, opinion polls suggest that there is currently very little public support for lowering the voting age. In 2020 two surveys found that 70% and 88% of those surveyed were in favour of keeping the voting age at 18 (Hehir, 2020; Watters, 2021).

Despite the procedural difficulty involved in changing the voting age, and the lack of public support for such a change, the last few years have seen an increase in public interest and debate around whether 18 is the appropriate age to grant voting rights. Alongside various op-ed pieces discussing the question (Howell, 2018; Dao-McLay, 2020; Fallon, 2022), there has been a sustained campaign by the advocacy group Make it 16 for a lowering of the voting age to 16. This group brought legal proceedings against the government, arguing that the minimum voting age of 18 was an unjustifiable limit on the right to freedom from age discrimination contained within the New Zealand Bill of Rights Act 1990. After a partial success in the Court of Appeal, the group's arguments were accepted in full by

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a majority of the Supreme Court. The court declared that the minimum voting age of 18 was inconsistent with the Bill of Rights Act and that that inconsistency had not been justified by the attorney-general (*Make it 16 v Attorney-General* [2022], [71]–[72]).

At around the same time that the Supreme Court was hearing arguments about the voting age, the government initiated a broader review of New Zealand's electoral system. In May 2022, the justice minister announced the composition of an independent electoral review panel, which was empowered to investigate and recommend changes on most aspects of the way we vote. This power specifically included the question of whether the minimum voting age should remain at 18 (Faafoi, 2022). The panel finished receiving submissions in November, and its first draft of recommendations is scheduled to be released for feedback in April 2023 (Independent Electoral Review, 2022).

This article will begin by examining the legal arguments raised in the court proceedings concerning the right to vote at 18 and will show that the fundamental question is whether the current minimum voting age is justifiable as reasonable in a free and democratic society. It will then seek to answer that question by considering the most common arguments for lowering the voting age to 16: that 16- and 17-year-olds are affected by the political decisions made today; that lowering the voting age will result in a better functioning democracy by increasing turnout and political engagement; and that lowering the voting age is justified by other areas of the law in which 16 is considered the age of adulthood. Looking at these three issues will show that none of them justifies a lowered voting age. Instead, then, the only question that should be asked is whether 18 or 16 is a better dividing line for competent voters. This article analyses this question and argues that the voting age as it currently stands is a better proxy for competency and, therefore, should not be lowered.

Make it 16 in the courts

Last November, the Supreme Court decided the *Make it 16* litigation in favour of those seeking to lower the minimum voting age to 16. This case was one of the key strands of the Make it 16 advocacy group's campaign to lower the voting age to 16, along with launching a public petition, making a documentary, talking to schools, writing media releases and making submissions to Parliament (Make it 16, 2019b). The case centred on an inconsistency within the New Zealand Bill of Rights Act 1990. This Act recognises a right to vote for all New Zealand citizens 'over the age of 18 years' (s12). However, it also recognises (s19) that everyone has the right to freedom from discrimination on the basis of the various grounds set out in the Human Rights Act 1993. These grounds include age discrimination, defined as 'any age commencing with the age of 16' (s21(1)(i)).

> One of the most common arguments for lowering the voting age is that those aged 16 and 17 are affected by the decisions made in today's Parliament but are unable to have a political say by affecting who makes these decisions.

The majority of the Supreme Court agreed with the Court of Appeal's decision that this inconsistency in the Bill of Rights Act was more apparent than real (*Make it 16 v Attorney-General* [2022], [35]–[39]). While section 12 recognises a right to those aged over 18, it would not be inconsistent with this section to grant the right to vote to those aged 16 and 17. It would only be inconsistent with this section if the voting age were to be raised higher than 18 (*Make it 16 v Attorney-General* [2021], [28]–[32]). Furthermore, preventing 16- and 17-year-olds from voting was an apparent breach of their right to freedom from discrimination based upon their age under section 19.

The next question, therefore, was whether this breach was nevertheless justifiable as reasonable in a 'free and democratic society' under section 5 of the Bill of Rights Act (*Make it 16 v Attorney-General* [2022], [41]). The attorney-general chose not to try and justify the current voting age as against one set at 16, instead arguing that 'the 18 year minimum voting age is within a range of reasonable alternatives' (ibid., [44]–[45]). This meant that the only evidence before the court on the policy rationales for a minimum voting age of 16 or 18 was that provided by Make it 16. This evidence focused on whether 16-year-olds have the requisite maturity of thought to 'make rational and informed decisions about who should represent them in government' (ibid., [47]). It consisted of a 2019 study provided by the children's commissioner to the High Court, as well as expert evidence from a senior lecturer in social policy at the University of Edinburgh, both of which supported 16 years as being a better proxy for competency to vote than 18 (Icenogle et al., 2019; *Make it 16 v Attorney-General* [2022], [52]–[53]). It is not surprising, then, that the Supreme Court held that the breach of the right to be free from discrimination on the basis of age had not been justified. As the court noted, the 'evidence that might have rebutted the alternative view was not before the Court', but that evidence may well exist (ibid., [57]).

The Supreme Court's decision has not settled the debate over the minimum voting age in New Zealand. Although a declaration of inconsistency with the Bill of Rights Act puts added pressure on Parliament to change the inconsistent law, there is no legal requirement for Parliament to do so. Parliament is the supreme law-making body in the land, and the Bill of Rights Act is not superior law. However, what the court has done is helpfully focus the debate on the key question: which age is the better proxy for maturity and competency to vote? An answer to this question will be given later in this article, but first we will assess the other commonly made arguments for why the voting age should be lowered to 16.

The common arguments for lowering it to 16

Affected interests

One of the most common arguments for lowering the voting age is that those aged 16 and 17 are affected by the decisions made in today's Parliament but are unable to have a political say by voting for those who makes these decisions. In the words of the Make it 16 campaign: 'Decisions that affect us, issues that determine the course of our life, are not being decided by us. As voices of the future, we deserve to have our say' (Make it 16, 2019c). The argument was succinctly summarised by the Court of Appeal when it said that keeping the voting age at 18 'denies [16- and 17-year-olds] any say in decision making which will directly impact them in the future' (*Make it 16 v Attorney-General* [2021], [11]).

This argument is based upon the 'affected interests' principle, the notion that those whose interests are affected by an exercise of political power should have a say in how that power is used and who is able to wield it (Koenig-Archibugi, 2022, p.406; Song, 2012, p.40; Waldron, 1996, p.2205). This is one of the most powerful arguments for why a group of people should be granted the right to vote. The affected interests principle guarantees that there is a symmetry between the 'decision-makers' and the 'decision-takers' (Held, 1995, p.ix). It ensures that democracy aligns with the principle of self-rule: everyone who is affected by the rule-makers should have a say in their governance. This 'follows from the root democratic idea that the people appropriately rule over themselves' (Shapiro, 1999, p.37).

While the affected interest argument justifies granting 16- and 17-year-olds the right to vote, it proves too much. It gives no justification for lowering the voting age to 16 but no further. A 15-year-old is affected by Parliament's current decisions as much as a 16-year-old. If we think of the long-term consequences of our current political decisions (such as on housing and climate change), then there is a strong argument that the youngest alive today have a greater claim to the right to vote than 16- and 17-year-olds: a newborn will experience the consequences of today's decisions for longer than a teenager. Taken to its logical conclusion, the affected interest argument justifies granting the vote to all those alive today and does not provide a reason for granting the right to vote to 16-year-olds but to no one younger. If we wish to justify a minimum voting age of 16, we must look elsewhere for a normative reason than simply because 16- and 17-year-olds are affected by today's political decisions.

... it is claimed that a lowered voting age would engage New Zealand's younger citizens so that they turn out to vote in greater numbers, which will then inculcate the habit of voting in them and lift our overall electoral turnout

Consequential benefits

The second line of argument used to justify lowering the voting age is that it will result in beneficial consequences for New Zealand: 'extending the voting age to 16 will make our democracy better' (Dao-McLay, 2020). More specifically, it is claimed that a lowered voting age would engage New Zealand's younger citizens so that they turn out to vote in greater numbers, which will then inculcate the habit of voting in them and lift our overall electoral turnout (*Guardian*, 2017; Milne, 2022).

There is some evidence to support these contentions from jurisdictions which have lowered their voting age. In Scotland (which lowered the minimum voting age to 16 for the 2014 independence referendum), a recent qualitative survey of young voters found that the newly enfranchised had gained a sense of confidence in their voice, their age cohort, and in their 'power to affect politics' (Huebner, 2021, p.576). Turning to the claims of increased turnout, Austria provides some limited evidence on this point. Austria has progressively lowered the voting age to 16 across elections at different levels (local, regional and national) since 2005. In five elections, it was found that 16–18-year-olds were more likely to vote than those aged 18–20, and the youngest cohort's turnout was similar to the average turnout rate (Aichholzer and Kritzinger, 2020, p.83). The apparent reason for this result is living arrangements: 16- and 17-year-olds are more likely to be living at home and be taken to vote by their parents. By contrast, 18-year-olds are more likely to have left home and will have less support encouraging them to the polls (Huebner, 2021, p.565).

