# Social Policy Journal of New Zealand

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# Contents

## FOREWORD

Issue 34 of the Social Policy Journal of New Zealand contains three themes:
- paid parental leave and other family-friendly policy initiatives
- the repeal of Section 59 of the Crimes Act
- programme evaluation.

The last theme emerges from a post-graduate course for professional evaluators at Massey University. Robin Peace, who is a member of the Journal's International Advisory Board, is Guest Editor for these papers from her course.

Heather Nunns writes about the pressure on evaluators to provide ever speedier evaluation findings and proposes a matrix that is designed to conceptualise the timeliness issue and help communicate these to stakeholders. Mathea Roorda and Robin Peace discuss the Social Policy Evaluation and Research Committee (SPEaR) *Good Practice Guidelines* and review an anonymised programme evaluation against the expectations of the guidelines regarding evaluations with Māori in order to explore through their case study some of the challenges that evaluators face in trying to meet these expectations.

Heading the theme of parental leave, Paul Callister and Judith Galtry provide a comparison between New Zealand's parental leave provisions and Australia's "baby bonus", addressing issues of eligibility criteria and middle-class capture in particular. Kat Forbes compares New Zealand's parental leave provisions with those currently found in the United Kingdom. Joanne James also looks at the family-friendly workplace, including a comparison between Australia's Family Tax Benefit package and New Zealand's Working for Families.

The campaign for the repeal of Section 59 of the Crimes Act, which succeeded in removing the defence of "reasonable force for the purpose of correction" from parents accused of assaulting their children, was the inspiration for two research projects covered in this issue. Sophie Debski, Sue Buckley and Marie Russell write about their analysis of submissions on the bill to repeal Section 59, examining the underlying viewpoints and the implications for parent education. In a study of the role professionals play in helping families resolve disciplinary practices, Julie Lawrence and Anne Smith convened focus groups of social workers, nurses and early childhood teachers to explore their understanding of the issues and their preparedness to address them in the course of their work.

Another paper that deals with aspects of child protection is contributed by Ian Hyslop, who explores the historical and philosophical underpinnings of care and protection social work practice in New Zealand. On the topic of child safety, Maxine Campbell discusses the risks posed by the use of all-terrain vehicles (ATVs), citing recent child figures for ATV-related injuries and fatalities in the context of the popularity of these machines, particularly in the rural sector.

Alison Towns has contributed a discussion paper on Police-initiated protection orders for women experiencing domestic violence. The paper identifies the assumptions that underlie the use of these orders, incorporating data on police interventions, how women act to protect themselves, and how the Courts respond to breaches of these orders.

In their study of media attention and public attitudes around the first tobacco litigation trial in New Zealand, Judith P. McCool, Becky Freeman, George Thomson and Sneha Paul found

that despite the media tending to be either neutral or supportive of the defendant, the public tended to favour the tobacco companies. Their paper discusses some of the issues around public awareness in this arena.

Warren Smart, in his study of the impact of the Performance-Based Research Fund (PBRF), finds that university researchers have become significantly more productive since the introduction of the PBRF.

In their paper on the availability of drugs in New Zealand, Chris Wilkins and Paul Sweetsur explore population-level data over time to look at changes in availability. The authors explain some of the changes and discuss policy options for influencing the availability of drugs.

I hope you find this issue of the Social Policy Journal of New Zealand to be interesting and stimulating.

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# "BABY BONUS" OR PAID PARENTAL LEAVE -- WHICH ONE IS BETTER?

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## Abstract

New Zealand's paid parental leave policy was introduced in 2001. Since then it has been altered a number of times, including an extension to its length and a loosening of eligibility criteria. Given that some parents continue to be ineligible for leave, there have been calls for further expansion of the eligibility criteria and an increase in the length of leave. Australia does not currently have a paid parental leave scheme. Instead it has a "baby bonus" as well as job protection legislation. Through this combination most core jobs are protecte, and, with the exception of very-high-income families, there is a payment for all new parents. While this gives rise to some middle-class capture, the Australian policy provides support to parents who most need it, including those on the margins of the labour force. New Zealand's scheme also has an element of middle-class capture, but with those disqualified from receiving payments or receiving the lowest payments, being among those families most in need.

## INTRODUCTION

The issue of paid parental leave is a topical policy concern in both Australia and New Zealand. In New Zealand the ongoing discussions focus on extending the current paid parental leave scheme in terms of both length and eligibility criteria.[2] In Australia the question is whether to introduce a federal paid parental leave scheme. Informing the New Zealand discussions, in 2007 two major reports on parental leave were published, one by the Department of Labour and the other by the New Zealand Families Commission.[3] A further report by the National Advisory Council on the Employment of Women was published in June 2008 (NACEW, 2008). While all the reports have included concerns about child and maternal health, historically parental leave policy has not been explicitly recognised by the Ministry of Health as an important health issue for infants, mothers and, by extension, their families. Parental leave has been framed primarily as a labour market concern in many

[2] This paper focuses on taxpayer-funded paid parental leave. In both New Zealand and Australia a small but significant number of employees, particularly in the public sector, are eligible for employer-funded parental leave schemes. While important, these are not considered in any detail in this paper.

[3] Paul Callister was the author of the data analysis section of the Department of Labour's report. However, the surveys were developed by the Department of Labour and the actual research was carried out by Research New Zealand. Paul Callister also provided some minor input into the Families Commission report. Both these reports, as well as the NACEW report, raise important issues around the eligibility of men to receive parental leave, but this question is not addressed in this paper.

countries, and this is perhaps one reason why parental leave design does not appear to be high on the current priority list of New Zealand health policy makers. Yet by not having a strong input from the health sector, the design of parental leave policy may not be optimal.

Internationally, the issue of paid parental leave, and its design, was first considered over a century ago. For example, in 1877 Switzerland passed legislation that restricted women's paid work two weeks before and six weeks after the birth of a child. A number of European countries followed with similar policies. In 1919 the International Labour Organization (ILO) was formed, and the Maternity Protection Convention was among the policies developed during the first year of the ILO's existence. In New Zealand, debates about paid parental leave have also taken place over a long period of time (Callister and Galtry 2006). During this time there have been major changes in the operation of labour markets, family types, the roles of men and women in both paid and unpaid work, fertility, and thinking about the delivery of support to parents and children, with a greater focus on targeted rather than universal benefits (Pool et al. 2007). In addition, research has now provided a much better understanding of the potential health benefits associated with parental leave. Some of these changes challenge the original conceptualisation of paid parental leave schemes.

Drawing on the Department of Labour and Families Commission reports, as well as a number of other studies of parental leave, three models of financial support for new parents are considered here. One is the model operating in 2008 on the other side of the Tasman. This involves legislation for job protection as well as a separate universal "baby bonus". The second model involves linking paid parental leave primarily to eligibility for job protection, as in New Zealand. In effect, this is a targeted form of income support based on recent work history. A third option is a payment for time out of paid work, based on need. This paper considers which model is best for New Zealand parents and children.

## NEW ZEALAND: WHAT IS THE AIM OF PARENTAL LEAVE?

The Department of Labour's evaluation of parental leave notes that the primary objectives of the Parental Leave and Employment Protection Act 1987 have evolved in response to changes in both families and paid work. The key objectives of the Act, and subsequent amendments set out in that report, are to assist the attainment of:

- gender equity within the labour market, with increased female labour-force retention and the opportunity to return to paid work without disadvantage to position or pay
- gender equity within families, with fathers sharing leave and caring responsibilities
- improved health outcomes for both mother and child, with the ability for mothers to recover from childbirth, bond with a new baby, and resume paid work without negative consequences to her own or her child's health
- income stability for families through the provision of financial security during the leave period (Department of Labour 2007:8).

Given the Department of Labour's primary focus on employment, it is not surprising that gender equity in the labour market is listed first. Although the Families Commission's report mirrors these four goals, it combines the two gender equity aims and, perhaps reflecting less of a labour market emphasis, places the goals in a different order (p. 7). First is *maternal and child health*, next is *income stability*, and last is *gender equity*. Determining which policy goal, or goals, is the most important clearly matters to the design of paid leave, especially because there can be some tensions between the various aims. In particular, the design of

parental leave can either create tension between supporting maternal and child health and gender equity, or help reduce this tension (Callister and Galtry 2006).

In New Zealand, as in many other countries, there are two components to paid parental leave. First there is job protection. This is the statutory right to return to the same job with the same terms and conditions after a period of leave. Second is payment for time out of the labour market. In the early days of parental leave in New Zealand it was only job protection that was available, but when a payment became available for the first time in 2002 the two components were linked. As of 2007, in order to be eligible for a payment a person had to be eligible for job protection. However, as an extra dimension to New Zealand's leave policy, the eligibility criterion for 14 weeks' paid leave is less stringent than the criterion entitling an individual to 52 weeks of job protection. To be eligible for paid parental leave (PPL), employees must have worked continuously with the same employer for an average of at least 10 hours a week (including at least one hour in every week or 40 hours in every month) in the six or 12 months immediately before the baby's expected due date or the date the employee has assumed the care of a child they intend to adopt. However, employees who have worked continuously with the same employer for 12 months or more are also entitled to up to 52 weeks of employment-protected unpaid parental leave, less any paid parental leave taken. As discussed, the eligibility criterion for the 14 weeks' paid leave period -- but not the 52 weeks of job protection -- has been based on a six-month reference period. After much lobbying by a range of groups, in 2006 the self-employed also became eligible for paid parental leave.[4] Naturally the state cannot protect the jobs of the self-employed, so this represents some separation of payment from job protection. However, there is an assumption that these self-employed parents will remain attached to the labour market.

A fundamental question is whether paid leave should be a universal right for all parents, or targeted, as in New Zealand, on the basis of attachment to the labour market. This is a particularly important issue in countries that have relatively flexible labour markets. OECD surveys have shown that entitlement to both job protection and income support has often been conditional on previous work experience undertaken on a continuous and full-time basis, yet contingent and/or non-standard work is common in many countries.[5]

If income support is seen as societal recognition that parents lose income from paid work in order to care for children, then there is some reason to link payments to work history. This approach potentially recognises that the opportunity costs associated with "time out" of paid work vary. High-income parents who have invested heavily in their education and subsequent careers potentially lose more money than low-income parents when they take time out of paid work. They may therefore need to be compensated at a higher rate. However, there remains a question as to whether all paid work history -- and possibly even unpaid work -- should be considered. The history of parental leave policies in New Zealand shows a gradual extension of employment-based eligibility criteria. For example, in late 1979, when the National Party introduced the original Maternity Leave and Employment Protection Bill, the proposed legislation had very tight employment-based eligibility criteria. In the original draft, employees had to serve 24 months with an employer and work full-time (defined as 35 hours

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[4] The mother or primary caregiver (in the case of adoption) needs to fill in the application form. The completed form needs to be accompanied by either a statement and declaration by a chartered accountant, *or* a declaration witnessed by a justice of the peace or other person authorised to hear declarations under the Oaths and Declarations Act 1957 (see http://www.ers.govt.nz/parentalleave/self-employed/how-to-apply.html)

[5] Non-standard work is generally seen as not being permanent or full-time. Included in non-standard work are self-employment, short-term contracts and casual workers, including seasonal workers.

per week).[6] In late 1986 the Labour Government enacted the Parental Leave and Employment Protection Bill. The Bill was introduced with a reduction in the eligibility criteria to 12 months' service and, originally, 15 hours' minimum paid work per week. This was then reduced to 10 hours in the final legislation.

The arguments for basing payment on strict employment and time-period eligibility criteria are undermined when a significant number of potential new parents find themselves in contingent employment and are thus ineligible for paid parental leave or, equally, have been in paid work but are not employed in New Zealand during the eligibility period. Although not all those in contingent or non-standard work are unskilled low-paid workers, unless there is some alternative form of income support it is this group that will be most disadvantaged if they are ineligible for paid parental leave.

In the Department of Labour's 2007 evaluation of paid parental leave, a quarter of expectant mothers did no paid work during the required eligibility period for paid parental leave (six months).[7] This does not mean they had no attachment to the labour market. With delayed childbearing the majority of mothers will have spent some time in paid work before having a child. In fact they may have had a long previous attachment and simply have been made redundant and unable to find a job in this period. Or, they may have been attached, but decided to stay at home with a first child and were thus heavily involved in unpaid work, including the health-promoting work of breastfeeding.[8] But as Marilyn Waring (1988) has noted, the unpaid work of breastfeeding "counts for nothing".

In addition, New Zealand's very large diaspora of women in prime childbearing ages means that some of these women will have undertaken much of their paid work overseas but may not be eligible for paid parental leave when they return, or consider returning, to New Zealand.[9] Finally, there may be mothers in couples who are not in paid work, but who experience pressure to return to work with young children if their partner is made redundant. When, as in the past, there were narrow eligibility criteria for job protection, the majority of new parents missed out. With more expansive eligibility criteria far fewer parents now miss out, but those that do are often among the most vulnerable groups in society. They will not only be ineligible for taxpayer-funded leave but, even if in employment before giving birth or adopting a child, are also highly unlikely to be eligible for employer-funded leave. In New Zealand the middle class, particularly those in government agencies, are the most likely to receive both public and private payments while on parental leave. The potential unfairness of a labour market-related system is reinforced the longer the period of paid parental leave.

As noted, one goal of parental leave is to support maternal and child health. But does New Zealand's parental leave policy do this? In terms of length of leave, the literature on pregnancy, childbirth and maternal recovery suggests that optimal leave duration will vary according to a wide range of factors, including the relative ease or difficulty of the individual's pregnancy and childbirth. However, there is some indication that the optimal

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[6] This did not reflect the then official New Zealand definition of part-time work, which was less than 20 hours per week, but was in line with official definitions of part-time work in countries such as the United States and Sweden.

[7] This survey was carried out at a time of high employment. It is likely some responses would be different in the face of a weakening labour market, a real possibility in late 2008.

[8] Smith and Ingram (2005) have endeavoured to "value" breastfeeding work as an indicator of its economic importance.

[9] Gamlen (2007) argues that policy makers need to take greater account of New Zealand's very large diaspora when developing social and economic policy.

length of leave is likely to be in the order of months rather than weeks or days, particularly post-birth. Assessing the design of parental leave, including length of leave, in relation to child health is equally difficult, given all the influences on health outcomes. But breastfeeding has an impact on child health, and breastfeeding guidelines give some idea of the optimal length of leave (Galtry 1995 2003, Galtry and Callister 2005). International recommendations advise six months of exclusive breastfeeding (i.e., breast milk without any additional fluid or food), with continued breastfeeding up to two years of age and beyond (World Health Organization 2003).

Although not directly linked to parental leave, in 2007 the Government designated several priority areas for health improvement that have direct relevance to the issue of parental leave. These include improving child health and reducing inequalities. As part of this the Government has established 10 health target areas for 2007/08 to help measure progress towards achieving these priority areas (Ministry of Health 2007). One is "improving nutrition", with an increase in breastfeeding rates seen as being an essential component of achieving this particular health target. There are concerns that in New Zealand only 12% of New Zealand infants are exclusively breastfeeding at six months, while 40% receive no breast milk whatsoever. Qualitative research, undertaken as part of an evaluation of parental leave policies in New Zealand, indicates that for most parents the focus for the first three months after birth (14 weeks of which can be supported through the current paid parental leave scheme) is the health of the baby, with many regarding breastfeeding as critical to this. Quantitative research from the same evaluation showed that 84% of new mothers rated establishing breastfeeding as important or very important in decisions regarding leave (84%) (Department of Labour 2007). However, when mothers who actually took PPL were asked about their attitudes towards parental leave, nearly a fifth thought that the paid leave period did not give them sufficient time to establish breastfeeding, while a third said it was an insufficient period for post-birth recovery (ibid). Similarly, almost 90% of new fathers saw parental leave as important for establishing breastfeeding, but that if leave periods are too short this creates potential tensions for gender equity. A similar proportion thought that for reasons of breastfeeding it was more important for mothers rather than fathers to take leave.

Taking these issues into account, the Families Commission recommended that eligibility for payment be relaxed to include those who have worked for any employer or have been employed for 26 out of 52 weeks prior to birth or adoption. It also recommended the removal of the minimum hours test.[10] Having statutory protection for some jobs is clearly important. However, for a variety of reasons some jobs are not worth protecting and/or cannot be protected. There are also advantages to a nation from having a flexible labour market. Extending protection too far brings the risk of detrimental effects on the economy and employment. Perhaps in recognition of this, the Families Commission is not suggesting that the eligibility criteria for the 52-week job protection be extended; simply that the labour market eligibility criteria for the period of paid leave be extended.

The Families Commission has estimated that changes in eligibility would increase the proportion of *employed* women who qualify for paid parental leave from 75% to around 82%. But, as noted, not all mothers, including many who have had a significant labour market attachment, are employed in the eligibility period. When the Families Commission's report was released the Government indicated support for expanding the eligibility criteria: "It's a

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[10] The Families Commission also recommends that the length of paid leave be increased in three steps. Step one would provide six months' paid leave, step two nine months and step three 12 months. In each of these periods the leave would be one month longer if paternity/partner leave is taken consequently.

priority for the Labour-led Government to ensure paid parental leave can be accessed by even more working parents -- no matter what their working arrangements" (Dyson 2007).

In the past there were good reasons for eligibility for paid parental leave to be linked to recent labour market attachment, but does this still make sense? One of the historical reasons for having labour market attachment criteria was to encourage women to maintain a long-term attachment to the labour market; that is, to return to paid work after a period of leave. But the 2006 Department of Labour's evaluation of PPL showed that most mothers return to paid work regardless of their eligibility for leave. At the time of the survey 80% of mothers were eligible for PPL, about 80% took leave (about half of those who did not take leave resigned), and of those who took leave, 80% returned to work. However, about half of those who did not take PPL also returned to work within 18 months. Of the 20% of mothers who were ineligible, just under a third took some sort of other leave, but 97% returned to work. Of those who were ineligible and took no leave, just fewer than 60% returned to work within 18 months. It is not surprising that most mothers return to paid work regardless of whether they are eligible for leave. Some will be career oriented and return for this reason, but many will be in families that are reliant on their earnings. Historically, women worked until they had their first child, then they resigned. Now most women are engaged in paid work at various stages over their whole life cycle.

Another problem with having an employment-based eligibility criterion is simply the transaction costs for employers, employees and the Government in determining parental eligibility. The additional costs of moving from the 82% coverage suggested by the Families Commission to the 100% coverage of a universal scheme have to be weighed against the potential reduction in transaction and compliance costs. It would be useful if these costs could be estimated when considering parental leave options.

In contrast to a labour market approach, viewing parental leave from a health perspective encourages the disengagement of parental leave payment from an employment-based eligibility criterion. There may well be some health effects for fathers associated with having a period of leave, such as improved emotional wellbeing through being able to bond with their infant. However, the health literature, including that cited in the Families Commission's report, generally focuses on the effects on women and children.

As discussed, having leave from paid work can have an impact on pregnancy, recovery from birth, the ability to isolate young infants from possible sources of infection by looking after them at home (a gender-neutral activity), and the ability of mothers to breastfeed their children. While the costs in terms of ill health can be high for individuals, these costs also have an impact on the wider society, either through private health insurance premiums or through taxes to support public health-care programmes. The health perspective suggests the need for universal extension of paid leave to all new parents. Specifically, the support of breastfeeding suggests providing income support for at least six months. If there is to be any targeting it would be based on income, and the aim would be to ensure parents -- primarily mothers -- could have a period detached from the labour market. Table 1 shows some of the differing goals of parental leave, and their policy implications.

**Table 1  Diverse goals relating to the design of parental leave policy**

| Policy areas | Some of the issues to consider | Possible design of paid parental leave |
|---|---|---|
| Health | <ul><li>Mother's wellbeing in pregnancy</li><li>Birth and recovery</li><li>Breastfeeding</li><li>Infant health problems related to group childcare</li></ul> | <ul><li>Paid leave *not* linked to job protection but a universal payment</li><li>Relatively long periods of leave</li><li>No taxpayer support for out-of-home childcare in the first year of the child's life</li></ul> |
| Employment | <ul><li>Cost of time out of the workplace for parents</li><li>Problems faced by employers with employees taking leave</li><li>Increasing patterns of non-standard work affecting eligibility criteria</li></ul> | <ul><li>Paid leave linked to job protection</li><li>Relatively short leave periods</li></ul> |
| Gender equity | <ul><li>Inequality in the workplace</li><li>Roles of mothers and fathers in the home</li><li>Differing family types (same-sex couples, etc)</li></ul> | <ul><li>Short gender-specific leave or longer gender-neutral leave</li><li>Specific "daddy" leave</li><li>Promote leave-taking by fathers</li></ul> |
| Supporting fertility | <ul><li>Higher opportunity costs associated with taking leave for well-educated women</li></ul> | <ul><li>High level of leave payment</li><li>Universal payment</li></ul> |

In Europe there have been examples of "cash-for-care" programmes, where income support has not been related to an individual's previous employment history (Salmi and Lammi-Taskula 1999, Fagnani 1999). There are also some examples of paid parental leave being provided (at a lower rate) to parents who are not eligible for job protection (ibid). In addition, the OECD is currently investigating "conditional" parental leave payments.[11] Rather than being linked to eligibility criteria, such as employment history, these payments are conditional on parents meeting criteria such as taking children to health checks, completing immunisation programmes or, more contentiously, breastfeeding exclusively for six months. While "cash-for-care" schemes currently tend to be low-paid and relatively long, they could instead be designed to be well paid, to provide universal coverage for anyone having or adopting a child, but to be relatively short. Cash-for-care schemes have been discussed in New Zealand. For example, in the latter part of 1975, as part of the lead-up to the general election, the Government introduced a new concept, that of a child-minding allowance to be paid to mothers (Bassett 1976). This was part of a separate, but related, debate about paying a "mothers' wage" which was taking place at that time (Kedgley 1996). In more recent times the Domestic Purposes Benefit has, to some extent, been a form of "cash for care".

## AUSTRALIA

As of late 2008 Australia does not have government-funded paid parental leave. However, Australia does have job protection legislation. To apply for a period of up to 52 weeks of

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[11] Simon Chapple, personal communication, January 2008.

unpaid parental leave, an Australian employee is required to have completed at least 12 months of continuous service with their employer by the expected date of birth.[12] Unlike New Zealand, there are no required hours-of-work criteria. In Australia the entitlement to parental leave can be extended to eligible casual employees. An eligible casual employee is defined as a casual employee who has worked on a regular and systematic basis for at least 12 months (or a sequence of periods totalling at least 12 months) with the same employer and has a reasonable expectation of continuing employment with the employer (other than the period of parental leave).

Although Australia does not have a paid parental leave scheme, it does have a payment that could be considered to be a universal cash for care scheme or, for those taking unpaid parental leave, as income support for part of the leave period. This is the so-called "baby bonus". If a person is eligible for job protection, then the baby bonus serves as a form of paid parental leave. Those ineligible for job protection also receive this payment. But given that the bonus is not linked to job protection eligibility, it does mean parents can take little or no leave from paid work and still obtain full payment. This means that parents are not compelled to take time out of paid work. Similarly, New Zealand parents, even if eligible for paid parental leave, do not need to take time out of work if they choose.

The baby bonus was not introduced as part of a parental leave package, but rather as an inducement to increase fertility rates. In tracing the introduction of the baby bonus, Jackson (2006) notes that the Maternity Payment (the baby bonus) was introduced in 2004 and replaced the First Child Tax Refund. It initially provided a A$3,000 grant for each new child (irrespective of the parity of the child), rising to A$4,000 in 2006/07 and $A5,000 in 2008/09. This was part of a package that included an increase in all levels of the Family Tax Benefit (an intervention from 2000 associated with the introduction of the GST), bringing the base payment up to $A1,695 per year inclusive of a new, immediate lump-sum payment of $A600, as well as improvements to childcare provision. In its first budget the incoming Labour government confirmed that the baby bonus would rise to $A5,000 at the start of 2009. However, from this date the bonus would be means tested, with the payment only going to parents with a combined income of less than $A150,000. In addition, instead of a lump sum payment there would be 13 fortnightly payments of $A385.[13]

Although having a generous amount of paid parental leave can be important for supporting child and maternal health, international data suggest that there is no simple relationship between paid parental leave (or the lack of it) and breastfeeding rates (Galtry 2003). In a period when there was only job protection available and no baby bonus, breastfeeding initiation rates were relatively high in Australia but, like New Zealand, duration rates were considered to be relatively low. According to the 2001 National Health Survey, at discharge from hospital 83% of infants were breastfeeding (Donath and Amir 2005). The same survey showed that 49% of infants were breastfed at 25 weeks after birth and 25% at one year. At 25 weeks only 18% of Australian infants were fully breastfed, but this was nearly double the New Zealand rate. Whether the baby bonus has had any influence on breastfeeding rates in Australia has yet to be determined. However, Australian research does indicate that maternal employment in the first six months of life contributes to premature cessation of breastfeeding,

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[12] http://www.workplace.gov.au/

[13] Discussions with the Australian Productivity Commission in May 2008 suggest that there was some concern about inappropriate expenditure of the lump sum payment, and that smaller regular payments are likely to help reduce this abuse.

even when controlling for known risk factors for breastfeeding cessation (Cooklin et al. 2008).

In its 2007 report, the New Zealand Families Commission did not consider the baby bonus to be paid parental leave. However, when its actual effect is considered, along with the job protection available across the Tasman, in early 2008 Australia appeared to have the best of both worlds. It had, like New Zealand, job protection for those jobs that are worth protecting, as well as a universal payment for all parents. Given that the payment is at a fixed level, those Australian parents who gain the most in a relative sense are either on the margins of the labour market, on low incomes, or not in paid work at all. In contrast, in New Zealand those who gain most absolutely are those in the middle-income brackets with comparatively strong labour market attachments, and those who gain the most relatively are those who are eligible for PPL but on low incomes. This is because in New Zealand payment is not only related to attachment to the labour market but also to income (with a cap). Therefore low-income earners have a higher proportion of their incomes replaced. From July 2007 the maximum payment in New Zealand has been $NZ5,477.92 (or $391.30 per week for 14 weeks), and it is estimated that over 90% of those who take PPL get this amount. This is similar to the payment that is proposed go to almost all parents in Australia from January 2009.

In parallel to the changes to the baby bonus, in 2008 the Australian Productivity Commission was asked to examine options for a paid parental leave scheme. This included considering the merits of the New Zealand scheme. In its September 2008 draft recommendations, the Commission recommended 18 weeks of paid parental leave, four weeks more than the period of leave in New Zealand. An additional two weeks would be available as paternity leave, and would be reserved for the father (or other eligible partner) on a 'use it or lose it' basis. Families not eligible for paid parental leave would be entitled to the equivalent of the baby bonus through a new maternity allowance and to other financial support through the social transfer system. This recommendation, if accepted, would mean that Australia would have a hybrid system with improvements on the New Zealand scheme combined with the backup of the baby bonus for non-eligible parents.

## DISCUSSION

New Zealand and Australia have broadly similar job protection legislation in relation to parental leave but, as in 2008, quite different systems of income support for parents in the initial months of an infant's life. The New Zealand scheme, brought in by a centre-left government, is targeted, based on attachment to the labour market. The Australian baby bonus scheme, brought in by a centre-right government, has been universal. However, Australia's new centre-left government has introduced targeting based on family income in order to qualify for the baby bonus.

There are costs and benefits to all three approaches. Being universal, the current Australian scheme is potentially more expensive in terms of direct costs, hence the move to targeting. But a universal scheme is administratively simpler and therefore potentially less costly than the careful targeting of New Zealand's scheme. New Zealand's scheme has the potential advantage of theoretically encouraging the labour market attachment of parents, primarily women. But the data indicate that most New Zealand women are now strongly attached to the labour market when work patterns over their entire life cycle are considered. Career development for increasingly well-educated women at one extreme, and poverty alleviation at

the other extreme, are strong factors behind these attachments. In addition, other policies, such as the availability and cost of childcare, influence job attachment.

The Families Commission proposes further changes that will increase both the coverage and the length of paid parental leave. In doing so, the baby bonus was not considered as an option. However, this paper has raised the question of whether the basic design of paid parental leave is flawed and suggests that the proposed changes will not address these inherent weaknesses. As noted, Australia currently has a much simpler scheme. It involves job protection for those jobs worth protecting and, before 1 January 2009, a universal payment for all parents. Although this has resulted in some degree of middle-class capture, which the new Australian government is trying to address, the current policy provides real support to those parents who most need it. New Zealand's scheme also has some elements of middle-class capture, in that those disqualified from receiving payments, or receiving the lowest absolute payments, include those most in need. If Australia adopts the recommendations of the Productivity Commission on paid parental leave, it will have a scheme with some similarity to New Zealand's scheme. However, it would be more generous and it would have a backstop of the baby bonus for non-eligible parents. Thus it would continue to give support to those who are in need but who are not firmly, or recently, attached to the labour market.

## CONCLUSION

New Zealand's paid parental leave policy was introduced as a compromise by a coalition government in 2001. Since it was introduced it has been altered a number of times, including extensions to both length and eligibility criteria. This has certainly helped broaden its coverage to include a greater number of families. The Families Commission as well as the National Advisory Council on the Employment of Women (NACEW) have suggested further extensions to the eligibility criteria. However, this incremental approach is problematic because it does not reflect the dramatic increase in women's employment that have taken place in recent decades, the changes in the labour market, or advances in our understanding of the health benefits of a period out of the labour market after the birth of a child. A more fundamental review of the design of New Zealand's parental leave policy is required. In particular, the costs and benefits of a universal payment to new parents -- ideally for at least six months to support breastfeeding -- needs to be investigated.

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# PAID PARENTAL LEAVE UNDER (NEW) LABOUR

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**Abstract**

Broad international comparisons of paid parental leave often leave New Zealand's policies looking less than adequate. This paper compares current policies in New Zealand and the United Kingdom. The extent to which either country has been able to implement maternity and parental leave policies has been comparatively limited, but the UK's relationship with the European Union has led to more comprehensive policies than those found in New Zealand. New Zealand will not be forced to comply with a regional or international standard, and it is unclear if there is sufficient momentum for change without such compulsion. However, the UK experience has demonstrated that these types of policies are certainly feasible within the context of the "liberal" welfare state.

## INTRODUCTION

International comparisons of paid parental leave policies often leave New Zealand's policies looking woefully inadequate compared to those of the Nordic societies, and certainly less comprehensive than in most other OECD countries (Department of Labour 2007, Families Commission 2007, James 2002, Susan Kell Associates 2007). While these comparisons provide useful information as to what constitutes best practice, the policies being compared often emanate from vastly different political, cultural and economic backgrounds, and may not aid the development of new policies in New Zealand. Comparisons of New Zealand's paid parental leave policies with those of other liberal welfare states, such as Australia, Canada or the United States, may be more instructive in terms of the potential for further policy development and for the evaluation of policy goals in New Zealand.

In this paper I compare the paid parental leave policies of New Zealand and the United Kingdom (UK) in terms of their shared cultural history, their similar economic and political contexts, and their categorisation as "liberal" welfare states (Esping-Andersen 1990). Both countries have in recent years introduced and expanded policies designed to address "new social risks", such as clashes between work and care responsibilities, single parenthood, and non-standard forms of employment (Falkner and Treib 2003). In addition, both countries have in recent years elected Labour governments whose policies have been described as "third way" (see Giddens 1998).[2]

[2] In New Zealand this has been a series of "Labour-led" coalition governments.

New Zealand and the UK also have similar employment contexts in terms of women's participation in the labour market. New Zealand's labour-force participation rate is slightly higher for women of all ages, but lower for women aged 25--34 (the prime childbearing years). Situated within the context of the OECD, participation rates for women of this age are broadly similar (Figure 1). However, New Zealand's employment rate for mothers of children aged under two years is below the OECD average, alongside quite dissimilar countries such as Germany and Japan, while the UK is above average, and in 2005 even above Finland which is known for its family-friendly policies (Figure 2). Although labour participation and employment rates are influenced by many different factors, the availability of paid maternity leave is perhaps one reason why these figures are higher in the UK than in New Zealand.

Fertility rates also have an influence on these figures, and have historically been higher in New Zealand than in the UK (OECD 2007). This in part explains why New Zealand's labour-force participation rates for women of childbearing age have been slightly lower than those in the UK (Baker 2002). Higher-than-average fertility rates and lower participation rates for women of childbearing age may also help to explain why paid parental leave policies have not been considered to be as urgent in New Zealand as they have in other countries. Paid parental leave (and other welfare policies, see Brewer et al. 2007) has been shown to contribute to both higher female participation rates and higher fertility, which have both become policy priorities among countries experiencing rapidly ageing populations (Ruhm 1998). This effect has been seen to some degree in the UK, as there has been a small lift in UK fertility rates in recent years (OECD 2006).

These shared factors suggest that it would be reasonable to expect a similar range of policies to have emerged in the two countries with regard to paid parental leave, but this has not been the case. The Labour government in the UK has been able to introduce a package of policies relating to maternity, paternity and parental leave that is more comprehensive than one would expect to find in a liberal welfare state, while successive Labour-led governments in New Zealand have introduced policies that remain among the least generous in the OECD (Families Commission 2007). This paper will examine current policies in both countries, the influence of the European Union (EU) on policy development in the UK, and implications for policy development in New Zealand.

**Figure 1  Labour-force Participation Rates for Selected OECD Countries, Women Aged 25--34, 2007**
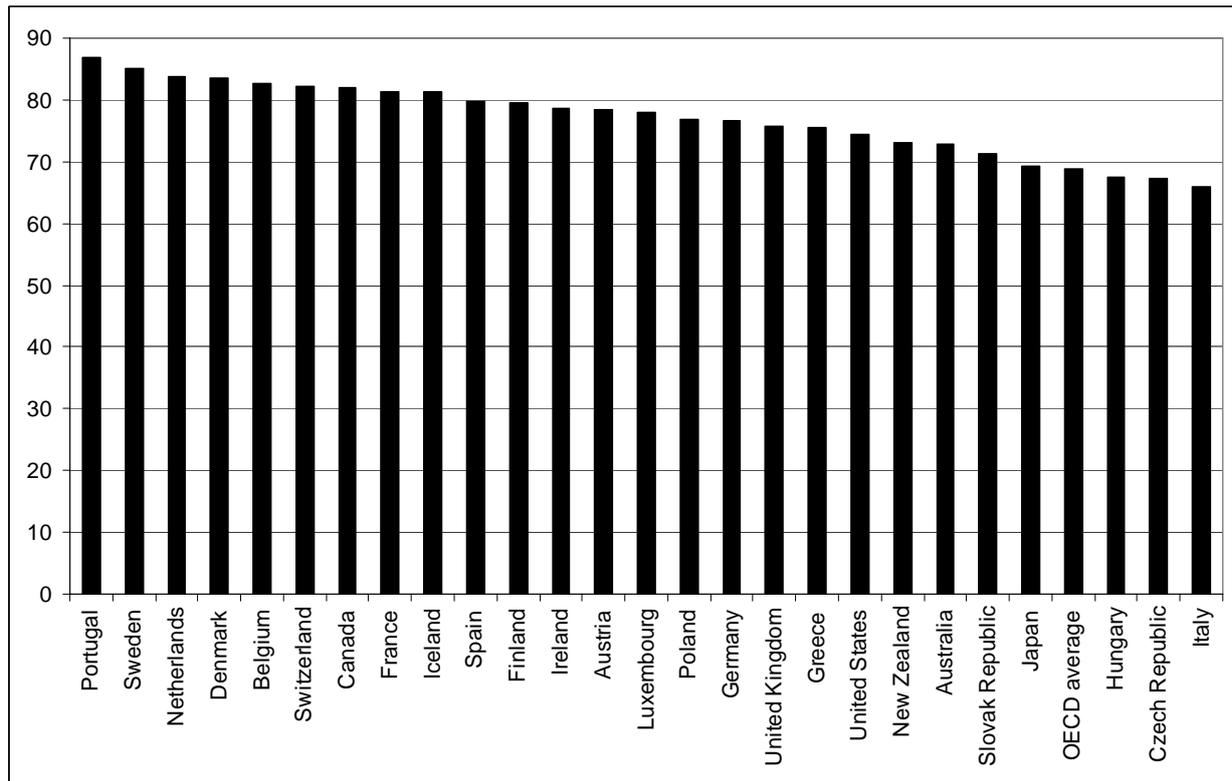


*Source: OECD 2008*

**Figure 2   Maternal Employment Rates for Selected OECD Countries, Women Aged 15--64, Youngest          Child          under          Two          Years          of          Age,          2005**
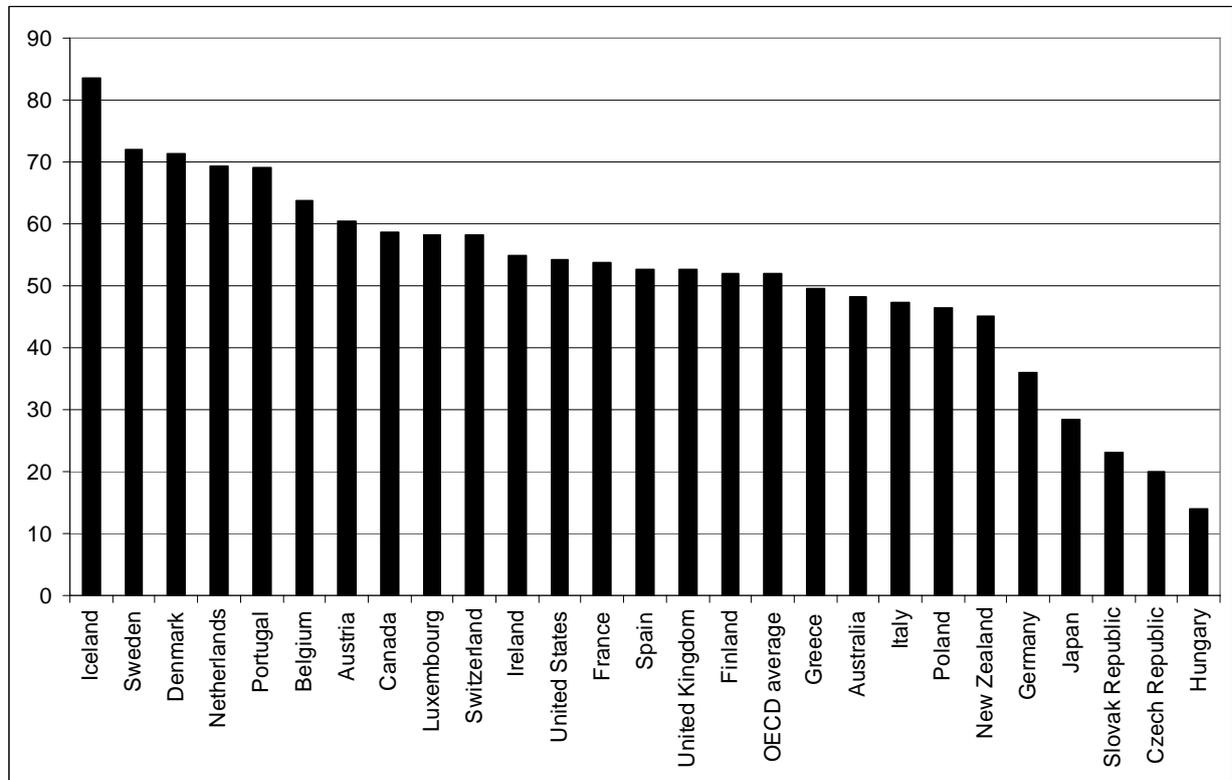


*Source: OECD 2007. Note that the figure is for the youngest child under five years of age in Australia, Iceland and Italy, and for the  youngest child aged 0−16 in Poland.*

## PARENTAL LEAVE POLICY IN NEW ZEALAND

New Zealand's provisions for paid parental leave are among the least comprehensive in the industrialised world, second only to Australia and the United States, which have no national paid parental leave scheme at all.[3] Maternity leave was introduced to New Zealand's public sector in 1948, but was not legislated for workers in the private sphere until 1980. The 1980 legislation instituted job-protected leave for up to 26 weeks, conditional upon 18 months of continuous employment working more than 15 hours per week. In 1987 unpaid leave was increased to 52 weeks and leave became gender-neutral and able to be shared between parents. Two weeks of unpaid paternity leave were also added, and eligibility requirements were reduced for both types of leave to 12 months' service of 10 hours or more per week (Callister and Galtry 2006).

In 2001 legislation was passed which introduced 12 weeks of paid parental leave. Eligibility requirements remained the same at 12 months' continuous employment of 10 hours per week, and the leave could be transferred from mother to father (or partner) if he or she also met the employment requirement of 12 months' continuous employment of 10 hours per week. Since 2002 the period of leave has been progressively lengthened to 14 weeks, and eligibility has been extended to include women who have six months' continuous service and women who are self-employed (Callister and Galtry 2006). Extended job-protected leave of 12 months (unpaid) continues to be available only to those parents with 12 months' service, while unpaid paternity leave is available for one week after six months' service, and two weeks after 12 months' service.

Parental leave payments are funded through general taxation and administered by Inland Revenue (Families Commission 2007). Payment is based on replacing 100% of previous earnings, but with a maximum payment level calculated as the average weekly earnings for New Zealand employees. For 2007/08 this is a maximum of $391.28 per week before tax. Women whose employment record does not entitle them to paid parental leave and who are not receiving another government benefit can apply for a parental tax credit, which is currently paid at $150 per week for eight weeks.[4] In addition to maternity and parental leave, all pregnant employees are entitled to 10 days of special leave during their pregnancy to attend medical appointments or to other matters related to their pregnancy. This leave is unpaid. From 1 July 2008 employees with caring responsibilities for children or family members have the right to request flexible working arrangements, and employers have a corresponding duty to consider requests seriously and accommodate them accordingly.

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[3] Australia does, however, pay a "baby bonus", which is not associated with job protection or employment history (see Callister and Galtry 2008 in this issue). A number of US states have also introduced paid family leave policies, most notably California.

[4] This payment is means-tested. Payments are abated for families with a total income over $71,000 for one child, $86,000 for two children, and so on.

# PARENTAL LEAVE POLICY IN THE UNITED KINGDOM

Maternity and parental leave provisions in the UK were introduced on a broadly similar timeline to those in New Zealand, although *paid* maternity leave existed in the UK 24 years before New Zealand women were accorded this entitlement. In 1975 legislation introduced the statutory right of up to 40 weeks' unpaid maternity leave, and in 1976 this was extended to include job protection and unfair dismissal clauses (Earnshaw 1999). A statutory paid period of six weeks operated from 1977, with eligibility for pay predicated on two years' continuous service (or five years for those working between 8 and 16 hours per week).

As of April 2007 all women in paid work in the UK have been entitled to 26 weeks of ordinary maternity leave and 26 weeks of additional maternity leave. Thirty-nine weeks of this period is paid as Statutory Maternity Pay (SMP) if at the qualifying week (15 weeks prior to the expected date of delivery or adoption) a woman is employed, has had the same employer for at least 26 weeks, and is earning above the lower earnings limit for national insurance contributions (£90 per week for 2008). The first six weeks of leave are paid at the higher of either 90% of earnings or the prevailing flat rate, and the remainder at the lower of either 90% of earnings or the prevailing flat rate. This is currently set at £117.18 per week. Those who do not qualify for SMP, but have been in some form of paid work for 26 of the last 66 weeks, can apply for a Maternity Allowance (MA), which is paid at the lower of either the flat rate or 90% of previous earnings (Department of Trade and Industry 2007b).

During pregnancy, women in the UK are entitled to paid leave to attend antenatal classes or medical appointments (Department of Trade and Industry 2003). Job protection while on leave varies according to the length of leave taken. Those who take only ordinary maternity leave are entitled to return to the same job, and maintain related privileges (such as a company vehicle) for the duration of their leave. Those who take the full 52 weeks' leave may be offered a similar job on their return if their employer can prove good cause (Department of Trade and Industry 2007b, Lewis and Campbell 2007). While on leave, women are able (at their own discretion) to engage in paid work for up to 10 days -- known as "keeping in touch days" (Department of Trade and Industry 2007b).

Fathers (and partners, including same-sex partners) in the UK are currently entitled to two weeks' paternity leave if they have 26 weeks' service with their employer at the qualifying week, and Statutory Paternity Pay (SPP) if they earn above the lower earnings limit for national insurance contributions. SPP is paid at the lower of 90% of earnings or the same flat rate as applies for SMP. Both mothers and fathers/partners are entitled to take up to 13 weeks of unpaid parental leave per child, which is to be taken in blocks of no more than four weeks up until the child turns five (Lewis and Campbell 2007). Parents are also legally entitled to time off for family emergencies, and, as in New Zealand, are legally entitled to request (but not necessarily to be granted) flexible working arrangements.

Statutory maternity and paternity pay is paid directly by UK employers, but they may reclaim 92% of the amount they pay from the government; small businesses may be eligible to claim back 104.5% of these costs (Department for Business, Enterprise and Regulatory Reform[5] 2007). The Maternity Allowance is administered by the Department of Work and Pensions. Further improvements to paid parental leave during the current parliamentary term have been foreshadowed that will see the entire paid period for British mothers increased to 52 weeks,

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[5] Formerly the Department of Trade and Industry.

with part of this period being transferable to fathers if the mother returns to work (Department of Trade and Industry 2007a).

## PROGRESSIVE ASPECTS OF UNITED KINGDOM POLICY

Several aspects of the UK's paid parental leave policies directly address those issues that have been raised in regard to New Zealand's current provisions (Families Commission 2007, Callister and Galtry 2008). For example, women in the UK who have been continuously attached to the labour market but have recently changed employer have an individual entitlement to a flat-rate payment that is not assessed on family income. Women who have worked less than 10 hours a week are still able to access employment-based payments, and the 90% replacement rate in the first six weeks goes some way towards acknowledging the different opportunity costs of childbirth for women in different income bands.

Although these aspects of UK policy appear quite progressive, in many ways the overall package of policies is both more protectionist and less gender neutral than those found elsewhere. For example, women are prohibited from working in the two weeks following childbirth -- four weeks if they work in a factory (Earnshaw 1999). While the idea of all women being out of paid work in the initial weeks after birth certainly has some merit, this policy would not address those aspects of parental choice that are considered important in the New Zealand context (New Zealand Government 2006). A compulsory period of leave for women also entrenches the idea that caring is solely the responsibility of mothers, and, by implication, not fathers. Leave intended for use around the time of birth is still demarcated specifically as maternity and paternity leave, and in fact the UK has the longest maternity leave in the EU (Lewis and Campbell 2007). There was also no statutory entitlement to paternity leave until 1999, whereas in New Zealand this was established (albeit unpaid) in 1987. Britain's Equalities and Human Rights Commission has recently suggested that extending *maternity* benefits without equivalent provision for fathers reinforces traditional patterns of care and may actually endanger women's equal participation in the labour force (Bennett and Ahmed 2008).

The UK has "ring-fenced" two weeks of leave for fathers and partners with payment for those who qualify. While international evidence suggests that ring-fenced periods of paternity leave contribute to gender equity in caring, provisions in the UK remain modest (Deven and Moss 2002). Paternity pay is at the flat rate, rather than related to earnings, and the individual entitlement to parental leave is unpaid. Current research suggests that many men in the UK elect to take annual leave at this time to ensure continuity of earnings (Thompson et al 2005), and this is corroborated by international evidence to suggest that take-up rates for fathers are higher where leave is based on individual entitlements for each parent, paid at a high replacement rate and able to be used flexibly; for example, on a part-time basis in combination with part-time employment (Families Commission 2007). However, provisions for parental leave that can be taken up until a child's fifth birthday and time off in the event of a family emergency, support ongoing family responsibilities in way that has not yet been seen in New Zealand. These policies acknowledge that parenting responsibilities cannot be entirely substituted by full-time childcare.

Although parental leave provisions that can be used by fathers are a positive feature, they are designed to be used as part of ongoing parenting commitments rather than around the time of childbirth. The maximum time that can be taken per year is four weeks. This may reflect a more realistic approach to men's involvement in caregiving, but does not provide for fathers

who undertake full-time parenting. The proposed introduction of a paternity leave scheme that permits a mother to transfer her leave to her partner (rather than providing an individual parental entitlement) would be an improvement, but would still create a barrier for fathers becoming full-time caregivers if their wives' employment histories did not qualify them for paid parental leave, as is the case in New Zealand. Despite these weaknesses, the overall package of maternity, paternity and parental leave available in the UK is more comprehensive than that available to new parents in New Zealand (see Table 1 for a summary of the key policy components).

**Table 1   Key Policy Components of Paid Parental Leave in New Zealand and the United Kingdom**

| Policy component | New Zealand | United Kingdom |
|---|---|---|
| Pregnancy-related leave | 10 days -- unpaid | 10 days -- paid |
| Compulsory leave following childbirth | -- | 2 weeks, or 4 weeks if working in a factory |
| Job-protected leave | 52 weeks (parental) after 12 months' employment of 10 hours or more per week | 52 weeks (maternity) for all women in paid work |
| Paid period | 14 weeks (parental) after 6 months' employment of 10 hours or more per week | 39 weeks (maternity) after 26 weeks' employment earning above the lower limit for national insurance contributions (assessed 15 weeks before due date) |
| Payment rate | 100% replacement rate with cap | 90% replacement rate for 6 weeks, then flat rate |
| Current value | Maximum of $391.28 | Flat rate £117.18 |
| Maximum rate / flat rate as a percentage of minimum wage (40 hours) | 81.5% | 53.1% |
| Payment as a percentage of national weekly average earnings | Women -- 52%<br><br>Men -- 42% | Women -- 20%<br><br>Men -- 18% |

| Alternative entitlement | Parental tax credit administered by Inland Revenue -- 8 weeks at $150 means-tested on household income | Maternity Allowance administered through Jobcentre Plus at flat rate for 39 weeks |
|---|---|---|
| Paternity leave | 1 (2) weeks unpaid after 6 (12) months employment | 2 weeks paid at the lower of either flat rate (same as SMP) or 90% replacement rate after 26 weeks' employment earning above the lower limit for national insurance contributions (assessed 15 weeks before due date) |
| Provision for workplace contact while on leave | -- | 10 days |
| Carer's leave | -- | 13 weeks per parent for each child, taken in blocks of 1 week, for a maximum of 4 weeks per year, until child is aged 5 |
| Family emergency leave | -- | Employees legally entitled to time off for family emergencies. No statutory right to pay. |
| Flexible working arrangements | Right to request -- employees with caring responsibilities | Right to request -- employees with a child aged under 6 or under 18 if disabled. |

## HOW HAS THE UNITED KINGDOM BEEN ABLE TO INTRODUCE THESE POLICIES?

Both New Zealand and the UK are characterised as liberal welfare regimes (Esping-Andersen 1990, O'Connor et al. 1999) due to features such as modest and targeted benefits, low levels of decommodification (i.e. the extent to which a person can exist independently of the labour market), and a higher level of income inequality than is seen in other countries (see Korpi 2000). Given this, the emergence of a (relatively) comprehensive policy framework for paid maternity leave in the UK, and plans to extend this framework further, are somewhat surprising. Furthermore, the rapid shift from policies framed solely as maternity benefits to policies based on parenthood represents a significant rhetorical shift. These changes can in part be attributed to the increasing relevance of social investment as an alternative to both monetarism and Keynesianism (Kilkey 2006).

However, a closer examination shows that many of the components of the UK's package of parental leave benefits that are more comprehensive or generous than New Zealand's are in place as a direct result of its membership in the EU (Duncan 2002). Articles of EU legislation such as the 1992 Pregnant Workers Directive (92/85/EC) and the 1999 Parental Leave Directive (96/34/EC) have had a significant impact on the policy environment, and are further embedded in broader EU concepts and frameworks such as the European Employment Strategy and the Lisbon Agenda (Hardy and Adnett 2002).

Employment requirements to qualify for paid leave in the UK are much less stringent, and therefore many more women are entitled to paid leave, because discrimination between full-time and part-time workers were alleged to be incompatible with provisions in the Treaty of Rome relating to equal pay for equal work (Earnshaw 1999). The Pregnant Workers Directive made its way into British legislation somewhat by stealth, as a health and safety measure. This Directive required "a minimum of 14 weeks' leave, protection from dismissal, maternity pay at least the level of statutory sick pay and protection from health and safety risks" (Earnshaw 1999:173). There was initially a transition period where separate entitlements existed for those who qualified under different measures, but the Directive eventually lifted standards of provision for all recipients, and ensured that many more women became eligible for a period of paid leave.

When the Parental Leave Directive was introduced in 1995, the UK was one of only three EU countries whose policies were not already compliant (Falkner and Treib 2003). However, as the Conservative government had opted out of the Social Protocol in 1992, the UK was under no obligation to implement its requirements (Sifft 2003). Perhaps significantly, this also meant that the UK was unable to exercise a veto with regard to policies in this area. Although the incoming Labour government of 1997 chose to sign up to the protocol, it was then obliged to introduce time off for family emergencies and an individual parental entitlement to three months' unpaid leave.

These three examples suggest that policy in the UK has lagged far behind that of its European neighbours, and where changes have been made it has frequently been through compulsion rather than by choice. Sifft argues that "without exception British Tory or Labour governments have implemented only the minimum standards of EC equal opportunities directives -- or even less" (2003:154), and that "no other European government has so firmly insisted on its sovereign rights in social and gender policies" (2003:150). Despite the demands of the European Union, policies on maternity, paternity and parental leave continue to reflect fundamental aspects of the liberal welfare state and can certainly be described as modest, targeted and contributing to social stratification (Wincott 2006). While this illustrates the difficulties involved in introducing social democratic policies into a traditionally liberal policy environment (see Taylor-Gooby and Larsen 2004), it also demonstrates the potential for these policies to be successfully adopted in countries that do not have a history of social democratic welfare programmes.

Although third way politics and social investment discourses have clearly played an important role in the ongoing development of parental and maternity leave policies, especially in relation to the role of fathers (see Kilkey 2006), those aspects of the policy package that have progressed beyond what has been achieved in New Zealand appear to be tightly linked to the demands of the European Union. Weak domestic actors in New Zealand do not have an equivalent of the EU to which these types of appeals can be made. The Council of Trade Unions and Human Rights Commission, among others, has repeatedly highlighted New Zealand's non-compliance with the International Labour Organisation's Maternity Protection Convention, which New Zealand is party to, but this failure to comply does not carry the same moral or legal consequences as departures from EU legislation (Council of Trade Unions 2004, Human Rights Commission 2004).

# COULD NEW ZEALAND ADOPT THE MORE PROGRESSIVE ASPECTS OF UK POLICY?

Despite changes in direction since 1999, particularly a stronger focus on social development, social investment and social inclusion, New Zealand's social policy environment remains firmly within the liberal paradigm. In the UK the emphasis on social investment has not itself been enough to prompt the introduction of more generous maternity and parental leave policies. However, the UK experience clearly demonstrates that it is possible for liberal welfare states to introduce these types of policies without putting economic interests at risk. But without the influence of the EU or its equivalent to encourage policy change, it is unclear if there is sufficient momentum for further change in New Zealand.

Paid parental leave policy in New Zealand has thus far been a weak response to the new social risks, such as changes in family structure and changing labour market participation across the life course (see Families Commission 2008). The Families Commission (2007) has canvassed possible developments and recommended that the paid period of leave be extended, maximum payment caps be increased, a ring-fenced period for fathers/partners be introduced, and flexibility allowed in the ways leave can be used. This suggests some consensus that current policies are inadequate, and that 14 weeks is not long enough to have a meaningful impact on the reconciliation of work and family life. The design of the current policy also makes it particularly ineffective at serving those whose paid labour is located in part-time, fixed-term or casual contracts. These failings could lead one to believe that the raison d'etre of paid parental leave in its current state has been to contribute to economic growth rather than the wellbeing of families. Nevertheless, an evaluation of parental leave policy conducted in 2005 and 2006 found that those families who were entitled to payments welcomed the financial support they received.

In New Zealand, the Labour-led government has indicated that the labour-force participation of women (and particularly mothers) is a high priority. Prime Minister Helen Clark's opening statements to Parliament in both 2004 and 2005 spoke of New Zealand's low female labour-force participation rates compared to OECD averages, particularly for women aged 25--34, and the impact this has on productivity and GDP in the New Zealand economy (Clark 2004, 2005, see Johnston 2005). Several strategies have been identified in an attempt to increase the labour-force participation of this group, including higher childcare subsidies, increased annual leave entitlements and improved provisions for paid parental leave. The Prime Minister stated that these policies would better enable women to "continue their commitment to the workforce" (Clark 2004). It seems likely, then, that any extensions or additions to the current scheme will be assessed primarily on their ability to alleviate traditional economic and labour market concerns, and, to a lesser extent, public health concerns for mothers and babies (see Galtry 1995). Other aims of paid parental leave -- such as stabilising family income, achieving gender equity in both the labour market and the family, and recognising the value of time spent caring for children -- seem less likely to take precedence.

Although some have argued that the expansion of parental leave provisions in many countries runs counter to the retrenchment of the welfare state in other policy areas (Avdeyeva 2006, Evans 2007), Skevik (2005) argues that parental leave and publicly funded childcare are more than compatible with the labour-market activation policies (such as workfare and welfare-to-work) that have risen in popularity in both the UK and New Zealand. These policies are based on a belief system that promotes "the wage as the best form of welfare, employment as

a means of social inclusion, and a flexible labour market as the best means of promoting economic growth and increasing employment" (Lewis and Campbell 2007:6).

Strengthening women's attachment to paid employment fits within this model because it allows governments to reduce spending in the long term. Parental benefits encourage young women to enter the labour force and become financially independent prior to becoming pregnant (Ruhm 1998). Women who continue to participate in paid work while in couple relationships and during their childbearing years are less likely to require support from the welfare state when a relationship ends (Skevik 2005). Although these factors also potentially have positive implications for women's personal and financial autonomy, the current policy of low-level payment and narrow eligibility mean that these eventualities are severely limited.

The UK certainly provides some good examples of parental leave policies that could be imported into the New Zealand context, such as paid leave for pregnancy-related medical appointments and the ability to keep in touch with the workplace while on leave. However, it seems that without external compulsion to introduce measures specifically designed to address gender inequalities, both countries will elect to introduce only those policies that are in harmony with economic goals. It seems likely that, despite rhetorical support for policies that support work--family balance (Collins 2007, New Zealand Government 2006), successive New Zealand governments will continue to introduce "the minimum standards ... or even less" (Sifft 2003:154) rather than develop the kinds of policies that have been seen overseas to have a real impact. Also, as international research and UK policy has shown, it is notoriously difficult to develop policies that balance the needs of children and parents, let alone the desire of governments to reduce spending and increase productivity (Callister and Galtry 2005).

Parents' work and parenting decisions are clearly not based solely on the availability of paid parental leave, but nor can they be based solely on personal preferences. Structural factors such as employer flexibility, affordable childcare, annual leave and tax policy all have an impact on the choices that parents make. Recent additions to parental leave policy in the UK have not only eased some of the constraints of combining paid work and parenting for parents in the UK, but have demonstrated that these policies can function, and flourish, under the social, economic and cultural conditions these two countries share. Despite the appetite among parents for effective policies to support paid work and parenting, further developments in New Zealand remain uncertain.

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# FACILITATING FERTILITY AND PAID WORK: CONTEMPORARY FAMILY-FRIENDLY POLICY INITIATIVES AND THEIR SOCIAL IMPACTS IN AUSTRALASIA

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**Abstract**

This paper focuses on contemporary public perceptions of the challenges of combining paid work and raising a family, set against the backdrop of concerns about low fertility, structural population ageing and the composition of the future labour force. Australasian policy makers have responded to these issues with various initiatives aimed at assisting people who are raising families and engaging in paid work. The New Zealand Working for Families package, the Australian Family Tax Benefit package, and the two countries' parental leave and women-focused policies are compared, with a focus on cross-national similarities and differences. The most significant difference between the two nations is the lack of a paid parental leave scheme in Australia, but the family-friendly policies are similar in perpetuating tensions between ensuring both present and future labour supply. The policies are aimed at providing incentives to be in paid work when parents have children, but tend to reinforce the notion of work and family as separate spheres, and potentially contribute to social divisions between parents and non-parents by providing cash benefits to families with children. This analysis suggests that Australasian societies may be on the cusp of a more collective articulation of people's obligations to one another and the nation, including the collective consequences of personal lifestyle decisions such as choosing not to have children.

## INTRODUCTION

Raising a family and participating in paid work are increasingly recognised as competing demands by many parents in contemporary Western societies (Families Commission 2008; House Standing Committee on Family and Human Services 2006; OECD 2002; OECD 2004). The financial costs of having children, the rising general costs of living, the common physical separation of the spheres of home and employment, and the gendered nature of childrearing and "breadwinning" are issues that many parents juggle on an everyday basis. These issues also frequently form the basis of the decisions by growing numbers of people in OECD nations to delay having children or remain childless. Voluntarily childless people, especially women, commonly experience social criticism for choosing not to be parents, but this negative reaction is often balanced by the increased choices available to them because their employment and non-work activities are not organised around children (Cameron 1997; Maher and Saugeres 2007; Park 2002). The greater career, education, travel and leisure opportunities available in the globalised contemporary world are increasingly being weighed

by young men and women against the perceived benefits and burdens associated with parenthood.

Australasian statistics reveal similarities in the social landscapes of New Zealand and Australia as a result of the competing pressures and choices faced by young adults. The numbers of voluntarily childless people in both nations are rising, and total fertility is below levels needed for population replacement, particularly in Australia, where fertility has become an explicit concern for government (Australian Bureau of Statistics 2008b; Boddington and Didham 2008; Callister and Didham 2007). Women's participation in both national workforces has increased, yet Australasian labour forces are steadily ageing (Australian Bureau of Statistics 1999; Statistics New Zealand 2008a). Australasian governments have responded to these issues with a variety of social policies aimed at the problems faced by people struggling to combine family and career, and at potential deficits in labour supply. In Australia, policy has also recently begun to address sub-replacement fertility.

Besides the historical close relationship between New Zealand and Australia, comparison of Australasian family-friendly policies is particularly relevant in a period where the countries are effectively competing for population and labour force (Hugo 2004:37). The 1973 Trans-Tasman Agreement allows New Zealand and Australian citizens to live and work in either country without negotiating the immigration channels required by other foreign nationals. The direction of current migration flows indicates that Australia is perceived more favourably by citizens of both nations at present, as a large number of New Zealanders are crossing the Tasman in relation to a much smaller number of Australians moving to New Zealand.[2] The trend to migrate to Australia has been exhaustively covered by the New Zealand media, which commonly represent Australia's larger economy as offering greater opportunities for employment and financial prosperity. In this context, the family-friendly policy initiatives of both countries are likely to be one of many factors that will influence the migration decisions of people who are comparing the benefits offered by each country.

This paper compares current family-friendly[3] policies in New Zealand and Australia against the backdrop of media and social research that reflects public perceptions of the challenges of combining work and family. Two sets of policies that are roughly comparable -- New Zealand's Working for Families package, parental leave policy and Action Plan for New Zealand Women, and Australia's Family Tax Benefit package, parental leave policy and 2008 Women's Budget Statement -- are analysed with a focus on the collective social outcomes these policies are directed at achieving. Although the most significant difference between the family-friendly policies of the two nations is the lack of a paid parental leave scheme in Australia, both policy sets attempt to reconcile present and future labour force requirements by encouraging women's participation in paid work, while recognising the importance of women's "reproductive labour" (Maher 2007:169) and its collective benefits. These policy strategies tend to reinforce the notion of work and family as separate spheres, and potentially contribute to tensions between parents and non-parents by providing cash benefits to families

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[2] Over the past decade the ratio of New Zealand migration to Australia versus Australian migration to New Zealand has been approximately 7.5:1 (Whiteford 2007). However, the predominant focus on the exodus of New Zealanders to Australia has often overlooked the circularity of Trans-Tasman movements and the considerable flow of New Zealanders moving back to New Zealand (Hugo 2004:35).

[3] Family-friendly policies are those that "facilitate the reconciliation of work and family life by fostering adequacy of family resources and child development, facilitate parental choice about work and care, and promote gender equality in employment opportunities" (OECD 2004:10).

with children. The policies also focus on the family unit rather than gendered roles of mother, father, woman or man, while at the same time having gendered implications.

## FAMILY AND WORK IN CONTEMPORARY AUSTRALASIA

### Public Perceptions

Contemporary media representations of issues of work and family indicate widespread public concern about the challenges of combining parenting and paid work. Voluntary childlessness[4] is a lifestyle choice that has received increased attention in this context as a new trend that has emerged in response to the stresses faced by parents. Media representations of the experiences of parents and non-parents are largely consistent with themes that have emerged in social research. Relatively few people delay having children or decide not to have children on the basis of not liking them; instead, factors such as career, relationships, finances and lifestyle tend to inform decision making, as well as a common recognition of the potential emotional and financial burdens involved in raising a family (Cameron 1997; Gillespie 2003; Letherby 1994; Letherby 2002; Lunneborg 1999; Maher and Saugeres 2007; Morell 1994). The freedoms that are characteristic of the lives of voluntarily childless people also tend to be what many parents most struggle to achieve. Gray et al. (2008:2) suggest that Australia's "low fertility rate is not due to a lack of wanting children", but rather the influence of contemporary financial and work-related pressures on the fertility decisions of Australian couples. Parents commonly see work and family as to some extent incompatible, and as separate spheres of life with no natural crossover (Maher 2007; OECD 2002; OECD 2004; Probert et al. 2000).

### Fertility, Population and Labour Force

Public perceptions of what it means to be a mother, father, parent or non-parent in Australasia have implications for the present social context, as well as for the future. People who perceive it to be difficult to manage the demands of both parenting and career may opt out of either one in favour of concentrating on the other. People withdrawing from paid work to raise children potentially contributes to lower family incomes, a shortfall in the contemporary labour force and the absence of a working-parent role model in some children's lives. Conversely, people deciding not to parent, or postponing parenting, potentially contributes to a decline in fertility rates that has repercussions for the level and structure of the national population and the "financial sustainability of social protection systems" (OECD 2004:10). Although Maher (2007:161) suggests women are most affected by such issues, given that they inevitably "carry the main burden of combining caring and paid employment", it is clear that fathers who, for instance, work long hours to support their families, also experience a burden in combining parenting and employment. In these terms, the key issue is differences in patterns of paid and unpaid work undertaken by mothers and fathers, especially when children are young, and the discrepancy in financial rewards between them.

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[4] Although I use the term "childless" for communicative economy, and because it is the dominant term throughout the literature, it tends to imply "an absence or deficiency" that does not reflect the perspectives of those who choose not to have children (Gillespie 2003). As Cameron (1997) has noted, most terminology used to describe voluntarily childless people is clumsy, offensive or irrelevant to non-parents, parents or both, and does little to make distinctions between those who choose not to have children, and those who find themselves childless as a result of infertility or circumstance.

Australasia is already affected by issues of labour supply and population ageing, and there are cross-national similarities in fertility levels and population and labour-force projections. Despite small overall increases in fertility in New Zealand and Australia over the last decade, both nations experience sub-replacement fertility (Statistics New Zealand 2007). This is perhaps not surprising given that recent census data reveal similar high employment rates for women in the main childbearing age bracket of 20-40 years. Between 60 and 75% of New Zealand women in this age bracket were employed in 2006, as were 60 to 70% of Australian women (Australian Bureau of Statistics 2008a; Callister and Didham 2007). New Zealand has high fertility in relation to female employment levels, and in comparison to many other developed nations, but total fertility of 2.0 is still marginally below the replacement rate of 2.1 (Callister and Didham 2007; Statistics New Zealand 2007). Australian fertility currently sits at 1.8, which is significantly below the 2.1 replacement benchmark (Australian Bureau of Statistics 2008b). This level of fertility became a concern for the government in 2004, which was made explicit in Peter Costello's famous "one for mum, one for dad and one for the nation" statement (Costello 2004). Unlike New Zealand family policy, contemporary Australian policy is characterised by this incipient pro-natal focus (Callister and Didham 2007; Jackson et al. 2006), although Lattimore and Pobke (2008:xvii) have recently argued that Australian policy is not explicitly pro-natalist in comparison to international examples. Sub-replacement fertility has been framed in terms of societal viability in Japan, Italy and Spain, for instance, where policies are in place specifically to raise birth rates (Callister and Didham 2007; Pool et al. 2007).

Low fertility levels can have implications for the size and structure of the future labour force. New Zealand and Australian statisticians both project their national populations will age dramatically, because comparatively low fertility rates over recent decades have provided fewer people to replace the large baby-boomer generation that is nearing retirement. Half of New Zealand's labour force will be older than 42 years in 2011 (Statistics New Zealand 2008a), while nearly a third of Australia's workforce will be 55 years or over by 2016 (Australian Bureau of Statistics 1999). The projected increases in older cohorts in the Australasian labour forces suggest that unless people continue to be in paid work until they are nearly 70, there may be a shortage of labour to meet future demands, as well as a reduction in future taxation revenues.

It is important to note at this point the strong link between fertility and migration. Replacement-level fertility is the number of children each woman needs to have to achieve "zero long-run population growth *in the absence of migration*" (Lattimore and Pobke 2008:xviii, my emphasis). As New Zealand and Australia both currently attract high numbers of potential migrants, migration could provide population levels that meet labour-force needs. However, given the low fertility currently experienced by many developed countries, there is considerable competition for migrants. Also, the highly skilled migrants who are most in demand are likely to have similar patterns of fertility to educated, employed people in developed countries, and this suggests low-fertility nations may be forced in future to look to nationals from high-fertility low-income countries to boost fertility (Callister and Didham 2007:8). The family-friendly and reconciliation[5] policies outlined here are attempts by Australasian governments to address labour-force needs and the negative potential of low fertility and population ageing.

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[5] "All those measures that extend both family resources (income, services and time for parenting) and parental labour market attachment" (OECD 2002:10).

## AUSTRALASIAN SOCIAL POLICY RESPONSES

### Family Payments

In keeping with the Labour Government's assertion that "the best form of social security is a job" (Prime Minister Helen Clark, TVNZ, 3 June 2008), New Zealand's Working for Families (WFF) package combines elements of family support with incentives to work. Announced in the 2004 Budget, the package had three key objectives: making work pay, ensuring income adequacy, and supporting people, particularly beneficiaries, into paid work (New Zealand Cabinet Office 2004:2).[6] WFF tax credits cover around three-quarters of families, and entitlement is based on the number of dependent children and the level and source of income of each family. Some key elements are conditional on a minimum amount of paid work. The package comprises six main elements:

- Family Tax Credit -- a payment for each dependent child aged 18 or younger
- In Work Tax Credit -- a payment of up to NZ$60.00 per week to couples who jointly work 30 hours a week or sole parents who work 20 hours a week, with one to three children (extra benefits apply for more than three children)
- Parental Tax Credit -- a payment of up to NZ$150.00 per week for a newborn or adopted baby for the first eight weeks or 56 days after birth (parents can claim either the parental tax credit or paid parental leave)
- Minimum Family Tax Credit -- a payment for families who earn up to NZ$22,645.00 a year before tax through paid work, to ensure a minimum net family income of NZ$355.00 a week
- Childcare Assistance -- a subsidy towards the costs of childcare for children under five, which is available for up to 50 hours a week for parents in work, education or training, and for up to nine hours a week for other parents; some changes to the Out of School Care and Recreation (OSCAR) subsidy are available for five- to fourteen-year-olds
- Accommodation Supplement -- assistance for low- and middle-income earners with the costs of rent, board, mortgage and other essential housing costs (Inland Revenue 2008).

WFF aims to subsidise some of the costs incurred by parents in having children, while providing an incentive for beneficiaries and employees to return to or remain in paid work. It is predicted that the package benefits "almost all families with children earning under $70,000 a year, many families with children earning up to $100,000 a year and some larger families earning more" (Ministry of Social Development 2008a). Approximately one-quarter of New Zealand families are entirely ineligible on the basis of income level.[7] Although WFF does not attempt to cover the total costs of raising children, the Families Commission considers the gap between WFF subsidies and actual costs to be a significant issue, as "the overall costs of having children (including opportunity costs) are still not fully recognised, and … may act as a disincentive to some people to have more children" (Families Commission 2008:60). The In Work Tax Credit element is the "key instrument" aimed at making work pay within WFF (Ministry of Social Development 2008b), although it has been criticised for doing little to encourage individuals or couples to take up additional work

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[6] Key background and policy relating to the development of WFF can be found at: http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/policy-development/working-for-families/future-directions-working-for-families.html.

[7] Figures for the 2006/2007 tax year show that around 371,000 New Zealand families with children received WFF tax credits in the period. This level of uptake is roughly in line with initial estimates that three-quarters of families would be eligible for the package (Ministry of Social Development and Inland Revenue 2007:10).

beyond the hours that are required to qualify for the payment (Dwyer 2005:viii). However, a recent government review found that the In Work Tax Credit is fulfilling its objective "as well or better" than anticipated, with a significant drop in those on the Domestic Purposes Benefit taking place around the time the credit was introduced (Ministry of Social Development 2008b).[8]

The Family Tax Benefit (FTB) package, introduced in 2000, forms the core of the family payments system in Australia. Unlike some elements of the WFF in New Zealand, the FTB is not conditional on employment and offers payments to most families with dependent children and extra help for families on benefits or low incomes. Australian family benefits are subject to income and assets tests, although they are relatively generous in comparison to the thresholds in New Zealand and many other OECD countries (Whiteford and Angenent 2002, cited in Gray et al. 2008:15). Over 80% of Australian families qualify for assistance (Brennan 2007; Gray et al. 2008). The main elements of Australia's family payments system are:

- FTB Part A -- an income-tested, per-child, age-related payment available to most families with dependent children
- FTB Part B -- an additional per-family payment for single-income families with dependent children, and those with low second incomes (income-tested on second income only)
- Child Care Benefit / Child Care Tax Rebate -- an income-tested benefit to assist with the costs of approved child care providers (qualifying parents who are in work, study or looking for work are also eligible for a tax rebate, which covers 30% of child care expenses to a set maximum)
- Baby Bonus -- a universal lump-sum payment of AU$5,000.00 per child to assist families following the birth or adoption of a child
- Parenting Payment -- a means-tested, fortnightly payment for a family's principal caregiver of up to AU$395.00 for partnered families and AU$546.00 for sole parents
- Employment Entry Payment -- an AU$104.00 one-off payment for people who previously received a Parenting Payment, on starting work (Australian Government 2008b; Centrelink 2008; Gray et al. 2008; OECD 2002).

FTB has been criticised for discouraging people -- predominantly women -- from entering paid work. FTB Part B, which entails high effective tax rates for secondary earners, contributes to reinforcing traditional male breadwinner / female caregiver stereotypes. This element makes it more beneficial financially for one partner to stay at home while the other increases their level of work, rather than sharing family care and work (Cass 2002, cited in Brennan 2007:38). In addition, the Employment Entry Payment is the only benefit for caregivers who move into work, and is so low as to be practically ineffective as an incentive to employment. The Baby Bonus payment currently provides universal cash assistance on the birth or adoption of a child, although from 1 January 2009 it will become a means-tested fortnightly payment. Eligibility will be limited to families with an adjusted taxable income equivalent to AU$150,000 or less per year, which will result in around 16,000 Australian families each year becoming ineligible for financial assistance following the birth of a child (Department of Families Housing Community Services and Indigenous Affairs 2008). Other changes to the Australian family payments system are to be implemented over the period to 2012 as part of the new Working Families Support Package, which includes measures such as

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[8] A detailed evaluation of WFF against the objectives of making work pay and improving income adequacy is due to be released in June 2009.

extra tax relief, an increase in the Child Care Tax Rebate and housing affordability assistance (Australian Government 2008d).[9]

## Parental Leave

The Parental Leave and Employment Protection Act 1987 provides New Zealand parents who engage in a set minimum of paid employment the statutory right to government-funded, job-protected paid parental leave (PPL) of 14 weeks. To qualify, parents must have worked continuously with the same employer for an average of at least 10 hours a week and no less than one hour in every week or 40 hours in every month in the six or 12 months prior to their baby's birth or adoption.[10] Payments equal an employee's gross normal pay up to a weekly maximum of NZ$407.36. In addition, parents who qualify are also entitled to up to 52 weeks of job-protected unpaid extended leave. The Act does not provide fathers with any independent right to paid leave, in spite of its stated aim to ensure gender equity within the labour market and within families. It assumes mothers will generally be the primary caregivers to children (Department of Labour 2007:8), and although mothers can transfer all or part of their PPL to their spouses, the Act tends to cement perceptions of women as primarily responsible for child care, whether they provide it themselves or not. Extended leave, which can be shared between both partners and taken separately or consecutively, is the element that most takes account of the role of fathers (or other partners) in caring responsibilities. The Act provides an incentive to be in paid work by making PPL available only to those in stable employment, and aims to balance an employee's interest in job-protected leave with an employer's interest in maintaining qualified staff (Department of Labour 2007:8).

Australia is the only OECD nation besides the USA without a nationally funded paid maternity leave scheme (Brennan 2007; Maher 2007). The Australian Fair Pay and Conditions Standard entitles permanent full-time, part-time and regular casual employees with at least 12 months' service to up to one year of job-protected unpaid leave following the birth or adoption of a child (Australian Government 2008a). In combination with this job protection legislation, the Baby Bonus effectively provides a period of paid leave for many parents, although it is not officially recognised as a paid leave scheme. This arrangement offers support on having a baby, but it fails to explicitly recognise that earnings are forfeited by mothers who take time away from employment for childbirth, breastfeeding and infant care. Over the optimum 14-week parental leave period recommended by the International Labour Organisation, the Baby Bonus is also equivalent to less than the minimum wage rate (Brennan 2007:43). Paid leave is only available via individual negotiation with employers, although some larger organisations offer it as company policy or on a collective contract basis. A significant percentage of Australians do have access to paid parental leave, but the extent of this leave is often far shorter than is ideal, sometimes only comprising a few days

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[9] Comparison of the levels of financial support offered by WFF and FTB is difficult. Payment amounts are often unclear because many benefits are income or asset tested, and a comparison that considers levels of support between economic groups as well as cross-nationally is beyond the scope of this paper. The Purchasing Power Parity (PPP) calculation, which eliminates differences in price levels between countries, provides a potential means of comparing the packages, although economists acknowledge that difficulties exist with PPP which can affect the comparison.