As with all consequentialist arguments, these arguments for lowering the voting age are open to two major objections: there is no guarantee that the claimed beneficial consequences will actually eventuate, and there is no reason to prefer this particular method of achieving these ends.

First, the evidence from overseas to support the argument that lowering the voting age in New Zealand will increase the overall electorate turnout is limited at best. In Scotland, 16- and 17-year-olds turned out in lower numbers than the average turnout across the nation (75% vs 85%) despite the importance of their first vote, the independence referendum (Huebner, 2021, p.567). As the political scientist Sir John Curtice summarised: 'Those who look to the enfranchisement of 16- and 17-year-olds in all elections as a way of boosting turnout should … not set their expectations too high' (Curtice, 2014). Since the referendum, the interest of younger voters in Scotland has tended to wane as subsequent elections have had less chance of offering immediate and 'far-reaching political and social change' (Huebner, 2021, p.567).

Evidence from Austria suggests that what gains there are in turnout rate tend to fade. In the five Austrian elections studied by Aichholzer and Kritzinger since 2005, the voting turnout of 16- and 17-year-olds has been consistently higher

than for those voters aged 18–21 (Aichholzer and Kritzinger, 2020, p.88). The limited evidence of the five elections studied suggests that 16- and 17-years-olds are not carrying those voting habits on as they age into their early 20s and leave home. For example, the 16-year-olds voted in the 2010 Viennese regional election at a rate of around 65%, but five years later the 21-year-olds in the 2015 regional election were voting at around 60%, a lower rate than the younger voting ages and well below the official turnout of 75% (Aichholzer and Kritzinger, 2020, p.88). However, as this is a small sample size, we need to wait for more real-world experience of the effects of lowering the voting age over several decades to substantiate whether lowered voting age will result in inculcated voting habits (Aichholzer and Kritzinger, 2020, p.97).

However, even if lowering the voting age were to increase voter turnout and engagement, it is not evident why this particular means of reaching increased turnout and buy-in – lowering the voting age – should be used instead of other means. For example, youth engagement in the democratic process could be increased through political education in school, encouraging engagement in particular issues, making submissions to parliamentary select committees and reviving youth wings in parliamentary parties (Aichholzer and Kritzinger, 2020, p.84; Barrett, 2011, p.16).

When it comes to increasing voter turnout, a far more effective means of doing so would be to follow Australia's example and make voting compulsory. When Australia did so in 1924, voter turnout in the federal elections jumped from under 60% to over 90%. Since then, each Australian federal election has seen turnout of over 90% (with one exception in 2022, when the number of people who voted for the House of Representatives was 89.82%) (Australian Electoral Commission, 2022). In contrast, the last three decades have seen the New Zealand voting turnout consistently below 90%, and reach as low as 74% in 2011. If we wish to increase the electoral turnout in New Zealand's general elections, then making voting compulsory seems to have a much better claim to be able to reach that goal.

Legal conceptions and definitions of the age of majority do not give guidance by providing a measure of maturity and competency for the purpose of determining the voting age.

Legal consistency

The third argument often used to justify lowering the voting age is that 16-year-olds are granted legal rights and responsibilities already, and it is inconsistent to deny them the right to vote. If 16-year-olds can legally make important and life-altering decisions (such as consenting to medical procedures, leaving home, leaving school, working full-time, etc.), then why are they not deemed mature enough to vote for a government representative? (Make it 16, 2019a; Fallon, 2022). Lowering the voting age would thus introduce greater consistency into the New Zealand legislative landscape.

This argument draws a conclusion from the age of majority in other parts of the law that simply does not exist. Although there are many things that one is legally entitled to do at the age of 16, there are also many other areas in which the age of maturity is assumed to be 18. For example, the courts will oversee most contracts that those under the age of 18 enter into to ensure that they are fair and reasonable under the Contract and Commercial Law Act 2017 (ss85–101). Those aged under 18 are only able to make wills if they are married or about to get married (Wills Act 2007, ss10–11) and are only able to get married if the Family Court agrees to the marriage and believes that it is in the best interests of those involved (Marriage Act 1955, s18). Further afield, the United Nations Convention on the Rights of the Child treats 16- and 17-year-olds as minors deserving its protection: it extends its rights to all those under the age of 18 (article 1).

Nor can it be said that the law is generally moving towards a lowering of the age of legal responsibility and maturity. There are a number of recent examples where the law has raised the age of maturity to protect those under the age of 18. In 2011 the law governing driving licences was changed so that most drivers are now eligible for their full licence at 18 rather than 17 (Radio New Zealand, 2011). Only a few years ago 17-year-olds were included in the youth justice system in order to 'help these young people grow into responsible adults' (Tolley, 2016). This means that the criminal law treats those under 18 very differently from those deemed emotionally and psychologically adults. Most charges against those younger than 18 are dealt with by the Youth Court and not the adult criminal justice system (Oranga Tamariki Act 1989, s272). Further, those younger than 18 are unable to be sentenced to home detention or imprisonment except for the gravest offences (Sentencing Act 2002, ss15B and 18).

The point to take away from this brief and limited survey of the law of majority in New Zealand is that there is no one age at which legal rights and responsibility descend upon teenagers. The Court of Appeal was correct to say that the 'age of responsibility varies greatly under New Zealand law' and that the law was a '"hotchpotch" of inconsistency' (*Make it 16 v Attorney-General* [2021], [55]). It is not an argument to lower the voting age to point to some other areas of law in which 16 is the age of responsibility simply because there are other areas in which 18 is the age of legal adulthood. Keeping the voting age at 18 is no more inconsistent than lowering to 16 would be. Legal conceptions and definitions of the age of majority do not give guidance by providing a measure of maturity and competency for the purpose of determining the voting age. Instead, we need to turn to some other argument to justify a voting age of 16 (or 18).

The real argument is competency

The trouble with all three of these arguments is that they do not provide a justification for placing the minimum voting age at 16. The affected interests argument can be used to critique a voting age of 16 just as easily as it can to critique one of 18. The claimed benefits that will accrue to society and our democracy once we lower the voting age can be questioned as unprovable, and the consequentialist argument as a whole is vulnerable to a claim that these benefits could be obtained through some other means. Finally, other measures of legal adulthood are no help in providing a consistent definition of the age of maturity in New Zealand.

Why, then, is it the norm around the world to have a minimum voting age? Why did John Stuart Mill think it self-evident that attainment of 'full-age' was necessary before one could vote (Barrett, 2011, p.3)? Why did Professor Robert Dahl question whether anyone could seriously contend that children should not be excluded from the voting public (Dahl, 1989, p.123)? The answer is that children and young people are excluded from the right to vote because they are assumed to be 'unable to understand properly their own interests or to evaluate rationally the relevant issues' (Geddis, 2013, p.65). We assume, in comparison, that all adults are able to make the best decision based upon their own interests unless there is some form of formal medical finding, specific to the individual, to the contrary (such as exists in section 80(1)(c) of the Electoral Act 1993). However, we cannot make the same assumption of competency for children (Dahl, 2015, p.75). We set a minimum voting age to ensure that only those who are competent to vote do so. This threshold will be arbitrary insofar as there will be exceptions above and below the threshold: precocious teenagers as well as disengaged adults. However, a blanket threshold is necessary unless we are to have an invasive, politically fraught and immensely contestable voter aptitude test for every voter (Barrett, 2011, pp.24–5).

The question then becomes, at what age does a blanket threshold best serve the goal of sorting the competent voters from the incompetent? When has the adolescent brain developed and grown enough so that it can be said to make decisions comparable to adults? One answer which was influential upon the Supreme Court's decision was that advanced by the children's commissioner which is to distinguish between 'cold' and 'hot' cognition (*Make it 16 v Attorney-General* [2022], [52]; Icenogle et al., 2019, p.71). In the former state, mental processes occur without high levels of emotion, while in the latter, processes occur in 'affectively charged situations where deliberation is unlikely or difficult' (ibid.). Teenagers tend to perform comparably to adults in 'cold cognition' states, but more poorly under 'hot cognition' conditions. Therefore, definitions of legal adulthood should take into account the circumstances under which teenagers are making these decisions and should be adjusted accordingly. There should be no one consistent age of majority: it all depends on the circumstances. Voting is a 'cold cognition' activity, without emotional intensity, one which 'lends itself to deliberation', and therefore at 16, teenagers might be capable of voting in a similar manner as adults (ibid., p.82).

While voting may be less emotionally charged than the commission of a crime, the developing adolescent brain is still labouring under disadvantages in the voting booth that its adult counterpart does not have.