[10] Different entitlements are available to employees depending on whether they meet the six or 12 month criteria. Employees who meet the minimum hours test over a six month period only are eligible for 14 weeks paid leave, but ineligible for the 52 week period of extended leave. Detailed eligibility criteria is available at: http://www.ers.dol.govt.nz/parentalleave/employees/summary.html.

(Brennan 2007:44).[11] The implications of this lack of paid parental leave scheme for Australian fertility and the labour force are somewhat unclear, because determining the real effects of policies is a difficult task. Recent research presents a range of differing findings that suggest that, at best, family-friendly policies have a limited influence on fertility levels (d'Addio and d'Ercole 2005; Laroque and Salaníe 2005; Robertson et al. 2006; Sleebos 2003).[12]

## Women-focused Initiatives

Maher (2007) argues that women continue to be those most affected by the challenges of attempting to combine work and family, so it is worth briefly outlining the contemporary Australasian policy initiatives that focus on women. Lack of policy or research focus on men's roles in fertility and parenting decisions means that men are often overlooked in this regard.

The Action Plan for New Zealand Women (New Zealand's Plan), published in 2004, draws together various women-focused schemes to promote women's "suitable access to resources and opportunities; opportunity to choose and pursue a life path; full and active participation in society; adequate resources and support; freedom from discrimination; and … contribution to society" (Ministry of Women's Affairs 2004:3). The Plan lays out government objectives for improving women's economic sustainability, work--life balance and well-being, as well as specific aims for Māori, Pacific, elderly and rural women. Despite drawing on feminist goals of valuing all contributions made by women in the home or the public sphere, the Plan has been criticised for constituting motherhood as "invisible … inevitable and undesirable" while privileging women's participation in paid work (Kahu and Morgan 2007:134).

The Australian Government draws together policies aimed at women in annual statements that accompany Federal Budget announcements. The 2008 Women's Budget Statement (Statement) is comparable to New Zealand's Plan in that it announces a series of initiatives designed to "improve the lives of women and their families" and ensure women "will share more equally in Australia's prosperity" (Australian Government 2008c). Economic security and independence, safety, health and well-being are key areas of focus, along with the promotion of women's influence in decision-making and international affairs. Like New Zealand's Plan, the Statement places most emphasis on women's participation in the labour market. Attention is paid to women's roles as mothers, but having children is framed as something that must be negotiated in addition to paid work. Despite its focus on women as workers, the Statement does not deliver any additional support for women in the workplace, instead announcing that extensions to unpaid leave and the right to request more flexible working conditions will be developed in future, while paid parental leave models will be considered by the Australian Productivity Commission.

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[11] Estimates of access to paid leave vary somewhat, but most statistics suggest that between 30 and 50% of Australian women have some access to paid maternity leave (Brennan 2007; Gray et al. 2008; Maher 2007). There are fewer statistics available concerning men's access to paid parental leave, but the figures may be reasonably similar; for example, 31% of men had access to paid paternity leave in their job in 2004 (Gray et al. 2008:18).

[12] Laroque and Salaníe (2005), looking at France, and d'Addio and d'Ercole (2005), looking at 16 OECD nations, link government family benefit payments to higher fertility rates. However, Sleebos's review of research on the subject found only a "weak positive" relationship between fertility and policy (cited in Gray et al. 2008:14). Robertson et al. (2006:8) argue that "broader social and economic context, and individual values, preferences and attitudes" are more influential than policy on family form.

## POLICY IMPACTS ON AUSTRALASIAN "SOCIAL LANDSCAPES"

Even if people do not have direct knowledge of policy detail, the "social landscape [is] … influenced by the policy landscape" (Maher 2007:159). Comparison of the family-friendly policies of New Zealand and Australia suggests several significant collective social outcomes as a result of the aspects of work, family and gender that are emphasised or de-emphasised by governments. Both nations address concerns about an ageing labour force and future social viability by providing families direct cash assistance with the costs of raising children. This form of reconciliation support has been criticised by the OECD (2002) as being "primarily designed to support workplaces achieving labour market supply … rather than assisting families per se". The policies of New Zealand and Australia do, to varying degrees, tend to emphasise the importance of work over family. In particular, both women-focused schemes stress the importance of women's participation in paid employment, and frame raising children as something women will do in addition to participation in paid work. In this respect, the criticism levelled at New Zealand's Plan as "primarily designed to meet the needs of capitalism … the need to increase productivity and to meet … [an] increasing skilled labour shortage" (Kahu and Morgan 2007:144) is perhaps equally applicable to Australia's current Women's Budget Statement.

The childcare subsidies offered by both nations also suggest a strong emphasis on combining employment and raising a family. Because means testing in both countries generally provides this assistance only to qualifying lower- and middle-income families, childcare costs may still be a disincentive to having both parents working in many other families, especially in New Zealand, where income-testing thresholds are lower. There is a tension between the women-focused initiatives, which emphasise employment, and the family payments systems of the two countries, which have been criticised for failing to promote the work of both partners or levels of work beyond those necessary to qualify for particular benefits. This tension suggests Australasian governments are most concerned with ensuring labour supply, and tend to "hedge bets" in order to achieve some balance between present and future demands on labour. As Vincent et al. (2004:581) have noted, "women who have children stand at the nexus of [such] competing policy discourses", which gender or degender them according to current social or economic policy. While social policy tends to celebrate women's 'natural' mothering skills, economic policy strips away gender attributes to understand women simply as valuable workers who can contribute to the economy.

The competing economic and social discourses in current Australasian policies also support the separate-spheres model of work and family (Maher 2007; Vincent et al. 2004). When policy discourse represents work and family as separate spheres, people become less aware of an entitlement to combine both spheres (Maher 2007:167). This is particularly applicable to Australia, where the absence of a national paid parental leave scheme privileges the needs of employers over the needs of parents, and represents the workplace as a domain with no responsibility to the separate domain of the family. Both New Zealand and Australia have "work--life balance" plans that ostensibly help to connect the two spheres, although the programmes are significantly different. Legislation supports New Zealanders in seeking flexible working arrangements around family and other commitments, while Australia's programme consists of guidelines for employers of women.

The New Zealand programme aims to manage "the juggling act between paid work and other activities … including spending time with family" (Department of Labour 2008). Promoted by the Department of Labour, it informs employees and employers about their rights and

responsibilities under the Employment Relations (Flexible Working Arrangements) Amendment Act 2007, which allows employees with at least six months' service to an employer the right to request flexible working arrangements in order to care for family members. Australian work--life balance guidelines are not supported by legislation and are promoted by the Equal Opportunity for Women in the Workplace Agency as a potential benefit to employers rather than employees. In line with Australia's parental leave policy, the needs of employers are privileged over those of employees, and employers have the right to choose whether to allow flexible working arrangements. Australian guidelines are targeted specifically towards women, in contrast with New Zealand's gender-neutral legislation, which tends to reinforce the historically dominant Australian idea that women are primarily carers, even if they are also wage earners (Brennan 2007).

In contrast with their governments' considerable focus on the future, the wider publics of New Zealand and Australia are less likely to understand their own working and family practices as directly linked to the future viability of the nation. People tend to be most focused on their present circumstances, and so family-friendly policies are commonly understood as "individual benefits rather than … part of a broader social project" (Maher 2007:160). In these terms, the payment of cash benefits to families whose size and financial circumstances fit government guidelines contributes to the tensions that have been reported in the New Zealand media between parents and non-parents.[13] Social policies that increasingly frame having children as a lifestyle choice that may be encouraged and financially supported by the state also tend to highlight the personal decisions of those who choose not to have children. The exclusion of people who choose not to be parents from family-friendly benefits is based on the notion that others benefit from the actions of young adults who produce children who will generate tax to sustain them in their old age. While such policies cannot be said to contribute to the traditional stigma attached to voluntary childlessness, they do articulate distinctions between parents and non-parents in terms of their contributions to national well-being. In this context, those who do not plan to have children, or delay parenting, may well be constituted as not just personally "selfish", but also as undermining the collective interests of their generation.

The nature and level of Australasian family benefits are also unlikely to significantly increase fertility by offering voluntarily childless people, or those delaying childrearing, cash incentives to become parents. High-income, highly educated women are more likely to choose to remain childless than men or women with lower income and education levels (Beaujot 2000; Callister and Didham 2007). Accordingly, the relatively modest financial incentives offered by WFF and FTB are unlikely to compensate for the significant loss of income many childless women would incur if they withdrew from paid work to raise children for even a few years. Although Hakim (2003) essentially limits women's heterogeneity by claiming they can be assigned to one of three "types" in relation to paid work and mothering, her suggestion that lifestyle preferences are now central in women's decision making about these issues is relevant. For this set of people, at least, individual lifestyle preferences will likely remain the basis of decision making about whether or not to have children, and others will be seen as making personal lifestyle decisions rather than acting as "good citizens".

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[13] New Zealand media have recently reported a growing division between parents and childless people over state benefits that are available only to families with dependent children. This sentiment has been pronounced since the introduction of the WFF package, which has been criticised as unfair to childless people, who receive no financial benefit for their contribution to taxation revenues through paid work (ONE News 2008).

Brennan's (2007:32) claim that families, rather than gendered individuals, were the traditional focus of Howard-era reconciliation policies in Australia is broadly applicable to the policies explored here, which tend to favour the family unit. With the exception of the women-focused schemes, descriptors such as mother, father, woman or man have largely been removed from Australasian policy language. Both countries began to phase out gendered terms in the 1980s, when it became necessary to adapt the traditional male breadwinner model that was previously the mainstay of family policy to the new reality of women's increased participation in the workforce (Shaver 1999).

Despite the removal of most gendered terms, the WFF and FTB policies in particular have gendered implications. Both family payment schemes include elements that provide benefits for the work of one partner in coupled families, and discourage any additional employment by the other partner. These elements support rather than disrupt the male breadwinner model by offering little incentive for both partners to work, and potentially encouraging the employed partner (who has historically been male) to work more and contribute less to caring for children. The lack of a paid parental leave scheme in Australia inevitably also supports gendered family roles, as the unavailability of paid leave from work is likely to provide Australian women with less incentive to take a job before or between the birth of children, at the same time as putting increased pressure on Australian fathers to provide financial support for their families. Kahu and Morgan's (2007:135) assertion that "government policy is an important resource in the discursive construction of women's identities" must be extended to recognise the influence of social policy on men's identities.

## DISCUSSION

Despite a number of differences, "from afar, the social policy traditions of Australia and Aotearoa/New Zealand look remarkably alike" (Shaver 1999:586). This macro-level analysis of contemporary family-friendly policies largely reveals similarities between the two countries. Most significant is the cross-national government focus on current and future labour supply, which results in policies that simultaneously promote the importance of employment and of having children. The tensions between these aspects of Australasian policies are not oversights, but evidence of these governments' competing interests in achieving economic prosperity through adequate provision of labour in the present context, as well as ensuring future labour market supply. Such policies have significant implications for parents and non-parents in both nations. Ultimately, financial assistance is not provided on the basis of employment alone. Having children is crucial to entitlement to family benefits, extended leave from work and many of the women-focused policies in Australasia. Voluntarily childless New Zealanders and Australians experience many freedoms and lifestyle choices that are not available to parents, but their personal choice not to have children has significant implications for the level of financial and policy support they receive from their governments. This analysis suggests that Australasian societies may be on the cusp of a more collective articulation of people's obligations to one another and the nation, including the collective consequences of personal lifestyle decisions such as choosing not to have children.

Although Australasian governments provide many initiatives aimed at supporting parents in their decision to have children, having children increasingly has implications that family-friendly policies struggle to address effectively. "Having children is becoming more complicated and expensive in liberal welfare states" (Baker 2008:78), and issues such as the rising costs of living, low incomes, welfare dependency, childcare costs and availability, and

competition in job markets remain for many parents, in spite of policy programmes that ostensibly address these problems. Means-tested family benefit schemes deliver support for the costs of raising children unequally across economic groups cross-nationally, and initiatives such as the In Work Tax Credit, FTB Part B and Australia's unpaid parental leave scheme offer little or no incentive for both parents to work, or increase their level of work. Contemporary Australasian policies have not yet successfully integrated the spheres of family and work, particularly in Australia, and many parents continue to seek a work--life balance that is suitable to their needs.

In this context, having children is likely to emerge as another potential lifestyle choice alongside voluntary childlessness. Public perceptions about the difficulties of reconciling work and family, and the notion of choice offered by schemes such as work--life balance programmes, will likely contribute to a new Australasian context where young adults will increasingly make more considered decisions about fertility and employment on the basis of their personal circumstances, demands and opportunities, in spite of family-friendly policies inspired by broader societal goals. Pool et al. (2007:343) predict couples may consider having children in future in terms of what is "bio-socially and financially possible". This will include issues such as how parenting might restrict or permit other lifestyle and leisure opportunities, whether income and debt levels can sustain raising children, entitlement to family benefits, how benefits might affect, facilitate or negate parents' involvement in paid work, and how caring and breadwinning can be negotiated to both partners' satisfaction. As Baker (2008:78) has noted, the social and economic pressures that influence people's fertility decisions are not easily addressed by social policy. This is particularly applicable to the contemporary Australasian context, where future-focused policies create a tension between working and parenting, and contrast markedly with people's focus on the present conditions in which they live, work, raise children, delay parenting or choose not to be parents. Even if fertility is not an explicit concern of governments at present, there remains a need to consider how the challenges of combining paid work and parenting might affect levels of fertility in the future.

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# POLICE-INITIATED PROTECTION ORDERS (SAFETY ORDERS) AND THEIR POTENTIAL IMPACT ON WOMEN: A DISCUSSION DOCUMENT

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**Abstract**

Access to protection orders for women experiencing domestic violence has recently been identified as a problem in New Zealand, and ways of addressing this problem are now being developed. Police-initiated protection orders, called safety orders, have been proposed to provide immediate protection to women who experience domestic violence and to overcome some of the evidential difficulties that can arise through representation in the Family Court. This discussion paper was commissioned to provide a review of the literature relating to safety orders. The paper uses a conceptual framework to identify the implicit assumptions associated with safety orders initiated by the police, and then compares these assumptions with the relevant research findings relating to police interventions, the actions women take to protect themselves and the court's responses to breaches of protection orders. Finally, conclusions are drawn about the ongoing need for education of the police and court personnel, and the need for compassionate involvement of women and their advocates in new initiatives. Research is encouraged when new initiatives are under development in this area to detect unintended consequences.

## INTRODUCTION

In light of increasing international concern about domestic violence against women by their male partners (Garcia-Moreno et al. 2005), attention is being paid to new interventions that might usefully bypass some of the current problem areas. One such area is access to protection orders. Australia has been experimenting with police-initiated protection orders as a means to provide urgent protection to women who have experienced domestic violence, thereby avoiding the delays associated with protection orders initiated by the women themselves. A similar process is being developed in New Zealand (Ministry of Justice 2008).

This paper was commissioned by the New Zealand National Collective of Independent Women's Refuges to provide an independent review and discussion document on the merits and potential disadvantages of police-initiated protection orders, which will here be called safety orders. The paper begins with a description of domestic violence in the New Zealand context and follows this with a conceptual framework for the review. The paper then discusses some of the implicit assumptions of safety orders and compares these assumptions with the research findings. On the basis of this international and local research, some conclusions are drawn about ways to proceed with such innovations.

## THE NEW ZEALAND CONTEXT

Te Rito, the New Zealand Family Violence Prevention Strategy, defines family violence as:

> … a broad range of controlling behaviours, commonly of a physical, sexual and/or psychological nature which typically involve fear, intimidation and emotional deprivation. Such violence occurs within a variety of close interpersonal relationships, such as between partners, parents and children. (Ministry of Social Development 2002:8)

Under the Domestic Violence Act 1995 (DVA), domestic violence is defined as violence against a person "by any other person with whom that person is, or has been, in a domestic relationship" (DVA s. 3[1]), where a domestic relationship is defined broadly, and includes having "a close personal relationship" (DVA s. 4). Violence is defined as physical abuse, sexual abuse and psychological abuse, "including but not limited to … intimidation … harassment, … damage to property … threats of physical abuse ... sexual abuse or psychological abuse" (DVA s. 3[2]). Also, see DVA s. 3(5), which covers the situation where a child is caused to witness such violence, or where that child is put at risk of seeing or hearing such violence (DVA s. 3[3]). Note that the clause relating to children exempts victims of domestic violence from causing or allowing children to see such violence (DVA s. 3[3]).

Typically, domestic violence requiring protection orders in New Zealand is perpetrated against women by a male partner or ex-partner, and violence towards women partners appears to be relatively common in New Zealand, although severe physical or sexual violence is less common. In a large population-based survey, Fanslow and Robinson (2004) found that of 2,674 ever-partnered New Zealand women, 33--39% had experienced physical and/or sexual violence from a male partner at some point in their lifetime, compared to Australian figures of around 20% (Grande et al. 2003, VHS 2004). Severe violence lifetime prevalence in New Zealand was 18.9--23.4% (Fanslow and Robinson 2004). Around a third of New Zealand men admitted to using physical violence against their female partner at some point in their lifetime (Leibrich et al. 1995).

In 2005 the New Zealand Police recorded 62,470 offence and non-offence family violence incidents; 62,615 children and young people aged under 17 years were involved (TAVF 2006). Between 2000 and 2004 54 women were murdered by men through family violence, and three men were murdered by women (TAVF 2006). Although the overall murder rate is declining, murders that are domestically related are not (TAVF 2006); in fact the number of deaths of women due to domestic violence has increased from an average of nine per year in the 10 years to 1987 (Fanslow et al. 1991) to an average of 15 in the years 2000 to 2004, suggesting a real increase (see TAVF 2006). In 2007, 25 of 53 murders were recorded as family violence-related (TAVF 2007). In 2005 Women's Refuge supported 17,212 women and 9,904 children (TAVF 2006). Between 90 and 95% of all applicants for protection orders in New Zealand are women, and most respondents are men (Bartlett 2006, Law Commission 2003).

Protection orders are available in New Zealand under the Domestic Violence Act 1995 (DVA) and are provided through the Family Court, whereas breaches of the Act are enforced through the Criminal Courts. Protection orders offer protection to both the applicant and the children from physical, emotional and/or sexual violence (DVA s. 16 and s.19). An application can be sought without notice if there is a risk of harm or undue hardship (DVA s.

13[1]). Without-notice applications provide urgent temporary protection orders, but these orders do not come into effect until served and the orders can be varied prior to coming into effect (DVA s. 46). Courts must take into account the applicant's and children's perceptions of the nature and seriousness of the respondent's behaviour (DVA s. 14[5]). Once served, temporary protection orders may be challenged by the respondent (DVA s. 76). With-notice applications are served if there is no immediate hardship or harm and to allow the respondent to challenge the application. Temporary protection orders are made final after three months if there is no challenge filed after they have been served, or following a defended hearing that finds in favour of the applicant (DVA ss. 77 & 78). The DVA allows for an associate of an abused person to seek a protection order on their behalf (DVA ss. 11 &12).

There are proposals underway to amend the DVA so that it will accommodate police-initiated protection orders more robustly through 72-hour safety orders (Ministry of Justice 2008). The intention is that these orders will provide short-term safety in crisis situations through police removal of the alleged offender where there is no evidence of a criminal offence. The orders will have a no-contact provision and will be available immediately as a "civil law remedy" (Ministry of Justice 2008:3), in contrast to protection orders issued under the DVA, which take some time to be processed through the Family Court. Before a safety order could be issued, the attending officer(s) would be required to conduct a risk assessment and contact an authorising senior officer, who would determine whether "the grounds for the order have been met" (Ministry of Justice 2008:3). The following discussion focuses on the issues that should be considered as part of this development. First, the principles that guide the discussion will be explained.

## CONCEPTUAL FRAMEWORK

The whole area of domestic violence against women is complex and filled with traps for those unfamiliar with the territory. A conceptual framework for this discussion will help to provide a structure that will allow at least some of these traps to be avoided. This paper makes use of Hudson's (2006) suggested principles of justice in guiding the discussion: discursiveness, relationalism and reflectiveness. These principles are consistent with social science knowledge in this area, which acknowledges the importance of language and power to an understanding of the dynamics of domestic violence (Adams et al. 2003, Heise 1998, Pence and Paymar 1993, Ptacek 1988, Towns and Adams 2000, Towns et al. 2003, Towns and Scott 2006).

- The *principle of discursiveness* refers to the importance of language and the meanings that are given, not only to the ways in which laws are constructed, but also to the ways in which actions taken to enforce those laws may be interpreted. In this review, attention will therefore be paid to the ways battered women are able to speak and be heard when police initiate safety orders, and the messages that actions relating to these orders might convey to women and others.

- The *principle of relationalism* refers to the importance of relationships, and how comfortable people are to express themselves in those relationships, for understanding the actions people take. In particular, this principle acknowledges that people's reactions will depend on the context they are in: for example, a woman may react differently when with a certain man from the way she may react with others, and people from a population group may react differently when their ethnic group is the minority in a community rather than the majority. This principle "recognizes individuals as embodied in a network of

relationships, which include relationships with the community and with the state"(Hudson 2006:37). Hudson argues that rights are relational and are "regulatory safeguards against oppression" (p.37). The principle of relationalism recognises power relations where one party may engage in dominant and controlling practices over another. This review will therefore pay attention to relationships of power and the ways they may affect women when safety or protection orders are employed.

- The *principle of reflection* refers to the need for justice to be reflective and to consider the implications of actions it takes on those who may not have been considered in the formulation of its rules and regulations. Relevant to this principle are legal matters relating to the safety of women and the accountability of offenders. This principle is concerned with the need to move beyond generalised legal formulations and to pay attention to differences, in particular differences associated with race and gender, and with being in or emerging from an abusive relationship. This review will therefore attempt to examine the tensions and ethical issues relating to the implementation of safety orders. It will attend to the particular issues that arise for women in relation to the abusive relationship, and related safety and accountability issues when the justice system is involved.

Attention to these principles in a review of domestic violence against women is likely to address the criticism made of previous research in the area that it has failed to take account of context (Yllo and Bograd 1988).

Safety orders may be understood as an exercising of institutional power in the context of power exercised by a man through violence towards a woman. It is important to acknowledge the sensitivities around this power dynamic and the implications for the women who are victims of such violence in the development of any new policies.

## SAFETY ORDERS -- WHAT DO WE KNOW?

With the increase in domestic violence murders in New Zealand and increasing concern about women and children's safety, the attention being paid to an alternative approach involving police-initiated safety orders is not surprising. Evidence relating to the effectiveness of such orders is necessary, but in this literature search there were few peer-reviewed published research reports found relating to such orders and their use in New Zealand, Australia or elsewhere internationally. However, an excellent review of the issues associated with their implementation has recently been released by the Government of Western Australia (Department of Attorney General 2008).

New Zealand attention to such orders was initially drawn by anecdotal reports from Australia. For example, Jack Johnson, Deputy Commissioner of Police in Tasmania, spoke of the effectiveness of police-initiated family violence orders in increasing the reports of domestic violence following their initial introduction in Tasmania (*Checkpoint* 2007). Burton (2003) describes a qualitative study of 60 key stakeholders -- professionals and frontline support workers -- and their opinions of third-party applications. Burton's study raised the potential for unexpected harm through further violence towards the woman survivor; the benefits to those women who cannot afford protection orders; the benefits of the validation of state responsibility to hold the perpetrator accountable; the potential for inappropriate state

intervention; and issues relating to the survivors' consent and enforcement of breaches. Most participants in the study preferred police-initiated third-party applications.

Judge Boshier (2006) pointed to the possibility of using police-initiated protection orders in New Zealand to overcome limited access to the Family Courts over the weekend and to provide substantiation that there has been a violent incident:

> [An] exciting issue we are considering is a wholly new way of some protection orders being obtained in the first instance. In a number of Australian States, when Police visit a scene of domestic violence, they can hand to the alleged perpetrator, an injunctive notice which has the effect of a very short term protection order. There is merit in our looking at a similar but more comprehensive process, in New Zealand. … One possibility is that as a result of a domestic violence incident, frontline Police may apply to a commissioned officer for an order with the limited duration of seven days. If the victim wished to obtain protection beyond this time an application would need to be made in the Family Court. Such an idea has much to commend it but of course like all new ideas, needs to be thoroughly thought through and debated. (Boshier 2006:11)

In New South Wales, apprehended violence orders (AVOs) may be made by the police and are heard before a magistrate in court (Lawlink 2006). The police arrange for a police prosecutor to represent the woman in court and a domestic violence liaison person is assigned to assist the woman and the police prosecutor. If the orders are undefended, the magistrate makes the AVO on the same day. If defended, the magistrate makes a time for the orders to be heard and in the meantime an interim AVO may be made to protect the woman. Once the evidence is heard the magistrate will make the order if, on the "balance of probabilities", the woman is considered to fear the defendant and there are reasonable grounds for these fears. Under federal law the state or territory courts are responsible for protection orders and applications while the family courts are responsible for parenting orders (Irwin 2006). Each court (state/territory and family) operates under different jurisdictions, with different definitions of domestic violence and family violence (Irwin 2006). In New Zealand, both protection orders and parenting orders are the responsibility of the Family Court.

The attraction of safety orders to the New Zealand Family Court is that because the police are present at the scene of the incident they can verify whether an offence occurred. The police will have documented evidence of any report of assault, and this evidence will be brought to the attention of the Family Court at any further hearings. The argument is that, as the offender is likely to be present, the application can be served immediately and the order is therefore potentially immediately enforceable. Until recently, due to restrictive legal aid provisions, protection orders in New Zealand were commonly initiated through more junior lawyers, who may not have accessed police reports of incidents and who may not be as familiar with the dynamics of domestic violence and with interviewing traumatised clients (Towns and Scott 2006). If the incident happened over the weekend, the applicant may have to wait until the court sits before receiving any protection, whereas safety orders can be implemented immediately (Boshier 2006, Ministry of Justice 2008). For the Family Court, because the police have immediate access to the offending incident, safety orders will have the advantage of countering any respondent's challenge that the action in taking out the application was vindictive and related to care of the children (see Davis 2004).

## The Implicit Messages of Safety Orders

The meaning safety orders have for women needs to be considered before introducing these orders. One interpretation is that the police need to initiate such protection orders because the

woman cannot or does not. Under this scenario, the woman's action in failing to initiate a protection order herself may be seen as a personal failure on her part. If she knows about the potential for a protection order yet does not seek one for herself, then her decision may be considered to be ill-informed, neglectful or simply remiss. This implicit judgement of the woman needs to be acknowledged. A second interpretation is that the woman cannot take out the order because she is too fearful of the repercussions from her partner should she do so, or because she is too traumatised, and indeed this may well be the case for some women. This interpretation suggests that the woman is helpless in the face of her partner's offending, and therefore the police will lend support to her by initiating the safety order. This action signals to the offender that the woman has the weight of the state behind her.

Both interpretations potentially fail to take into account that the woman may be acting purposefully: that she may be making considered decisions based on her current situation, including information she has gathered and knowledge of her particular partner, the potential agency response and the context of the violence. For example, Towns and Scott (2006) found that women's advocates in a large New Zealand urban context were less inclined to encourage women to apply for protection orders because they lacked confidence that the court would proceed with temporary orders and that the police would act on breaches. Women's advocates noted that applying for protection orders involved a risk of further violence for many women applicants because for some offenders the application was like a "declaration of war" (Towns and Scott 2006:159), and women who sought their help needed to be fully informed of the risk. Under the DVA, when appointing a representative, reasonable steps must have been taken "to determine the wishes of the person to whom the application relates" (DVA s. 12[3] p.13).

## The Promise of Safety Orders

One appeal of police-initiated orders is the potential for preventing further domestic violence where there is repeated offending but difficulty in laying charges. If most women who experience violence from their partners have some form of protection order, then when the police are called to an incident they can at least charge the offender with a breach of the order. This presupposes, however, that the police routinely enact the law with regard to breaches of protection orders and that breach charges will be successful in preventing further violence. The latter presupposes a smooth process through the Family Court and the Criminal Court. In the following, the literature relating to the police response to protection orders and that relating to Family Court processes will be scrutinised in order to determine the validity of this presupposition.

## KNOWN POLICE RESPONSE TO BREACHES OF PROTECTION ORDERS

Women's experiences of police responses to domestic violence incidents in New Zealand are variable, with some women experiencing some officers as very helpful and supportive and some experiencing others as singularly judgemental and unhelpful (Hand et al. 2002, Robertson et al. 2007). One New Zealand study found that whereas some police officers were well aware of police policy in relation to domestic violence and spoke of intervening accordingly, some police officers appeared to determine their interventions in domestic violence according to their assessment of how deserving the victim appeared to be  (Towns 1999). Repeat call-outs without any apparent change contributed to a culture that labelled domestic violence incidents "just another domestic" that would be better dealt with through counselling interventions (Towns 1999). Similarly, research elsewhere indicates that some

police officers consider therapy to be more appropriate than sanctions with domestic violence offenders (Harris et al. 2001, Logan et al. 2006). The New Zealand Police attempted to address this culture through a mass media campaign message that "Family violence is a crime" soon after the DVA was first introduced, but this campaign was time-limited and has not continued.

## How Often Do Police Lay Charges of Breaches?

International research indicates that police officers do not routinely arrest for breaches of protection orders, even when there are mandatory arrest policies (Carswell 2006, Jordan 2004). In a review of the literature on the extent of arrest due to violation of restraining orders, Kane (2000) found an arrest rate of between 20 and 40%. In his subsequent study of 818 domestic violence incidents he found an arrest rate of 76% in high-risk situations, when arrest was made to prevent further injury, and an arrest rate of only 44% in low-risk situations, when the arrest was solely for breaches of the order. In one study officers presented with vignettes describing domestic violence incidents said that they would have recommended protection orders in 61% of cases but would arrest for protection order violation in only 21% of the cases (Rigakos 1997, cited in Kane 2000).

## When Do Police Lay Charges of Breaches?

Kane (2000) suggested that consideration should be given to the "custody threshold" (p.565), noting that police officers appeared to apply varying standards when determining when to arrest. Police officers were found to prefer treatment rather than sanctions in domestic violence cases, particularly if the offender had a drug and alcohol problem (Logan et al. 2006). Kane noted that the police operate in a climate that de-emphasises arrest, and that they typically rely on arrest as "an emphatic last resort" (p. 564). Police officers assessed whether decisions to arrest were related to the purposes of custody and therefore actively determined "arrest worthiness" (p. 564). He found that prevention of "risk and injury to the victim were the strongest predictors of arrest, above all factors including violation of the restraining order" (p. 576). Although violation of the restraining orders was recognised by police officers as legitimate, "they appeared to have the propensity to stop short of actually enforcing the orders" (p. 576). Accordingly, Kane recommended that officers be trained to recognise different custody standards and taught to understand the importance of arresting for administrative purposes -- such as when breaches occur.

## Prosecutions for Breaches and Associated Risks

Towns and Scott (2006) found that although arrests for breaches do occur, custodial sentences for breaches were the exception in New Zealand:

> In the period 2003/2004 there were 3,518 charges laid nationally for breaches of protection orders and in the period 2004/2005 there were 3,355 charges laid for such breaches. In 2003, 60% of prosecutions for breaches were successful. Around 10 to 14% of those convicted for breaches received a custodial sentence. The average custodial sentence at that time was three to four months. (p.158)

Charges for breaches may be laid for violation of the protection orders and for non-attendance at court-mandated programmes. Under the DVA programme, providers of programmes must inform the registrar of the Family Court if the man does not attend the programme and the registrar must bring the breach to the attention of the judge. Towns and

Scott (2006) found that the number of breaches laid nationally had increased since the introduction of the DVA, and that the successful prosecution rate was high relative to other offences. Nevertheless, because few of the offenders received custodial sentences and most offenders who did were likely to be freed from custody within a month or two, prosecution in New Zealand does not appear to offer women much protection from the fear of their partner's further offending, although a limited respite may be a sufficient turning point for some women who experience such violence.

In their review, Logan et al. (2006) found little research relating to the extent of prosecution for breaches of protection orders. In relation to prosecution in general involving domestic violence, they found that if prosecution was not pursued there was a high risk of re-victimisation compared to cases where prosecution occurred. Consistent with findings on police action regarding arrests for breaches, prior criminal history and victim injury appeared to be associated with prosecution and conviction (Logan et al. 2006). Coulter et al. (1999) found that although 58% of 498 women who entered a shelter called the police in response to domestic violence, less than a quarter of the abusers were arrested. Poor system response has been identified by Erez and Belknap (1998) as a reason why women are not prepared to co-operate with prosecution, although 43% of the women victims of domestic violence in their study had experienced encouraging behaviour from the police.

There may well be some women who are pleased to work with the police and are relieved that the police will initiate a safety order, thereby absolving them from blame by their partners or ex-partners (Burton 2003). These women would be pleased that there is state involvement in holding the man accountable for his actions. Such women may also consider that safety orders will assist them with access to Family Court sanctions. For these women, such orders might provide a useful transition to an application for a temporary protection order.

## FAMILY COURT RESPONSES TO APPLICATIONS FOR TEMPORARY PROTECTION ORDERS

Alongside the expectation of a consistent police response, women also hold expectations that their safety will be protected by the courts. Applications for protection orders in New Zealand are made in the Family Court, and in recent years there has been concern about the ways in which the DVA is implemented. The Family Court in New Zealand and elsewhere has come under considerable pressure from fathers' rights lobby groups. These groups are reported to have argued that temporary protection orders are misused by women for tactical advantage in child care disputes, that they are too easy for women to get, and that they are fundamentally unfair to fathers whose rights are violated by without-notice applications (Laing 2003, Law Commission 2003). Lawyers and judges are particularly sensitive to any potential for natural justice rights violations. Natural justice is considered to be a fundamental civil and political right that underlies the New Zealand justice system (Towns and Scott 2006). Natural justice in this context refers to the right to all documentation, and to be informed of any legal proceedings in order to answer any charges, a right of the respondent temporarily set aside when temporary protection orders are sought by an applicant under the DVA. Others have argued that the Act has been used when violence is only a "one off" or "situational" (Doogue 2004), although the Act has provision for use in such instances when the violence arouses fear (DVA s. 3).

In response to such criticisms, the New Zealand Law Commission (2003) suggested that the threshold for the provision of temporary protection orders should be lifted to involve "substantial harm" (p. 120), and that orders should be put on-notice whenever possible. This recommendation is contrary to the existing legislative criteria for without-notice applications of harm and undue hardship under the Act. There is also concern that such enactment without a legislative change to the DVA runs counter to the New Zealand Bill of Rights Act 1990 (NZBORA), which notes that no provision of any Act can be repealed because it is assumed to be counter to any provision of the NZBORA (NZBORA s. 4). Acts can only be changed through Parliament. Davis (2004) has argued that the court's attention to fathers' rights at the cost of women's access to protection orders amounted to gender bias.

Despite the discourses of fathers' rights groups and those who support them, there is no evidence that the DVA is used vindictively in New Zealand (Law Commission 2003). There are safeguards under the Domestic Violence Rules in that lawyers must certify that the contents of the application for protection order are truthful and that the order ought to be made (Law Commission 2003). Research elsewhere has found that, despite fears that protection orders would be used vindictively, they are not used as often as was expected by the small group of women who successfully navigated their way through their provision (Romkens 2006). Regarding the DVA, Atken (1998) and Clark (2003) have argued that the intention of the Act was to lower the threshold for the provision of protection orders in order to improve the safety of women and children after some horrendous deaths due to domestic violence. The objectives of the DVA specify "more effective sanctions and enforcement in the event of the protection orders being breached" (DVA s. 5[2(e)]). Clark (2003) has argued that concerns about natural justice human rights violations due to the provisions of the Act were unfounded because the Act provides rights protection for both applicants and respondents. More recently, Chief Family Court Judge Boshier (2006) noted:

> … we must balance the intention of the Domestic Violence Act to be able to deal with matters swiftly when required, against the denial of the respondent's rights when making a without notice order, and the possible impact upon the care arrangements of any children involved. This results in a trade-off. The Court grants fewer without notice applications but speeds up the process for applications with notice. (p.9)

Women's organisations' concerns are that with-notice applications, because they are served to the respondent, do not offer the same protection as without-notice applications (Hann 2004). There was concern that attention to the respondent's rights to natural justice had been balanced against a woman's right to safety and the safety of her children, in contradiction to the NZBORA[2] (Towns and Scott 2006). Validation for this concern is provided by the declining number of applications for protection orders, which have gone from 7,395 in 1997, a year after the DVA came into effect, to 4,560 in 2004/2005 (Towns and Scott 2006), and this decline continued in the following year to 4,534 (Boshier 2006). In the year to June 2006, 76% of applications for temporary orders were successfully granted, compared to 84.5% in the year ended 1999 (Boshier 2006). Final orders made as a percentage of total applications filed has steadily declined, from 62% in the year to June 1999 to 52.8% in the year to June 2006 (Boshier 2006), indicating that fewer women who seek protection orders had them made final.

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[2] See s. 8 and s. 9 of the New Zealand Bill of Rights Act 1990, which are concerned with the rights not to be deprived of life or to be subjected to torture or cruel treatment.

Perry (2000) found that 35% of applications for protection orders in the Christchurch Family Court were discharged by the court, and of those discharged within a month of the initial protection order application date, 54% of the applicants had been subjected to severe abuse. Of those discharged after one month from the initial protection order application date, 79% had been subjected to severe abuse. Perry questioned judges' ability to predict those applicants who were safe from further violence. In New Zealand, lack of Family Court resources was found to affect the time available and the information accessible for judges to make decisions concerning temporary protection orders (Towns and Scott 2006). The lack of resources and the failure to prioritise the seeking of protection orders may well affect natural justice for women applicants. Perry (2000) found that out of 73 cases, in only nine had the judges provided reasons for discharging or not discharging the applications for protection orders. When judges fail to provide reasons for not discharging the applications, the reasons are likely to be in the applicant's affidavit (Robertson et al. 2007), but when judges do not provide reasons for discharging the applications, this failure may have a direct impact on women's ability to appeal the decision.[3] Proposed amendments to the DVA will address this problem (Ministry of Justice 2008).

A lack of resources or a failure to prioritise protection orders may affect the time that judges have to apply to documentation and due diligence, and ultimately women's and children's civil rights (Slote et al. 2005). A similar lack of resources has been documented elsewhere. Freedman (2003) found that Family Courts were struggling to cope with the large numbers of applications for protection orders and for child custody and access hearings. Although there had been an increase in these applications, there had been no corresponding increase in resources allocated to deal with them. Freedman argued that this lack of resources has resulted in a fact-finding gap, particularly in relation to domestic violence, and secondary traumatic stress of those in contact with such violence in the Family Court. She argued the need for compassionate witnesses, particularly through interdisciplinary communities of support:

> It is important to note that the well-being of children is directly related to the well-being of the adults who care for them. Unless protective resources for adults experiencing domestic violence are widely available, children suffer. (p.571)

She noted that the lack of fact-finding resources, alongside unaddressed "judicial bias and reactivity" (p. 583), severely affected the ability of judges to make informed decisions, and this has a direct impact on the lives of women and children. In New Zealand the rights not to be deprived of life or not to be subjected to torture or cruel treatment are protected under sections 8 and 9 of the NZBORA, and the Act applies to institutional or professional practices associated with legal actions. The NZBORA puts into New Zealand legislation the United Nations International Covenant on Civil and Political Rights. New Zealand has ratified other relevant United Nations covenants that protect women and children from violence, including the United Nations Convention on the Rights of the Child in 1990, the International Convention on the Elimination of All Forms of Discrimination against Women in 1984, the Convention Against Torture and other Cruel Inhumane or Degrading Treatment or Punishment in 1989, and the Universal Declaration of Human Rights in 1948.

## COURT RESPONSES TO BREACHES OF PROTECTION ORDERS

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[3] This right to appeal is protected in New Zealand law under the DVA s. 91 and under the New Zealand Bill of Rights Act 1990 s. 27(2).

Towns and Scott (2006) found in a large urban area of New Zealand that there were significant concerns among men's programme providers and women's advocates about the follow-up of men who failed to attend court-mandated programmes -- a breach of the protection order. Estimates by men's programme providers were that only a third attend the first session of the programme, and one pointed to the lack of prioritising breaches by some court registrars, with the result that some breaches were simply not processed in the Criminal Court. Women's advocates said that this lack of accountability of the man, either through police or court lack of resources, alongside the movement in the Family Court to place applications without notice on notice wherever possible, had affected their confidence in the usefulness of the protection orders.

## MESSAGES TO BATTERED WOMEN

When women take out protection orders, the promise of these orders is that there will be state action: the police can be called and will offer protection should their partners breach the order, and courts will respond with accountability measures. Where there are mandatory arrest policies for breaches of the orders, the expectation of women who have experienced violence is that their partner will be arrested when they report a breach.

When the police enforce the law and act on breaches, women receive the message that their concerns about their safety are warranted and that the police will ensure their safety through law enforcement. Successful progression of their case through the courts will provide further messages to women and to others that domestic violence against women is unacceptable, and that the state has real concerns about such behaviour and will act to ensure it does not happen. On the other hand, failure of the police to enforce the Act and deal with breaches of the orders may provide a message to some women that that their concerns about their safety are trivial, unwarranted and unimportant, and that the police have more important activities than men's domestic violence against women. Failure of the courts to hold the man accountable further reinforces this message. As Erez and Belknap (1998) note, "Inappropriate or inadequate system's responses may cause battered women a deeper despair than the abuse itself" (p. 263).

The police's and courts' actions on breaches will also hold a message for the offender: he will be held accountable for his violence and his violence is not condoned. When the police or the courts fail to act, the women's male partner is likely to be supported by this lack of action and may see this as a further message that he can violate the orders with impunity. As the evidence suggests, he may actually increase his level of abuse against the woman. Safety orders will give added responsibility to police officers to ensure the messages women and offenders receive are ones of safety and accountability.

## WOMEN'S APPRAISAL OF RISK AND THE RISK OF RE-OFFENDING

Erez and Belknap (1998) state that the single most important barrier to women's co-operation with legal action is fear of the batterer. Whether women take out protection orders or not will depend on their appraisal of risk of further violence from the man. Little is documented about women's ability to determine their risk of experiencing further violence in the New Zealand context, although new work relating to death reviews of women killed through domestic violence may assist here. Research elsewhere has found that most women were able to predict their own *re-assault risk*, at least with the help of a risk assessment, indicating that agencies need to attend to the woman's own assessment of risk (Campbell 2004). This means

that women would need to be assessed separately from the abuser to ensure full disclosure of risk factors. In Campbell's study (2004), the majority of women who were killed were seen in the criminal justice system, the health system, the social services or a shelter in the year prior to their death, suggesting that safety planning was possible at this stage. The majority were seen in the health system. Most women who were killed had not accessed a shelter in the year prior to their death, and few women died who had been in shelters during this time. Campbell argues that this finding indicates the efficacy of shelter programmes and the need to link women's advocacy more directly with services.

Concerning *lethality risk*, Campbell's research on femicide suggests that at least 50% of the women who were killed did not accurately assess their partner as capable of killing them (Campbell 2004). Campbell suggests that when women assess themselves as being at low risk there is added need for a lethality assessment and safety planning, and for work in partnership with service providers that can keep women safe. Prior arrest for domestic violence was protective for those women who were most at risk, but increased the risk of murder or attempted murder for those assessed as being at lower risk. The majority of the killers had never been arrested for domestic violence, although 38% of the women killed had called the police in the year prior to their death. Protection orders were not found to be a significant risk factor for femicide relative to other factors: 24.5% of the women killed had a protection order.

International research indicates variable findings relating to the risk of further offending following the issuing of protection orders. A discussion of such risk needs to bear in mind that there will be methodological and jurisdictional differences between studies. In their review, Logan et al. (2006) found that between 23% and 70% of women with protection orders experienced a breach. In another review of the literature, Jordan (2004) stated that some studies found a reduction in violence following the issuing of protection orders, whereas a meta-analysis of stalking studies found the orders were violated around 40% of the time and that there were perceived worse events following the issuing of protection orders around 20% of the time (Spitzberg 2002). In a two-year follow-up study Klein (1996 cited in Jordan 2004) found that almost half of the offenders re-abused the victim after the order was issued. Risk of re-offending has been found to be associated with the severity and persistence in the pattern of offending, the level of resistance to the order, the presence of children biologically related to the offender, and the shorter term of the relationship (Harrell and Smith 1996, Carlson et al. 1999 cited in Jordan 2004).

Holt et al. (2003) found there were stronger decreases in risk when the orders were maintained over the full nine-month period following the incident that led to the issuing of the protection order, indicating the importance of final and long-term protection orders to reduced risk. Tellingly, in New Zealand the percentage of final orders granted annually relative to the number of applications has reduced (see above). Holt et al. (2002) also found increased likelihood of police-reported psychological abuse with temporary protection orders. A protective factor was the police arrest of the offender at the time of the incident that led to the protection order: the likelihood of severe violence decreased in the following year (Campbell 2004).

These findings suggest that research will be needed to ensure that the provision of 72-hour safety orders does not have the unintended consequence of increasing the risk to the woman of further violence from the offender. Under the new safety order provisions, the police will be expected to carry out risk assessments (Ministry of Justice 2008). Research might also

determine whether or not there are benefits from the immediate removal of the offender by the police when safety orders are instituted, and from the brief no-contact period. Of note is the fact that with safety orders the police will not be expected to find accommodation for the offender (Ministry of Justice 2008), and there is the possibility that he could return to harm the woman. Consideration needs to be given to the woman's appraisal of risk and the barriers to her seeking orders when engaging in any process of police-initiated protection orders, so that her control over her situation is not undermined and eroded through institutional practices.

## WOMEN'S DECISION TO SEEK PROTECTION ORDERS

Much can be learned from the research on women's decisions to take out protection orders when considering the introduction of safety orders. The international literature indicates that those women who seek protection orders have severe histories of violence (Logan et al. 2006): most have histories of severe threats, severe physical violence, economic and resource abuse, and reported injuries, and 20 to 30% have histories of sexual assault. For many of those seeking to obtain protection orders, the violence was becoming more severe and frequent and the psychological abuse was escalating (Jordan 2004). Increasing attention to the sexual assault and stalking of women who experience violence from their partners indicates that around half of men who enrolled in an intervention programme had sexually assaulted their partner at least once (Bergen 2006) and that stalking is highly correlated with domestic violence (Melton 2007). Stalking of women who had experienced domestic violence was more likely to occur if the abuser was no longer in a relationship with the woman, had an alcohol or drug problem, was more controlling, and had engaged in stalking previously (Melton 2007). Jordan (2004) found that most women who sought protection orders had experienced physical assault, beating and choking, threats of harm or death, sexual abuse, threats with a weapon, stalking, and harassment and/or assault of their children. Commonly, women who sought protection had had a lengthy exposure to abuse (Jordan 2004). Wolf et al. (2000) found that financial independence and the abuse of family or friends were important factors associated with the decision to take out protection orders. Erez and Belknap (1998) found that most women (90%) who called the police did so following a violent incident that resulted in an injury.

New Zealand research suggests that most women who seek protection orders have experienced severe violence, and that this violence has continued for years rather than months or weeks (Perry 2000). Of those who went through the Christchurch Family Court:
- the overwhelming majority (88%) had feared for their safety
- 20% considered that the physical violence was getting worse
- 63% feared for the safety of their children and 15% believed the violence was affecting their children
- 83% were separated at the time of the application and were "attempting to break the cycle of violence that had featured in their relationships" (Perry 2000:140).

These findings suggest that police officers attending any incident should pay particular attention to the criminal actions of the offender, as is recommended in the New Zealand Cabinet paper (Ministry of Justice 2008). Safety orders are not intended for use when a criminal offence has already occurred. The authorising officer must monitor for evidence of criminal action to ensure that safety orders do not replace the treatment of an offence as a crime. In the Western Australian experience, concern was expressed about the failure of some

officers to charge for a criminal offence when there was clear evidence of an injury to the woman (Department of Attorney General 2008).

## BARRIERS TO WOMEN SEEKING ORDERS

In their review, Logan et al. (2006) identified two types of barriers to women seeking protection orders: accessibility and acceptability. Under accessibility were eligibility criteria: meeting the statutory criteria for the provision of the orders, and bureaucracy, including repeated court hearings, limited hours for accessing the orders, and difficulties with serving the orders. Romkens (2006) found that "the cases in which the protection order was granted did not always seem to involve obviously more serious or more imminent threats than the cases in which it was turned down" (p. 170). She argues that the potential arrest of the perpetrator resulted in a rhetorical reversal in which "victims become inevitably constructed as possessing great powers that in the hands of individuals are subject to abuse" (p. 172), and it was this judicial and bureaucratic fear that precluded safe options for women. Other bureaucratic barriers included the applicant's and justice personnel's lack of knowledge of the system, the lack of 24-hour access to temporary protection orders, and the cost of the orders. Perry (2000) found that 72% of the Christchurch applicants were not in paid employment, although women who are limited financially are entitled to legal aid. Using qualitative research, Towns and Scott (2006) identified the cost of the orders in New Zealand, and the use of junior inexperienced lawyers due to inadequate legal aid, and their lack of interviewing skills, as barriers to women getting orders. New immigrant women require interpreters, which, at the time of the Towns and Scott study, were not routinely available in the Family Court.

Safety orders may offer a solution to some of the accessibility barriers women have experienced in getting protection orders, but this research emphasises the importance of educating junior and other police officers about the complexities of such violence towards women and the ways safety orders work. The proposed New Zealand safety orders will address the issue of 24-hour access to orders.

Acceptability barriers refer to the embarrassment that many women feel about the violence being brought out of the private arena and into public view (Logan et al. 2006), an issue that is relevant to safety orders. Some women may also fear the consequences of an order, which is served on the man. Perry (2000) found that, in the Christchurch Family Court, having the application changed to an on-notice application resulted in women withdrawing applications, as did the man's notice to challenge the application or defend the making of a final order. Negative perceptions of the justice system and poor prior experiences have been found to have an impact on women's determination to seek or pursue protection orders (Logan et al. 2006), and may have an impact on their determination to enforce the provisions of the order. Potential criminal charges or prosecution may also deter some women who are more concerned with reducing harm to themselves and their children than criminalising their partners through reporting breaches (Romkens 2006). There are also likely to be cultural barriers to enforcing orders (Balzer et al. 1997). For example, Māori[4] women were found to have sought fewer applications for orders than would be expected (Perry 2000). The impact on Māori and other indigenous cultures of colonisation and associated distrust of institutional practices should not be ignored (Cram et al. 2002, Glover 1993), and so safety orders may be an unwanted state intervention for these women.

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[4] Māori are indigenous New Zealanders.

## Safety

The extent to which safety orders actually offer safety will influence women's support of these orders, as can be seen from research on their applications for protection orders. As mentioned previously, fear of retaliation affects women's determination to pursue applications for protection orders (Logan et al. 2006). Lack of timely serving of the orders has been found to be a barrier to women accessing protection orders and should be alleviated by the immediate provision of safety orders. Harrell et al. (1993 cited in Logan et al. 2006) found that, of the women who did not obtain a protection order, 35% were talked out of the order by the offender, 11% were afraid of pursuing the order due to fear of retaliation, 6% were threatened by the offender, and in 4% of the cases the offender forced his way into the woman's home. Logan et al. (2006) found that the rate of failure to serve orders ranged from 18% to 91%, depending on the jurisdiction. The lack of enforcement (discussed above) also acts as a barrier to women, who are likely to decide whether to proceed with final orders on the basis of their successful enforcement of breaches of temporary protection orders (Logan et al. 2006). Women will need to see that safety orders are enforced if they are to have confidence in them. A lack of enforcement of the orders may discourage them from reporting breaches and from applying for protection orders, which may offer them more safety in the long run.

## Harm

In their review, Logan et al. (2006) found that there was a high risk of re-victimisation when prosecution was not pursued compared to when it was, although there was minimal research on the impact on women victims of violations of protection orders, and on prosecution and conviction associated with enforcement. Erez and Belknap (1998) note that when enforcing domestic violence law through the criminal courts:

> … attitudes, comments, opinions or assumptions of criminal processing personnel who deal with battered women can be, and often are, harmful and demoralizing to victims. … Negative comments or discouraging attitudes by criminal processing agents underline victims' powerlessness and helplessness. The data suggest that if police officers side and identify with the abuser, if they cannot appreciate the fear or vulnerability of the victim, if they do not recognize the power imbalance between the parties (all of these situations were mentioned as problems by the victims), these agents exacerbate the situation. (p.263)

These findings emphasise the importance of an appropriate response by the police to women who experience such violence. The new safety orders will mean that the police have added powers to remove offenders and enforce breaches. With these added responsibilities come increased requirements for accountability, although the Western Australian experience has been that in some cases police officers have not acted to protect the woman despite obvious criminality (Department of Attorney General 2008). Ongoing training, requirements for action, close monitoring and enforced officer accountability remain imperatives.

## BENEFITS OF PROTECTION ORDERS FOR WOMEN

Although women may experience violations of the protection orders, research suggests that many women report life improvements associated with their own initiation of an order. For example, Keilitz et al. (1997) found that of the 62% of their original sample followed up six months after obtaining an order, 85% reported life improvements, 93% reported

improvements in how they felt about themselves, and 81% reported feeling safer. Fischer and Rose (1995 cited in Logan et al. 2006) found that of 287 women who had obtained a protection order, 98% felt more in control of their lives and 89% more in control of their relationships. Johnson et al. (2003) argue that victims' assessment of the effectiveness of the order is complex and is not commensurate with subsequent violence: 48% of their sample considered the order to be effective, although more than half of this group had experienced violence after the order was issued. Women victims in this study found value in "building a paper trail" (p. 321) for any later arrest or prosecution. Research is required to determine whether women would experience these same benefits if the orders are police initiated.

## COMPELLABILITY AND DUAL ARREST

### Compellability

Police-initiated safety orders raise the issue of compellability. When a judicial procedure is initiated without the need for victim involvement, there remains the possibility that the matter may be heard in the Family Court, although at a later date (for example, if a woman's partner challenges the safety orders). At any subsequent hearing the woman will determine whether she is able or willing to co-operate with the court proceedings. If, for example, she considers that her co-operation may result in further risk to her safety or that of her children, she may determine that she does not want to participate in the court process. The Family Court judge, however, may be unwilling to discharge the order if the woman and her children are considered to be at risk. Under this scenario, the court will need to decide whether the victim needs to be heard and should be coerced or compelled to participate.

The woman may also be expected to appear in the Criminal Court if the respondent breaches the order within the limited time of the safety order. The police prosecutor will need to determine whether the woman victim/survivor is compelled to appear as a witness in the Criminal Court in relation to any such breach. Of note is that under the new Evidence Bill 2005, New Zealand police will be able to prosecute with less reliance on the victim, but the witness "can be required by the Court to give evidence" (Boshier 2006:16). However, the victim can be excused from testifying if the court decides that "requiring them to testify would cause hardship" (Boshier 2006:16).

Ford (2003) has argued that policies of witness coercion in the context of domestic violence raise serious questions that have not yet been addressed:

> Research is due on unintended consequences and policy backfires: To what extent do coercive policies dissuade women from prosecuting? What is the impact for victims of arrested batterers when prosecutors declare their cases too weak to prosecute? Above all, there is an urgent need for research to test the protective impacts of not only coercive policies but especially policies acknowledging the interests of battered women. (p. 681)

Ford (2003) has argued that there needs to be community dialogue within and outside the justice system in order to determine the best ways to proceed with prosecution in domestic violence cases:

> Can all parties agree on the prosecutor's responsibility to protect the victim whose batterer is being prosecuted? Is it appropriate that she be denied a part in the process in favour of general deterrence? Can prosecution be sufficiently flexible that it complements both victim strategies for self-protection and community-based initiatives for preventing domestic

violence? Should the state's interest in offender accountability obviate a victim's interests in safety on her terms? (p. 681)

While these questions were raised in the context of domestic violence prosecutions, they might also be applied to Family Court proceedings involving compellability.

## Dual Arrest

Alongside these concerns about compellability there is the issue of potential unintended consequences relating to dual arrest -- the arrest of both the man and the woman -- when police initiate safety orders, which is a major concern for women's advocates. Finn and Bettis (2006), for example, found that mandatory arrest policies were used as a justification by police officers for dual arrest. They found that police officers justified dual arrest as a legal requirement and through a desire to force the woman and man into relationship counselling. Saunders (1995) found that officers who arrested victims of domestic violence tended to believe that domestic violence was justified in some circumstances and that women remained in such relationships for psychological reasons. Stalans and Finn (2006) found a more complex picture, with experienced officers more likely to arrest only the husband than rookie officers, who generally tended towards dual arrest even when the husband was understood to be the primary assailant and there was knowledge that he had engaged in violence in the past. Experienced officers were more likely to engage in dual arrest if the injured wife was in a drunken state. These researchers note that:

> Laypersons and rookie officers were more likely to focus on normative issues such as who was to blame whereas experienced officers were more likely to consider pragmatic and legalistic concerns such as the future dangerousness of each disputant and the likelihood of a conviction. (p. 1150)

This finding reinforces the importance of education for inexperienced police officers, particularly in relation to dangerousness, and legal requirements for conviction in relation to domestic violence and breaches of protection orders. Carswell (2006) points to the need for police training in better evidence gathering "to identify offensive and defensive wounds" (p. 37), because research indicates that women who injure men are quite often acting in self-defence. Dual arrest was raised as a matter of concern in the Australian review (Department of Attorney General 2008:21), but more research will be required on the complex relationship between dual arrest and the provision of, or enforcement of, safety orders.

## BATTERED WOMEN AND CONTROL/EMPOWERMENT

Safety orders raise important matters central to women's experiences of domestic violence from their male partners or ex-partners, such as the issue of control. When women experience domestic violence they often experience a shattering loss of control over many aspects of their lives:

> Violent behaviours -- be they physical, psychological, economic and social -- are not just expressive acts but also instrumental acts that coerce the actions of others. The outcome of being coerced through exposure to repeated acts of violence is inevitably the diminishment of possibilities for action: because one fears the repercussions that will follow from taking such actions … This constriction on possibilities for action sets the battering context apart from most other contexts in which people commit crimes against those they know. (V. Elizabeth, cited in Law Commission 2001:6)

Safety orders have the potential to perpetuate the lack of control women who are beaten have been experiencing through the violence they have received. Of critical importance to any implementation of these orders will be the relationship the woman has with the police and with women's advocates, the extent to which she is party to the decision to proceed in this way, and the extent to which she is empowered or disempowered by the legal process. The impact of any further erosion of her control through orders initiated on her behalf needs to be well researched, particularly if their initiation is an alternative to a criminal response. As this experience is likely to influence her perception of the police and the justice system, it may well have an impact on her willingness to contact the police during any future violent incidents. Such orders, and how they are implemented, will therefore have real implications for her future safety and that of her children. For some women such a process may mean greater safety, but for others it may not. Ongoing research is required to determine the potential benefits and harms of such orders once introduced.

## CONCLUSION

This paper is an attempt to draw together the various issues that may arise when considering police-initiated protection orders, here referred to as safety orders. The review is not intended to be definitive, but rather to raise some of the issues that require discussion as part of any development of safety orders. In particular, consideration needs to be given to: the messages that such orders convey to women who experience violence from their partners; the current police and Family Court response to applications and enforcement of provisions under the DVA, and the messages these responses convey; the ongoing need for education of police officers, the judiciary and associated personnel; and the need for open and public debate about the ways to proceed when safety is such an integral factor for women and children. Finally, this discussion raises the need to proceed compassionately through the involvement of women victims/survivors and their advocates in any future developments. Respectful research which involves women who have experienced such violence and the associated agency responses, and that makes use of violence research expertise and inter-agency co-operation, will add to future prevention and intervention developments.

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# CHILD PROTECTION POLICY AND PRACTICE: A RELATIONSHIP LOST IN TRANSLATION

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**Abstract**

This article considers the challenges and opportunities facing contemporary child protection practice and contends that a meaningful understanding of child protection can best be gleaned by examining how practice is connected historically and sociologically with the broader discipline of social work. The essence of social work is described as a contradictory mix of surveillance and empowerment. The Victorian genesis of social work is linked to a distinction between the deserving and undeserving, yet also with a theme of redemption and liberation. It is suggested that the positioning of social workers as intermediaries between the comfortable and the threatening classes remains a salient feature in current practice. The relevance of the enduring phenomenon of a constructed underclass for child protection practice is explored. It is contended that anxiety associated with the breakdown of modernist certainties in the last 40 or 50 years has created an impetus to define and measure child protection in a mechanistic and risk-averse manner, and that the dominant instrumental form of social science misapprehends the nature of child protection as "practice". A paradigm conflict is described, whereby managerial policy frameworks fundamentally fail to accommodate the essence of social work. It is argued that the effective development of child protection practice requires that it be re-conceptualised as complex, creative and interactive as opposed to a two-dimensional process of procedural compliance. It is suggested that child protection practice must be reacquainted with the voice of practice wisdom -- contextualised in the same way that social work is itself a process of engagement with social context. Practitioners, educators and theorists are challenged to actively advocate for an accurate understanding of child protection as ambiguous and situated social practice.

> I asked her pardon for the cruel lesson, and to her great surprise, gave her the eighty rubles. She murmured her little "merci" several times and went out. I looked after her and thought: "How easy it is to crush the weak in this world." (Chekhov 2003:22)

## CHILD ABUSE AND SOCIAL WORK

There are significant opportunities for developing child protection social work in Aotearoa / New Zealand. From the media-fuelled public and political outcries when infant children are killed at the hands of their parents, to our statutory agency's struggle to retain experienced

social workers, contemporary practice is under severe pressure. Arguably, this pressure has been imperceptibly building; ebbing and flowing like an incoming tide over the last 10 or 20 years, perhaps for much longer from a historical perspective. An aura of risk anxiety is, of course, nothing new to child abuse and child protection practice. After all, child abuse involves a crisis for the child, the family, the wider community, and for the agencies charged with intervening (Summit 1983). Consequently, as Morrison (1997:1) so acutely observes, "Anxiety runs like a vein throughout the child protection process".

It is instructive to adopt a broad "contextual" approach when seeking to understand the challenges facing practice development in this field. Child protection has developed, over time, as a public service delivered principally through the emerging profession of social work. Social work is, in turn, no more separable from its past than social life is separable from social history (Bourdieu 2003:72) Accordingly, this paper sets out to explore some of the tensions that beset the ideological and sociological construction of child protection social work; to look back in order to find a way forward. It is contended that the analysis that emerges could contribute to the development of a policy vision that reconnects child protection practice with social work values and principles. The strength of social work resides in the capacity to link, in theory and in practice, big-picture analysis with the circumstances of individual lives; the political with the personal. By way of analogy, it is argued that child protection cannot be well understood unless it is reconnected with its socio-political dimensions, its complex practice context, and with the value base that informs social work.

## SOCIAL WORK AND POST-MODERNITY

Social work is a socially constructed activity in that the parameters of practice are influenced by dominant societal perceptions of what is normative and desirable. What we look for is often what we find, although our visions (and our illusions) change with the times. Societal anxiety has spread and gathered momentum as the clarity and security that characterised the era of industrial modernism has progressively dissolved over the last 40 or 50 years (Parton and O'Byrne 2000:4). This cultural sea-change, often referred to as post-modern times, is associated in the social sciences with an epistemological crisis: critique of the notion of objective professional expertise, of the credibility of the scientific method of truth production as pioneered by the likes of Comte and Durkheim; and a questioning of the validity of the Cartesian dualism that underpins the scientific way of knowing (Sarantakos 1998:35). Ferguson (2004:132) refers to a "melting" of the solid visions of modernity, arguing that such assumptions have always been illusory in the context of child protection practice.

Parton (2000:460--461) has proposed that the recognition of social work as an intrinsically interactive and contingent activity (that "the social" cannot be removed from social practice) may mean that it is a discipline that is uniquely tailored to an uncertain post-modern society. Social work is at best "variably rational" and routinely accommodates ambiguities and dualities (Hutchison 1987:586, Webb 2001:67). It constantly seeks to balance an uneasy dialectical essence in its positioning at the intersection of social care and social control, and in its practice of seeking objective outcomes through a process of subjective interpersonal interaction (Dingwall et al. 1983). Power is understood and experienced as non-linear, contested, and to some degree negotiable in the relationship between social worker and "client".

Conversely, the implosion of modernist absolutes has prompted a growing concern in Government, and in social life, with the minimisation of uncertainty: of "risk" identification,

containment and control (Beck 1992). In the case of child protection practice, the greater visibility of child abuse generally, and public scrutiny of the injury or death of children known to social services particularly, has prompted increasingly shrill demands for the design and application of stringent measures to predict and reduce risk (Connolly and Doolan 2007). This article contends that a resultant preoccupation with lineal procedures -- task performance, timeliness, fiscal accountability, and, above all, technocratic measurement -- is ultimately counter-productive, in that a dispassionate and disengaged form of practice is promoted. The art of practice is buried beneath an anxious science of uncertainty. Trebilcock (1995:11--12) credits H.L. Mencken with the astute observation that simple solutions to complex problems are not only comfortably seductive, but also generally wrong. As Connolly and Doolan (2007:3) suggest:

> … trying to replace professional judgment with protocols, tools and guidelines ignores the fluidity of child protection practice … Attempting to make complex matters simple by developing tools and checklists is a naïve response and more than likely to fail.

## CONTESTED PRACTICE FUTURES

In terms of the future development of social work practice, and of the ownership and control of that development, the stakes may be extremely high. In asserting that it is "no exaggeration to say that the very future of social work itself rests on reaching a deeper understanding of child protection", Ferguson (2004:7) polemically suggests that no less than the survival of the social work profession is at stake. This claim is germane to the Aotearoa / New Zealand context given the extensive social work resources invested in a field that is subject to constant political and media interrogation. Scott (2006:7) describes a centrifugal, self-reinforcing crisis in child protection practice in Australasia in the following terms:

> Most child protection services in countries such as Australia and New Zealand have become demoralised, investigation-driven bureaucracies which trawl through escalating numbers of low income families to find a small number of cases in which statutory intervention is necessary and justifiable, leaving enormous damage in their wake.

The depiction of contemporary child protection as a relentless juggernaut which is oblivious to collateral damage presents social work with an ethical imperative. According to Scott (2006:2):

> We need to have the courage to ask ourselves what it is that we are currently so confident about doing in the name of protecting children, without any empirical evidence of its benefit, that in a generation we may be too ashamed to say we have been a part of.

This article will offer a response to Scott's challenge, arguing that the development of child protection practice is a fundamental issue for the social work profession. It is contended that guidance may be found through consideration of what it is that social work knowledge has to offer child protection. Turning Ferguson's assertion on its head, it is proposed that the revitalisation of child protection policy and practice rests on reaching a deeper understanding of the nature of social work. It is suggested that social work embodies a dual tradition of state-sanctioned re-socialisation on the one hand, and of empowerment and redemption on the other. An understanding of this ambiguous nexus, and of the knowledge and skills needed for reflexive practice in such a context, has the potential to inform creative practice development. In addition to a legacy of coercive social practice, social work has traditionally advocated for empowerment, seeking to restore its excluded human subjects to the ambit of social citizenship (Parton 2006). In a similar manner, it is suggested here that the vision and

the voice of social work need to be re-enfranchised: brought back in to the politics of policy formation and applied to a practice of child protection that has been compromised by procedural anxiety.

## SOME HISTORICAL THREADS

The history of social work, like all social history, is entwined with relations of power; with questions of class and gender, and, in the Aotearoa / New Zealand setting, with the process of colonisation. Its origins can be traced to the social dislocation that accompanied the rise of industrial capitalism in the nineteenth century (Parton 1994). There is a long and undistinguished tradition in social welfare provision, dating back to the infamous English Poor Law of 1834, which separates the deserving from the recalcitrant poor (Morris 1994:51). Distant echoes of current social work practice are found in the "scientific" practice of the English Charity Organization Society (founded in 1869), which was oriented to assisting the deserving, or in later parlance, the "helpable poor" (Himmelfarb 1991:190, 192). Attitudes to the poor in Victorian society were enmeshed with questions of social control, moral turpitude, and the punishment of deviance (Cheyne et al. 1997:18). The delineation of a discrete, morally threatened and/or threatening underclass "other" is a powerful and enduring phenomenon. Dean and Taylor-Gooby (1992:28) contend that:

> … the impetus to define a "residuum" or "underclass" has always stemmed from a concern to defend other assumptions concerning the integrity of existing social relations of production and reproduction and, in particular, of labour and the family.

The emergence of social science, and its application as "social work", is historically connected with this perceived threat of social breakdown (Jordan 1996:36). Future security necessitated a repatriation of the morally unfit to the ranks of the respectable working classes. Re-moralisation features as a recurrent theme in state welfare provision throughout the Western world (Lessnoff 1994:106). Ferguson (2004:199), following Baudelaire, asserts that the clients of child protection agencies have traditionally been constructed as human rubbish; as refuse swept aside in the Schumpeterian gales of creative destruction that define the capitalist mode of development. In this analysis, social workers are metaphorically, and literally, positioned as intermediaries operating within established social relations of privilege and relative deprivation. As such, they frequent two worlds: acting as fugitive emissaries between the state and the marginalised, and effectively constructing a bridge between the comfortable and the dangerous classes (Jones 1983).

This description resonates with my personal experience of two decades of statutory child protection practice as a social worker, supervisor and practice manager in South and West Auckland from 1984 to 2004. This analogy can be usefully extended in two ways. First, as a student of mine recently observed, social workers may, as an outcome of this positioning, cease to be fully enfranchised in either world. From my personal observation the phenomenon of burn out for practitioners is often accompanied by an inarticulate state of muddled perceptions. It is as if gravity has failed and left the worker adrift in a no-man's land -- an indeterminate space where, to recall Habermas, the life world of the other and the demands of the system cannot be adequately reconciled (Sinclair 2005). A second, and related, inference is that social workers are distrusted by both their clients and their masters. The administration of a standardised Risk Estimation System by Child, Youth and Family in the late 1990s was, for example, as much about policing practice compliance as it was about greater accuracy in the prediction of child risk (Smith 2004:23,24, Hyslop 2007:8).

## THE CONSTRUCTION OF EXCLUSION: PATTERNS AND CONNECTIONS

Western liberalism has been persistently haunted by the spectre of a dispossessed and morally endangering underclass (Morris 1994). The cardinal sin, and ever-present risk, in the modernist capitalist project is to fail to adapt to continuous change, to fall behind into poverty and beyond participation in, and hence belonging to, market society (Ferguson 2004:134--136). The relevance to child protection lies in the fact that notwithstanding the undisputed assertion that child abuse and family violence occur within all sectors of society, the clients of the contemporary child protection system are most often drawn from the ranks of the poor and marginalised. Practice in child protection social work is as much a class-based, gendered and culturally biased phenomenon as it ever was (Scott 2006). The image of the unfit mother continues to inhabit the consciousnesses of clients and child protection workers alike. Further, as an outcome of the colonial alienation that defines the social history of Aotearoa / New Zealand, the client group is disproportionately peopled by inter-generationally deprived Māori: ngā mokai Maori (Hibbs 2005, O'Reilly 2008).

In time of war or conflict, and certainly colonisation, human groups habitually objectify, and effectively dehumanise, externalised others. In the first analysis, given the notions of inclusion and empowerment that are routinely inscribed in social work ethics, it may seem perverse to link such practices with contemporary child protection. However, further consideration of the historical legacy suggests that this may not be such a long bow to draw. The Victorian tap-root of social work that demands the moral redemption of individuals and families also includes an associated reflex to purge the profession of the non-compliant and undeserving client (Parton 2006, Morris 1994). In current child protection practice this inheritance is evidenced in the apparent need to justify the more conflicted, arguably punitive, aspects of statutory social work practice by locating failure firmly in an individualised, inadequate other, stripped of reference to historical and cultural location. This phenomenon is consistent with Philp's (1979) analysis of social work as a normalising intervention contingent on the perceived sociability or deserving character of the social subject.

## ESCALATING ANXIETY

In Foucauldian terms, social work is connected with the notion of surveillance; the maintenance of social control by means of the various disciplinary gazes that watch over us all (Foucault 1977). The primary function of social work in this analysis is the diffusion of societal anxiety: cauterising and thereby concealing the ruptures in the social fabric which are endemic to the contradictory nature of capitalism. The societal process of acceleration and destabilisation that is variously described as "late", "reflexive", or "post"-modernity has exposed the inherent fallibility of modernist child welfare bureaucracies (Parton and O'Byrne 2000:18--24). Children are vulnerable to abuse, exploitation, and deprivation and are victimised by adults with disturbing frequency. Statutory social services have never been, and never will be, able to prevent this. The revelations that have both challenged and shaped social work in recent decades -- physical abuse / non-accidental injury, child sexual abuse and the deaths of children in the care of the state or otherwise known to social services -- are none of them related to new phenomena. What was previously a well-kept secret has been increasingly opened up to public review. Statutory social workers, once the keepers of such terrible knowledge, are now castigated for the truth that has been laid bare. Connolly and Doolan (2007) express this paradox as follows:

> Systems of child welfare went from being protectors of public anxiety to being inadequate protectors of the nation's children. The notion that social workers could and should, protect all children from harm, took hold.

In the first half of the twentieth century neglect was the primary focus of anglophile child-protection systems. The American paediatrician Henry Kempe and his ground-breaking *Battered Child Syndrome*, a 1962 study of the non-accidental injury of children admitted to hospitals, is often associated with the launch of the second wave of the child protection movement. As awareness and anxiety in relation to child protection has continued to expand and intensify, statutory social work has been transformed from the generic provision of social services and social care to a child abuse detection and intervention service. Scott (2006) describes a "vicious feedback loop"; a process of anxiety-driven "net-widening" where forensic investigations designed to detect and process notifications of physical abuse have now become a one-size-fits-all template for child protection social work.

## AN ALTERNATIVE VOICE

Despite the conflicted history, social work also possesses a powerful and persistent alternative narrative of care and emancipation as opposed to surveillance and control. Turnell (2006:11) identifies an often hidden first voice:

> Anne Weick (2000), writing specifically to a social work audience, suggests that the social work profession has two voices, a dominant, professionalized, scientized second voice of assessments and interventions, policy and procedures and a mostly hidden first voice of everyday caring, solution building, and compassionate action.

Social work is heir to the creative humanist tradition of compassion (Parton 2007:3), and because of this it carries the possibility of transformation and redemption; of subversion and liberation from oppression. A penchant for swimming against the tide in terms of making space for creative practice is arguably ingrained in the social work ethos (Ferguson 2004:153, Turnell 2006:4, Walsh 2006:38). Such practice may require social workers to question organisational dictates, acknowledge indeterminacy, and take risks. In my experience, careful and principled child protection practice flourishes when well-organised and rigorously supervised teams of competent practitioners are encouraged to acknowledge anxiety and are resourced to exercise their professional discretion.

Social work is a complex, nuanced and relational activity that contains this dual narrative of control and empowerment at its kernel. Child protection will always be a demanding, stimulating and at times consuming field of practice for the engaged practitioner. Just as policy is ideologically contested (Fox-Harding 1997:99, Packman 1986:5), high-quality practice requires a continual balancing of the need for careful safety-focused assessment and decisive action with reflection and collaborative solution building with client families. The sometimes conflicting demands for child safety and whānau wellbeing are resolved through social action -- in the doing. Child protection social work entails careful, fluid and reflexive praxis -- the doing informs the knowing. It is misleading to reduce this process to a set of actions and procedures, and to then equate compliance with these tasks as a measure of practice reality and practice quality. The often-quoted words of Schön (1983:42) capture something of the dichotomy:

> In the varied topography of professional practice, there is a high, hard ground, where practitioners can make effective use of research-based theory and techniques, and there is a swampy lowland where situations are confusing messes incapable of technical

solution. The difficulty is that the problems of the high ground, however great their technical interest, are often relatively unimportant to clients or to the larger society while the problems of the swamp are the problems of the greatest human concern.

## SPEAKING IN DIFFERENT TONGUES

Ferguson (2004:136 212) argues that in addition to the rational, structured bureaucracy of management, measurement and accountability, modernist child protection bureaucracy melts in the doing into two other elements. First there is the realm of aesthetic sensibility. Child protection is mediated through sensory perception: the smell of practice, which is also referred to as the smell of poverty. Related to this human encounter there is an expressive dimension that is concerned with emotions, symbolic power, and the psychodynamic aspects of embodied social action. Regardless of the legacy of social control functions, there is room in this engaged relationship for democratic, meaningful, and empowering practice. Parton and O'Byrne (2000:33) suggest that social workers are:

> … differentiated from workers in other services mainly by their willingness to forsake the formality of their roles, and to work with ordinary people in their natural settings, using the informality of their methods as a means of negotiating solutions to problems rather than imposing them. Imposed, formal solutions are the last resort in social work, whereas they are the norm in other settings. The further social work moves from this situation the more it loses what is distinctive about it.

A decade ago Morrison (1997:1) illustrated the organisational consequences of ignoring the emotionally loaded nature of child protection practice as follows:

> A couple of years ago a middle manager summed up the culture of her social work organization in terms that have resonated with every audience that I have subsequently shared it with. She described herself as being paid for "doing" -- outputs, tasks etc.; as far as "thinking" was concerned she should do that at home; or at the weekend, but as for "feeling" she should not bother to do that at all. In other words her organization, typical of many social care organizations in the 1990's, was one in which two thirds of the domains of human experience, i.e. thinking and feeling were off organizational limits.