However, other studies suggest that one cannot so neatly divide adolescent decision making in this way. Our brains develop unevenly: our 'socioemotional system' ('rapid, automatic processing') matures around the age of puberty, but our 'cognitive-control system' (deliberative, controlled and reflective) does not mature until our mid-20s (Diekema, 2020, p.21). Thus, although teenagers have the capacity to make rational and intelligent decisions, 'it is unwise to conclude that they always make decisions using the same cognitive processes that adults do' (ibid., p.22). This imbalanced developing brain leads adolescents to focus more on immediate benefits than the future cost of actions. They are far more vulnerable to peer pressure, even without direct coercion. They also tend to underestimate long-term consequences and tend to overlook alternatives. By way of contrast, adults are more able to resist social and emotional influences and to make better decisions when the stakes are high (Dawkins and Cornwell, 2003; Diekema, 2020, pp.21–2; Steinberg and Scott, 2003, p.1012). In short, 'the ability to think about the future, plan ahead, and anticipate future consequences increases gradually throughout adolescence but does not peak until well into the 20s' (Diekema, 2020, p.22).

While voting may be less emotionally charged than the commission of a crime, the developing adolescent brain is still labouring under disadvantages in the voting booth that its adult counterpart does not have. The evidence suggests that our decision-making abilities continue to develop into our mid-20s. For this reason, it may be logical to conclude that we should *raise* the voting age to, say, 25 years. That way, we can be confident that the age threshold aligns with physiological development and fully rational decision making. At the very least, we can conclude that the age should not be lowered. Does the ongoing physiological brain development in teenagers make it more difficult for 16-year-olds than 18-year-olds to decide who should represent them in government? At 18, the brain has not finished developing, but it is more developed than at 16, as is our decision-making capability. Thus, one can say that, generally, 18-year-olds *are* more competent than 16- or 17-year-olds and that the voting age of 18 is more justifiable than 16.

Conclusion

Due to the attorney-general failing to advance evidence to the contrary, the Supreme Court was explicitly contingent in its conclusion that a minimum voting age of 18 could not be justified. It left open 'the possibility that the limit could later be held to be justified' (*Make it 16 v Attorney-General* [2022], [57]). This article has sought to provide some evidence to justify the current age limit. It has shown that the common arguments advanced for lowering the voting age from 18 to 16 do not provide a justification for lowering the voting age to 16. Focusing on these arguments obscures the real question: whether 16- and 17-year-olds are competent to make rational and informed decisions in the voting booth. Due to the continued maturation of the brain until the mid-20s, 16-year-olds are generally less competent to vote than 18-year-olds. Therefore, the current age of 18 is more justifiable as a proxy for competency than 16.

As was mentioned above, recent opinion polling shows that there is strong public opposition to any lowering of the voting age. While public opinion should not be taken as determinative of this issue, it shows that there is not broad support for such a major constitutional change. In the face of such clear public opposition, and the fact that the current voting age is an entrenched provision, the case for lowering the voting age to 16 should be demonstrably strong. Such a case does not exist. Instead, the current voting age is more justifiable and the minimum voting age should therefore remain at 18.

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Max Rashbrooke and Lisa Marriott

A Reform Architecture for Political Party Funding in Aotearoa New Zealand

Abstract

We recently published a comprehensive report on political party funding in Aotearoa New Zealand (Rashbrooke and Marriott, 2022). This article documents some of the issues we discovered in the process of writing that report and some of the solutions we propose to address these issues. We recommend stronger donation regulation: capping annual donations at $15,000 and donor identification for donations above $1,500. We also recommend increased state funding: for approximately $2 per voter per annum, 'big money' can be eliminated from the political finance arena. This improves transparency and – crucially – can significantly reduce the perception of influence from large donations.

Keywords political party funding, donation reform, state funding, tax credits, democracy vouchers

In Aotearoa New Zealand political parties receive funds from a variety of public and private sources. To carry out their parliamentary duties, MPs get state funding for their operational activity, such as IT support or communications with constituents. This funding goes to the parliamentary wing and is for 'parliamentary' work, in the sense of carrying out parliamentary duties, rather than for 'electioneering', in the sense of appealing for votes. The other principal source of state funding is the election broadcasting allocation, in which the Electoral Commission distributes funds that the various political parties can use for campaign advertising. This money is explicitly for electioneering and goes to the non-parliamentary wing.

While parties' parliamentary work and election advertising is state funded, other activities are not. Parties receive no public subsidies for their general, day-to-day operations – in particular, for researching, debating and developing policies, and communicating them to the electorate (except to the extent that this happens through election broadcasting and in Parliament). Parties also need funds for campaigning. Running campaigns has become increasingly professionalised and, consequently, more expensive. Costs of campaigning are increasing at a time when party memberships are declining, which further reduces resources available to contribute to campaigning activity.

To carry out these functions, parties must raise their own funds. These can come from members' fees, other fundraising, such as selling merchandise, and, perhaps their most important sources of revenue, political donations.[1]

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The problems

Concerns about donations to political parties emanate from perceived or actual opportunity for corruption. This corruption may be overt, or it may be what academic Michael Johnston (2005) describes as the most common form of corruption in liberal democracies: trading in influence. In some instances, trading in influence may be criminal, but it also includes many currently legal practices (Gluck and Macaulay, 2017). A further concern is that only some actors – the wealthy – have the opportunity to engage in this behaviour, either directly through donations, or indirectly such as through funding lobbying or third-party campaigning efforts.

Most countries have a mix of public (state) and private funding (donations). But, as political donations create clear opportunities for undue influence to be exerted, developed countries have started to introduce more rigorous regulation to minimise the potential for money to influence, or be perceived to influence, political decisions.

When donations form most of a political party's resources, this may create an imbalance: some parties are more successful at fundraising than others. This creates an uneven playing field and violates the principle that elections should be determined by who has the best ideas, rather than who has the most money to communicate them.

Our report documents multiple examples of donations and other payments to parties resulting in access to politicians. Separation of MPs and party leaders from fundraising did not exist in any meaningful manner. Not only does this open the door for donations to exert influence; it also creates a strong perception that influence exists, which can undermine people's trust in democracy.

In collecting data for our research, we heard from donors to political parties that many expected to have access to politicians as a result of the donation. Similar access does not appear to be available to those who do not make large donations. While the link between access and influence is often opaque, we note below the research that finds a strong relationship between government policy and the preferences of large donors.

It is well established that large donations from individuals or businesses 'pose a risk to democracy because they may allow the giver to obtain undue influence over the political process'

We document a long list of incidents involving political donations, including suggestions of favours from the donations, concealment of identities, and donation splitting. We were told that it was relatively easy to circumvent the overseas donation cap of $50: individuals can transfer funds to someone in New Zealand who will donate on their behalf and there is no tracing through of the funds that would detect this. Of particular concern is that these events are not detected by any regulatory mechanism; instead, whistleblowers or the media highlight these activities.

Several actions have been adopted by other countries to limit actual or perceived corruption. Examples include: restricting donations to voters (i.e., natural persons); limiting the total amount that a donor can give; or disclosing donors' names at a relatively low threshold (e.g., $1,500).[2] However, in comparison with many other countries, New Zealand has a weak regulatory framework for political donation: there are few restrictions on who can donate (overseas donors); there are no limits on maximum donation amounts; and the threshold for disclosure is at $5,000.[3]

Donors who donate amounts between $1,500 and $5,000 must be known to the party, but do not need to be disclosed to the public. The names and addresses of donors who contribute $20,000 and above must be notified to the Electoral Commission within ten days of receipt of the donation (Electoral Act 1993, s210C(6)). The Electoral Commission will generally make this information available to the public within a short time, although no specific time frame is legislated for this public disclosure. The recent change to quickly disclose these larger donations only in general election years dilutes the transparency that is important for large donations, as these have the potential to rapidly influence politics, and thus the greater need for the public to be able to equally rapidly scrutinise them.[4]

What we know about donations

It is well established that large donations from individuals or businesses 'pose a risk to democracy because they may allow the giver to obtain undue influence over the political process' (Leong and Hazelton, 2017, p.190). In Australia, for instance, the two main political parties (or groupings of parties) rely on a small number of major donors: in 2020–21, 39% and 57% of the Coalition's and Labor's declared donations respectively came from just five donors (different ones for each party). On this basis, Grattan Institute researchers Griffiths and Emslie (2022) claim that large donors 'can achieve significant access and influence'.