Nevertheless, attempts to force social work generally, and child protection particularly, into a procedural straight-jacket, and to quantify practice accordingly, have gathered increasing momentum over the past 20 years. Managerial efforts to define and measure child protection practice in exclusively instrumental terms, as flow charts with binary decision-making points aided by the application of practice tools tend, like the visible section of an iceberg, to conceal more than they reveal. Effective judgements in relation to child safety are crucial; however, distinctions between abuse, neglect, need, and fault are seldom cut and dried in Schön's "swampy lowlands" (Ferguson 2004:112). As most practitioners know, despite the functional rationality prescribed by technocrats, accountants and policy analysts, the how of practice matters as much as, if not more than, the what: the script is not the play.

## THE CONTEMPORARY POLICY CONTEXT

The commercial production efficiency ethos of Aotearoa / New Zealand in the 1990s saw statutory child protection redefined in terms of fiscal accountability and managerial efficiency: the delivery of measurable, numerically categorised sub-outputs as required by the Public Finance Act 1989 (Hanna 1999). The conceptual flaw in this model lies in the premise that social work can be accurately described as a commodity produced for a commercial market. The consequences of this distorted analogy were at times farcical and also deeply

damaging to both social workers and their clients (Hyslop 2007). Policy and practice design that exhibits minimal appreciation of, or respect for, the nature of its subject is hopelessly flawed by definition: mischievous at best and likely to be damaging.

The Labour-led third way(Duncan 2004:224--254) political configuration of recent years has achieved much in rehabilitating social policy from the market enemy pariah status visited upon it by the economic fundamentalism of the 1990s. The Ministry of Social Development has cast itself in a central planning and co-ordination role and has produced voluminous policy documents that set out social development aims and means at varying levels of generality. A complex web of partnership and/or contractual relationships across the social service sector has developed under this umbrella. Where actual social services to children and/or families are involved, as in the Family Start initiative, implementation has been cautious and evaluation driven. In contrast to policy construction, any associated service development has tended to be fiscally prudent and dominated by the notion of justifying investment with reference to evidentially measurable outcomes. As far as statutory child protection is concerned, the legacy of the 1990s neo-liberal output production model continues to have a pervasive influence, not least in the assumption that timeliness of response is the primary determinant of practice quality.

There will always be cases of severe harm and risk where the duty of the state to protect its weakest citizens is the primary determinant of initial action taken. Such assessments must be made in a careful, dispassionate and balanced way (Skehill 2003:154). For the great majority of child protection practice, however, the issue is not so much whether state or NGO practitioners assume responsibility, or even what is done in many cases. Access to resources, support services, and the willingness of families to re-think questions of power and abuse can all be critical issues. Nevertheless, in my experience the key to positive outcomes for children is as often as not a product of how assessment and intervention are managed. The quality of communication between social worker/s and whānau -- how the smell of practice is mediated -- is generally the key to good outcomes for children.

## GENERATIVE TENSION

It is little wonder that contemporary child protection policy, and the practice derived from that policy, fails to take adequate account of social work as social practice. At the core of the problem lies a clash of paradigms. Social work is innately avoidant of reductionism. It defines itself in nebulous and slippery terms that do not sit easily with evidence-based rationalism. Conversely, instrumental rationality inherently recoils from that which refuses to be de-contextualised, reduced, sanitised, and measured. It is unsurprising that such puckish insolence tries the patience of policy analysts, motivating them to take their ball and go home, and to regard the social work ethos as altogether too precious. The resultant policy prescription typically takes little cognisance of social work knowledge. Mansell's (2006) recent erudite exposition concerning optimum outcomes for child protection risk assessment is a case in point. Effective child protection is described in terms of efficiency: a rational process of risk assurance that entails negotiating an acceptable, consistent, and transparent trade-off between the negative consequences of false alarms versus failed alarms, given a finite pool of resources.

Social work's refusal to be instrumentally classified is not wholly a matter of wilful or capricious disobedience. It is more that such resistance is hard-wired into a discipline that is based on the application of social and moral values in a complex context. If social work is to

be better understood, and if something of its essence is to be applied in the development of child protection practice, it is necessary to move beyond the fact that child protection social work won't stay in the box that operational policy frameworks conspire to place it in. It is necessary to consider what social work wisdom may have to offer on its own terms. In contrast to the quest for ever greater approximations of predictive certainty in modernist social science, social work is a process that actively engages with uncertainty. Parton (2007), following Philp, suggests that social work is intrinsically concerned with individualising and humanising its subjects, as opposed to categorising, identifying, and generalising. In contrast to evidence-based policy development, which is an exercise in quantifiable probability, social work is a qualitative exercise in possibility.

Social work is fundamentally concerned with communication and with developing an understanding of the social world by engaging with social context. It is a process of inclusion as opposed to the isolation and removal of extraneous influences. Interactive, reflexive and critical engagement with the person in context is arguably the defining principle of social work practice (O'Brien 2001:14). This notion, although altogether too amorphous to satisfy evidential methodology, provides a useful starting point for an interrogation of what it is that effective practice in this complex and contradictory field might require (Lloyd and Taylor 1995:25,108).

## RE-CONTEXTUALISING CHILD PROTECTION SOCIAL WORK

In my opinion a revaluing of social work knowledge in the realm of child protection practice is needed if significant and sustainable progress is to be made. Child protection practice needs to be re-contextualised. Child protection practice operates within the historical and contemporary context of the capitalist social order. Just as it is overly simplistic to disembody the behavioural components of client identity from the social context of their lives, it is vitally important to be mindful of the political context of state-sponsored child protection. Similarly, it is important to be fully aware that the procedural map of practice has little real correspondence to the tense, ambiguous and creative territory of interactive communication that lies at the heart of social practice (Lowenberg and Dolgoff 1992:103).

It has been suggested that child protection practice in anglophone jurisdictions may continue to develop a mechanistic vision. Parton (2007) proposes that the information age has heralded previously unimagined possibilities for social surveillance. He explores an increasing adherence to the logic of the database, where human subjects are assembled against a variety of pre-constructed pathology indices. In the face of this colonising paradigm, social work needs to reclaim its first voice in the realm of child protection. The quality of practice is assisted by the accumulation of evidence and adherence to assessment protocols, but is ultimately mediated by the quality of engagement and by the sensitivity of the practitioner.

## CONCLUSION

This article has argued that social work has a history and a value base that can and should be articulated by child protection social workers and theorists so that systems of practice can be better aligned with the complex social nature of practice reality. I have merely assembled and attempted to synthesise a body of argument that is well canvassed. Extensive statutory practice experience in Aotearoa / New Zealand over 20 years of my working life has left me with a belief that the effective development of child protection social work requires that the

voice of social workers and their clients be heard in the policy realm. Practitioners have first voice stories that need to be told. The institutions that train and educate practitioners need to assume some measure of responsibility by preparing social workers for practice in this zone of abundant contradiction. Action and advocacy are required if child protection is to be reclaimed as a site of creative, innovative, and solution-building practice (Walsh 2006). The social work profession must arise from its apparent torpor and claim ownership of a practice context that has such a wide impact on the nature and quality of human lives. The broader policy vision for child protection must take cognisance of the essential nature of child protection social work as an engaged, interactive, and innovative process of social practice, as opposed to a disembodied science of calculation and compliance.

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# CHALLENGES TO IMPLEMENTING GOOD PRACTICE GUIDELINES FOR EVALUATION WITH MĀORI: A PĀKEHĀ PERSPECTIVE

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**Abstract**

Evaluation contractors working in the Aotearoa / New Zealand government sector, whether Māori or non-Māori, are expected to use culturally appropriate processes when evaluating mainstream programmes where Māori are a significant subgroup. For independent evaluators, this expectation is generally made explicit in requests for proposals. A range of formal guidelines has been developed over the last decade to support both commissioning agencies and independent evaluators to conduct culturally appropriate evaluations. However, few of the processes suggested in these guidelines are fully incorporated into Pākehā evaluation practice. A case study of an anonymised "Programme X" identifies and reviews some of the challenges to good practice and process.

## INTRODUCTION

Over the past 10 years evaluators in New Zealand have had access to different sets of guidelines that focus specifically on research involving Māori (Health Research Council 1998, Te Puni Kōkiri 1999, Ministry of Social Development 2004). These guidelines have led to greater awareness of a range of considerations entailed in research and evaluation involving Māori. The launch of the Social Policy Evaluation and Research Committee (SPEaR) *Good Practice Guidelines*[2] (*Guidelines*) is a renewed prompt for evaluators and social policy agency officials to reflect further on the processes they engage in when evaluating government-sponsored programmes where Māori are participants. The *Guidelines* also have relevance to independent evaluators and researchers who work for government sector agencies (SPEaR 2008).

In a New Zealand social policy context there is an expectation -- generally made explicit in the selection criteria of requests for proposals (RFPs) for research and evaluation work -- that culturally appropriate processes will be adopted wherever Māori are a significant group or subgroup in the programme under review. Although an evaluator or evaluation team may start with strong intentions of observing the advice and direction of such guidelines, they

often fall short of what is outlined as good practice. The focus of this paper is on some of the complex issues that attend the implementation of the *Guidelines* in real-world research and evaluation contexts. We show that, for independent Pākehā evaluators, the "intention of observance" and the apparent "failure of practice" pose ongoing challenges.

Identifying and understanding some of the factors that might contribute to the gap between intention and practice is one of the purposes of this paper. A second purpose is to stimulate dialogue among evaluators and commissioning agency staff about current practice and how "the standard of research and evaluation practice across the social sector as a whole" (SPEaR 2008:5) could be enhanced. Insights drawn from a review of the process of a government-commissioned evaluation, and experience in independent evaluation practice, inform the discussion in this paper.

We begin with a short contextual discussion of guideline development in New Zealand, and then move to the analysis of "Programme X". In this case study all identifying material has been removed so that the evaluators, commissioning agency and participants have their anonymity preserved. Notwithstanding the constraints and frustrations that were identified in this evaluation, all those involved worked hard, within complex constraints, to deliver a responsive, robust evaluation.

## WHAT ARE GUIDELINES FOR RESEARCH AND EVALUATION WITH MĀORI?

Guidelines, as the term implies, are not sets of rules or laws, but rather provide principled advice and direction. In the case of research and evaluation, such guidelines may steer the conduct of a specific project in the direction of ideal practice. Professional evaluators who belong to associations or societies such as the Australasian Evaluation Society (AES), or the recently formed Aotearoa / New Zealand Evaluation Association (ANZEA), will also work within ethical guidelines promulgated by the organisation. AES, for example, promotes the ethical practice of evaluation and aims to "foster continuing improvement in the theory, practice and use of evaluation" (Australasian Evaluation Society 2002:2). The ANZEA constitution identifies its purpose as being to:

> Promote excellence in evaluation in Aotearoa New Zealand with a focus on the
> maintenance of appropriate ethical standards for the evaluation profession, development
> of effective practice and craft, and the promotion of reflective learning as a strategy for
> evaluation for the public and community well being. (ANZEA 2007)

Guidelines for research and evaluation involving Māori are intended to improve the quality of evaluation practice within Aotearoa / New Zealand government agencies and to "enhance our ability to carry out effective and appropriate research (and evaluation) with Māori" (Ministry of Social Development 2004:2).

Tauri (2004) outlines the chronological development of guidelines for research and evaluation involving Māori and notes that a number of initiatives implemented in the 1980s and 1990s by government agencies acted as a signal of increased recognition and commitment to the Treaty of Waitangi. The first to be developed were *Guidelines for Researchers on Health Research Involving Māori* (Health Research Council 1998). These were aimed at researchers in the health sector and focus on processes for consultation. They were followed a year later by Te Puni Kōkiri's *Evaluation for Māori: Guidelines for Government Agencies* (Te Puni Kōkiri 1999). In 2004 the Ministry of Social Development's (MSD) Centre for Social Research and Evaluation (CSRE) published *Nga Ara Tohutohu*

*Rangahau Māori: Guidelines for Research and Evaluation with Māori*, aimed at both staff and contractors. These two most recent guidelines include suggestions for processes to consider during all stages of an evaluation, from planning through to reporting.

In 2002 SPEaR began developing a set of guidelines relevant to all stakeholders in social policy research and evaluation in Aotearoa / New Zealand. SPEaR's mandate is to "oversee the government's social policy research and evaluation purchase" (SPEaR, n.d. Purpose, para. 1). One of its functions is to "promote the utilisation of 'best practice' approaches, tools and techniques through development (where necessary) and/or dissemination" (SPEaR, n.d. Roles and functions, para. vii). The SPEaR *Good Practice Guidelines* are designed to:

> … provide practice-based advice aimed at improving social sector research and evaluation systems and processes, enhancing the professional conduct of government officials and external research contractors, improve the generation of information that informs policy development and service delivery, support the saving and sharing of research data and encourage the development of respectful and ethical working relationships between all participants in social sector research and evaluation. (SPEaR 2008:5)

As stated in the *Guidelines*, good practice is seen to rest on five principles: integrity, respect, responsiveness, competency and reciprocity. The practice expectations that are included are consistent with those outlined in the previous guidelines (SPEaR 2008, Te Puni Kōkiri 1999, MSD 2004). The SPEaR *Guidelines* inform the evaluation of Programme X that follows.

Given that considerable intellectual and organisational work underpins the development of the range of guidelines in the last decade, it is reasonable to expect some success stories in relation to their implementation. No such stories currently circulate, however, and the analysis that follows indicates how stories that do emerge are likely to highlight more challenges than successes.

## EVALUATION OF PROGRAMME X

Programme X was a year-long evaluation of a government-funded programme that included Māori as a significant subgroup of participants. The programme that was evaluated was delivered by Māori staff employed by community-based service providers, most of which are iwi-based organisations. Community stakeholders were not involved in key decisions about the evaluation design prior to the request for proposals being developed because there were significant time and budget constraints (Agency contract manager, personal comment, 2008). The evaluation was contracted to an independent evaluation company and led by two experienced Pākehā evaluators. In terms of strategies designed to manage the limited budget, a senior Māori evaluation advisor from the commissioning agency provided 15 hours' support to the project team, and Māori staff, also from the agency, were recruited to assist with fieldwork and analysis.

### Method of Review

The review of the activities in Programme X was undertaken prior to the finalisation of the *Guidelines,* consequently the draft *Guidelines* were the point of reference. However, the substantive items that comprised the review framework remained consistent between the Draft and final versions. For the analysis of the evaluation programme's uptake and

implementation of advice and direction, five systematic (although not exhaustive) steps were followed:

1. An inventory of the practice expectations listed under each of five guideline principles was prepared.
2. The field notes and records made during the evaluation were scanned and additional notes, from the reviewer's own recollections of the process, were compiled.
3. The evaluative activities were broken down and matched with relevant expectations.
4. The matched findings were tabulated.
5. The review process was reviewed by another independent evaluator and the agency contract manager, both of whom confirmed the findings.

A summary of these review findings is given in Table 1.[3]

**Table 1  Incorporation of SPEaR good practice guidelines for Māori in an evaluation of Programme X**

| | Applying the principles | Guidelines incorporated in Programme X evaluation? | Summary of review |
|---|---|---|---|
| Respect | 1. Involve Māori participants (hapū, iwi, providers, communities etc) as early as possible in the design | Partial | Evaluation objectives were defined by the commissioning agency.  The evaluation design was developed as part of the tender proposal. Prior to fieldwork starting, evaluators met face to face with providers to introduce the team, explain the evaluation design as signed off by the sponsoring agency, and negotiate access to clients. Providers were able to veto clients from the sample. |
| | 2. During project planning, identify protocols to be observed during engagement with Māori participants and stakeholders | Partial | Evaluators worked closely with regional managers in fieldwork locations. Two Māori research assistants were assigned to work with the Pākehā evaluators. The evaluators were not in a position to assess the skills of the research assistants due to time, budget constraints and lack of knowledge about what constitutes 'cultural expertise'. In the field it became evident one had extensive knowledge of tikanga while the other had no expertise in this area. |
| | 3. Ensure the resourcing for the project enables officials to make a koha to participating groups and communities. | Partial | A koha (thank-you voucher) was offered to participants. Providers were reimbursed for time spent identifying potential respondents. There was no resourcing for community stakeholders to participate in the evaluation design, or analysis. |
| Integrity | 4. Develop a consultation plan for engaging with Māori who have been identified as likely participants in the project | No | No consultation plan was developed by the agency or the evaluators (see 1). |
| | 5. Identify whether there are likely to be actions required for protecting intellectual and cultural property rights (if there are, develop mechanisms for protecting these) | No | The evaluators / sponsoring agency did not consider intellectual and cultural property rights. |
| | 6. Acquire a budget for | No | There was no budget for consultation (see 1). There was |

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[3] Note that, for brevity, some of the wording in the table has been abridged. The full text of the *Guidelines* can be found on the SPEaR website (www.spear.govt.nz/) and the full text version appears in the discussion. The final version of the guidelines will also be published on this site.

| | Applying the principles | Guidelines incorporated in Programme X evaluation? | Summary of review |
|---|---|---|---|
| | consultation | | an expectation (by the sponsoring agency and evaluators) that the providers would assist with the evaluation (initial meeting and follow-up interview). |
| | 7. Check the validity of the analysis and/or reporting of data with Māori participants | No | Interview notes were not sent back to participants. The providers were not involved in the analysis. |
| | 8. Be ethical and honest during the evaluation | Partial | Evaluators considered the AES ethics guidelines, provided information about the evaluation and sought informed consent. They did not consider other practices that might be more appropriate to the values and beliefs of the participants. |
| Responsiveness | 9. Involve Māori participants in the design of the evaluation | No | See 1. |
| | 10. Develop processes that enable Māori participants to maintain contact with the project team throughout the project | Partial | The lead evaluator maintained informal contact with providers (key stakeholders) throughout the project . |
| | 11. Ensure interim project reports and other reporting documents include a summary of negotiations with Māori participants and stakeholders on issues relating to project design, and report back on any subsequent design changes | No | See 1. |
| Competency | 12. Include officials or external advisors with an appropriate level of experience and knowledge of the tikanga and kawa (Māori customary protocol, which varies according to hapū and iwi) applicable to the Māori entities involved in the project | Partial | A Māori evaluation advisor was sub-contracted to the project after the contract/evaluation design was approved by the commissioning agency. Advice was limited to input into the development of the interview guides, assistance with the high-level analysis and reviewing the draft report.<br><br>Both Māori research assistants were involved in interviewing and high-level analysis. One had knowledge of tikanga and te reo; the other did not. |
| | 13. Include people with experience and knowledge of methodologies and methods applicable to Māori evaluation contexts | Partial | See 12. There was limited involvement by the Māori evaluation advisor due to budget constraints. |

| | Applying the principles | Guidelines incorporated in Programme X evaluation? | Summary of review |
|---|---|---|---|
| Reciprocity | 14. Use the consultation process to identify any information and research requirements of participating Māori organisations, and (where possible) incorporate these into the research design | No | See 1. |
| | 15. Ensure Māori participants are given the opportunity to comment on draft analysis/findings and incorporate this into the final draft | No | See 7. |
| | 16. Ensure potential Māori participants receive all relevant information about the evaluation (e.g. information sheets) | Yes | Information about the evaluation was given in writing and verbally to all participants. |
| | 17. Identify, via negotiation with Māori participants, the appropriate processes and formats for the dissemination of evaluation results | No | See 1. |
| | 18. Release the findings (in appropriate formats) as agreed during consultation | Partial | There was no consultation about the dissemination of findings. A summary of findings was sent to all participants. |

How this five-step review process worked can be followed in the present context. First, the reviewer considered the principle of respect in the *Guidelines*, which states that there is an expectation to "Involve Māori participants (whanau, hapu, iwi and community organisations) as early as possible in the designing of research that will impact on them and their communities" (SPEaR 2008:34). Notes and recollections from the evaluation identified a number of activities that were undertaken early in the evaluation. For example, the evaluation objectives were defined by the commissioning agency; the evaluation design development occurred as part of the tender proposal process; and prior to fieldwork beginning the evaluators met face to face with the service providers to introduce the evaluation team, explain the evaluation design as it had been signed off by the sponsoring agency, negotiate access to clients, and explain the proviso that providers would be able to veto clients from the participant sample. The reviewer then entered these findings in the table of findings and made an assessment of the extent to which the *Guidelines* had been incorporated in the Programme X evaluation. The possible responses were "yes" (implemented), "no" (not implemented), or "partial" (partly implemented). The findings were later corroborated by the independent evaluator and the agency contract manager.

In what follows, the main findings are identified and then discussed according to whether the expectations were met, partially met or unmet. In the discussion, the processes that occurred during the evaluation are described and the range of constraints and barriers that were encountered during the evaluation are briefly identified in order to set the scene for the discussion that follows in the final section of the paper.

## Expectations Met

Overall, only one SPEaR guideline was effectively incorporated in the evaluation. Under the principle of reciprocity, the expectation of ensuring Māori participants[4] receive all relevant information about the evaluation could be considered to have been achieved. The purposes of the evaluation were explained (both verbally and in writing) to all potential participants, and participants were invited to sign a consent form. The evaluators provided information on what participation and confidentiality (including who will have access to their information) would involve, and clarified that participation was voluntary and that participants had the right to refrain from answering any questions and could end the interview at any time. This expectation is similar to standard ethical guidelines that must be enacted with any group of participants, and it is therefore not surprising that it was incorporated.

## Expectations Partially Met

Eight of the expectations were judged to have been partially met. The first three partially met expectations fall under the principle of respect and include the need to:

> Involve Māori participants (whanau, hapu, iwi and community organisations) as early as possible in the designing of research that will impact on them and their communities

> Use the project-planning phase13 to identify the appropriate protocols that need to be observed during engagement with Māori participants and stakeholders now and in the future

> Ensure that the budget for the project is adequate and includes sufficient resources for consultation, reciprocity, compensation for contribution/participation and feedback (SPEaR 2008:34)

The fourth partially met expectation comes under the principle of integrity, and entails the application of ethical guidelines, while the fifth, under the principle of "responsiveness", includes the development of processes that enable Māori participants to maintain contact with the project team throughout the project. These are stated in the *Guidelines* as:

> Conduct the research according to the agreed protocols (i.e., of the research ethics committee if applicable, the project management committee/Advisory Group) and in accordance with legal requirements and professional guidance (e.g. the code of practice of the professional body they are members of, the procedures of the agency they are employed by) (SPEaR 2008:25).

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[4] The SPEaR *Guidelines* do not define "participant" but identifies them in the context of "many stakeholders in social policy research and evaluation - public servants, academics, students, private sector or third sector/NGO researchers and evaluators, research participants or communities of interest" (2008:5).. The authors assume the term also refers to those who answer the questions in an evaluation (otherwise known as "respondents"), and may also include those who are more passively involved in an evaluation (sometimes known as "subjects" or "stakeholders").

> Develop processes that enable Māori participants to maintain contact with the project team throughout the life of the initial research project, or future unspecified projects, and which enables the project team to keep participants informed of the progress of the project(s) (SPEaR 2008:37)

The sixth and seventh partially met expectations fall under the principle of competency and entail the inclusion of officials or external advisors with an appropriate level of experience and knowledge of tikanga and kawa, and the inclusion of people with experience and knowledge of methodologies and methods applicable to Māori evaluation contexts. In the *Guidelines*, these are stated as:

> Include in the project team, officials or external advisors with an appropriate level of experience and knowledge of the tikanga (protocols) applicable to the Māori entities involved in the project, with experience in research involving hapu, iwi and or other Māori organisations, and with experience and knowledge of methodologies and methods applicable to Māori research contexts. (SPEaR 2008:39).

The final expectation that met with some partial success fell under the principle of reciprocity, and entails the "Release research findings (and in appropriate formats) as agreed in the contract and with regard to the consent given by (and any additional guarantees given to) research participants" (SPEaR 2008:22).

The first SPEaR guideline element, *respect*, outlines expectations that protocols for engagement with Māori participants and stakeholders be identified during project planning, and the reasons why there was only partial success in this aspect can be identified in a re-telling of what happened: the process story. In the first instance, the contracted evaluators set out to establish contact with the Māori stakeholders by contacting senior managers from the commissioning agency who worked in locations where fieldwork was to be conducted. The evaluators' aims were to use both the existing organisational hierarchy and local knowledge to find locally-based Māori staff to assist the Pākehā evaluator in the field, to ensure the evaluator observed appropriate tikanga,[5] to optimise rapport building, and to assist with making sense of the data collected.

What ensued was a complex set of circumstances that evolved beyond the evaluators' control. In one area, a Māori manager assigned a Pākehā staff member who they said had adequate knowledge of tikanga to support both the Pākehā evaluator and the Māori respondents. The Pākehā evaluators questioned the appropriateness of another Pākehā assisting them with the interviews but felt obliged to accept the manager's decision. After an initial meeting the designated staff member withdrew from the project, stating they did not have time to participate. Further, a relatively inexperienced Māori postgraduate student was sub-contracted at short notice to take up the research assistant role in one fieldwork location, while in a second location a Māori staff member was assigned by their manager to work with the evaluation team. While a job description had been developed for the role, the Pākehā evaluators were not in a position to assess the skills of either of their research assistants. The evaluators had little or no knowledge of tikanga or te reo Māori, and were thus reliant on others to identify research assistants with the appropriate expertise. Time constraints also meant they were not in a position to pick and choose from a pool of candidates.

In the field it became obvious that the Māori staff member had no knowledge of tikanga or ability to converse in te Reo. The impact of this lack of appropriate skill on the respondents is

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[5] Māori customs and values

not known, but it was a stressful experience for the Pākehā evaluators. Although not openly discussed, it was obvious the situation was not ideal for the research assistant, who was enthusiastic about participating in the evaluation but clearly unable to provide cultural expertise to the project. In an attempt to be useful, the research assistant assumed responsibility for locating respondents' addresses and driving the evaluator to meet with participants. During interviews and in the analysis workshop they remained largely silent.

In contrast, the postgraduate student spoke te Reo confidently and was able to build rapport with Māori respondents that led to rich, in-depth data being collected. The debrief notes from one interview provide evidence of the difference it made for respondents to have a researcher with the appropriate skills:

> The interview was shifted from Tuesday to Friday as the couple had to go to a tangi. Husband left a message on my cell phone telling us he was sorry but they'd had a family bereavement. When we arrived (at the prearranged time) he had popped out to drop his mokopuna [grandchild] somewhere locally. His wife welcomed us into their home. We started the introduction and said we would wait for her husband (to do the interview). She said she really had no idea why we were there; she was thinking we might have come because they were doing something wrong. When husband arrived, he responded to [research assistant] in Māori, saying he (also) didn't understand why were there really, but he was willing to listen. Once the consent form was signed and [research assistant] asked the first question, husband said he would like to start further back (in time), which is what he did. It was important that we allow him to start his story from where he was comfortable and this really helped (with building rapport). Once the interview was over we were invited to stay for a cup of tea. (Debrief notes from interview)

Respondents were all recruited by telephone. Those who agreed to participate were sent a letter with information about the evaluation and confirmation of the date and time of the interview. As the fieldwork progressed, the evaluator realised that people still needed to be reassured verbally and in person about the purpose of their visit. For some, particularly older, respondents it was clear they felt more comfortable if the introduction was conducted in te Reo.

It is difficult to state with any certainty the *extent* to which respondents participated in an interview because of the presence of someone who had the appropriate cultural expertise. It is possible that the postgraduate assistant's ability to converse in te Reo, and their knowledge of tikanga, resulted in a good experience for both respondents and the researchers. It is also possible that these interactions enhanced the relevance of the information collected for the evaluation. Further and more systematic research would be required to confirm these speculations.

Partial implementation, therefore, was achieved for a range of elements across the evaluation process, but not in any clear, linear or cumulative way. It was difficult to identify the precise phasing of some elements or the logic of why some elements were attended to and others not. Much of what eventuated was beyond the evaluators' control. During the evaluation it was difficult for any of the participants to stand back and assess where practice was or was not following the *Guidelines*, and only the retrospective reconstruction of events, facilitated by the review process, made such assessment possible.

## Unmet Expectations

Overall, at least nine of the processes considered important in the *Guidelines* were not implemented during the evaluation. The details of these appear in Table 1 and some examples are chosen for further clarification below.

Under the principles of integrity and responsiveness, a number of guidelines highlight the need for early and on-going involvement of stakeholders and participants. In particular, the *Guidelines* point to the need for officials to ensure the integrity of their work with Māori and:

- Develop a consultation plan for engaging with Māori, Māori organisations, hapu and iwi that have been identified as likely participants in the project (2008:35).
- Use the planning and consultation phases to identify whether there are likely to be actions required for addressing intellectual and cultural property issues or concerns now and in the future. Ensure future consultation is enacted when the data is reused (2008:35).
- Ensure that the budget for the project is adequate and includes sufficient resources for consultation, reciprocity, compensation for contribution/ participation and feedback (2008:34).
- Check the validity of the analysis and/or reporting of data with Māori participants (2008 36).

In addition:

> To ensure the responsiveness of their processes, officials should:
>
> Involve Māori participants in the design of the project – including the design the research question(s), the methodology, the methods, analytical framework and mechanisms for disseminating results. (SPEaR 2008:36)

In the case of Programme X, however, few of these principles were observed. The evaluation objectives were defined by the agency prior to the RFP being posted on the Government Electronic Tenders Service (GETS) website. Contractors responding to the RFP were expected to put forward an evaluation approach as part of their proposal (due three weeks after the RFP was posted). This approach allowed little opportunity for considering Māori interests and the level and nature of Māori involvement in the project. Although the providers were Māori organisations whose clients were predominantly Māori, no community stakeholders were consulted about key aspects of the evaluation design. According to Moewaka-Barnes, this approach to evaluation design is relatively common in the New Zealand government sector:

> The reality is that frequently an evaluation is imposed on a programme and the researchers have little control over its parameters, other than deciding whether they will do it or not. Consultation in this context is not about being able to offer those who are consulted any level of control over the evaluation. (Moewaka-Barnes 2003:148)

The evaluator's proposal for the evaluation of Programme X worked around the issue of consultation by stating that the evaluators would consult with "Māori evaluation colleagues, Te Puni Kōkiri staff and others undertaking related research and evaluation projects". In retrospect it is clear that, at best, the evaluators were in a position to *negotiate* aspects of their design. As Justice McGechan has noted, consultation is a rather different process from negotiation, which involves:

> … setting out a proposal not fully decided upon; adequately informing a party about relevant information upon which the proposal is based; listening to what the others have to say with an open mind (in that there is room to be persuaded against the proposal); undertaking that task in a genuine and not cosmetic manner; and reaching a decision that may or may not alter the original proposal. (Health Research Council 1998:5)

Once the evaluation plan had been approved by the commissioning agency, but prior to fieldwork commencing, the evaluators visited staff from the Māori provider organisations selected by the commissioning agency for participation in the evaluation. The primary purpose was to introduce the evaluation team, build rapport and negotiate access to clients who had participated in the programme being evaluated. Theoretically, the providers were entitled to state that they did not wish to participate in the evaluation, but in reality they had little choice because involvement was included as a condition of their contract with the funding agency.

Lack of community involvement at the design stage produced repercussions for both the commissioning agency and the evaluators at the end of the evaluation. As with other aspects of the evaluation, both time and budget constraints made implementation according to the *Guidelines* problematic. The government evaluator responsible for commissioning the evaluation had to manage internal pressures to provide evaluative information within a policy-dictated timeframe and a budget that involved trade-offs in the sampling strategy. The evaluation findings were presented at a national hui attended by all the providers contracted to deliver the programme. The evaluation design was criticised by a number of providers because it focused on a small number of providers/areas and ignored the experiences of all other providers. The criticism that surfaced at the hui resulted in the evaluation findings being disregarded by a key stakeholder group.

In summary, Programme X achieved partial success in implementing the *Guidelines*, but it also illustrated some endemic failures. The intention of observance" was evident in how the evaluators developed a number of work-arounds and innovative, on-the-run solutions as opportunities presented themselves. Overall, however, Programme X, like many other evaluations, exemplifies an apparent "failure of practice" in the face of ongoing challenges. In the next section some of these challenges are discussed and questions for further debate are put forward.

## DISCUSSION

### What Authority Do the *Guidelines* Have?

The first point is that neither the evaluation team nor the commissioning agency were held to account for falling far short of the *Guidelines*, both in terms of what was planned and what was implemented. No one questioned the lack of consultation with community stakeholders in the evaluation design, and the design was not openly questioned or criticised by any of the government, community or evaluation stakeholders directly involved in the evaluation. Furthermore, although the evaluation plan was independently reviewed by an experienced evaluator, and a Māori evaluation advisor provided support to the project team, the *Guidelines* were not an explicit point of reference for the evaluation. Ultimately, no major repercussions appeared to result from the independent evaluators' or the commissioning agency's approach other than that some providers dismissed the findings (when they were presented in a hui to both participants and non-participants) because their programmes were not included in the evaluation.

The *SPEaR Best Practice Guidelines: Background Paper* makes it clear that the guidelines are not, and should not be, prescriptive and that constraints are pervasive and unavoidable:

> In government agencies, the decision to undertake a particular research or evaluation project usually does not lie with an individual researcher or policy analyst. Managers are accountable for finances and people resources. Most funding and in-house capacity is fully allocated to negotiated work programmes. A new project does not necessarily mean additional resources are readily available and priorities can change quite rapidly. This can be a challenge for research and evaluation ideals about lead times and coverage of breadth and depth… There will usually be a time line which is not very flexible, a set limit on the funds available and limits on the time "in-house" people can make available. (Good 2004:4)

One explanation for the observation silence is that the *Guidelines* have little authority and there is a general acceptance that "this is how it happens" in a government/provider contractual relationship. Although most parties to the evidence-building processes that now characterise government are aware of the need to observe ethical guidelines, a range of factors make such observance problematic. Among the factors that frustrate opportunities for observance are such things as requirements to participate, unrealistic ideas of what would constitutes sufficient time and resources, confusion over obligations under the Treaty on Waitangi (Treaty), the need for agencies to maintain control in order to manage political and fiscal risk, and the credibility of culture as a marker of robust research and evaluation practice. Each of these factors is considered in more detail below.

## Requirements to Participate

Moewaka-Barnes (2003:148) notes that "consultation [in the context of evaluations] is undertaken because it is a requirement of a funding or ethics body". Thus, service providers can expect to be scrutinised by funding agencies both because it is a requirement and because ideas about financial accountability are given prominence in policy discourse. As Lunt (2003: 13) suggests, "a number of factors are exerting pressure for evidence-based activity … a key driver here is the continuing emphasis within the public sector to secure value for money". Community providers responsible for delivering Programme X had contracts that stipulated they participate in an evaluation. A provider's motive, or toleration, for participating in an evaluation may also include demonstrating the programme's success so they can secure ongoing funding.

## Sufficient Time and Resources

Another reason for the partial or incomplete observance of the *Guidelines* is that few officials are aware of just how much time is "sufficient time" or the kind of resources necessary to allow more than a cursory consultation with community stakeholders. The gap between intention and responsiveness may be both unavoidable and unintentional and, at the end of the day, the deadlines for reporting are a more persuasive motivation than perfect process. The United Kingdom Evaluation Society (2003) suggests that:

> It would be helpful if commissioners:
> - hold preliminary consultations with all parties to the evaluation to support a relevant, realistic and viable specification
> - clarify the constraints that commissioners operate under, e.g. timescales, budgets, deadlines, and accountability.

In the case of Programme X, a meeting was held between a staff member from the commissioning agency, the evaluator and a Te Puni Kōkiri analyst, but there was no budget or time allocated to involve community stakeholders in the design phase.

## Obligations under the Treaty

The lack of clarity about government's rights and obligations under the Treaty[6] may also create confusion for staff from commissioning agencies. Two versions of the Treaty exist: an English-language and a Māori-language version. The two versions are not precise translations of each other. This has been the source of ongoing tension and debate, more recently in relation to the Crown's obligations toward Māori in the social policy area (Barrett and Connelly-Stone 1998). Tauri (2004) notes, for example, that the English-language version of Article 1 of the Treaty is interpreted as providing the Crown with the right to govern and make laws. Tauri's view is that government agencies use this interpretation to underpin the legitimacy of their research and evaluation units to undertake research and evaluation involving Māori:

> Article 1 is also interpreted as providing Government and, by extension, agencies and officials with the authority to set the policy and research agendas, including deciding what to research and on what issues Government's research spend will be focused. (Tauri 2004:8)

However, this interpretation is not shared by proponents of kaupapa Māori research, which is based on a premise that the Treaty gives Māori the authority to control the research (and, by implication, evaluation) process (Pipi et al. 2004, Tauri 2004). A key component of a kaupapa Māori approach is meaningful consultation with Māori in the development of the evaluation design. As Te Awekotuku (1991:17) has stated, "A researcher's responsibility, when working with people, is to the people themselves. This responsibility transcends sponsors; these individuals must come first."

## Managing Risk

In the political and risk-averse environment in which most evaluation currently occurs, government agencies maintain tight control over the evaluation scope, design and reporting of findings. Publication of findings, for example, may not occur until the agency's chief executive officer, or the Minister responsible, has given their permission. There is a reluctance to publish any information that might portray an agency, or the current government, in a negative light. Reporting findings back to participants may take months, and in some cases never occurs (McKegg 2003). Such "risk management" processes may seem frustrating from an evaluation participant's perspective but are seen as both necessary and expedient from a policy perspective.

## Credibility of Culture

When government agencies fail to involve Māori stakeholders, they risk designing and conducting evaluations and delivering evaluative information that are not credible to Māori.

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[6] The Treaty of Waitangi was signed by representatives of the British Crown and New Zealand's Māori chiefs (rangatira) in 1840. For a more detailed account of the Treaty and perspectives on the Treaty, the reader is referred to Belgrave et al.(2005).

As Johnson et al. (2008) state, culturally appropriate processes are not an end in themselves but a means to an end. They encourage evaluation to be "conducted in a way that supports credibility, that data reported accurately represent the phenomena of interest, and that interpretations are trustworthy" (Johnson et al. 2008:201).

It is in a government's interest to obtain evaluative information that derives from rigorous, robust evaluation designs. Definitions of rigour and robustness, however, are socially constructed and subject to culturally distinct interpretations. As Smith (2005), in her discussion of the "tricky ground" on which research practice is constituted, suggests:

> It is considered [by indigenous people] a sign of success when the Western world, through one of its institutions, pauses even momentarily to consider an alternative possibility. Indigenous research actively seeks to extend that momentary pause into genuine engagement with indigenous communities and alternative ways of seeking to live with and in the world. (Smith 2005:103)

The credibility and robustness of evaluation practice, when enacted against a set of well-crafted guidelines, may constitute such a pause, leading to genuine engagement.

## Summary

Although the review of practices implemented in one government-sponsored evaluation has identified a number of structural barriers that were beyond the evaluation team's control, it has also highlighted gaps in the evaluation team's ability to work with Māori. These capability issues have been noted by Duignan (2002) and the State Services Commission, which has stated that:

> … officials commissioning and using evaluative activity to inform policy often do not have an adequate understanding of tikanga and te reo Māori or of Māori research and evaluation methodology. (State Services Commission 2003:29)

Professional evaluation organisations can play an important role in supporting members to develop their cultural capability. The Aotearoa New Zealand Evaluation Association (ANZEA) has as its goals to:

> Promote and facilitate the development of evaluation practices and standards which are relevant to Aotearoa New Zealand, with particular reference to the principles and obligations established by Te Tiriti o Waitangi and reflecting the unique bi-cultural context of Aotearoa New Zealand, while also providing a framework from which multi-culturalism can be embraced and responded to. (ANZEA website 2008)

The Australasian Evaluation Society (AES) also has an agenda to develop evaluators' capability to practise appropriately within indigenous contexts (Wehipeihana, 2008; Scougill 2006) as does, in a less direct way, the American Evaluation Association in the discussion and debate that underpins the *Cultural Reading of the Program Evaluation Standards* (AEA 2004).

## CONCLUSIONS

The SPEaR *Guidelines* are a useful resource for contractors working in the government sector, not just at the planning stage but throughout an evaluation and as a framework for reflecting on current practice. The final version, refined through an extensive consultation

process, offers complex and demanding material for consideration. Despite the existence of such guidelines, however, there are a number of challenges that make it difficult to implement good practice approaches when conducting government evaluations where Māori are a significant subgroup. These challenges include practical considerations such as budget and time constraints, and lack of clarity about what consultation is required when involving Māori. More subtle challenges are evident in unspoken requirements for groups to participate in evaluations, or for evaluators to deliver robust findings. Complex institutional challenges exist in New Zealand in relation to obligations under the Treaty, and the extent to which agencies will invest authority in culturally responsive guidelines. There are political challenges in the need for agencies to maintain control in order to manage political and fiscal risk.

At an individual level, contractors are expected to have a wide range of competencies, one of which is the ability to be able to engage with and involve Māori individuals, families and communities in ways that are authentic, appropriate and ethical. As this review has highlighted, an evaluation team may proceed with good intentions but difficulties encountered at different stages of the process mean the ideal is seldom realised.

The dissemination of thoughtful and well-crafted guidelines is one necessary strategy to mitigate the failure of practice, but it is not sufficient. Evaluators need to reflect on their practice, share their experiences and explore new approaches to evaluation. New approaches may align with or surpass existing practice guidelines. If government is serious about promoting best practice approaches, there needs to be structural change in the ways evaluations are currently conceived and commissioned. Debate and dialogue about the nature and role of culturally appropriate practice are critical.

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## *RESPONDING TO THE DEMAND FOR QUICKER EVALUATION FINDINGS*

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**Abstract**

Some public sector stakeholders are demanding evaluative findings within a short timeframe. Although evaluators want to be responsive to such requests, there are a number of barriers that hinder their ability to produce evaluative information more quickly. This paper describes the results of an investigation into ways to help evaluators respond to such evaluation "timeliness" issues. It examines the factors that underpin the issue and the barriers to addressing it. A review of the literature identifies three approaches evaluators can use to address the timeliness issue. An unintended result of the investigation is also presented. Based on the findings of the literature review, a tool (named the "time/resource matrix") has been developed for responding to and managing stakeholder demand for quicker evaluative findings.

## THE ISSUE

This investigation is the result of my experiences as an evaluator in a public sector organisation. Evaluation stakeholders (notably policy and programme managers) are requesting evaluations with short timeframe for the reporting of findings. An examination of requests for proposals (RFPs) posted on the Government Electronic Tendering (GETS) website in 2007 indicated that such demand is occurring across the public sector. Some RFPs have a period of 6 to 12 weeks between the awarding of an evaluation contract and the reporting deadline.

Timeliness is an important consideration for evaluators. A "utility standard" is the first of four evaluation standards of the American Evaluation Association. The utility standard refers to the importance of the timeliness of evaluation findings "so that they can be used in a timely fashion" (Sanders 1994:53--57). In New Zealand, the Social Policy Evaluation and Research Committee (SPEaR) has identified timeliness as one of four features that make research and evaluation useful for social policy purposes (Bedford et al. 2007).

The importance of the timeliness of evaluative findings is expressed succinctly by Grasso (2003:512): "Timing is almost everything". Other authors stress the relationship between use and timeliness:

> The timeliness of information is no less critical than its accuracy, as exigencies often force program managers to make decisions before thorough analyses can be completed. In some instances, less rigorous analyses delivered at the right time may be superior to exhaustive analyses delivered too late. (McNall et al. 2004:287)

Given the relationship between the timeliness of evaluative findings and their subsequent use, it is appropriate for evaluators to consider how they can respond to requests for a quicker turn-around of evaluation results.

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## CONTRIBUTING FACTORS IN THE POLICY ENVIRONMENT

Three factors in the policy environment appear to contribute to this demand for quicker evaluation findings: the policy-making process, the conceptualisation of evaluation in the policy process, and misaligned timeframes.

### Policy-making Process

New Zealand's policy environment is characterised by "a degree of volatility" (Williams 2003:199). This is due in part to New Zealand's three-year electoral cycle, which means that major policy changes can occur very rapidly (Williams 2003:199) and may also result in "political exigencies that leave policy analysts with little time or incentive to track down and digest evidence" (Baehler 2003:37). Baehler's observation is congruent with my experience as a public sector evaluator. The demand from policy analysts for quick turn-around of evaluative findings is often the result of a Minister's request for new or revised policy within a very short timeframe.

### Conceptualisation of Evaluation in the Policy Process

The policy process is typically portrayed as a cyclical, unidirectional process with evaluation the end-stage, providing information for decision-making for the next cycle of the process (Baehler 2003, McKegg 2003). Both Baehler and McKegg challenge this conceptualisation. Baehler (2003:32) argues:

> The typical textbook portrayal diverges from reality … single-loop models of policy making … fail to recognise the different arenas in which decisions are shaped and the different stages of the cycle where key actors may be more and less open to learning from evaluation results.

McKegg (2003) notes that this linear conceptualisation fails to address the wide range of possible purposes and uses of evaluation. As a result, it fails to capture the many ways in which evaluation can interact with and inform policy development and review, along with programme design and delivery.

### Misaligned Timeframes

There is an inherent mismatch in the timeframes associated with the policy process and evaluation activity (Baehler 2003, Williams 2003). Policy processes are aligned with the electoral cycle, with policy making and funding for new initiatives typically occurring at the beginning of the three-year period. However, the funding of evaluations via the Government Budget process commences at the beginning of the financial year (1 July), which often does not fit with key decision-making cycles (Williams 2003). For example, policy makers require evaluative information approximately 12 months before the end of the funding of an existing programme in order to gain ongoing programme funding through the annual Budget-setting process. If an evaluation is scheduled towards the end of the policy cycle (as in the traditional conceptualisation described above), its findings will be too late to be used for decision-making purposes.

It should be noted that two of the factors described above -- the conceptualisation of evaluation in the policy process and the misalignment of policy and evaluation timeframes -- are not only contributing to the demand for quicker evaluation findings, but are also having a negative impact on evaluation use generally (McKegg 2003). These factors will only be

addressed through structural change (such as the alignment of policy/programme funding allocation with evaluation funding allocation) and strategies to increase understanding about evaluative activity. Such strategies could include educating public sector managers about the ways evaluation can be used for decision-making, policy development, and programme design and development.

## ADDITIONAL BARRIERS

Within the context of the policy environment identified above there are other factors that further limit the ability of evaluators to respond to requests for rapid evaluation findings. These barriers relate to resourcing, evaluator supply, the evaluability of some programmes and policies, and stakeholder expectations. Each of these is briefly discussed below.

The first barrier concerns internal resourcing limitations. Many public sector evaluation teams are small (with perhaps three to eight staff) in comparison with other teams in the organisation who commission evaluations (for example, policy teams, which may comprise 20--100 staff). Given an evaluation team's size and its annual work programme, it has limited capacity to respond to requests for "quick" evaluations, particularly if such requests are unplanned or ad hoc, as is often the case. The notion of an evaluation team maintaining spare capacity for such unplanned, urgent work is not feasible given its routine work demands.

The second barrier concerns the supplier market. Just as internal evaluation teams have limited spare capacity to respond to requests for quick evaluations, the number of evaluators in New Zealand is similarly constrained. This is attributed to two factors -- the amount of work available for private sector evaluators and the limited capacity of the supplier market (Baehler 2003).

A third potential barrier concerns the evaluability of policies or programmes. This refers to "a process that helps evaluators to identify evaluations that might be useful, explore what evaluations would be feasible, and design useful evaluations" (Wholey 2004:33). One of the considerations when assessing the evaluability of a policy or programme is the length of time it has been running, and whether this is sufficient for the stated purpose of the evaluation (for example, to measure outcomes).[2] The evaluability of new policies or programmes is particularly problematic for outcome and impact evaluations. A new programme requires time to become established. A sufficient number of clients need to flow through the intervention and the results of the programme need to be manifested before an evaluation assessing the programme's outcomes can begin. Baehler (2003:31) notes that a minimum period of 18 months is required for an evaluation to be reported on the success of a new programme. These time requirements are often at odds with the demands from policy or other stakeholders for rapid evaluation results.

Another potential barrier concerns stakeholder expectations about methodology. In my experience, some of those who are commissioning evaluations have unrealistic expectations about the type of evaluation method that is feasible given the time and resources available. The preferred methodology of such stakeholders is the result of their desire for a level of evidence or certainty about the effectiveness of an intervention, despite limited evaluation funding and a short reporting timeframe. Discussion with evaluators in other government

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[2] Note that the length of time a programme has been running is not an issue for formative evaluations; that is, evaluations that attempt to identify improvements to programme design, implementation or delivery

organisations suggests that such unrealistic expectations about methodology are not uncommon.

## SOLUTIONS IN THE LITERATURE

A review of the literature suggests three potential ways to meet the demand for quicker evaluation findings.

### Time-saving Approaches

The first solution is provided by Bamberger et al. (2006). They describe two ways of thinking about time saving: by reducing the total amount of evaluator resources and effort, or by reducing the time involved in data collection, analysis and reporting, which reduces the overall length of the evaluation. Bamberger et al. argue that this resource/duration distinction is important because the best approach for a particular evaluation needs to be determined: is it more appropriate to reduce the level of evaluator effort and resourcing, or the duration of the evaluation? Each has different implications for how an evaluation will be designed, resourced and executed.

### Evaluation design

An alternative way for evaluators to save time is to adopt a simplified evaluation design, and Bamberger et al. (2006) identify a number of ways to achieve this. These include prioritising information needs to focus on critical issues (thereby eliminating the collection of non-essential data), using existing data sets or secondary data, and reducing the sample size.

Bamberger et al. (2006:54) stress that evaluation designs that are simplified in response to timing constraints involve a "methodological compromise". Consequently, evaluators must give sufficient consideration to the potential threats to the validity of the evaluation findings.

### Rapid Evaluation Methods

A third potential solution lies with research and evaluation methods referred to as "rapid evaluation and assessment methods" (REAM) (McNall and Foster-Fishman 2007). There has already been a substantial effort to address the demand for rapid findings in the international aid and development fields through the development of REAM methods.

A review of the REAM literature indicates that there is a large family of rapid research techniques, with a bewildering array of acronyms. For example, Beebe (2001) identifies more than 20 REAM approaches, which have originated from different disciplines and areas of practice. From the literature available it is difficult to identify which approach evolved from which other approach, and what features distinguish one approach from another. For the purposes of this paper, five REAM approaches have been selected for investigation: real-time evaluation (RTE), rapid feedback evaluation (RFE), rapid assessment (RA), rapid evaluation method (REM), and participatory rural appraisal (PRA). Table 1 provides an overview of each of these approaches.

## Table 1  Rapid evaluation and assessment methods

| | Real-time evaluation (RTE) | Rapid evaluation method (REM) | Rapid feedback evaluation (RFE) | Rapid assessment (RA), rapid assessment process (RAP), rapid assessment methodology (RAM) | Participatory rural appraisal (PRA) |
|---|---|---|---|---|---|
| **Origins** | The chief proponent and implementer of RTE is the United Nations High Commission for Refugees (UNHCR), which has used it since 2000 (Sandison 2003). | REM was developed by the World Health Organisation. | RFE is attributed to Wholey (2004). | This group of assessments is based on an ethnographic inquiry approach, and are similar to rapid rural appraisal (Beebe 2000:xvi). Vincent et al. (2000) describe RAM as evolving from RA and RAP. | PRA evolved from the Rapid Rural Appraisal (RRA) method, activist participatory research, agroecosystem analysis, applied anthropology and field research on farming systems (Chambers 1994a:953). |
| **Context for use** | RTE is used in fast-moving situations such as an international emergency or a humanitarian aid operation (Jamal and Crisp 2002). | REM is used to assess the performance and quality of health care services in developing countries (Anker et al. 1993). | RFE is a problem-solving technique for identifying, diagnosing and improving the functioning of programme processes, and so RFEs are most appropriate in the context of formative, internal evaluations (McNall et al. 2004). | Beebe (2001) does not mention any specific context. Unlike the other REAM approaches, it appears to be used in a diverse range of settings. Vincent et al. (2000) describe RAM as being used as a tool for health research, and to monitor and evaluate health programmes. | PRA is used in third world rural settings. Projects have included agriculture, natural resource management, poverty and social programmes, health and food security (Chambers 1994b). |
| **Description** | "RTE is a timely, rapid and interactive peer review … undertaken at an early phase. Its broad objective is to gauge the effectiveness and impact of a given UNHCR response, and to ensure that its findings are used as an immediate catalyst for organizational and operational change" (Jamal and Crisp 2002:1). "RTE examines a programme against recognizable evaluation criteria while it is still being implemented with the intention of making in situ changes" (Sandison | REM consists of a set of observations and survey-based diagnostic activities. It is problem oriented, focusing on collecting necessary information for decision-making purposes. Therefore REM's focus is on specific health care problems rather than on overall health care (Anker et al. 1993). | RFE is an evaluation model that is focused on a particular issue, problem or information need, where evaluative information is needed in a short timeframe. | This is an intensive, team-based qualitative inquiry using triangulation, iterative data analysis and additional data collection to quickly develop a preliminary understanding of a situation from the insider's perspective (Beebe 2001:xv). Vincent et al. (2000:420) describe rapid assessments as being distinguished from other social science research by their speed, cost effectiveness, technical eclecticism and pragmatism. RAM adopts the principle of adequacy rather | "A family of approaches and methods to enable rural people to share, enhance and analyse their knowledge of life and conditions, to plan and act" (Chambers 1994a:953). |

| | | | | than scientific perfection (Vincent et al. 2000:421) . | |
|---|---|---|---|---|---|
| | 2003:2). | | | | |
| **Key features** | The quick timing of feedback is described as an essential feature of RTE: "Rapid feedback is as important as the timing of the evaluation, and without it the evaluation is not real-time" (Sandison 2003:3). The evaluator role is not limited to a passive or analytical one. Evaluators work with the response team and are key players in all stages of the operation, including the planning of the response. They act as a facilitator and provide advice. They should be a "repository of knowledge on lessons from past emergency evaluations" (Jamal and Crisp 2002:2). | REM has a front-end participatory focus. The first step involves the participation of diverse stakeholders to identify the key issues to be examined. Decisions are made about the minimum sample size required for the level of precision that is needed for the decisions to be made. Data collection errors are detected in the field as early as possible (e.g. the supervisor reads all of the completed questionnaires and checks for completeness and consistency). | RFE is based on Wholey's (1983) RTE model which consists of 5 steps: 1. collection of existing data on program performance 2. collection of new data on program performance 3. preliminary evaluation 4. development and analysis of alternative designs for full-scale evaluation 5. assisting policy and management decisions. However, McNall et al. (2004) assert that step 4 is not necessarily required because the information gathered during RFEs may be sufficient to answer the client's questions. | The basic concepts of RAP are:<br>▪ data collection using triangulation<br>▪ analysis using an iterative process, where initial analysis is followed by several cycles of additional data collection and more analysis. | PRA's primary objective is the empowerment of the local people. PRA is less about gathering data, than it is about starting a process. Ownership of the investigation and the information lies with the local people. The evaluators' role is to act as catalysts and facilitators who enable people to undertake and share their own investigations and analysis. They watch, listen and learn. It requires critical self-analysis and personal responsibility (Chambers 1994a:958). |

McNall and Foster-Fishman (2007:159) identify the common features of REAM approaches. These include a short duration (from a few weeks to a few months), use of mixed methods, collaborative team-based arrangements, iterative research designs in which data are analysed as they are being collected and preliminary findings are used to guide additional data collection. McNall and Foster-Fishman also describe REAM methods as being participatory, such that "representatives of local populations and institutions are involved in the planning and implementation of the research" (2007:159). However, this claim is not upheld in the case of rapid feedback evaluation (Wholey 1983), which does not appear to have any participatory features.

In fact McNall and Foster-Fishman have not necessarily captured all of the common features of REAM approaches. Another common feature is summarised by Beebe's (2001) "sound enough" principle. The underlying principle of REAM methods appears to be that of adequacy for purpose; that is, adequate evidence for the level of precision that is needed for the purpose to which the findings will be used (Anker et al. 1993). REAM studies also appear to be emergent, requiring a high degree of flexibility. They also appear to be designed for instrumental use, such as decision-making and problem-solving, rather than for conceptual or process use.[3] Finally, there is rapid turn-around of findings, which appear to be reported

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[3] Instrumental use occurs when a decision or action follows, at least in part, from an evaluation. Conceptual use refers to the use of evaluation to influence thinking about issues in a general way. Process use refers to, and is indicated by, individual changes in thinking and behaviour, and programme or organisational changes in

incrementally, with increasing levels of content and analysis. An initial findings report is often provided before evaluators leave the field.

The literature was searched to identify the strengths and weaknesses of each of the five REAM approaches described in Table 1. This search proved largely unsuccessful, which may be attributable to the lack of substantive differences among the REAM approaches (McNall and Foster-Fisherman 2007:159):

> The contrasts between rapid evaluation and assessment/appraisal techniques should not be overdrawn and are likely artifacts of their distinct intellectual lineages and historical contexts of application. At this point in their developmental history, there has been enough cross-fertilization between the variants of REAM that they have become almost indistinguishable.

The only significant difference appears to be that some REAM approaches (for example, REM and PRA) are more participatory than others. The participatory nature of REM and PRA could therefore be regarded as strength of these approaches.

Bamberger et al. (2006:76) identify a significant shortcoming of REAM studies when they note that "such studies do not systematically address the increased threats to validity from being implemented in a quick fashion" . They suggest that further work is needed to address "the trade-offs between time, quality and validity" (2006:76). The validity issue is also noted by McNall and Foster-Fishman (2007), who suggest the use of an adequacy criterion from an evaluation quality framework to assess the quality and rigour of the data and findings.

## Use of REAM in the New Zealand public sector

Although REAM appears to offer New Zealand evaluators a way of producing rapid evaluative findings, its use must be approached cautiously. For REAM approaches to be credible for public sector purposes, they must be applied appropriately and in ways that do not compromise rigour. This is particularly important given the variable level of knowledge about evaluation among public sector managers and staff (McKegg 2003). REAM could be misused as an "easy and cheap" way of obtaining evaluative information. If undertaken inappropriately or incorrectly, REAM could therefore compromise the integrity of public sector evaluative activity.

If REAM is to be regarded as a credible evaluation approach for public sector purposes it is essential that it is fully understood by evaluators and those commissioning evaluations so that decisions can be made about whether it is an appropriate approach to use in a particular situation. This involves understanding the trade-offs or compromises involved in using REAM. The most significant compromise is that of time versus the type and amount of evaluative evidence required for credible findings. McNall and Foster-Fishman (2007:166) describe this compromise as involving "a balance between speed and trustworthiness." Beebe (2001) and Anker et al. (1993) shed further light on this compromise: Anker et al. describe REM as involving adequate evidence for the level of precision that is needed for the purpose for which the findings will be used, and this adequacy for purpose is echoed by Beebe's (2001) "sound enough" principle, which underpins RA.

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procedures and cultures, that occur among those involved in evaluation as a result of the learning that occurs in the evaluation process (Patton 1997:90).

As indicated by both Anker et al. (1993) and Beebe (2001), evaluation purpose is a major determinant of whether REAM is an appropriate approach to use in a particular situation. Evaluation purpose determines the nature and amount of evidence required to produce credible evaluative findings. In the public sector context, REAM methods appear to offer an appropriate approach for some evaluations with a formative[4] purpose, such as increasing understanding of an evaluand[5] and/or participants, diagnostic and/or problem solving, learning and development, design or process improvement, or state of play assessment. REAM is not appropriate for evaluations that aim to provide a summative[6] assessment of performance, worth or merit, and for other evaluations where robust evidence is required for attribution or other purposes.

## THE TIME/RESOURCE MATRIX

To summarise, a review of the literature suggests three potential ways of addressing the demand for "quick" evaluation findings: controlling the evaluation's duration, effort and resources; determining the evaluation's design; and REAM methods. However, rather than being unrelated factors, each is an individual component of a larger picture. I have developed a matrix (Figure 1) to illustrate the relationships between these factors. The matrix has two axes: the horizontal axis represents time and the vertical axis represents resource. There are four quadrants, each of which represents different stakeholder priorities, and involves evaluation designs and methods of differing levels of complexity, together with different time and resource requirements, as described in Table 2.

**Figure 1  The Time/Resource Matrix**



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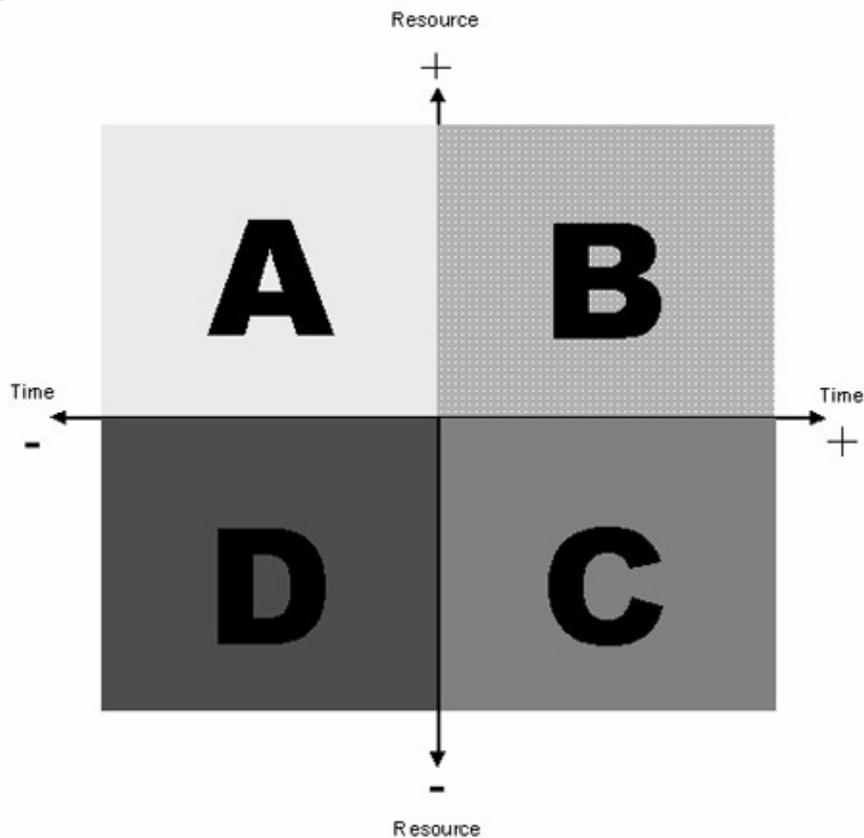
[4] Evaluation for the purpose of improvement (Scriven 1991).
[5] That which is being evaluated (Davidson 2005).
[6] An overall assessment or evaluative judgment (Patton 1997).

**Table 2  Characteristics of each quadrant**

| | |
|---|---|
| Quadrant A<br><br>Higher resource + quicker time | **When to use**: for evaluations that are time critical for stakeholders.<br><br>**Evaluation design**: the design is more likely to be straightforward, to involve a team approach, and may use rapid evaluation methods.<br><br>**Examples:** evaluations with a formative purpose, such as increasing understanding of an evaluand and/or participants, diagnostic and/or problem-solving, learning and development, process improvement, or state-of-play assessment. |
| Quadrant B<br><br>Higher resource + longer time | **When to use**: for evaluations that are important to stakeholders but are less constrained by time, *or* evaluations where time is critical but in a different way to quadrant A; for example, evaluations that require a period of time to pass before the evaluand can be evaluated (such as a new initiative), or for programme results/outcomes to be achieved, or to enable time intervals to be compared.<br><br>**Evaluation design**: designs are more likely to be more complex (e.g. longitudinal, action research, baseline/post, outcome, impact).<br><br>**Examples:** evaluations that measure change over time; evaluations where the level of attribution is important; outcome and impact evaluations; evaluations involving a summative judgement. |
| Quadrant C<br><br>Less resource + longer time | **When to use**: for evaluation projects with fewer time constraints and less resource, which are more likely to be less important or "nice to do" evaluations. |
| Quadrant D<br><br>Less resource + quicker time | **When to use**: where there is sound existing data that involves minimum additional effort or resource. If there is no existing data, or the quality of the data is questionable, evaluators should not be working in this quadrant as doing so will lead to issues of evaluation quality. |

## Use of the Matrix

Although the matrix does not solve the timeliness issue or address all of the identified barriers, it does provide evaluators with a means of conceptualising the timeliness issue and communicating with stakeholders. The matrix is a useful educational tool for explaining the time/resource/method relationships to stakeholders, thereby helping to manage their expectations and negotiate their requirements. The matrix also helps evaluators to explain to stakeholders any evaluability issues relating to time. Further, the matrix is a useful tool for planning and managing annual work programmes in public sector evaluation contexts. Care can be taken during the annual business planning process to ensure that work projects are distributed across quadrants A, B and C, so as to avoid over-committing evaluator resources and preventing bottlenecks.

## Limitations of the Matrix

Despite its usefulness for the above purposes, the matrix does not address the factors in the policy environment that contribute to the demand for quicker evaluative findings, particularly the conceptualisation of evaluation in the policy process, and the misalignment of policy and evaluation timeframes. As noted above, these factors will only be addressed through

structural change (such as alignment of policy/programme funding allocation with evaluation funding allocation) and strategies to increase understanding about evaluative activity. Such strategies could include educating public sector managers about the ways evaluation can be used for decision-making, policy development, and programme design and development.

## CONCLUSION

This paper describes an investigation into ways of meeting the demand from public sector evaluation stakeholders for "quicker" findings. The literature describes three potential solutions to enable evaluators to respond to such demand. The third of these solutions -- rapid evaluation and assessment methods (REAM) -- is suggested with some caution. Although REAM offers evaluators a means of providing rapid evaluative findings, this approach must be used appropriately and applied correctly. Failure to do so could compromise the credibility of evaluative activity in the public sector.

The three potential solutions to the timeliness issue are presented in the literature as unrelated elements, but I have developed a matrix to illustrate their relationships with each other. This Time/Resource Matrix provides a useful tool for managing stakeholder expectations and requirements.

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## JUST WHO DO WE THINK CHILDREN ARE?
## NEW ZEALANDERS' ATTITUDES ABOUT CHILDREN, CHILDHOOD AND PARENTING: AN ANALYSIS OF SUBMISSIONS ON THE BILL TO REPEAL SECTION 59 OF THE CRIMES ACT 1961

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**Abstract**

A research project analysed a sample of the submissions to Parliament in 2006 on the Bill to repeal section 59 of the Crimes Act 1961. S.59 had provided a defence to parents accused of assaulting their children, the defence being that they used force for the purpose of correction. The project examined two particular contrasting social viewpoints of children -- children as "human beings" and as "human becomings" -- and whether these two viewpoints were implicated in people's views on the use of physical punishment. The research hypothesis was that people who advocate the use of physical punishment are more likely to conceptualise childhood as a phase of development, where the child is on his/her way to becoming an adult, unable to reason and in need of constant guidance from adults; in other words, that children are human becomings. Alongside this, we hypothesised that people who see childhood as a complete state in its own right, and see children as fully developed at whichever age and stage they are in, having full human rights and contributing to society -- the human beings view -- are more likely to reject physical punishment. We found that submitters expressing a view of children as human beings were more likely to oppose physical punishment and support repeal, whereas people who saw children as human becomings favoured physical punishment and opposed the Bill. There were also gender and location differences among the submitters. Lessons for parent education include the need to examine and address people's deepest beliefs and attitudes about children and childhood.

## INTRODUCTION

This paper first describes two particular contrasting views of children and childhood. It then describes a research project that used the case of physical punishment of children to explore New Zealanders' views about children, childhood, and the roles, rights and responsibilities of parents and children. The research team analysed a sample of 170 written submissions (about one-tenth of the total submissions) sent to the New Zealand Parliament's Justice and Electoral Select Committee in 2006 on the Bill to repeal Section 59 of the Crimes Act. Both quantitative and qualitative results are presented. The concluding discussion includes the implications of the findings for children's human rights and for non-violent parenting education programmes.

Until 2007, Section 59 of the Crimes Act 1961 stated, under the heading "Domestic discipline":

> Every parent of a child and … every person in the place of the parent of a child is justified in using force by way of correction towards the child, if the force used is reasonable in the circumstances.

Section 59 thus provided a defence for parents charged with assaulting their children; the defence was that they were using reasonable force for the purpose of correction.

## TWO VIEWS OF CHILDREN AND CHILDHOOD

Over the past 20 years, as part of debates within the social sciences about the nature of childhood, sociological theorists have developed social constructionist views of the child (Waksler 1991, Corsaro 1997, James and Prout 1997, Qvortrup 1994). In viewing childhood as a social construction, earlier views of the child became open to challenge and new views began to develop.

Earlier predominant ideas of children as on the way to adulthood had focused on their socialisation into an adult world, or their development -- both physical and psychological -- into adults. Socialisation is something that happens *to* the child; generally an adult-directed process whereby the child is shaped and guided to become a well-adjusted member of adult society. In the developmental view, the growing child is understood in terms of progress in acquiring emotional and cognitive skills and knowledge. In this view, children need to be "reared, raised etc. if they are to become adults just like us, if they are to support the world we've made, if they are to 'outgrow' or 'get over' their childish behaviour" (Waksler 1991:64).

The development of social constructionist views of children challenged accepted frameworks and ideas about what children are, one of the outcomes being a new focus on children as "social actors":

> Childhood is recognised as a structural form and children are social agents who contribute to the reproduction of childhood and society through their negotiations with adults and through their creative production of a series of peer cultures with other children. (Corsaro 1997:43)

In this view, children are already fully developed human beings, who have rights, who can and do make decisions about their lives, and who contribute to society. Qvortrup further argues that if children are indeed social actors, like adults, then the relationship between adults and children is most likely not regulated philosophically, but by power and interests (Qvortrup 1994). The two divergent views were pithily summarised by Qvortrup as follows:

> children are "human beings" whose status as children *now* is just as important as their future adulthood; who are active social beings, engaged in everyday real life, and requiring the same respect that adults receive
> children are "human becomings", where the key aspect of children is that they are not yet competent, not yet able to reason, not yet knowledgeable, and in need of constant guidance from adults. (Qvortrup 1994:4).

Looking at these issues using the case of physical punishment is instructive. In their review of the literature on physical punishment, Phillips and Alderson found two underlying reasons for

the apparent anomaly whereby, in spite of evidence that smacking is unnecessary and dangerous, it is "widely practised and accepted in Britain". These reasons were beliefs that children are human becomings rather than full human beings, and support for parents' rights over children's human rights (Phillips and Alderson 2003:282). Views of children as human becomings and as human beings appear to co-exist within New Zealand. We wondered how they might affect people's support for, or opposition to, the use of physical punishment here.

## POLICY ABOUT CHILDREN

Increasing acceptance of new views of childhood and concerns about the consequences of children's relative powerlessness have led to such international developments as the 1989 United Nations Convention on the Rights of the Child (UNCROC), and, within New Zealand, the 2002 Whole Child Approach (Ministry of Social Development 2002b), the Agenda for Children (Ministry of Social Development 2002a) and the Youth Development Strategy Aotearoa (Ministry of Youth Affairs 2002).

In the Ministers' foreword to the 2002 Agenda for Children (Agenda), they wrote: "We need to treat children as respected citizens who can contribute to society now and not just as 'adults in the making'"(Ministry of Social Development 2002a:2). This view, and the Agenda's promotion of the "whole child" approach, constitutes "a new view of children and childhood". The view is reflected in research and policy that emphasises:

> … the need to consider children as social actors, stakeholders with participation rights, and not just passive dependants [and which] argues children's voices, views and rights need to be … central to policy and research conceptions of children. (Smithies and Bidrose 2000:51)

While the new view of children may have currency with some policy makers and child welfare practitioners, it is by no means universally or even widely held among these groups, nor among New Zealand's communities.

The different ways of viewing children have implications for how children should be raised and what sorts of rights children should have within society. In the developing adult view of childhood, where children are seen as on the road to adulthood, their status as children *now* is less important than what they *will become* in the future. Viewing children as social actors and childhood as a structural form has implications for the roles and relationships of parents and children. Here, adults are no longer seen as all-knowing and all-powerful, and children are no longer viewed as incompetent, ignorant and unable or unwilling to reason, or in need of constant adult guidance in their development towards becoming complete human adults.

## RESEARCHING NEW ZEALANDERS' VIEWS OF CHILDREN AND CHILDHOOD

Our research made use of a body of original material that became available in 2006, and which provided a convenient sample for analysis. This was the large number of written submissions (over 1,700) received up to 28 February 2006 by the Justice and Electoral Select Committee of the New Zealand Parliament on the Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill. The Bill's intention was to repeal Section 59 of the Crimes Act. (The full research report is Debski et al. 2007.)

We developed a hypothesis which we would test by examining the submissions using Qvortup's (1994) summary terms as a framework. Our research hypothesis was that people who advocate the use of physical punishment are likely to conceptualise childhood as a phase

of development, where the child is on his/her way to becoming an adult; in other words, children are "human becomings". The logic of this view is that since children are less than adult, not yet competent and reasonable human beings, or even in some cases, sinful, then adults can assume a right and a duty not only to guide but also to chastise if necessary, as the child is unable to be reasoned with and is in need of correction.

We also hypothesised that, on the other hand, people who see childhood as a complete state in its own right are more likely to reject physical punishment. In this view children's competencies are valued and children are viewed as able to understand others' perspectives and to respond in sensitive and reasoned ways to others, according to their abilities. A children's rights perspective fits within this view, since here children are perceived as full and complete "human beings", who therefore command the same human rights as any other people. Of course children always need care and nurturance appropriate to their development.

One of the key principles for government policy and practice as outlined in the Agenda is that policies and practices should be consistent with the UNCROC. At the time of the research, although New Zealand was a signatory of UNCROC, and although the UN Committee on the Rights of the Child had twice recommended the repeal of Section 59, in 1997 and 2003 (Global Initiative to End all Corporal Punishment of Children[2]), it remained in force. The Bill for repeal was a member's, not a government, Bill.

## METHODS

We accessed details of 1,716 written submissions using the collections available at the Parliamentary Library, and from the Green Party of Aotearoa New Zealand office (the Bill's sponsor was Sue Bradford, Green Party Member of Parliament). Some submissions were very brief; others were much longer or included many pages of supplementary material.[3] We examined all of the submissions available to us and noted whether they were from organisations or individuals/families, and whether they supported or opposed the Bill: 164 of the submissions were either duplicates, unclear about their position on the Bill, missing, or otherwise unusable. Table 1 lists the details of the remaining 1,552 submissions.

**Table 1  Submissions supporting and opposing the Bill to repeal Section 59: Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill**

| Type of submitter | Support the Bill | Oppose the Bill | Total |
|---|---|---|---|
| **Organisations** | 185 | 25 | 210 |
| **Individuals** | 194 | 1,148 | 1,342 |
| **Total** | 379 | 1,173 | 1,552 |

Taking four groups (organisations in support, organisations opposed, individuals in support and individuals opposed to the Bill), we generated a random sample within each group,

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[2] *Γλοβαλ Ινιτιατιωε το Ενδ αλλ Χορπραλ Πυνισημεντ οφ Χηιλδρεν.* Γλοβαλ προγρεσσ: Νεω Ζεαλαν δ. ωωω.ενδχορποραλπυνισημεντ.οργ/παγεσ/φραμε.ητμλ Αχχεσσεδ 2 Οχτοβερ 2007.

[3] The report by the Justice and Electoral Select Committee noted that it had received "1,718 submissions on the bill. The majority (1,471) came from individuals. Of these, 385 submitters identified themselves as parents or caregivers, and 76 as children or young people. We received 247 submissions from organisations." (Parliament: Justice and Electoral Select Committee 2006:2).

yielding 150 individual/family submissions (75 opposed to and 75 in support of the Bill) and 20 organisation submissions (10 opposed to and 10 in support of the Bill). Thus we examined 170 submissions (comprising 526 pages) in detail for the study. This sample represented approximately one-tenth of the total submissions, and the number of individual and organisational submissions in the sample reflected their proportions in the total submissions. We reported both quantitative and qualitative analyses of the material.

A list of categories was developed for the analysis from the literature, from a scan of the submissions and from discussion within the team, and then tested and refined over a period of weeks. Data extracted from the submissions, where they were present, included:
- type of submitter -- individual or organisation
- position on the Bill -- support or oppose
- support or oppose physical punishment of children
- demographic details (gender, age and life stage, city or region, etc.)
- submitter's perspective (as a parent, a professional, etc.)
- views about :
  o nature of children
  o nature of parenthood
  o rights and responsibilities of children, parents and government.

Within the category on the nature of children, the researchers looked at whether submitters wrote of children as:
- bad, wilful, sinful, naughty and disrespectful, or as good, intelligent, eager to learn and knowledgeable
- able to be reasoned with and explained to or not; having cognitive ability or not
- having the status of "object" or "subject": children are seen as objects if, for example, they "need training", "can't think for themselves", "don't know right from wrong", "need to be controlled", etc.; and are seen as subjects if they "can reason", "know right from wrong", "can learn" or if "parents can explain things to children".

## FINDINGS

Many submitters did not give information on topics we were interested in. Even basic demographic information was not always available (e.g. if submissions were sent by email without a physical address we could not identify the submitter's region).

Although submitters clearly either supported or opposed the Bill, most did not comment on the nature of children. Thirteen wrote that children are bad, wilful, and sinful; six submitters thought that children were good and intelligent. For nine submitters children did not have cognitive ability and could not be reasoned with, whereas 13 submitters thought that children had cognitive ability and could be reasoned with.

In 41 submissions, using the categories listed above, children were considered as human becomings whereas in 50 submissions they were considered as human beings. Although this total of 91 submissions is only slightly more than half the total number of submissions analysed (170), there was a very distinct difference in the support or opposition to the Bill among these submitters.