While it is well established that money can buy access (Langbein, 1986), it is more difficult to demonstrate that donations translate into influence. However, access is generally a precondition for exerting influence over public policy. Depending on the parameters of the research, most studies find some impact of private money on regulatory outcomes (de Figueiredo Jr and Edwards, 2007; Claessens, Feijen and Laeven, 2008; Witko, 2011; Bromberg, 2014). Research from the US shows that governments' decisions typically align with elite preferences, rather than the broad public interest. Page and Gilens observe that in the US:

> laws and institutions make it hard for ordinary citizens to have an effective

> voice in politics. They permit corporations, interest groups, and the wealthy to exert a great deal of influence over what the government does. And they allow donors and highly ideological political activists to dominate the parties' nominations of candidates. (Page and Gilens, 2020, p.4)

Other examples can be seen in, for instance, the connections between party donations in the UK and appointments to the House of Lords, a law-making body (Gluck and Macaulay, 2017, p.51).

As well as the advantages potentially gained by donors, donations may favour one party over another. Literature has some contrasting results, but recent research supports the claim that greater fundraising has a positive impact on electoral success (Samuels, 2001; Griffiths, Wood and Chen, 2020; Schuster, 2020; Cagé and Dewitte, 2021; Bekkouche, Cagé and Dewitte, 2022). In September 2022, the *Economist* surveyed recent US data showing that better-than-average fundraising is a strong predictor of better-than-average electoral success, concluding: 'Money still matters.'

When it comes to donations regulation in New Zealand, a 2021 poll of 1,000 New Zealanders, conducted for the Institute for Governance and Policy Studies (IGPS), showed that about two-thirds backed a regime in which the maximum amount that could be donated was $10,000 and the donor's identity should be declared if they gave over $1,000 (69.3% and 64.4% support respectively). A substantial minority – about four in ten – supported a still tougher system in which the maximum amount was $1,000 and donor identity was declared once they gave more than $100 (43.7% and 39.5% respectively). Just 17.6% of respondents supported the current system of unlimited donations (Chapple, Duran and Prickett, 2021, pp.7–9).

The responses to a similar question in our survey are shown in Figure 1. We found higher numbers who preferred no cap (33%, compared to 18% in the IGPS survey) and lower numbers who supported a tighter limit (43% thought it should be under $15,000, compared to 69% who thought it should be under $10,000 in the IGPS study).[5] Nonetheless, even our survey

Figure 1: Of the following options, what should be the maximum amount a person can donate to a political party?

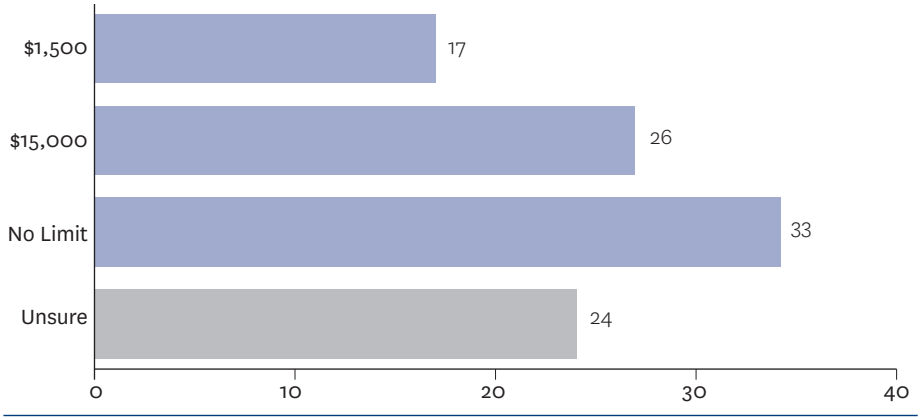
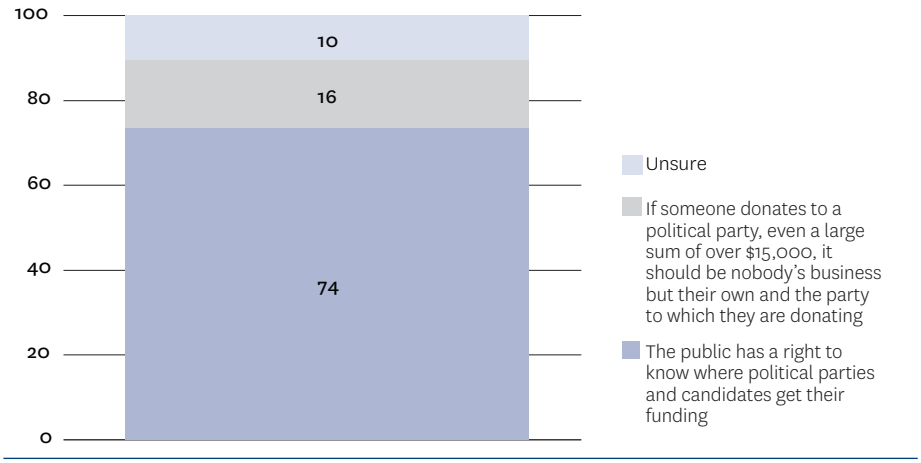


Figure 2: Which view is closer to your own?



indicates that unlimited donations are not the public's preferred option, as a majority of those with a fixed opinion supported a cap of under $15,000.

Our research report is informed by data collected from focus groups, a survey and over 35 interviews.[6] There was strong agreement on the need for transparency from all participants. Figure 2 shows that 74% of survey respondents believed that the public has a right to know where political parties and candidates get their funding, while 16% did not agree that this should be disclosed.

Other countries use a range of approaches to political party funding. These include election expense reimbursement; tagged funding (e.g., for policy development); per-vote funding, usually weighted so that the first tranche of votes provides greater funding support; per-member funding; matching funding; tax credits; and democracy vouchers. Ideally, the method selected will encourage political parties to engage with the public; encourage the public to engage with political parties; allow citizens either direct or indirect control over the funding allocation; provide some certainty and predictability of cash flows; and allow participation for those who have limited financial resources.

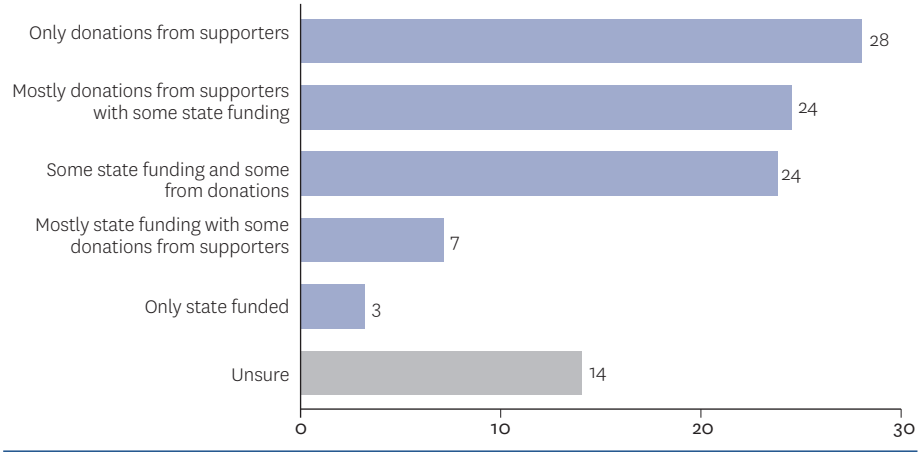
We compared New Zealand's approach to donations with those of 32 other OECD countries. This analysis showed that most countries require disclosure of a donor's identity if they donate over $5,000. However, nine countries go further and mandate disclosure for donors giving under $1,500, while three countries require all identities to be disclosed. Only five require disclosure above $15,000 and seven have no disclosure provisions.

Most countries have maximum annual donation amounts. Seven countries have very restrictive caps of under $5,000, and a further four of under $15,000. The caps can be as low as $850 (Belgium) or $2,000 (Canada). There are a further handful of countries with limits that are either between $15,000 and $50,000, between $50,000 and $100,000, or over $100,000.

Table 1: Canadian tax credit system (NZ$)

Individual donation	Tax credit	Maximum tax credit
$0–$500	75%	$375
$500–$950	50%	$225
$950–$1,640	33.3%	$230
Total		$830 (for a donation of $1,640)

Figure 3: What is the right balance for where political parties should get their money?



Only one-third of countries (11), including New Zealand, allow unlimited donations.

Only two countries provide no state funding to political parties. Often the approach adopted was designed to provide greater benefit to smaller parties, but usually with a minimum requirement for entitlement to any funds, such as gaining 1–2% of votes at the last election. New Zealand is towards the weaker regulated end of the spectrum.

We draw on Canada's experience of political party funding as an example. Canada has strong regulation, requiring, for example, disclosure of all donations above $233 and a maximum donation limit of approximately $2,000 per person per year. Only natural persons can donate and there are limits on election spending. However, state funding is provided to ensure political parties have sufficient funds. The primary funding comes from tax credits that effectively reimburse donors for donations up to $1,640. A donation of $1,640 would attract a tax credit of $830 (approximately 50%). Smaller donations attract a higher proportion of tax credits, as shown in Table 1. In addition, every party that gets over 2% in a general election has half their election expenses reimbursed by the state.