**Table 2 Submitter's position on the Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill and their view on children's status**

| View of children | Support the Bill | Oppose the Bill | Total |
|---|---|---|---|
| Human becomings | 2 (5%) | 39 (95%) | 41 |
| Human beings | 48 (96%) | 2 (4%) | 50 |
| No mention / unclear | 35 (44%) | 44 (56%) | 79 |
| Total | 85 | 85 | 170 |

Note: Pearson Chi-Square, Asymp. Sig. (2-sided) 0.000.

Analysis of the submissions was in the nature of a secondary analysis since submitters were not specifically addressing the question of how they viewed childhood. For this reason, particular care was taken in grouping the submissions into human beings or human becomings categories. We categorised statements from submitters that described children as active agents into the beings category, and developing / unable to reason into the becomings category. Because of the potential to over-emphasise the fit between submitters' meanings and our categories, the research team repeatedly discussed the meanings implied in submissions and addressed this challenge by treating the material conservatively, confining allocation to different categories on the basis of certain specific trigger words.

As can be seen in Table 2, for those 91 submissions indicating views of children as either human becomings or human beings, the results support our hypothesis. Those people who saw children as human becomings were more likely to oppose the Bill and support physical punishment, and those who saw children as human beings were more likely to support the Bill and oppose physical punishment.

Some submitters also conceptualised children as either innately bad or as innocent. Those who saw children as innately bad were likely to support physical punishment; those who viewed the child as innocent saw the need for the child to be protected. This was also reflected in views on parenting practices, with some believing that parents need to have their authority backed up with force, while others saw the need for parents to protect children and model good behaviour to them. Submitters who supported repeal of Section 59 were more likely to discuss children's rights and those who opposed repeal were more likely to discuss parents' rights.

Below are quotations selected to indicate submitters' diverse views. Some spoke of the essential nature of children:

> "We believe that every child is born with a sinful (rebellious) nature, and that one of the duties of the parent is to curb rebellious expressions by the child."

> "Small children are not deliberately naughty."

> "Children by nature lack the wisdom and self-control needed to survive and prosper in this life, and in the life to come. In fact, they naturally tend to the opposite."

> "Children are children because they haven't yet learned how they ought to behave."

> "To allow children the 'dignity of risk' to express themselves and challenge boundaries, including boundaries of behaviour, is a natural part of growing up for all children. Disabled children are more likely to be denied that dignity of risk."

Some submitters discussed how children learn appropriate behaviour through physical punishment:

> "Children, from being smacked, will learn boundaries. They will learn these boundaries if they have rules set when they are young."

> "It is a fact that children need physical/corporal discipline for the purpose of correction and training."

> "Children need to be forced to do the right thing again and again so that it becomes habitual."

Others spoke of children learning appropriate behaviour by imitating their parents:

> "Children model themselves on us as parents."

> "Children learn mostly from example, so if they are hit, they will hit others."

There were contrasting views about the use of force in child-rearing:

> "If you cannot use force, you cannot back up your authority."

> "Use of reasonable force is at times necessary to discipline children and is mandated by God."

> "Physical punishment either teaches children to use violence to solve problems or in some cases, like mine, destroys the child's feelings of self-worth for a very long time."

> "Every parent has had the right since time began to smack their children and bring them up to mind."

Some submitters opposed to physical punishment reflected on their own childhoods in support of their opposition to physical punishment. They discussed the great harm it had caused to them and their family relationships. The reflections of this group sometimes described how they had felt as children when being hit by their parents.

> "[After the smacking] all I knew was that I'd been assaulted by someone who had total control of my life."

> "The more lasting pain was emotional; it destroyed my relationship with my mother permanently and resulted in loss of confidence and self-esteem which has affected me all my life."

Some submitters discussed rights:

> "Children have the right to be protected from physical abuse as much as adults."

> "Children today do not need more rights. They need more respect for authority and realise consequences for their actions."

> "Our children deserve the same rights currently afforded to adults and animals in New Zealand."

There were gender differences in the individual/couple submissions, with more women than men in our sample: women (82), men (39), couples/families (21) and gender unknown (8). The majority of women submitters in our sample supported repeal (53 out of 82), and the majority of men opposed repeal (25 out of 39).

There were differences in view between people from cities and those from rural areas (as indicated by an RD -- Rural Delivery -- address). For example, of 34 submitters from Auckland, 19 supported the Bill; of 29 from Wellington, 23 supported it. Of 17 with RD addresses, however, 13 were opposed to the Bill.

## DISCUSSION

### Implications of the Findings

There are implications from our findings for organisations and people who work with families and children. Numerous government and non-government agencies, such as the Ministry of Social Development (MSD) and End Physical Punishment of Children (EPOCH New Zealand[4]) and their staff or supporters have long had an interest in reducing family violence, including the use of physical punishment and smacking of children. The research relates to an area of social and family life in which a profound social and cultural change is sought. Generations of accepted practice in childrearing across all groups were challenged by the proposed changes to Section 59.

The law change of 2007, the Crimes (Substituted Section 59) Amendment Act, removed the old Section 59 but introduced new provisions relating to restraint and other use of force with children. However, there is now no defence for the use of force *for the purpose of correction*, and, as can be seen in the numbers of submitters opposing the Bill (Table 1), there were many citizens who objected even to this change.

### A Focus on Children's Rights

One of the implications of our findings is the importance of promoting views of childhood as a state of being rather than a state of becoming. If children continue to be viewed as in a state of becoming, they may be more vulnerable to abuse and also to treatment that is less respectful than that which is available to adults. Promoting the view of children as human beings in the wider society (not just to parents) has the potential to bring about more respect for children generally, and to increase social pressures on parents to treat their children respectfully.

When children are viewed as full human beings they are more likely to command the same respect as adults. In their discussion of human rights, Geiringer and Palmer (2007) note the interaction of rights and needs, and how the language of rights adds power to the moral or legal obligations others have to the needs of a rights-bearer. Waksler (1991) describes how the view of the child as developing into something implies that children are lacking (e.g. in language ability or maturity), have less experience, and are less serious, less important etc. than adults. Such a view of children as less than adult has implications for how parents might treat children and how they might interpret children's behaviour, and for the sorts of parenting techniques they might find appropriate.

In past decades the women's movement addressed similar issues when women were viewed as "other", or seen as aberrant when the male was considered (by men *and* women) as the

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[4]  *EPOCH New Zealand,* www.epochnz.org.nz/. Accessed 1 October 2007.

norm. If parents consider adult as the norm for human, then children may be seen as an aberrant other.

The ideas of rights figured in the findings. Those who supported the repeal of Section 59 were more likely to consider children's rights, and those who opposed repeal were more likely to mention parents' rights. Many child- and family-support agencies advocate for children's right to live free from violence and abuse, in accordance with UNCROC. They see physical punishment and the law that provided an excuse for hitting children as part of the spectrum of violence inflicted on children.

The Agenda for Children (MSD 2002a) noted that "the concept of 'children's rights'" is not well understood. For example, children's participation rights are often seen as undermining parents' power (MSD 2002a:14). However, children's and parents' rights are not necessarily in conflict (Commissioner for Children 1999). Our findings suggest that the promotion of children's rights to equal treatment with adults is likely to develop alongside a view of children as complete human beings who, like adults, develop and shape both childhood and the wider society.

## A Focus on Deeply Held Ideas and Beliefs

The Ministry of Health's (MoH) *Family Violence Intervention Guidelines on Child and Partner Abuse* (2002) lists "high risk indicators associated with child abuse". These include family factors such as "parent administers harsh or unusual punishment", and "Caregiver's perceptions of child" such as "'bad', 'naughty', 'manipulative', 'difficult'". Some submitters saw children as innately bad or as sinful. Others viewed children as innocents. These views of children clearly have implications for the promotion of non-physical child-rearing, and for abuse. There is a certain perverse logic, if one views a child as naturally naughty, in the belief that he/she deserves to be smacked. However, a view of the child as both exploring and actively and creatively contributing to the development of the social world leads logically and easily to quite different parenting approaches.

A key question is how far the law change and any subsequent education and social marketing might change people's attitudes and behaviour. There is some evidence from longitudinal studies in Sweden following the 1979 ban on the use of corporal punishment there (Durrant 2000, Ministry of Health and Social Affairs [Sweden] 2001) that the law change, combined with a public education campaign, was effective in reducing Swedes' commitment to physical punishment.

There are many models and theories about how behavioural changes occur, or whether changes in attitude precede changes in behaviour, including social cognitive or learning theory, the health belief model, theory of reasoned action, theory of planned behaviour, among others (Elder et al. 1999). These models and theories arise from the literature on behavioural change, health promotion and social marketing. Fanslow, in her report on key issues and directions for family violence work, suggests that to make advances in preventing family violence, one of the tasks for research is to "unpack core beliefs that can underpin violent behaviour" and "help to work through conceptual issues" (Fanslow 2005:86). Fanslow discusses the community readiness model, which identifies stages of community preparedness for change in terms of social marketing. This "provides a framework for assessing the social contexts in which individual behavior takes place and measuring changes in readiness related to community-wide efforts" (Kelly et al. 2003:411--2).

Nine stages of community readiness are listed:
- no awareness
- denial/resistance
- vague awareness
- pre-planning
- preparation
- initiation
- stabilisation
- confirmation/expansion
- high level of community ownership.

Findings from our research suggest that while many of the submissions reviewed showed that their authors were aware of and concerned about child abuse, those opposed to repeal of Section 59 considered physical punishment was entirely distinct from and did not in any way lead to child abuse. Many considered physical punishment as absolutely necessary in child-rearing. We suggest that submitters who see no connection between physical punishment and child abuse could be considered in the no awareness or denial/resistance stages. Kelly et al. suggest strategies to address denial/resistance and no or vague awareness, including "interpersonal contacts and media advocacy to build awareness, legitimacy and a core group of supporters within the community" (Kelly et al. 2003:417).

Currently, government and non-government parent education programmes support positive parenting approaches (e.g. Strategies with Kids -- Information for Parents, or SKIP[5]). These explicitly or implicitly emphasise alternatives to physical punishment and encourage parents to avoid smacking or hitting children. The programmes generally aim to persuade parents to use alternative methods in the belief that they work well in terms of creating a happy family life and well-disciplined children. They also aim to change attitudes in the community as a whole to support positive parenting. In general, parenting programmes assume that parents want to find new ways of disciplining children. While the positive parenting approach might work well with such parents, there is a group of parents and community members who hold strongly to the view that children need to be physically disciplined. In order to shift the attitudes of this group, we need to understand more about why people hold the views they do, and whether they are amenable to new information about non-violent approaches in parenting. For those parents currently reluctant to forgo physical punishment, a different approach developed from an understanding of these deeper attitudes may be needed.

In their review of parenting programmes for the Families Commission, Kerslake Hendricks and Balakrishnan (2005) covered geographical communities and different types of parenting programmes, but not communities of interest such as religious groups in which parenting is promoted that involves or requires physical punishment. They note, however, that "[p]arenting programmes in isolation cannot address well-established patterns of inappropriate parenting" (Kerslake Hendricks and Balakrishnan 2005:4). We suggest that the active promotion in society of a view of the active, creative, contributing child would make a major contribution to changing the place children have in society, as well as to the patterns of parenting.

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[5]  MSD, Family and Community Services. *SKIP -- Strategies with Kids: Information for Parents.* www.familyservices.govt.nz/info-for-families/skip/index.html. [Accessed 1 October 2007]

## A Focus on Gender Differences

The significant gender differences in the findings showed that women were more likely than men to support repeal of Section 59 and to oppose physical punishment. This is particularly interesting in view of the fact that women are the primary caregivers of children in most families. In her research with children about discipline, Dobbs (2007) noted children's report that fathers and male household members hit them more often, even though fathers spent less time looking after the children. Smith and her colleagues in their extensive review of research reported that "males are more likely than females to hold favourable attitudes towards physical punishment" (Smith et al. 2005:25).

We support Dobbs's call for further research on gender, and we also call for increased action by organisations working with families to address men's beliefs about children and child-rearing, and to advance positive, non-physical parenting skills for men. In view of the gender differences we found in people's support of physical punishment, we also suggest that gender-specific approaches are needed for strategies that address denial/resistance, no or vague awareness, and non-violent parenting in general.

## A Focus on What Physical Punishment Feels Like

We suggest that reflection on one's own childhood, particularly on the feelings of being a child, might be an illuminating process for taking people into the world of the child. It is easy as adults to impose an adult interpretation on our own upbringing, such as, "It never did me any harm" and "I probably deserved it". However, finding the child's feelings in this reflection is more likely to encourage parents to understand the world from children's point of view, and lead to greater respect for and understanding of children.

## CONCLUSION

The research reported here used a convenience sample of submissions to a Parliamentary Select Committee to provide information on New Zealanders' attitudes about children, childhood and parenting. Qvortup's (1994) summary terms for two contrasting views of children provided a framework for analysing the submissions. Of the submissions able to be classified, this exploratory research found a connection between submitters' view of children as human becomings and approval of physical punishment. Submitters opposed to physical punishment were more likely to be classed as holding a human beings view of children.

A key limitation of the research was the nature of the sample. People self-select into writing a submission, and it may be that only people with particularly strong beliefs will go to the trouble of doing so. Note that many more individuals submitted in opposition to the law change than in favour.

Nonetheless, the study revealed some significant areas for future consideration in policy, research and practical parenting education. Deeply held beliefs and attitudes that support the use of physical punishment of children may be hard to change. Some of the themes that emerged suggest that a focus on men's attitudes, a focus on what it feels like to be a child, and a focus on children's human rights may support a change to positive parenting.

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# A PLACE WHERE IT IS NOT OKAY TO HIT CHILDREN: THE ROLE OF PROFESSIONALS

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**Abstract**

As a result of recent legislation that removes from the Crimes Act the statutory defence of "reasonable force" to correct a child, professionals have an increasingly important role in supporting parents to use effective and positive discipline. This study focused on how professionals approach the tasks of communicating, guiding and advising families with young children about disciplinary practices. The researchers convened 10 focus groups of people working in family support, child health, early childhood teaching and social work roles, in Northland, Auckland, Wellington and Dunedin. This paper describes how the participants work with and advise families about child discipline, how well prepared they are to fulfil this role, and how they understand the legal issues relating to family discipline. Parents did seek advice on discipline from professionals and acknowledged using corporal punishment. Most professionals disagreed with the use of physical discipline, but some expressed caution about telling parents directly that they thought smacking was harmful. Few of the professionals discussed the debate (current at the time of the research) regarding the proposed repeal of Section 59 with parents, and many did not understand it themselves. They believed that parents would need more support if the law changed. Only a minority had received training on the issue of child discipline. The findings suggest that those working with families with young children are in need of more resources and professional development to deal with this matter.

## INTRODUCTION

The passing into law of the Crimes (Substituted Section 59) Amendment Act 2007 on 21 June 2007 has modified the policy framework for families and children. The law change has removed the defence provided by the previous law (Section 59 of the Crimes Act 1961) for parents charged with assaulting children.[2] The repealed Section 59(2) bans "the use of parental force for the purpose of correction", though the law makes it clear that the police have the discretion not to prosecute complaints if the offence is considered inconsequential and there is no pubic interest in proceeding. Beth Wood (2004), one of the leading campaigners for the repeal of Section 59, has argued that changing the law was not about "banning smacking", but rather "It is about changing the social norm -- it is about making

[2] The Crimes (Substituted Section 59) Amendment Act 2007, was introduced as a Private Member's Bill by Sue Bradford, an MP for the Green Party, and approved by a cross-party majority in Parliament. It replaced s.59 of the Crimes Act 1961, which stated that "Every parent of a child and … every person in the place of the parent of a child is justified in using force by way of correction towards the child, if the force used is reasonable in the circumstances."

Aotearoa New Zealand a place where everyone knows it is not okay to hit children" (Wood 2004:31).

The "necessity for a mind-set change" (Ranby 2004:32) has also been recognised in the launch by the Prime Minister on 4 September 2007 of a comprehensive 14-million-dollar campaign to prevent family violence as an initiative of the Taskforce for Action on Violence within Families, which was established in 2005 (Ministry of Social Development 2007). The new campaign aims to change community attitudes towards family violence (including violence to children), and to support communities in taking action against family violence.

The research we report on here examines the role that professionals play in helping families stop using violence to control children's behaviour. In our view the law change and the public awareness campaign are only the first steps towards changing the mind-set. The professionals (social workers, Plunket nurses, early childhood teachers, family support agency workers) who have regular face-to-face contact with parents are in a potentially powerful position to help bring about change and support government initiatives. There is evidence that professionals working in a sensitive partnership with parents in the context of the complexity and stress of families' real lives can positively influence their parenting (Powell 1997, Smith 2005a).

Physical punishment is ineffective and has harmful long-term effects on children, especially if it is severe (Smith 2005b, 2006). It is a clear and preventable health risk for children and there are many less harmful but effective disciplinary strategies. But to what extent do professionals know about the harmful effects and how do they work with families on disciplinary issues?

Murray Straus (2000), a long-time advocate for the elimination of corporal punishment of children in the United States, expressed frustration that American professionals who work with children do not provide a clear message to parents that physical punishment is harmful and should be avoided. Professionals, in Straus's view, have an important role to play in stopping the use of physical punishment. He is critical that professionals in the United States are failing to get behind a no-corporal-punishment educational effort. He says:

> To my surprise, most of the child maltreatment scholars and parent educators to whom I have mentioned no-spanking messages on milk cartons, on posters in pediatricians' offices, and a warning notice on birth certificates, they do not favour these steps. When I ask if they favour posters and warning notices about cigarettes, the answer is almost always yes. They typically go on to explain that a "negative approach" will not succeed for spanking because parents must be taught alternatives. (Straus 2000:1111)

Straus's explanation for these attitudes is that acceptance of the use of corporal punishment is embedded in the cultural norms and beliefs of American culture, and that professionals either share these views or are unwilling to challenge them. In the US, paediatricians play an important role in talking to parents about discipline (Sege et al. 1997, Wissow and Roter 1994). However, Wissow and Roter (1994) found that medical practitioners find it very difficult to talk to families about corporal punishment, and that parents are often reluctant to discuss private family discipline difficulties with doctors.

Although there is evidence of a tacit acceptance of physical violence in the home in New Zealand (Colmar Brunton 1995, Maxwell 1995, Ritchie 2002, 2004), there is little research on how professionals view it. An analysis of submissions to the Select Committee on the

Crimes Amendment Bill 2006 shows that, of the organisations that made submissions, 88% (185 out of 210) were in favour of a change in legislation, in contrast to individual submissions, of which only 14% (194 out of 1,342) were in favour (Debski et al. 2006). Most of the organisations who made submissions were groups of professionals or advocacy groups. Fifty-nine organisations supported the Bill, including professional organisations such as the Royal Plunket Society, New Zealand Council of Christian Social Services, the Paediatric Society, Barnardos and Presbyterian Social Support.[3] Professionals working with families, therefore, are probably already aware of the negative effects of physical punishment, and are in a potentially powerful position to change attitudes.

In this paper we discuss the findings of a study on people who work with children and families, exploring these professionals' attitudes towards the physical discipline of children and how they advise parents in this area.


## THE STUDY

The research reported here is from the first phase of a two-year study exploring disciplinary practices in family settings. Phase 1 took place over a period of 10 months, mostly in 2006, and was completed in 2007.[4] For the duration of the focus groups the proposed repeal of Section 59 of the Crimes Act was high on the national political agenda and there was much media attention surrounding the proposed repeal. This political and policy context was evolving as we conducted our research.

A variety of organisations whose main role was working with families with young children were informed about this study and asked to invite their staff to participate in a focus group. Participants from these organisations volunteered by responding directly to the research team. Ten focus group interviews were conducted in five areas of New Zealand: Dunedin, Wellington, Auckland, Kerikeri and Kaikohe. The focus groups were organised by professional group, varied in size between two and eleven participants, and lasted between one and one-and-a-half hours.

### Participants

Participants were trained nurses, social workers, early childhood educators or students undergoing training in one of these areas (see Table 1). There were 58 participants: 52 females and 6 males; and 39 Pākehā, 12 Māori, four Pacific people, and three of other ethnicity. The majority (37 out of 58 participants or 64%) of the participants were over 41 years old, and most (48 participants or 83%) were parents. The average length of time participants had worked with families was 14 years; the range was one-an-a-half years to 30 years, with the mode being 20 years.

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[3] J. Michie, personal communication, 29 March 2007.

[4] Phase 2 is now completed. It involved interviewing 100 families who have a preschool child and live in New Zealand.

**Table 1 -- Professional Categories of Participants**

| Professional categories | % | N |
|---|---|---|
| Social workers | 46 | 27 |
| Nurses | 28 | 16 |
| Early childhood teachers | 17 | 10 |
| Student (social work and nursing) | 9 | 5 |

A focus group protocol was developed for the study, which included open-ended questions to stimulate discussion. This paper reports on the following aspects of the focus group discussions:

- Do parents seek the advice of professionals about disciplinary issues?
- How do professionals deal with the issue of physical punishment when they talk to parents about discipline?
- What do professionals who work with children and families in New Zealand think about the physical punishment of children?
- How well do professionals understand the legal issues relating to family discipline?
- How well prepared and resourced are professionals to deal with disciplinary issues?

## Do Parents Seek the Advice of Professionals about Disciplinary Issues?

Most professionals found that parents were quite open with them about their use of smacking, supporting the view that physical punishment is a normative part of the culture of New Zealand parenting, as shown in other studies (Maxwell 1995, Ritchie 2002).

In half of the focus groups (five), participants had observed parents smacking their child while they were present. Most groups reported that smacking was a regular and openly practised part of parenting in families. Nearly all (nine) of the focus groups reported that families they worked with had told them that they used smacking to discipline their children.

> "Smack and that's it, end of story, they deserve it. And I have never had anyone try to rationalise what they have done and that's interesting because they don't. It's perfectly normal behaviour for them, a good whack and usually picked up them by the arm and whack on the bum." (Focus group 2: Family/whānau support workers / social workers)

One participant in a focus group of non-statutory social workers (with a family support role) said that she had *not* been approached by families for advice in this area. All the remaining 57 participants agreed that parents did seek their advice on family discipline, which suggests that these professionals can play an important role in helping parents to recognise that physical punishment is not okay and providing them with alternatives.

> "Well I get asked about parenting all the time. In my role in Family Support, that's probably one of the major things I deal with, and I think most parents are pretty open asking for help once we get in there and get the rapport going. I find they are pretty open once they feel comfortable." (Focus group 5: Family/whānau support workers / social workers and teachers)

Although discipline is sometimes seen as a private family issue, it is encouraging that these parents are actually willing to acknowledge their difficulties and discuss disciplinary issues outside the confines of their family.

## How Do Professionals Deal with the Issue of Physical Punishment When They Talk to Parents about Discipline?

We were interested in whether the professionals directly advised against particular disciplinary approaches. Although our question did not specify any aspect of discipline, the majority of participants focused on physical discipline. They were not always in agreement about how strongly they should advise against physical punishment.

> Participant 1: "We realise that there's lots of different ways of dealing with things and like, for example, say the hitting scenario, we would say, well, we would like to offer some alternatives. We would never be so strong as to blatantly sort of agree or disagree in any way."
> Participant 2: "We would actually disagree and say we don't recommend hitting and there's other ways of doing it and [be] sort of quite, quite clear … there are better ways." (Focus group 1: Family support agency teachers and social workers)

Some focus group participants said they did advise against certain practices and, in particular, smacking. Strongly anti-smacking views emerged from only a few focus groups.

> "We are all avid no-hitters, you see, so it's really easy to come up with strategies." (Focus group 6: Social workers in schools)

> "As Barnardos workers we can't condone smacking, we actually have to say -- if I see somebody smacking or they tell me they smack, I always say, well smacking isn't actually against the law but as, you know, a Barnardos worker I can't -- I can't go along with that, and here's a whole lot of strategies to use instead." (Focus group 8: Early childhood teachers)

Participants were often more comfortable suggesting alternatives than telling parents not to smack.

> "With the smacking I say it, but not in a way that would take away, because I can also understand that is what they have and that is their way to express their authority to their children, and that's what they know. By me saying it's wrong, it's not also going to be constructive because they will feel really defensive about it, but you also tell them, like, have you tried this and have you tried that? It's sort of introducing other ways, through talking." (Focus group 2: Family/whānau support workers / social workers)

All focus groups agreed that if parents crossed the line and they had child protection concerns, then they would confront the parents immediately.

> Participant: "If it is care and protection you would definitely confront them."
> Interviewer: "So where would you draw the line?"
>
> Participant: "That comes over a period of time. Very often you will see things and you will have that baseline and you work with the family and you may see things deteriorate and drop below the line. Because you are in constant conversation with your supervisor, they should be seeing that too, and when it gets to a point where you are going to have to say, well hey, that is not good enough and you are going to have to do a notification." (Focus group 2: Family/whānau support workers / social workers)

In the focus groups the majority of participants were clearly of the view that smacking was an ineffective and harmful approach. Participants from some groups (social workers in schools and Barnardos staff) pointed out that their organisation had a clear and unambiguous policy against the use of physical punishment, and they were able to use their agency's stance to support their advice to parents against smacking.

How participants advised parents against the use of physical punishment varied. Some were quite upfront in telling parents they thought smacking was wrong. The professionals who worked with the most stressed and disadvantaged families (e.g. Family Start staff or social workers in schools) were more likely to directly confront parents' use of smacking. Others were more indirect in their approach. Helping parents understand the reasons for the harmfulness of smacking (its effect on brain development and children's social behaviour, or unrealistic expectations of children) was one strategy used, though this was not common. Most of the professionals reported that they used their conversations with parents to suggest alternative techniques that were more effective and less harmful than physical punishment. All participants said they would only directly confront parents' use of physical discipline if they were concerned about the severity.

## How Do Professionals Talk to Parents about Discipline?

Discussions with parents were clearly perceived to be sensitive by most professionals, because they talked about being cautious and treading carefully before they could comfortably discuss disciplinary issues. Before such a level of comfort was reached it was necessary to build a trusting and close relationship with parents, and this often took time. Not least of the professionals' concerns was that parents would not continue to use their services if they were offended by their advice.

> "[This is] a voluntary organisation so families … choose to stay or choose to go. … It's a learning process really, for them and supporting them, and when you see something happening, discipline that shouldn't be happening, you've got to be very careful what you say … because if you say you shouldn't be doing that they will just say F off. So I'm really careful about telling them what to do, that there's other ways, but that's a slow process too." (Focus group 2: Family/whānau support workers / social workers)

> Participant 1: "It's about establishing a strong enough relationship and being seen as someone that is completely impartial so, you know, if you do see things that are probably practices that aren't that great, that you can actually say something and that relationship still continues. A lot of it is how you say that. If you point your finger and say, don't do that, you know, there are ways of suggesting other things I think."
> Participant 2: "It's much easer if you do have somebody in confidence and that they trust you. … Certainly from the organisations that I have worked for people walk away and you know we can't make them come back, so quite a lot of energy and effort have to go into establishing a relationship, a trusting relationship, so there can be a meaningful dialogue about how things really are." (Focus group 1: Family support agency -- teachers and social workers)

Professionals were often tentative and cautious in their approach to disciplinary questions, largely because they were concerned that advising parents against using smacking would damage or even end their relationship with parents. There was a tension between their role as supporters and advisors to parents on parenting issues, and their responsibilities for protecting the wellbeing of children and reporting cases of potential abuse to Child Youth and Family (CYF). Reporting to CYF was a last resort for many professionals, because they thought they might be able to achieve better results by maintaining a close personal relationship with parents. Indeed, a warm, trusting and ongoing relationship with parents was regarded as a prerequisite to successful parent support and education, and their reluctance to confront parents was about finding a good way of getting the message over to parents without scaring them away.

## How Well Do Professionals Understand the Legal Issues Relating to Family Discipline?

A debate about the law did not seem to be a regular topic of conversation between parents and professionals. Three of the focus group discussions indicated that parents never talked about the issue of repealing Section 59 with them. (This may well have changed later because of escalating media discussion and lobbying on the issue). On the whole, strong feelings for or against the law change were not expressed by participants but the arguments on either side were voiced in discussions. There was, however, confusion on the part of some of the professionals about the implications of the current Bill.

> Interviewer: "Do parents mention … the repeal of Section 59 at all?"
> Participant 1: "Is it the smacking?"
> Participant 2: "The smacking one in the media?"
> Participant 3: "Yeah."
> Participant 2: "No, none have mentioned it."
> Participant 1: "No."
> Participant 3: "No." (Focus group 7: Early childhood teachers)

Several focus group discussions suggested that professionals could not explain to parents the purpose or the implications of the proposed changes in the legislation because they do not understand it themselves.

> Participant: "We don't clarify for them what it is because we're unclear ourselves [re Section 59]."
> Interviewer: "Okay, so if the repeal goes through, would you be clear what the implications would be for families?"
> Participant: "Not really."
> Participant: "No." (Focus group 6: Social workers in schools)

> Participant: "Sometimes they say: So what will happen … if I smack my children what will they do to me? … But we don't really know how to answer because I don't really know how the law will be enforced." (Focus group 2: Family/whānau support workers / social workers)

Nevertheless, there was awareness among some of the focus groups of three of the main arguments in favour of the Bill: the right of children to have equal legal protection against assault as adults; prevention of harsh punishment; and signalling to the public that smacking is not okay.

> "Oh yes, I read different stories about different children that have been treated certain ways and the perpetrators have gotten away with it because of that loophole. When other members of society, do it with elderly or disabled persons, they step forward and get prosecuted. But because they are children … " (Focus group 1: Family/whānau support agency -- teachers and social workers)

The focus of the Bill not being anti-smacking was highlighted by public health nurse participants.

> "What the people who are wanting reform are asking for is some way of protecting children from being severely beaten and some of the injuries that they have received are certainly not on. So it's … saying that, when the change comes, people who give their child a smack around the legs in the supermarket or whatever they do, that if it's reasonable, they won't be dragged into court and it's trying to get that message out." (Focus group 10: Public health nurses)

Another participant in the same group mentioned that changing the law would show the public that smacking was not acceptable.

> "And I don't think it will stop parents smacking just 'cause they have the law, but what I think what it does is makes it a bit more unacceptable in society and then we move on. It might take us 10 years but … I personally believe we need to make the stand." (Focus group 10: Public health nurses)

Several focus groups believed that a law change might drive the practice of physical punishment underground. This concern was accompanied by the feeling that "It will be hard work for us" in Focus group 2. There was also the perception in one group that the Bill might criminalise good parents, and that they would be less likely to seek help.

> "You know there were times that I lapsed and I smacked my kids. And making me a criminal -- and I was already so stressed, look at me. And I thought, Would that be helpful? and I don't personally think it would … I have seen some parents who have struggled to come and tell me … And I do think that it may be the law might criminalise them and it might make people feel like they can't seek help or counselling." (Focus group 4: Counsellors)

There were few strong pro-repeal or anti-repeal views voiced in the focus groups. During the course of their work with families participants did not discuss the legal debate much with parents. Neither did the focus groups talk much about the widely publicised evidence of the harmful long-term effects of physical punishment. Some of the participants were clearly confused themselves about the meaning and implications of the proposed law change, which may be why they did not want to discuss the issue with parents and help clarify it for them.

### How Well Prepared and Resourced are Professionals to Deal with Disciplinary Issues?

There was consensus that parents required more culturally appropriate information, education and support, especially if the law changed.

> "If the Government's even thinking about it why aren't they just doing a massive campaign at the moment in educating people more? … I mean SKIP5 has been … really positive and there should be more available." (Focus group 9: Child health nurses)

The implication of the need for a much more proactive approach to parent education, was that the professionals "would need a lot more resources" (Focus group 9). Since advising parents on disciplinary practices is already a role for the vast majority of participants, we were interested to find out what formal or informal training they had received on the topic. A number of participants referred to their professional training, and just over a third (21 participants, 36%) said they had received formal training. The majority of these had a background in early childhood education. As one participant social worker (formerly an early childhood teacher) said, "In early childhood training you get a lot."

One social worker in schools mentioned her pre-service training and later professional development as being useful in the context of the strong philosophy of her professional group in opposing the use of physical punishment.

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5 SKIP (Strategies for Kids, Information for Parents) is a Ministry of Social Development parent education/support initiative.

"We come up with our own sort of strategies … and it's from our own life experiences … from our studies…. We've got our 'dips' [Diplomas in Social Work]. We still have, you know, the odd bit of training that we go away and do … But we're all avid no-hitters, you see, so it's really easy to come up with strategies." (Focus group 6: Social workers in schools)

The majority of the participants in the focus groups (37 participants, 64%) had not received any formal training about child discipline, and their knowledge mostly came from learning on the job or from being parents themselves. For some, a lack of training had consequences in reducing their confidence to talk with parents about discipline.

"Because we don't have specific training on how to discipline, you are only coming from what you bring with you about the appropriate way. So you have to be more doubly careful if you are going to step in and advise them on what to do." (Focus group 2: Family/whānau support workers / social workers)

However, those who had formal training alone also felt a lack of confidence. One professional described her discomfort advising parents when she herself had no personal parenting experience. Her comment suggests that if people are young and inexperienced when they undertake training, it is more difficult to utilise it in work with parents. Exposure to formal training by itself may not be enough to help professionals in their advisory role, and real-life practical experience may be an essential adjunct.

"I know that when I was training, I had to run a parenting course with someone and I felt intensely uncomfortable doing it -- my very limited knowledge of parenting itself." (Focus group 1: Family support agency -- teachers and social workers)

Professionals sought information from a range of sources, including TV programmes, colleagues and books, but many of them agreed that the biggest asset to them was their own family experiences and that this increased their credibility.

Participant 2: "And the more children you have the better. The more experiences that you got under your belt then the more different scenarios you can think of."
Participant 3: "The more anecdotal evidence that you have."
Participant 2: "Good storytellers go down well." (Focus group 1: Family support agency -- teachers and social workers)

All participants considered that professional development in this area would be useful for them.

"It would be excellent, you know, having specific training -- sort of how to deal with children … (Focus group 1: Family support agency -- teachers and social workers)

Although the professionals were pleased with some of the work that has been done in the last few years, such as the introduction of SKIP, they felt that much more would need to be done in the future, that the initiative should be widened (for example to cover older children), and that more resources were essential. Professionals were not particularly confident in their own knowledge about the effects of, and advantages and disadvantages of, disciplinary procedures. Their own lack of training was an inhibiting factor in some cases, but formal training without practical experience was not thought to be helpful. It is more likely that ongoing and regular professional development opportunities alongside other professionals working with families could enable these professionals to reflect on practice, and discuss information for families and effective strategies.

## CONCLUSIONS

In our view professionals are, and will be, in the front line of developing a preventive approach to supporting families to use non-punitive parenting. They are, however, in need of much more professional support and development opportunities so that they can continue their important work as effectively as possible. Unambiguous policies within professional organisations that clearly state that smacking is harmful and inappropriate can help give professionals the authority and the rationale to give parents straightforward and clear messages about positive parenting.

The recent change in the law with the introduction of the Crimes (Substituted Section 59) Amendment Act 2007 and the public awareness campaign against family violence signal that New Zealand does not accept violence towards children, and that we are finally beginning to address our responsibilities to implement the United Nations Convention on the Rights of the Child. Article 19 requires that state parties take all appropriate measures to protect children against all forms of violence, injury or abuse, and at last we have begun to take action on this issue. We are the first English-speaking country in the world to introduce such legislation (though there are at least 18 other countries who prohibit the physical punishment of children). Professionals, in our view, can play an important role in changing parents' attitudes towards according dignity and respect to children, within the context of clear guidelines and suggestions about a positive disciplinary approach.

There is little doubt that public understanding can be changed when there is a coherent ideology, high-impact information and influential people to help disseminate such messages (Wood 2001). It is to be hoped that the new public campaign changes public attitudes to violence against children. It remains to be seen whether the campaign will be as clear and unequivocal as it needs to be about the negative effects and the illegality of physically punishing children. It is our view, however, that in the context of personal contact and ongoing trusting relationships, early childhood professionals can really make a difference and help to change parental attitudes and behaviour.

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# KIDS ON QUADS: RESPONDING TO RURAL RISKS

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**Abstract**

The rural sector features prominently in the statistics for All Terrain Vehicle (ATV) injuries and fatalities amongst children in New Zealand. ATVs are the new workhorse of the farm and their increasing popularity suggests the rate of accidents involving children will not abate of its own accord. This paper summarises and updates research on ATV farm accidents involving children undertaken early in 2006. It reiterates the unsuitability of ATVs for use by and around children and examines accident statistics in the wake of a court case resulting from the death of a child on the family's farm. It argues that voluntary compliance with existing guidelines for the operation of ATVs is an insufficient strategy for reducing or eliminating existing risks to rural children. While the specificity of rural circumstances is acknowledged, it is not accepted as an adequate justification for maintaining the *status quo.* Rather, in light of the increasing numbers of ATVs and their growing popularity amongst lifestyle block holders, reducing unacceptable levels of risk to rural children requires the development of legal restrictions on the operation of the vehicles.

## INTRODUCTION

In the summer of 2005/06 the Child Accident Prevention Foundation of New Zealand (CAPFNZ) funded a summer scholarship for research on the nature and extent of All Terrain Vehicle (ATV) accidents involving children on New Zealand farms (Basham et al. 2006). Over the same period, a high-profile manslaughter case was brought before the High Court. In September 2005 a four-year-old child was killed on her family's farm when her father allowed her to operate an ATV while he attended to a call on his cell phone (Rennie 2005:4). The Crown alleged that her father was grossly negligent in allowing her to ride his quad bike to round up the cows for milking. The girl lost control of the bike, it rolled on her and she died instantly from massive head injuries (Boyes 2006). This paper draws on and extends the substance of the CAPFNZ report, ultimately seeking to ascertain whether the farm is now a safer place for children since 2005. It begins with an outline of the vehicles, their governance, typical accidents and the environment and culture in which they are used. It canvasses the recommendations provided in the CAPFNZ report, and examines the means by which safer outcomes for farm children might be achieved.

The research for the original project involved an extensive literature review in which the general paucity of ATV studies published in New Zealand and Australia contrasted sharply with the abundance of statistical data from the United States. Because ATV use in the United States is largely recreational, however, the findings were not always directly transferable to the predominantly agricultural use of the vehicles in New Zealand, though they provided

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good background data in regard to the vehicles themselves and typical accidents and injuries. Within the somewhat sparse New Zealand literature, a key resource was a workplace accidents report (Lilley et al. 2004) in which the farm as a workplace featured prominently.

Additional data were gleaned from a review of New Zealand media reports, editorials and commentaries on ATV safety between 1999 and 2005. The project also incorporated interview data from two groups of respondents closely associated with key aspects of the topic. The first group consisted of experts in child, farm, ATV and workplace safety and comprised representatives from OSH, ACC, Safekids, Ag ITO, Agribusiness and Federated Farmers. The second group comprised parents who own and use ATVs on their farms.