We calculated the total amount of donations and donors for the five largest political parties in Canada for 2021 and concluded that tougher regulation of donations is not incompatible with parties being well-funded. Average donations ranged from $213 for Bloc Québécois, which attracted 7.6% of votes in the 2021 election, to $325 for the Conservative Party of Canada, which received 33.7% of the votes. Note that numbers of donors are high: for the Conservative Party there were over 95,000 donors in 2021, leading to total donations of over $31 million. We also reviewed Canadian party funding across a four-year election cycle (2016–19) and again saw a clear trend of parties raising large sums by receiving many small donations (e.g., the Conservative Party received over $107 million from 405,274 donations averaging $266, and the Green Party received nearly $18 million from 85,625 donations averaging $204). Donations typically comprised over 80% of Canadian political parties' revenue in non-election years and over 50% in election years (election years are lower as parties receive additional government funding in the form of reimbursement of expenditure).

State funding

Our report identifies a comprehensive reform architecture that we believe will improve transparency and enhance equality of political influence in New Zealand. However, in this article we focus on a small number of key components of this architecture. The first is state funding. When we refer to state funding, we mean subsidies for non-parliamentary work, policy development and communication of that policy, and parties' other day-to-day functions. State funding is premised on the idea that it is in the public interest to have strong political parties. In the words of the UK's Phillips Review: 'Healthy parties are, in themselves, good for democracy. It is in our interest that they prepare robustly researched policies, that they consult widely, and that they train people in the skills needed to be effective in public office' (Phillips, 2007, p.17). This makes them part of the public good and justifies the use of taxpayer money to support them.

New Zealand is unusual in its funding approach to political parties, where little assistance is provided to those outside parliament. Most people we interviewed for this research were open to increased state funding, with a common view that democracy is poorly served if parties cannot communicate their messages to the public. The trade-off from more state funding is limiting private donations. Benefits from state funding are: mitigating the perception of possible corruption from large donations; greater support for new or small parties; and improved transparency. Arguments against increased state funding include whether the spending is a good use of taxpayer funds, and the potential decrease in incentives for parties to engage with members. Figure 3 shows support for state funding from survey respondents, with 58% supporting some level of state funding.

We asked the survey respondents about three possible state funding options: per-vote funding, tax credits and democracy vouchers. Of these, tax credits and democracy vouchers were the most attractive to respondents. We provided brief descriptions of how the options worked, along with advantages and disadvantages. Figures 4 and 5 show the responses for tax credits and democracy vouchers.

Tax credits are a form of reimbursement in which the state subsidises a proportion of an individual's donation to a party up to a set amount. Typically, this approach is

progressive, so that smaller donations have a proportionately larger subsidy component. Tax credits was the most appealing option to respondents: 45% indicated they would support it (note the numbers do not sum correctly due to rounding), with 23% in opposition.

Democracy vouchers are a recent innovation internationally and respondents were less likely to be familiar with them.[7] Nonetheless, as shown in Figure 5, 40% supported and 32% opposed this option. We note that for both options there are large numbers of people who were undecided. This is possibly a reflection of the complexity of the topic. This highlights the need for clear, straightforward communication to the public regarding any proposed funding changes.

Figure 4: How strongly do you support tax credits?

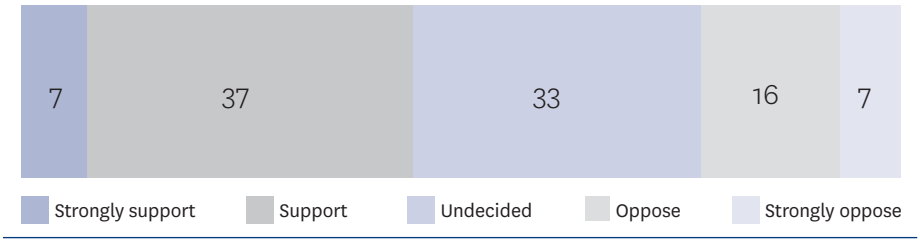
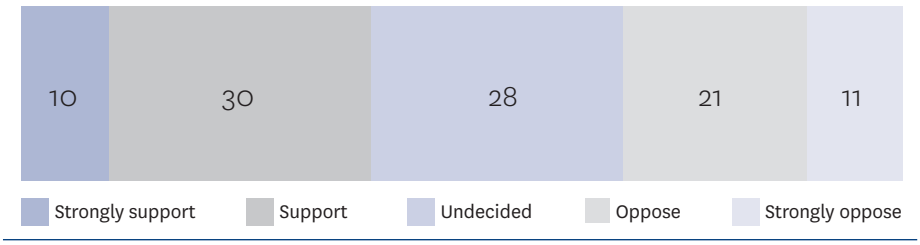


Figure 5: How strongly do you support democracy vouchers?



Recommendations

Our recommendations include reducing the threshold for disclosing donors' identities to $1,500; capping total annual donation amounts at $15,000; and the introduction of comprehensive state funding, incorporating tax credits, lump sum payments, and democracy vouchers that would allow citizens to directly allocate party funding themselves. Combined with other policies, these measures would ensure a healthy funding base for political parties, while encouraging a wide range of New Zealanders to each provide small amounts to support vibrant political competition.[8] Each of these components is discussed in more detail below.

There is some judgement required in establishing a threshold for disclosing donor identity. Factors to consider include setting a level somewhere above the amount that a committed but not especially wealthy party member could reasonably give. This would suggest around $20 a week, or $1,000 a year. There would also be justification for setting the threshold slightly higher, at $1,500. The slightly higher value aligns with the current threshold at which donations to candidates must be declared, removing the loophole through which donations destined for candidates can effectively be anonymised by routing them through the party. It would be consistent with the threshold set by roughly one-third of the OECD countries surveyed. It is also approximately the amount typically paid to attend the kinds of fundraising events where access to MPs and sometimes ministers is available. Crucially, a $1,500 threshold would be likely to deter most attempts at donation splitting. Accordingly, we recommend that the name and address of all donors giving over $1,500 in a 12-month period be publicly disclosed in parties' annual donations returns.

Two-thirds of OECD countries cap donations at some level, rather than relying on transparency alone. The evidence we collected in the research and documented in the report, concerning the access and potential influence stemming from large donations, and the growing funding imbalance between political parties, justifies a limit on total annual donations. It is relevant that somewhere between half and two-thirds of New Zealanders, depending on the survey, support a donation cap of $10,000–15,000. Moreover, one-third of the OECD countries surveyed have a cap at $15,000 or lower. The $15,000 figure is similar to that recommended by reviews in other jurisdictions. For example, the Committee on Standards in Public Life in the UK concluded: 'We have come to the conclusion that the only safe way to remove big money from party funding is to put a cap on donations, set at £10,000' (approximately $20,000) (Committee on Standards in Public Life, 2011, p.4). Such a figure would also help achieve the right combination of transparency and limits. We therefore recommend that no individual may give a party more than $15,000 in a 12-month period.

We recommend state funding with three separate components: tax credits, a lump sum payment and democracy vouchers. Tax credits have the potential to encourage large numbers of small donations, as seen in Canada. This method would provide a reasonably reliable flow of funds to political parties, is based on a proven model, and would enhance citizen engagement and control.

Democracy vouchers are sent directly to individuals, allowing them to allocate state funds to the party of their choice. This is the most democratic of all state-funding options, but also the most novel. Our proposal is to repurpose the current broadcasting allowance (of approximately $4 million) as a fund that parties can use for any campaigning purpose, and then allow citizens to allocate it using the vouchers.

Finally, we recommend that, as in some other jurisdictions, parties receive a lump sum payment. This would help defray costs imposed upon them by the state – for instance, the fees they pay for compulsory audits of donation returns – and, for newly launched parties, encourage them to overcome the significant obstacles they face, including incumbency bias and the difficulties of getting over the 5% MMP threshold. We recommend that these payments go to all parties that attract votes above an eligibility threshold, such as polling above 2% at the previous election or in several consecutive opinion polls, or, alternatively, representation in Parliament. Ensuring small parties received support

was a strong theme in our focus groups. Incorporating a lump sum payment into the overall funding mechanism helps achieve this.

What will parties receive?

Detailed design is included in the main report. Using available data and cross-country comparisons, our estimates suggest that New Zealand's largest parties might expect to receive annual donations in the order of $2.5–3.5 million, and the smaller parties sums in the order of several hundred thousand dollars from donations. The National Party could expect to receive upwards of $3 million a year. This contrasts with fears sometimes expressed by National Party spokespeople that political finance reform would unduly disadvantage their party.

Setting a maximum annual donation limit of $15,000, and a disclosure requirement for donations between $1,500 and $15,000, will reduce total amounts of private donations, both because of the upper limit and because some donors will no longer donate if their donation is attributed to them. However, not all would be put off by disclosure, given we already have named donors. Parties would retain many of their current other funding or fundraising options, such as selling merchanise, Parliamentary Services funding, or the tithing that is practised by the Green Party.

We propose that the annual lump sum payment to all eligible parties (e.g., those polling over 2% at the last election or in several consecutive opinion polls, or that are represented in Parliament) should be $100,000. This figure is informed partly by testimony that this is the minimum cost to run a small party hoping to get into Parliament, and partly by testimony about the substantial costs imposed on all parties to meet Electoral Act donation reporting requirements.

The final element of our costings concerns our proposal for democracy vouchers. Taking inspiration from their use in Seattle as an election-year form of funding, we propose that the broadcasting allocation, currently the principal campaign-related form of state funding in New Zealand, is repurposed to fund this. This would allow the approximately $4 million to be used for any campaigning purpose. Funds would be distributed as democracy vouchers at the start of each election year. Based on the Seattle experience, we would expect that only a small proportion of voters would allocate them – e.g., around 10%. With roughly 3.4 million voters, this would result in the vouchers having a value of approximately $12 each. The allocation would be capped at $4 million; therefore there would be no concern about overspend. Scaling could be used for any over- or under-allocations beyond the forecast.

What will it cost?

More detailed costings are included in the main report. By way of public expenditure, we estimate that the cost of the tax credit system would be approximately $5.5–7 million, with the upper limit representing likely higher donations in an election year. Depending on the number of eligible parties, the lump sum payment would add around $600,000 a year to the total cost of state funding. There is no additional cost for the democracy voucher option, as this repurposes the existing state funding attached to the broadcast allowance. Therefore, the total cost of our proposal is approximately $2 per voter per annum.

Conclusion

Our research highlights many problems with the current system of political party funding, alongside strong support for change to the system. Some of the policy changes we propose include increased state funding, greater transparency of donors and donation amounts, and placing some limits on large donations. Our full report includes a range of other recommendations, but we highlight these three here as important components of a rigorous political party funding framework. We believe that the state funding options we propose will increase engagement between parties and voters, and reduce the ability for larger donors to have greater access to politicians than those who cannot donate, thereby improving political equality.

1 Reference to donations in this article refers to donations of money, goods or services that are non-reciprocal, i.e., they have the characteristics of a gift.
2 All amounts in the article are NZ$ unless otherwise stated.
3 Refer to the full report (Rashbrooke and Marriott, 2022) for more detail on current rules.
4 This article incorporates the new electoral finance rules that are in place from 1 January 2023 after the Electoral Amendment Bill passed in December 2022. Note that the full report was completed prior to the Bill passing.
5 These differences may result from the lack of a 'total ban' option in our survey, which in the previous survey not only gave respondents an extra option, but may also have 'anchored' the responses towards a stricter limit: its presence meant the 'middle' option, which respondents may gravitate towards, was stricter in that survey than in ours. Moreover, we allowed undecided responses, which do not appear in the IGPS survey question.
6 The online survey, conducted 22–27 September 2022, polled a nationally representative sample of 1,004 people, all aged over 18. The margin of error in its results is ± 2.9%.
7 A relatively new state funding mechanism, democracy vouchers are currently used by the city of Seattle. Each enrolled voter receives four US$25 vouchers, which can only be spent by allocating the voucher to a political candidate of their choice.
8 Other recommendations included in the report but not detailed here include only permitting donations from eligible voters (i.e., not companies, trusts or other entities), and introducing greater powers for the Electoral Commission to pursue donations fraud. The measures are intended to be complementary, with each strengthening the other. See the full report for detail on these other recommendations.

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Alex Morris

The Dilemma of Digital Colonialism

unmasking facial recognition technology and data sovereignty in Aotearoa New Zealand

Abstract

Law enforcement agencies have become increasingly reliant upon facial recognition technology (FRT) as a powerful surveillance tool in the fight against crime. Developing at an unprecedented rate, FRT has exceeded the incremental pace of law and policy. This has resulted in unregulated over-surveillance, triggering questions about police misconduct and ethnic discrimination. In Aotearoa New Zealand, targeted surveillance and the emergence of FRT have reignited concerns over inherent colonialist practices, dismissive of obligations to te Tiriti o Waitangi and Māori rights. They have also provided for a new wave of discussion on how future policy might incorporate Māori data sovereignty. While a highly valuable policing tool, its lack of regulation, technological accuracy and potential racial bias have led some countries, including Aotearoa New Zealand, to impose a moratorium on FRT use in law enforcement. Policymakers must now look at how to dismantle what is fast becoming an age of digital colonialism.

Keywords facial recognition technology, Māori data sovereignty, surveillance, data colonialism, emerging technologies, law enforcement

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Facial recognition technology – 21st-century surveillance

Facial recognition technology in law enforcement

While surveillance in law enforcement is by no means a new phenomenon, facial recognition technology (FRT) has been touted as the gateway to innovations in smart policing (Bromberg, Charbonneau and Smith, 2020; Feldstein, 2021). FRT is a tool to compare, verify and confirm someone's identity. It relies on an FRT algorithm, conducting a biometric scan to extract a person's unique facial geometric features, such as the distance between the eyes, nose and mouth, and the structural composition of the forehead and cheekbones, to create the equivalent of a digital footprint (Lynch and Chen, 2021). These geometric features are then collated in the form of data and used to link individuals to pre-existing images stored on a database.

Automated (live) FRT is the newest and most controversial form of smart surveillance, as it can identify people in real time without their prior knowledge or consent. However, police maintain that its speed and efficiency have proven highly

effective in crime prevention and counterterrorism operations, able to detect people from a distance in large, fast-moving crowds. Internationally, law enforcement agencies have sought to expand FRT on the premise that it can increase public and police safety and security, promote de-escalation methods, and improve accountability and efficiency (Bragias, Heine and Fleet, 2021; Schwartz, 2017; Smith and Miller, 2021).

The threat to privacy

Until recently, police have been afforded unregulated discretion over FRT, testing the boundaries of privacy. Roberts et al. (2020) highlight how China has used FRT to closely monitor the moral behaviour of its citizens in a push for digital social governance. People have been 'blacklisted' for what the government considers 'immoral' behaviour and reprimanded through measures of public shaming and the removal of the right to privileges, such as purchasing first-class train tickets or sending children to prestigious schools. Furthermore, China is also utilising FRT as a tool to persecute and purge the minority Uyghur population, under the premise that they are a potential terrorist threat (ibid.; Van Noorden, 2020). During the Covid-19 pandemic Russia, China and Malaysia have merged thermal technology with FRT to locate people with high temperatures, monitor positive cases and detect quarantine-breakers (Lynch et al., 2020; Roussi, 2020). China has even adopted emotional FRT, which has the added capability of inferring people's feelings through analysing their facial expressions (Standaert, 2021). Yet concern is mounting that this cutting-edge technology feels somewhat akin to dystopian depictions of authoritarian surveillance regimes designed to restrict basic human rights rather than prevent crime and disorder.

The lack of FRT regulatory measures has also impacted how personal data is being collected and retained. In 2020, Clearview AI (a US-based company specialising in FRT) was exposed for harvesting over 3 billion personal data images, scraped from social media platforms such as Facebook, YouTube and Instagram (Hill, 2020a). The company had used these images in its identification application, which it then supplied to law enforcement agencies across the United States, Australia, the United Kingdom and New Zealand. Clearview AI was also retaining sensitive images collected by the police, unregulated and without public scrutiny (Lynch et al., 2020; Smith and Miller, 2021). The UK, France, Italy and Australia have since attempted to enforce more stringent data regulatory measures, discontinuing business with Clearview AI, ordering them to delete data and imposing fines for violating data protection laws. However, the company has refused to cooperate on the basis that it is not bound by EU and British jurisdictions. Since 2020 the size of Clearview AI's database has skyrocketed: it now holds a collection of over 20 billion facial images, which are globally available to all the company's clients (McCallum, 2022). Data scraping, data retention, and the sale of biometric information without active consent are a clear violation of privacy rights, regardless of whether the technology is used for law enforcement purposes or by private companies. While firms such as Clearview AI can blatantly flout jurisdiction and continue to use personal information, there remains an urgent need for more robust legislation and transnational cooperation.

> Currently, there is a tendency to compartmentalise the causes and effects of AI bias and attribute blame to individuals or technological malfunctions, rather than acknowledging bias as an ingrained societal construct ...

Bias and discrimination

Researchers have also warned against utilising FRT software prematurely, citing evidence of flawed and discriminatory FRT algorithmic systems (Lynch and Chen, 2021). While performing post-crime search and scan procedures manually through fixed CCTV footage is common in police practice, the replacement of manual identification with algorithms is relatively nuanced and a complex technological process. Algorithmic identification is inherently different from human analysis, as even minor changes in pixilation – unnoticeable to a human – may significantly affect the identification process, resulting in false positives (or false negatives) (Ruhrmann, 2019). In 2017, for example, the South Wales Police misidentified over 2,000 people when using automated FRT to monitor fans at the UEFA Champions League final; this was due to poor image quality and incomplete data sources (BBC, 2018; Fussey, Davies and McInnes, 2021).

In determining the cause of algorithmic error, scholars have highlighted that one explanation is underdeveloped training data sets, which algorithms rely on to identify facial images (Feldstein, 2021; Hoffmann, 2019; Zajko, 2021). Despite ongoing AI performance development, there is now substantial research showing that algorithmic error is contributing to the reproduction of ethnic and gender bias. This points to sounder FRT accuracy for white males compared with higher rates of false positives and false negatives for females and those with darker skin; darker-skinned females are thus significantly disadvantaged and more likely to suffer from bias (Buolamwini and Gebru, 2018; Grother, Ngan and Hanaoka, 2018). The US National Institute of Standards and Technology 2019 study on the demographic effects of FRT supports this hypothesis. Findings revealed that in the US, African Americans and Asians were 10–100 times more likely to produce false positive matches than other ethnicities, highlighting insufficient demographic diversity in data sets (Grother, Ngan and Hanaoka, 2019). If

used in law enforcement, FRT will likely depend on biased data and may result in unjust or inaccurate outcomes (Buolamwini and Gebru, 2018; Fussey and Murray, 2019). A prime example of this occurred in 2020 with the arrest of Robert Williams, an African American who was detained and interrogated for a shoplifting offence resulting from an FRT match which was later found to be a false positive (Hill, 2020b). While this is based on Western data sets – as opposed to data sets in China which have higher accuracy rates – it illustrates the detrimental impact of algorithmic discrepancies if data sets do not provide sufficient demographic representation.

Currently, there is a tendency to compartmentalise the causes and effects of AI bias and attribute blame to individuals or technological malfunctions, rather than acknowledging bias as an ingrained societal construct (Hoffmann, 2019). While designing fair and equitable AI systems is critical, this alone cannot eliminate bias and discrimination; it requires an intersectional approach to better understand how technology and colonialism are entwined (Buolamwini and Gebru, 2018; Hoffmann, 2019; Zajko, 2021). Furthermore, as Fussey, Davies and McInnes have observed, in law enforcement 'the rules encoded within the algorithms are not "unbending" and inflexible but configured and constructed via a range of policing influences' (Fussey, Davies and McInnes, 2021, p.342). Again, this points to data as a man-made construct. The reality is that humans and technology need to co-exist, with appropriate accountability mechanisms and the assurance that responsibility cannot be externalised at the convenience of the designer, politician, police, or anyone who finds themselves under fire for FRT's technical shortcomings. Essential to this process is the deconstruction of digital colonialism.

Indigenous rights to data sovereignty

FRT data collection and storage has further provoked questions over indigenous rights. The manipulation of data has long involved the control of indigenous minorities; from an indigenous perspective, combining surveillance technology with mass data collection is an inherently colonialist approach, suppressing the indigenous right to self-determination (Cormack, Kukutai and Cormack, 2020).

> While there has been a move towards improving data collection efficiency through New Zealand's Integrated Data Infrastructure (IDI) – a streamlined, cross-government data network – structures remain inherently Eurocentric.

In recent years there has been a drive to dismantle oppressive data constructs through recognising indigenous data sovereignty. Indigenous data sovereignty realises the rights of indigenous peoples to manage and govern their own data, based on alternative approaches to data governance and the appreciation of data as a living representation of culture, ancestry and history (ibid.; Hudson et al., 2017). Witnessed on an international scale, governments and politicians can no longer feign ignorance about the inadequacies of data management. In 2018 the special rapporteur for the United Nations released a report imploring member states to recognise indigenous data sovereignty. The report succinctly outlines the fragility of indigenous interests, stating:

> Indigenous peoples remain largely alienated from the collection, use and application of data about them, their lands and cultures. Existing data and data infrastructure fail to recognize or privilege indigenous knowledge and worldviews and do not meet indigenous peoples' current and future data needs. (Cannataci, 2018, p.13)

To date, indigenous data sovereignty has largely been absent from public policy. Kukutai and Cormack (2021) argue that indigenous data sovereignty can only be truly empowered through indigenous data governance. However, creating indigenous data ecosystems requires legislation and policy, rather than relying on voluntary charters and principles alone.

Digital colonialism in Aotearoa New Zealand

A history of surveillance

Aotearoa New Zealand has a long and fraught history of racial surveillance, discrimination, and a failure to develop policy which prevents bias (Norris and Tauri, 2021). This is bound in colonial policing practices, notorious for targeting Māori. Currently, while Māori comprise only 16.5% of New Zealand's population, they make up 56% of the prison population (Department of Corrections, 2022). The explanations behind the disproportionate incarceration rates have been widely debated among scholars, citing reasons such as socio-economic and intergenerational disadvantages, embedded structural racism, and a power imbalance between Māori and the Crown (McIntosh and Workman, 2017; Norris and Tauri, 2021; Webb, 2017). Many argue that colonisation and colonial practices remain the underlying cause, not only of repeat offending and high imprisonment rates, but also of systemic bias; this in turn has fuelled a lack of faith in policing practices (Stanley and Bradley, 2021).

In 2020 it was disclosed that the New Zealand Police had been photographing Māori and Pasifika on a targeted basis. Police had photographed rangatahi Māori without cause or consent, retaining their data on the national police database (NIA)

as 'intel notings' (Hurihanganui and Cardwell, 2020; Hurihanganui, 2021). Following a joint inquiry into police behaviour, the Independent Police Conduct Authority (IPCA) and the Office of the Privacy Commissioner found that since 2018, 45% of photographs attached to intel notings on the NIA database were of Māori and 10% were of Pasifika (Independent Police Conduct Authority and Office of the Privacy Commissioner, 2022). Other issues included the lack of policy on storing photographs on police mobile devices; retention of duplicate photographs; and breaches of the Privacy Act 1993 and the Oranga Tamariki Act through unlawful photographs taken of rangatahi Māori. This again raises questions of racial profiling and existing gaps in legislation which allow for the collection and retention of data.

The future of surveillance policy

In December 2021 the New Zealand Police announced the suspension of automated FRT in response to an independent report, carried out following the growing national unrest over its controversial use. The report contended that without a better understanding of the legal, privacy and ethical impacts, FRT could be detrimental to social licence (Lynch and Chen, 2021). Mark Evans, deputy chief inspector of the New Zealand Police, announced that the suspension was an opportunity to 'prepare for any considered future adoption of the technology' (New Zealand Police, 2021). This included a commitment to community engagement, addressing concerns related to FRT bias, and approaching its use in a safe and responsible manner.

Since then, the New Zealand Police have thankfully demonstrated a considerably more transparent and proactive approach. In July 2022 an updated policy on emerging technologies was published (New Zealand Police, 2022b). The policy captures both new and well-established technologies with either new capabilities or improved functionalities that change the purpose of their use; this includes FRT, machine learning, AI, drones and CCTV. The primary objectives are to enhance accountability and transparency, dispelling public mistrust over surveillance. The police have also since published a 'New Technology Framework', which sets out ten principles for consideration when adopting a new technology. Another positive sign is the acknowledgment of data sovereignty in principle 4 of the framework, which states: 'If the technology includes any form of data collection and use, relevant mechanisms are in place to ensure data is treated as taonga and Māori sovereignty is maintained' (New Zealand Police, 2022a, p.8).

> The [Integrated Data Infrastructure] has neglected to consider te ao Māori data values and principles, continuing to store data offshore and diminishing the Māori right to tino rangatiratanga ...

While both the policy and framework acknowledge police obligations under te Tiriti o Waitangi, taking account of a te ao Māori perspective, and the importance of partnership, they fail to detail how, practically, this will be achieved. The framework only provides broad guidance on how the policy and principles should be applied. For instance, *how* should te ao Māori be considered? Which relevant mechanisms will ensure data is treated as taonga? Although the moratorium on FRT remains in place, it is unlikely that this will become permanent, given FRT's vast scope as a policing tool. As things stand, the efficacy of this policy in practice – particularly regarding the practical measures taken to avoid future injustices and privacy violations – is yet to be determined.

The emergence of Māori data sovereignty

While there has been a move towards improving data collection efficiency through New Zealand's Integrated Data Infrastructure (IDI) – a streamlined, cross-government data network – structures remain inherently Eurocentric. The IDI has neglected to consider te ao Māori data values and principles, continuing to store data offshore and diminishing the Māori right to tino rangatiratanga (Kukutai and Cormack, 2019; Moses, 2020). Its rapid expansion has also led to procedural gaps, such as a lack of Māori inclusion and consultation, the failure to gain consent to reuse data as a secondary means, and the absence of policy (Sporle, Hudson and West, 2021). There is also evidence that policymakers have become too reliant on algorithms, integrated data sets and predictive statistical modelling to draw conclusions about population needs and social investment (Kukutai and Cormack, 2019). Moses (2020) argues that these practices have neglected to fully account for the disproportionate representation and over-surveillance of Māori.

Emerging from indigenous data sovereignty, the concept of Māori data sovereignty has gained significant traction in Aotearoa New Zealand. Based on mātauranga Māori ontologies of collectivism and relativism, Māori data sovereignty illustrates another layer of tino rangatiratanga, neglected due to Eurocentric domains of governance. Māori data sovereignty considers data as a taonga, giving Māori the right to governance under article 2 of te Tiriti o Waitangi (Te Mana Raraunga, 2021). Data should be treated according to tikanga-based values such as wellbeing and restoration, encouraging manaakitanga and kaitiakitanga (Cormack, Kukutai and Cormack, 2020).

Established in 2016, Te Mana Raraunga (the Māori Data Sovereignty Network) has led the drive for an alternative view of data management, pooling the knowledge of Māori scholars, researchers and practitioners to foster a better

understanding of Māori data sovereignty and protect Māori rights on a national level. In its charter, Te Mana Raraunga states that:

- Data is a living taonga and is of strategic value to Māori.
- Māori data refers to data produced by Māori or that is about Māori and the environments we have relationships with. (Te Mana Raraunga, 2021, p.1)

Working in tandem with the National Iwi Chairs Forum's Data Iwi Leadership Group, Te Mana Raraunga has advocated for an ethical approach to data through the mana-mahi framework set out in the charter. It presents an approach based on six principles – whanaungatanga, rangatiratanga, kotahitanga, manaakitanga and kaitiakitanga. Together, these principles form the basis for a future in which Māori data rights are respected and valued. However, a caveat to this approach concerns determining whether data is a taonga and therefore subject to article 2 of te Tiriti. The Waitangi Tribunal (2021) acknowledged that Māori data has the potential to be a taonga as part of mātauranga Māori, but could not conclude whether all data was a taonga. Certain scholars have concluded that this must be deduced on a contextual basis (Dewes, 2017; Hudson et al., 2017). Developing a comprehensive assessment process in partnership with Māori to determine whether data is a taonga will be key to the future of data sovereignty across not only police policy, but all realms of governance.

Māori data sovereignty in policymaking

While concrete policy is yet to materialise, the language of Māori data sovereignty is beginning to appear in policy documentation, and various agencies and government departments have expressed interest in incorporating Māori data sovereignty principles into practice (Sporle, Hudson and West, 2021). StatsNZ has committed to forging a better relationship with Māori through the signing of a Mana Ōrite Relationship Agreement, pledging partnership and focusing on a future data network of co-design and co-creation with Māori (StatsNZ, 2021).

In 2020 the New Zealand Police, along with other government agencies, signed the Algorithm Charter for Aotearoa New Zealand, committing to safeguarding privacy and ethics, managing bias, and embedding a te ao Māori perspective in the use of algorithms (New Zealand Government, 2020). However, apart from StatsNZ's Mana Ōrite agreement, there are no other frameworks pertaining to the ethical use of data that include Māori as a partner in data management. While the algorithm charter pledges commitment to incorporating a te ao Māori perspective, it states that it is unable to 'fully address' Māori data sovereignty. The current system remains built upon Western capitalist assumptions, such as individual privacy and property rights, and remains incompatible with Māori data sovereignty approaches. While it would, of course, be a momentous challenge, there is an opportunity for policymakers to deconstruct colonial data management and redesign it from the ground up.

The inclusion of Māori data sovereignty in policy may require the establishment of a consistent cross-government framework to determine whether data is a taonga and to move towards alternative methods of data management.

What happens next?

The development of a new policy and framework for emerging technologies is a promising start in terms of policing and this new frontier may well transpire into further scope for robust Māori–Crown relations. On the other hand, if concrete actions remain wanting, it may simply cement the longstanding criticism of an unwillingness to relinquish the colonialist reins. Below we discuss in brief how the police could further solidify their commitment to improving FRT regulations and data use in Aotearoa New Zealand.

A data sovereignty assessment framework

The inclusion of Māori data sovereignty in policy may require the establishment of a consistent cross-government framework to determine whether data is a taonga and to move towards alternative methods of data management. Any such framework would need to analyse whether the data has been obtained by consent and whether is it being utilised as a secondary source. In a similar vein to the secondary use of data held in the IDI, police have retained and reused facial images without consent. Data collection and retention where there has been no probable cause is particularly questionable. If this method of data collection is re-established in the future – particularly in terms of FRT – it is critical to maintain transparency regarding how Māori will be affected; currently, there are only internal police mechanisms in place to ascertain whether data is being used ethically or whether it is being misappropriated.

Moving towards data ecosystems which allow Māori authority over their data and are shaped by tikanga may be one solution to creating an ethical, Tiriti-based approach to data management (Kukutai and Cormack, 2021). This would involve establishing a fair and transparent process to determine an appropriate degree of autonomy. Hudson et al. (2017) suggest that the level of authority Māori are afforded over data control is largely dependent on the context and sensitivity of the data. If the data is of high sensitivity, then Māori should be entitled to greater control and equal decision-making rights; if it is data of moderate sensitivity, Māori

may only require consultation; if the data is of a less sensitive nature, it may qualify for public availability. How this may fare in terms of criminal justice data leads to discussion around Aotearoa New Zealand's current data legislation.

Legislation

It is important to acknowledge the absence of sufficient legislation relating to data management and privacy rights. While it has been established that indigenous peoples possess the right to self-determination and data sovereignty (Cannataci, 2018; United Nations, 2008), the circumstances under which those rights can be overruled remain unclear, particularly in terms of law enforcement. As was highlighted in the IPCA report, despite certain provisions for the protection of personal information set out in the Privacy Act, there are exceptions which allow the police to gather intelligence without obtaining consent or informing the individual (Independent Police Conduct Authority and Office of the Privacy Commissioner, 2022). As principles-based legislation, the Privacy Act provides flexibility, blurring the boundaries of what constitutes lawful collection and retention of personal information. While the Office of the Privacy Commissioner and IPCA have recommended that the New Zealand Police engage in further policy development and provide clearer guidelines for gathering intelligence, including the lawful collection and retention of photographs, the efficacy of such policies is yet to be determined. Further, the effectiveness of existing legislation in terms of protecting Māori data rights is tenuous to say the least: the Māori population remains over-represented in data sets and thus continues to suffer from bias (Cunneen and Tauri, 2016; Moses, 2020). Police have been allowed undue discretion over managing personal information, revealing a lax approach to upholding the right to privacy and failing to address inequitable practices such as targeted surveillance.

.. there is an opportunity to harness technologies such as facial recognition technology so that both the police and the public may benefit, while eliminating aggressive and invasive surveillance practices.

Data localisation

Finally, further consideration needs to be given to data storage. Part of embedding a te ao Māori approach involves seeing data from an alternative perspective, and in the case of Māori data sovereignty would involve a commitment to storing data locally (Cormack, Kukutai and Cormack, 2020). Storing data offshore poses a serious threat to data sovereignty, with the further loss of Māori control, inconsistent and insufficient data regulations, and lower accuracy rates, which has a detrimental effect on minority populations (Lynch and Chen, 2021). In committing to a fully nationalised data storage facility, Aotearoa New Zealand would both shore up security and better align with Māori data sovereignty values. Co-designing any such facility would be another positive step towards giving effect to tino rangatiratanga.

Conclusion

The repercussions of over-surveillance and ethnic discrimination have been witnessed on a global scale as law enforcement agencies have seized the opportunity to utilise digital surveillance to the detriment of human rights and privacy. However, there is an opportunity to harness technologies such as facial recognition technology so that both the police and the public may benefit, while eliminating aggressive and invasive surveillance practices. Each nation must look to this as the opportunity to be inclusive of indigenous populations, removing any threat of discriminatory practices, including both algorithmic and systemic biases.

Looking forward, not only should Aotearoa New Zealand's FRT policy include evidence of the steps required to actively ensure partnership with Māori; it should also demonstrate how this will remain a constant in the long term. Social licence has waned due to discriminatory targeted surveillance, but it is not the technology alone that is the cause. Policing systems have failed to keep pace with both the regulation of technologies and with the evolution of data management, lacking any insight into the harm caused by embedding colonialist data practices.

Implementing ethical, te ao Māori-based data collection and management systems will ensure that New Zealand Police policy aligns with te Tiriti o Waitangi and its principles. Māori data sovereignty represents the potential to dismantle data colonialism and transform how data is perceived. While this would challenge the very fabric of the capitalist-based information age, it would create the opportunity to eliminate digital colonialism and unethical practices such as unconsented data collection and retention. Furthermore, enforcing data localisation would strengthen not only Māori rangatiratanga, but also national control over data management. This provides both policymakers and the police with the unique opportunity to enhance partnership with Māori and approach emerging technology through a fair and just lens.

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