## THE VEHICLES

In 2002, OSH estimated that there were about 70 000[2] ATVs in use on New Zealand farms (OSH 2002a) and in 2005 approximately 95% of ATV use in New Zealand was for farm work (ACC 2005). They are rapidly replacing tractors as a multi-purpose farm workhorse. Designed for use by a single operator, ATVs are open, motorised, four-wheeled vehicles with low-pressure tyres and with handlebars for steering control. They have a high centre of gravity and tend to be unstable (American Academy of Pediatrics 2000' Phrampus et al. 2005). They can be difficult to turn and have an ineffective, or no suspension system (American Academy of Pediatrics 2000), though newer models now offer improved handling through, for example, limited-slip differentials. Engine capacities can vary enormously (from 50cc to more than 800cc), but mid-range engine capacities are the most popular in New Zealand (OSH 1998:15). As engine size has increased, ATVs have become heavier and larger and the increase in average engine size is attributable in part to the increase in non-recreational use of ATVs (Rodgers 1999:418).

Dry weight of the vehicles ranges from about 180kgs to more than 400kgs, with the lighter models being used primarily for recreation and sport and the heavier models more commonly used as work vehicles. The design and weight of the vehicles is such that operation of ATVs requires that drivers manoeuvre their body weight in a practice referred to as *active riding*, which in turn requires a combination of adequate height, weight, cognitive capacity and dexterity. ATVs are not designed to be modified or to carry passengers (Phrampus et al. 2005:58). In New Zealand however, many bikes are used for carrying farm equipment or supplies, further increasing the high centre of gravity, and 92.5% of farmers in a 1998 survey admitted to carrying passengers (OSH 1998). Infants' car seats are also often affixed to ATVs, which again alters the balance of the vehicles.

## THE LAW

Land Transport legislation prohibits children under 15 riding ATVs "on roads and beaches*"* (OSH 2002b), though there are no laws to prevent younger children from driving ATVs off road, including on farms (OSH 2002b).[3] The vehicles are subject to two forms of regulation in terms of farm use, however. Work-related on-farm use of ATVs is covered by OSH,

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[2] Because ATVs need not be registered for off-road use, actual numbers currently in use are impossible to determine. Of those relatively few vehicles which are registered, most are in urban areas and used by city councils or parks and reserves operations (personal communication 2006)

[3] In 1996, OSH issued *Guidelines for the Provision of Safety, Health and Accommodation in Agriculture*, a best practice document which allows children aged 12 to 15 years to operate tractors on farms under specific conditions (Section 2.22) and this informed the development of ATV user guidelines in New Zealand.

whereas non-work-related on-farm use of ATVs comes under the 1961 Crimes Act, which is enforced by the Police (OSH 2002b).

Regulations developed under the Health and Safety in Employment Act 1992 require employers to ensure that children under 15 do not operate tractors and other "self-propelled mechanical plant" (Langley 1997:10), but this applies only to employees and even then, because ATVs weigh less than 700kg, no age or employment restrictions actually come into effect (Langley 1997:10). Under Land Transport regulations, ATVs must be registered (and therefore warranted) only if used on public roads. Helmets are compulsory only when riding ATVs on the road, though farmers are not legally bound to wear them when riding ATVs on roads that border or intersect their own farm, subject to a 30kph speed restriction (Land Transport New Zealand 2005' OSH 2002b).

In the absence of specific legislation, the agricultural sector is guided by a set of operational guidelines, the *Safe Use of ATVs on New Zealand Farms Agricultural Guidelines* (2002).[4] Published by OSH, the *Guidelines* were composed in consultation with a number of stakeholders under the auspices of the Agricultural Health and Safety Council.[5] They provide standardised operational rules and practical safety advice to ATV users. Among the these rules is a stipulation that children less than 12 years of age shall not ride the vehicles and youth aged between 12 and 15 years should do so only under certain conditions, such as meeting safety criteria in regard to training, physical strength, helmet use, absence of passengers and loads, speed limits and supervision of the rider.[6] In this respect, the *Guidelines* implicitly condone ATV use amongst 12--15-year-olds. The *Guidelines* also advise that ATVs are not designed for carrying passengers. While the *Guidelines* cannot be legally enforced, its authors note that they represent -- and may be interpreted by the Courts as -- an industry agreed position and best practice (OSH 2002b). There are also various manufacturers' guidelines also in existence, though they provide inconsistent operational advice, particularly in regard to minimum rider ages.

While the literature is unanimous in its insistence that ATVs are not designed to be ridden by children, and that children lack the physical strength and cognitive capacity to operate them safely, ATVs are commonly ridden by children on farms in New Zealand. Existing research shows that children begin to drive ATVs at well below the ages recommended by manufacturers and the *Guidelines*. Despite the increasing number of accidents involving children, our key informants were averse to further legislation. This sentiment was echoed by our expert informants, who emphasised the impracticality of initiating further ATV legislation, noting in particular the difficulties inherent in monitoring and enforcing legislation specific to remote geographical regions. The key informants viewed any further formal governance as restricting prevailing workplace practices and as unwelcome intrusions into the operation of private businesses. Both groups viewed legislation as a "last resort" strategy, appropriate only if educational campaigns failed to achieve an improvement in rural safety practices.

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[4] Hereafter referred to as the *Guidelines*.

[5] Federated Farmers, NZ Young Farmers' Clubs, Rural Women NZ, NZ Deer Farmers' Association, NZ Farm Forestry Association, the Agricultural Industry Training Organisation, the Council of Trade Unions, MAF Policy, OSH and ACC.

[6] The guidelines define 'shall' as a 'mandatory recommendation' for compliance with the guidelines, whereas 'should' is defined as 'a preferred practice or recommendation' (OSH 2002:4).

## THE ACCIDENTS

ATVs are the vehicle most commonly involved in child workplace fatalities (Lilley et al. 2004). The agricultural sector accounts for one-third of all workplace fatalities involving children (Lilley et al. 2004) and one-third of farm fatalities involve ATVs (Owens 2005). Between 1990 and 1999 ATV accidents were responsible for more than 900 hospitalisations of children under 15 years of age (Safekids 2001). In 2001 there were 12 ATV-related deaths involving children under the age of 15 (Safekids News, June 2005).

Recent New Zealand research shows that work-related child fatalities primarily involved children who were bystanders (86%) and just over half of work-related fatalities for children up to five years of age occurred on farms (Lilley et al. 2004). This research also indicates that a high proportion of fatalities occurring in the under-five-year-old age group is associated with children playing or helping out in an area where work was being carried out by a parent. For older children, the most common working activity associated with a fatal work-related accident was riding a motorbike or ATV to shift stock on a farm (Lilley et al. 2004). The two most common non-working activities at the time of a fatal accident were being a vehicle passenger and playing in or near the workplace (Lilley et al. 2004). Males are more at risk than females, with just 18% of fatalities occurring to females. As with most types of accidents, fatalities are simply the tip of an iceberg.

Phrampus et al. (2005) report that most adult injuries occur when the driver loses control of the vehicle, causing it to roll over and then throw the driver (p. 59). Rollovers are a leading cause of injury to adult ATV riders in New Zealand and entrapment is a feature of just under a third of rollovers. For children, the pattern is significantly different. For them, falls from the ATV are the most common source of injury, with 40% occurring this way (Brown et al. 2002:377). Typically, ATV injuries to under-15-year-olds in New Zealand occur on dairy farms, mainly to boys. Three distinct groups of children can be delineated in the injury statistics: passengers, bystanders, and child drivers. Contrary to widespread warnings against the carriage of passengers by official organisations and manufacturers, it is common for farmers to take children as passengers while they attend to work on the farm. Young children therefore feature prominently in statistics reporting injuries to passengers. Bystanders killed on farms in New Zealand are also more likely to be younger children. Lilley et al. (2004) found that in workplace fatalities to children under five years old, all the children were bystanders, and in 68% of workplace fatalities involving 10--14-year-olds, they too were bystanders.

## THE ENVIRONMENT

Farming families face a set of domestic and working circumstances which differ significantly from most of their urban counterparts in that the farm is both home and workplace[7] and the boundaries between the two are inherently blurred. Even when not directly involved in farming operations, rural children are routinely part of the farming workplace, often because of the lack of viable childcare options. Our key informants stressed that the geographical isolation of many farms, coupled with the 24-hour commitment required on working farms, leaves farming parents with few, if any childcare options. Childcare facilities are likely to be distant and unlikely to provide services at times of most need -- early morning milking or

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[7] The growing trend towards working from home is acknowledged, though this is usually associated with IT, textile or clerical types of work, which pose minimal risks to children.

calving, for example. Affixing extra seats to ATVs and taking the children into the farm workplace is frequently regarded as the only practical alternative.[8]

Risks do not arise solely from practical considerations such as these, however. The literature also indicates a tendency to let children accompany adult workers using machinery and to allow children to perform work-related activities which are inappropriate for their age and physical size (Lilley et al. 2004). Whether children are themselves engaged in farming activities, or are simply accompanying their parents whilst the parents work, their very presence in the farm workplace necessarily increases their exposure to the risks associated with a demonstrably dangerous workplace.

## THE CULTURE

Farming culture has historically encompassed a rugged, independent tradition, along with a strong family ethos which is expressed in the farming community's commitment to working, living and playing together. This tradition of self-sufficiency, individual initiative, physical strength and established practice informs the rural community's perspective of safety issues in general and ATV safety in particular. It also fosters a different level of safety consciousness amongst the rural community, who routinely engage in behaviours that are inconsistent with acknowledged dangers in farm workplace (Lilley et al. 2004). That is, knowledge of the risks and awareness of existing safety recommendations do not translate into safety compliant behaviour. In part, this is connected with the practical realities of a working farm. Rules and regulations are ignored or bent for want of viable childcare options, for example. A second dimension is more closely aligned with farming culture, however.

In keeping with the general ethos of a culture that values strength, initiative and self-reliance, many farmers ignore rules, regulations and recommendations almost as a matter of course, and in the case of ATV safety, a lack of stringent regulation allows them to do so. Paraplegic farmer Kevin Richards (himself the survivor of an ATV accident) argues that "It's not instilled into the farming culture to be safe" (Sweetnam 2000:5), a sentiment echoed by co-author of the Otago workplace accident study, Rebecca Lilley, who argues that "a safety culture has been lacking within this community for a long time" and that "the culture of farming … needs to change" (The Press 2005:3).

The involvement of children in the day-to-day operation of farms emerged in the research as one of the most fundamental determinants of child ATV safety. While it was generally perceived as a positive practice for both parents and children, one effect of this inclusive, family approach to farming was the perception that older children were similar, if not equivalent to adult farm workers. There was again evidence of a disjunction between knowledge and behaviours. Zentner et al. (2005) report that "… the majority of farm parents perceived farming to be more dangerous than other occupations, yet substantially fewer thought it was more dangerous for children to work on the farm than to work in other settings, and even fewer perceived their children to be at risk for a farm injury" (p. 865). Indeed, the Zentner study noted that there is a "belief held by a noteworthy proportion … of individual farmers, that farming is dangerous, but 'not for my children'" (Zentner 2005:865).

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[8] For example, Brosnahan (2000) presents the experiences of one farming mother as being relatively typical. Formal childcare for her children would require a round trip of 56 kilometres -- and many women, she believes, are in a worse situation.

Within the New Zealand farming community however, there was evidence of a growing disparity of opinions between the sexes. Two of the expert informants noted that rural mothers were becoming increasingly opposed to children having access to ATVs. Within the group of key informants, fathers were more accepting of the presence and involvement of children on the farm and stressed the importance of education, personal responsibility, awareness and vehicle maintenance when considering ATV child safety. By contrast, the mothers, sought to minimise children's involvement in farm operations and perceived a stronger demarcation between the home and work environment on the farm. Both groups preferred to retain personal choice, as opposed to further regulation, but the mothers adopted a more complex approach to the multiple factors that increased their children's exposure to ATVs and other farm risks.

## MEDIA

The rural gender divide was not the sole difference of opinion to emerge during the research. Significant differences between rural and urban attitudes were evident in news media accounts of the 2005 tragedy and its aftermath. The prosecution of the child's father attracted significant media coverage, with editorial commentaries and rural readers' responses exposing a sharp divergence of opinion. The rural community perceived its urban counterpart as having little appreciation or understanding of the exigencies of farming life, while metropolitan editorial commentaries lamented the rural community's pride in pragmatism for its fatal repercussions when it involved "bending the rules" (*Farmers Weekly* 2005:12).

Many farmers argued that pragmatism was "the only workable option" (Smith 2005:10), insisting that the unique circumstances of rural family and working life required a different set of standards. Somewhat contrarily, the case was viewed by many rural residents as an unfair punishment for a momentary lapse in judgement and as tragic reminder of the need for vigilance, while at the same time there was acknowledgement that allowing young children to ride ATVs was a common practice.[9] Indeed, ATV use by and around children was regarded as "normal practice" on the farm and this formed a cornerstone of the defence case.

## FINDINGS

The overall picture presented by the CAPFNZ research was one of a sector typically displaying low compliance rates with officially endorsed safety messages and an unacceptable level of injuries amongst the paediatric population. There was evidence of a complex web of inter-related contributory factors. These included rural parents' lack of access to appropriate childcare options, the widespread practice of children undertaking farm duties, and inconsistent guidelines for the safe operation of ATVs. The data also confirmed the unsuitability of ATVs as vehicles of choice when transporting children on the farm, or as vehicles to be driven by children when undertaking farm duties. Legislative responses in regard to implementing minimum driver ages or transporting children on the vehicles were viewed as "last resort" options. The preferred option was to amend existing rural culture through educational programmes and awareness campaigns.

The report provided recommendations under nine distinct categories, which often overlapped and were inter-related. The strategies for practical solutions included ensuring better

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[9] An expert involved with the CAPFNZ research had undertaken an informal survey of 12 rural schools which he visited. Each had a roll of about 50 pupils. Of the 600 or so students in the schools, only five or six had never ridden an ATV.

availability of, and access to childcare, with provisions for in-home care where necessary. The report recommended continuing support for existing formal training programmes and reductions in ACC and insurance levies for farmers who meet various safety training and vehicle maintenance requirements. It also encouraged further research efforts in regard to the design and technical aspects of the vehicles. Recommendations with regard to the vehicles themselves included continuing the development of a device to limit the speed of the bikes when cornering and refinements which enhance the stability of the bikes. In addition to further discouraging the attachment child car seats and the carriage of passengers in general, the report also supported renewed and continuing promotion of the NZS 8600:2002 specialised farm ATV safety helmet.

While these types of measures may remove practical barriers to safer practices, that in itself does not equate to changes in behaviour. The CAPFNZ report therefore made further recommendations designed to address farm culture directly. The issue of further regulating ATV use on private property was perhaps the most contentious for our informants. In light of this resistance and because any further legislation would present significant monitoring difficulties due to the geographical isolation of most farms, it recommended that in lieu of further legislation, the *Safe Use of ATVs on New Zealand Farms Agricultural Guidelines* (2002) be adopted as the benchmark in ATV safety in New Zealand and supported a minimum driver age of 15.

The strong resistance of the farming community to any further regulation of their practices suggested that safer practices were contingent on changes occurring within farming culture and it was thought that this was more likely to be precipitated by measures designed for and by those directly involved. Accordingly, the initiation of a process reminiscent of that from which the *Guidelines* eventuated was advocated. Essentially envisaged as a social dialogue[10] amongst farmers, work and safety organisations, child welfare agencies and vehicle safety experts, the process would be charged with delineating safer norms for New Zealand's rural children. Such a multi-stakeholder process could address the historic absence of children in both the existing legislation and previous dialogues around farm safety.

## RECENT TRENDS

The shock that reverberated through both rural and urban communities was compounded when the child's father was charged with manslaughter. Publicity surrounding the case ensured that the broad parameters of prevailing farm practices received sustained scrutiny and discussion over an extended period. On the one hand, the tragedy and ensuing discussion provided some cause for optimism that behaviours on the farm might move towards better safety practices on the farm. On the other hand, the utilization of "normal practice" as a key part of the defence case and the ultimate acquittal of the father suggested that the status quo might be maintained. That is, farmers may have viewed the acquittal as vindication of the farming community's practices and safety culture.

Furthermore, there is a sense in which there is now a perverse incentive not to change farming practices, since to do so will remove a proven legal defence should a further tragedy occur. It is therefore in farmers' interests to continue to allow ATV use by and around children. It was also made clear in court that the *Guidelines* were not considered to be an

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[10] The *Guidelines* process has been used as an exemplar of social dialogue in government papers (see, for example, Dyson 2004).

industry standard or best practice, with farmers testifying either that they were unfamiliar with the *Guidelines* or that they chose to ignore them (Boyes 2006).

If the court case had effected any change in farming behaviours, it was likely to be reflected in ACC caseloads over the period since 2005. Data supplied by ACC (Table 1) show a steady increase in the number of claims for children involved in ATV accidents each year since 2001, with the trend continuing in the year to June 2006 -- the period following the child's death. Claims for accidents involving children below the age recommended by the *Guidelines* have increased 10-fold over the five years covered by the table (subtotals). During the 12 months from September 2005 court case, claims increased by more than 27% for all children under 15 years of age. While all age groups recorded increases in claims, the increase for children aged 10--14 years rose at a lower rate (14.5%) than that for younger children. Alarmingly, the greatest percentage increase occurred in the 5--9-year-old age group at 49%.

**Table 1  New ATV Claims (Medical Fee Claims) for Claimants 19 Years and Younger, by Year**

| Age | July 2001 -- June 2002 | July 2002 -- June 2003 | July 2003 -- June 2004 | July 2004 -- June 2005 | July 2005 -- June 2006 |
|---|---|---|---|---|---|
| 0--4 | 5 | 7 | 24 | 26 | 33 |
| 5--9 | 4 | 16 | 46 | 49 | 73 |
| 10--14 | 10 | 11 | 58 | 83 | 95 |
| Subtotal | **19** | **34** | **104** | **158** | **201** |
| 15--19 | 52 | 39 | 66 | 110 | 150 |
| Total | 71 | 73 | 194 | 268 | 351 |

The increasing numbers doubtless reflect the increasing popularity of ATVs but, because reliable data on total numbers of ATVs currently in use are not available, it is not possible to ascertain *rates* of accidents. Nonetheless, the increased numbers bear out the predictions of experts, wherein the numbers of accidents involving children were expected to rise as total vehicle numbers increased (Kelleher et al. 2005). They are also testament to the continuing use of ATVs by and around children, suggesting that it is still "normal practice".

## DISCUSSION

It was evident in the earlier research that there was a mix of practical and cultural factors which contributed to the levels of risk to rural children. While farming families clearly face practical problems in terms of the availability of childcare, this is less relevant to older children since they require supervision rather than care, presenting a different set of problems. Compliance with regulations and guidelines in regard to older children is less connected to the availability of childcare and more readily reflects decisions premised on personal choice rather than a lack of choice. The childcare argument in regard to younger children is also tenuous however, given that throughout New Zealand thousands of families must make decisions about how best to arrange for the care of their children if both parents work (whether for wages or self-employed) and it is not the case that all urban workers have the luxury of working hours which coincide with the common hours of operation of childcare facilities. Similarly, the problems associated with accessing childcare facilities are frequently paralleled in urban environments, with parents in our larger cities often spending at least as much time (if not distance) in travelling to and from childcare centres. The details and dynamics of urban and rural situations may differ in significant ways, but this indicates a need for innovative solutions, rather than acquiescence to continuing risks.

ATVs themselves are clearly not designed for use by children. In addition to their size, weight and power, their high centre of gravity and the required mode of riding present a challenge to adult riders. For small bodies, the challenges are even greater.[11] The CAPFNZ project provided evidence of small shifts in attitudes to farm safety, particularly amongst rural women. Farm and workplace safety experts also continue to promote training programmes, increased risk awareness and widespread adoption of the *Guidelines*. While the issues raised in the public domain by the 2005 case appear to have dissipated somewhat in the aftermath of the trial, Federated Farmers' president Charlie Pedersen is confident that more farmers are adhering to the *Guidelines* and "fewer were allowing their children to ride ATVs" (Watt 2007). Together, these shifts suggest that voluntary compliance with the *Guidelines* may yet eventuate. In the light of continued increases in ACC claims however, such changes as do exist are clearly insufficient to reverse the upward trend in ATV accidents involving children. While individual farmers may indeed be reconsidering or changing practices on the farm, the data indicate that safer practices are far from universal. They also indicate that it is not merely a matter of preventing children from driving ATVs, since the majority are injured as bystanders.

Complicating matters further still is the increasing popularity of lifestyle blocks, where ATVs are used for both work and recreation. Anecdotal evidence indicates that ATV use by children is considered to be amongst the benefits of the family's chosen lifestyle, though gender differences are again evident.[12] Current data present problems here since they do not distinguish between farms and lifestyle blocks. Nor is it clear whether the accidents involve drivers, passengers or bystanders. The updated ACC statistics might suggest that any changes in farming practices are happening too slowly to provide appreciable improvements in the safety of farming (as opposed to lifestyle block) children. Alternatively, they may indicate that the rate of increase of lifestyle blocks is such that accidents within that domain obfuscate any improvements in the data relating to the farming community. The distinction is immaterial, however, since in either case it is clear that rural children continue to face unnecessary risks and the risks apply to both environments in almost equal measure. Irrespective of specific location, ATVs are inappropriate vehicles for operation by or near children.

In the original research the researchers deferred to the views of both groups of informants with regard to further legislating ATV use. This decision reflected consideration of both cultural and practical factors: the strong resistance from the rural community and the difficulties inherent in monitoring compliance in geographically isolated environments. Both aspects are open to challenge. The practicalities of enforcing the legislation are not insurmountable, nor can they be reduced simply to the difficulties of monitoring compliance. In the event of an accident, non-compliance will be readily apparent. Enacting legislation in the face of resistance from within the community is also not without precedent. The introduction of laws requiring the use of child car restraints provides a cogent example of the forces at play here. It also demonstrates that the cultural dimension is perhaps less significant than the research indicates in as much as it illuminates the ways in which technological

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[11] In recognition of the risks associated with disparities in weight ratios, some US states have introduced legislation calling for the development of a "rider fit" requirement to prevent children riding adult-sized bikes (Manning 2007)

[12] For example, amongst the enquiries canvassed following the release of the CAPFNZ report, was a request from a lifestyle block mother seeking information which would strengthen her position in opposing her husband's encouragement of ATV use by their children.

developments frequently present safety concerns which remain unconsidered for long periods.

For successive generations, many thousands of children routinely travelled unrestrained in cars, with many good parents even allowing unrestrained front seat travel for children. Over time, data attesting to the risks associated with the practice prompted the promotion of child car restraints. That is, there was a time lag between the development of new technologies and the development of appropriate safety practices, simply because the risks remained unconsidered until sufficient data were accumulated to indicate the need for changing behaviours. Similarly, the development of ATVs and their deployment in farm workplaces or on lifestyle blocks presents a new set of safety considerations which were initially unconsidered. For many people, the decision to allow small children to operate a 400kg machines defies comprehension. Thirty years ago, those same people may well have allowed their toddlers to travel standing on the front passenger seat of the family car. Child car restraints were not universally welcomed initially and, ultimately, behavioural change did not occur simply through educational campaigns. It was not until legislation was introduced in conjunction with the education campaigns that parents eventually accepted that prevailing practices posed unnecessary risks to their children.

Reducing the risks to rural children requires urgent attention and, contrary to the recommendations in the CAPFNZ report, history suggests that the optimal method for instigating extensive shifts in behaviour is legislative change. While social dialogue may yet be useful for deriving improved rural child safety norms in general, it will be a lengthy process. Current ATV accident statistics communicate the urgency of the situation, such that the statutory regulation of ATV use is imperative and overdue. In terms of operating the vehicles, a minimum driver age, consistent with both the *Guidelines* and our Land Transport legislation, should be set at 15 years, subject to completion of a standardised competency test. This is entirely consistent with legislation governing the operation of any vehicle on public roads, but removes ATVs from among the vehicles currently exempted for off-road use.

Given that ATVs are replacing tractors as the workhorses of the farm, the vehicles themselves should be subject to the same restrictions as currently pertain to tractors with respect to their operation and the carriage of passengers. Such measures will remove the incentive to persist with unsafe behaviours in the interests of sustaining a "normal practice" legal defence. They will also allow charges more commensurate with the (in)actions involved, rather than the present constraints associated with the Crimes Act, wherein manslaughter charges eventuate, though they will not preclude such charges when warranted. Furthermore, any developing propensity towards recreational use[13] of the vehicles by children on lifestyle blocks may be forestalled before the practice becomes entrenched. As noted by ACC Injury Prevention Programme Manager, Peter Jones, "ATVs are not toys" (Watt 2007).

Clearly, such legislation may initially be unpalatable to many in the rural community, including rural children, and the transition will no doubt be fraught for some of the current generation. Conversely, if farming practices are already changing through voluntary compliance with the *Guidelines,* legally codifying those new behaviours should not present significant problems. As happened with car restraints -- or motorcycle and bicycle helmets --

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[13] The author notes the advent of "mini" ATVs, which are sold as children's toys. These have not been considered in this research and it is not intended here that they be governed by the legislation suggested. Their safety -- or otherwise -- is a matter more properly in the domain of product safety regulators.

the practices fostered by the regulations will eventually be adopted as new behavioural norms which recognise the risks associated with technological developments. In the interim, legal changes may well present practical problems for farming families without access to suitable childcare options. There is therefore an obligation to give serious consideration to the relevant recommendations in the original CAPFNZ report, particularly those connected with access to childcare and the initiation of social dialogue in regard to developing appropriate safety norms and practices for rural children.

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# THE IMPACT OF THE PERFORMANCE-BASED RESEARCH FUND ON THE RESEARCH PRODUCTIVITY OF NEW ZEALAND UNIVERSITIES

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**Abstract**

The introduction of the Performance-Based Research Fund (PBRF) has resulted in much greater scrutiny of the research activities of New Zealand universities. This study examines the impact of this greater scrutiny on the research productivity of the universities. The analysis shows that most universities exhibit a significant increase in productivity in the period following the introduction of the PBRF. This finding is corroborated through the use of a production function approach to model the research process in New Zealand universities. This showed that the number of research publications listed in the Web of Science[1] by university researchers is significantly higher following the introduction of the PBRF. Analysis of total research output data shows that this increase in Web of Science research publications has not been at the expense of other forms of research output.

## INTRODUCTION

Governments around the world are increasingly using performance-based funding to allocate resources for research at higher education institutions. New Zealand is no exception to this trend, with the introduction of the Performance-Based Research Fund (PBRF) in 2004 representing arguably the most significant change to the funding of tertiary institutions in New Zealand since the introduction of the equivalent full-time student (EFTS) funding system in 1991. It marks the first time that a substantial proportion of tertiary education funding from Vote Education[2] has been allocated based on institutional performance.

Although the main objective of the PBRF is to raise the average quality of research through rewarding excellence (Tertiary Education Commission 2004), the increased scrutiny the PBRF places on research performance is likely to have increased the quantity of research output at New Zealand universities. This study attempts to quantify this effect by analysing the impact of the PBRF in terms of stimulating research output, in the form of journal articles and reviews[3] listed in the Web of Science, at the eight New Zealand universities.[4]

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[1] Web of Science is an online academic service that provides access to five databases: <u>Science Citation Index</u> (SCI), <u>Social Sciences Citation Index</u> (SSCI), <u>Arts & Humanities Citation Index</u> (A&HCI), <u>Index Chemicus</u>, and <u>Current Chemical Reactions</u>.

[2] A fund for delivery of education in alternative learning settings for at-risk youth.

[3] Other types of research publications captured by the Web of Science, such as book reviews, bibliographies and meeting notices, were excluded from this analysis.

[4] In this analysis it has been assumed that the colleges of education were merged with their associated universities for the entire period. Similarly, it is assumed that Massey University was merged with Wellington Polytechnic for the entire period. The purpose of this approach is to make any trends in research productivity clearer by removing the impact of the mergers with the colleges of education. It also allows for an analysis of university performance in their current (2008) configurations.

To measure the impact of the PBRF on research productivity, this analysis uses a mix of quantitative approaches. Firstly, the number of articles and reviews listed in the Web of Science per full-time equivalent research staff is examined over a 10-year period to see if productivity increased in the period following the introduction of the PBRF. Then a production function approach is used to model the research process at the New Zealand universities. Within this framework, multiple regression analysis is applied to panel data for the eight New Zealand universities. An advantage of using regression analysis in this case is that it can control for other factors that influence research output, thereby helping to isolate the impact of the PBRF.

This article begins by outlining the history of performance-based funding of research in the tertiary education sector in New Zealand and outlines briefly how universities reported their response to the PBRF. The reasons for using the Web of Science to measure research output are discussed and the limitations that apply to the coverage of total research activity in this data set are explained. The productivity of university research staff is then examined, and the empirical model used to estimate the research production function is introduced. This is followed by a discussion of the results of the production function analysis, with a focus on the impact of the PBRF. Finally, some conclusions and future areas of analysis are presented.

## PERFORMANCE-BASED FUNDING OF RESEARCH

The New Zealand government has expressed a desire to introduce performance-based funding of tertiary education research for more than a decade. In 1997 the publication of the *Green Paper* (Ministry of Education 1997) signalled the government's intention to change the system of funding research from one based on the number of student enrolments to one where a contestable fund would be used to distribute funding based on the quality of research at an institution. However, a change of government in late 1999, along with concerns expressed by the universities at the size of the contestable fund and lack of operational detail, resulted in the proposed approach being deferred (Boston 2006).

The proposal for performance-based funding for research was revived by the Tertiary Education Advisory Commission (2001) report *Shaping the Funding Framework*. The report recommended the introduction of a "Performance-Based Research Fund", based on a mixed model of peer review and performance indicators,[5] to assign funding based on the quality of research at an institution. The Cabinet signed off on the decision to go ahead with the PBRF in May 2002, with the operational detail of the PBRF being outlined in late 2002.[6] The PBRF began allocating funding in 2004 as funding from enrolments-based research top-ups was phased out. In 2007, the year in which the transition from the research top-ups to the PBRF was completed, the PBRF is estimated to have allocated around $231 million in funding to participating tertiary institutions (Tertiary Education Commission 2007).

Sixty percent of the funding allocated via the PBRF is based on the results of the Quality Evaluation, which uses peer review to evaluate the quality of research by PBRF-eligible staff at participating tertiary institutions. Peer reviewers evaluate researcher performance across three dimensions: the quality of research output, the esteem with which the researcher is held

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[5] The indicators included a measure of the external research income earned by institutions and the number of research degree completions.

[6] This was when the PBRF Working Group published their detailed recommendations outlining the operational details of the PBRF (PBRF Working Group 2002).

by their peers and their contribution to the research environment. In generating a final quality category, the quality of research output has the highest weighting.

The top quality category A is assigned to a researcher who produces research that is assessed as being of international quality. This is followed in order by B, C and R quality categories. Funding is only allocated to those researchers who receive a minimum of a C quality category, with A researchers receiving the highest weighting of funding.

Importantly, the results of the Quality Evaluation are published by the Tertiary Education Commission. Therefore, there is a strong incentive for universities to improve the quality of their research output, not only to maximise the funding received via the PBRF but also to maximise the positive impact from a high ranking.

An examination of university profiles published shortly after the release of the first PBRF Quality Evaluation results in 2004 illustrates how the PBRF has influenced the management of the research process at the universities. A number of universities stated that the results of the first PBRF Quality Evaluation would be used to identify areas of research strength and also those areas that required additional support to improve the level of quality of research (University of Auckland 2004, Massey University 2004, University of Canterbury 2004, Victoria University of Wellington 2004). Having identified those areas requiring additional support, the universities indicated that improvements would be made through helping research-inactive staff to improve their performance (Massey University 2004) and/or by recruiting research-active staff (Auckland University of Technology 2004, University of Auckland 2004).

The examination of the university profiles also shows that a number of universities used PBRF measures explicitly in setting goals. For example, the University of Waikato stated they wanted to build on their 2003 Quality Evaluation results (University of Waikato 2004), while the University of Canterbury stated an explicit long-term goal of being New Zealand's top university for quality of research, as measured by the PBRF (University of Canterbury 2004).

Given the response of the universities to the PBRF, it seems likely there would be an associated increase in the volume of research activity, especially by those researchers seeking to improve their quality category. International experience also suggests that the introduction of performance-based funding of research increases research activity. Liefner (2003) interviewed professors from a number of prestigious universities around the world on aspects of the funding of research. There was broad agreement that the introduction of performance-based funding leads to an increase in research activity, and hence quantity and quality, as a result of the increased scrutiny of performance. An evaluation of the impact of the United Kingdom's (UK) Research Assessment Exercise (RAE), which, like the PBRF, involves peer assessment of research quality, observed that researchers targeted journal publication as a means of raising their level of research quality (McNay 1998). This was based on a perception that publishing in highly cited journals would be viewed favourably by the review panels (Elkin 2001).

If New Zealand researchers responded in a similar fashion, it would be shown by an increase in the number of journal articles and reviews published in the years following the decision to introduce the PBRF, and also in journals likely to be more highly cited.

## MEASURING RESEARCH PRODUCTIVITY

A key problem in measuring the research output of universities in New Zealand is a lack of consistency in the way the universities report their research output. Although universities have routinely reported counts of research output in their annual reports for several years, they use different categories and thresholds to report research output, and several have changed the way they report over time. Some have even ceased reporting the total number of research outputs in their annual reports. This makes a year-to-year comparison of research output at all eight universities problematic for any extended period of time.[7]

A number of recent studies have used bibliometric databases to analyse the research productivity of university departments and individuals within various academic disciplines. Dale and Goldfinch (2005) used data extracted from the Web of Science to measure the research output and impact of the research of political science units in Australasian universities over the period 1995 to 2001. The authors found that the political science department at the Australian National University produced the highest number of research articles per staff member overall, while the best-performing unit from New Zealand was at the University of Waikato.

In a similar vein, Macri and Sinha (2006) measured the quality and quantity of research by economists at New Zealand and Australian universities during the period 1988 to 2002 using data extracted from the ECONLIT[8] database. The study found that over the period 1996 to 2002, economics staff at the University of Melbourne were the largest producers of journal articles per staff member overall. The most productive of New Zealand's economics departments was at the University of Otago.

At the institutional level, a report by the Ministry of Research, Science and Technology (2006) analysed the research output (in the form of articles and reviews) between 1997 and 2003 at each of the universities using data from Thomson's New Zealand National Scientific Database. This study showed a decline in the research productivity of New Zealand universities of 4.2% between 2000 and 2003. However, the window of analysis in the study ended before the impact of the PBRF could be observed.

These previous bibliometric studies focused on comparing the performance of research staff at different universities. In this study, the focus is not on comparing the performance of universities, but rather on analysing the performance of each individual university over time. To achieve this, the Web of Science is used to extract counts of research publications, in the form of journal articles and reviews, for each of the universities between 1997 and 2006.[9] The Web of Science, published by Thomson Scientific, is an online searchable bibliometric database that contains the details of publications in over 9,000 peer-reviewed journals, most of them based in North America and Europe.

The key advantage in using the number of articles and reviews listed in the Web of Science to measure research output is that it allows for a consistent way to measure research output over

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[7] The data do show some evidence of an increase in productivity following the introduction of the PBRF at the University of Canterbury, University of Otago, Lincoln University, Auckland University of Technology and Victoria University of Wellington.

[8] The American Economic Association's electronic bibliography which includes over 30 years of economics literature from around the world.

[9] An article and review were assigned to a university if at least one of the authors was from that institution.

time.[10] However, there are a number of important caveats relating to the use this data. For one thing, the Web of Science has much better coverage of journals in the sciences and medical disciplines than in the social sciences and humanities. This introduces an element of bias into the publication counts, in that institutions that have relatively large science faculties and/or medical schools[11] will tend to have a larger number of articles and reviews listed in the Web of Science compared with institutions that are more focused on the social sciences/humanities and creative arts. In addition, because there are few New Zealand-based journals in the Web of Science, research that is published locally will not be captured in its database. Finally, the Web of Science does not capture research published in the form of books, book chapters, exhibitions, conference papers and other creative works -- which are important means of disseminating research for university researchers.

A comparison of the number of articles and reviews listed in the Web of Science with the total number of research outputs reported by universities in their annual reports gives an idea of the scale of coverage of the Web of Science. In 2004 the number of articles and reviews listed in the Web of Science ranged from a low of 6% of all reported research outputs at Auckland University of Technology (AUT) to a high of 25% for the University of Canterbury.[12]

Despite this relatively low coverage of research output, the Web of Science provides a consistent measure of research output over time, which is critical in assessing the impact of a policy instrument like the PBRF. In addition, as researchers in the relevant fields are likely to target journal publication in higher-status journals to improve their quality category, the Web of Science will be able to capture this trend.

Because of the limitations of the Web of Science, any direct comparison of the productivity of researchers between universities is not useful, as universities with a medical school and/or large science faculties will naturally have a higher number of articles and reviews listed in the Web of Science. However, the performance of an individual university can be examined to see if there has been a change in its productivity over time.

Although the PBRF did not begin allocating funding till 2004, the details of how it would work were widely available from 2002, so universities would have been able to begin responding to its introduction from that year onwards. Therefore, any "PBRF effect" should show up as an increase in the number of articles and reviews listed in the Web of Science after 2003.[13]

Figure 1 shows the total number of articles and reviews listed in the Web of Science by researchers at New Zealand universities, by publication year, between 1997 and 2006. There is some evidence of a "PBRF effect", with total publications increasing by 35% between 2002 and 2006 following a period of relatively stable output between 1999 and 2002.

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[10] Although journals are added and dropped from the Web of Science journal set each year, the number of year-on-year changes is relatively low. The validity of using the Web of Science for time series analysis is discussed in Phelan 1999.

[11] The University of Otago and the University of Auckland have medical schools.

[12] The total research output data are sourced from Ministry of Education 2005.

[13] Although individual researchers may or may not have responded directly to the PBRF signals, as was discussed earlier, management at the universities did respond and began to reorganise and promote research activity.

Figure 1 also displays the number of articles and reviews listed in the Web of Science on a per full-time equivalent (FTE) research staff basis to give an indication of changes in the productivity of research staff. To account for the lags that exist in the research publication process,[14] the articles and reviews in a particular publication year were divided by the number of FTE research staff[15] in the previous year. For example, articles and reviews published in 2006 have been linked to the FTE research staff at the universities in 2005.

There appear to be three distinct phases to research productivity in the universities between 1997 and 2006. After an initial increase in the number of articles and reviews per FTE researcher of 12% between 1997 and 2000, productivity stagnated. Between 2000 and 2003, productivity declined by 2% to reach 0.41 publications per FTE researcher in 2003. Since 2003, there has been a significant rise in productivity, coinciding with the introduction of the PBRF, with publications per researcher increasing by 21% between 2003 and 2006.

## Figure 1 Web of Science Research Publications by New Zealand University Authors, by Publication Year
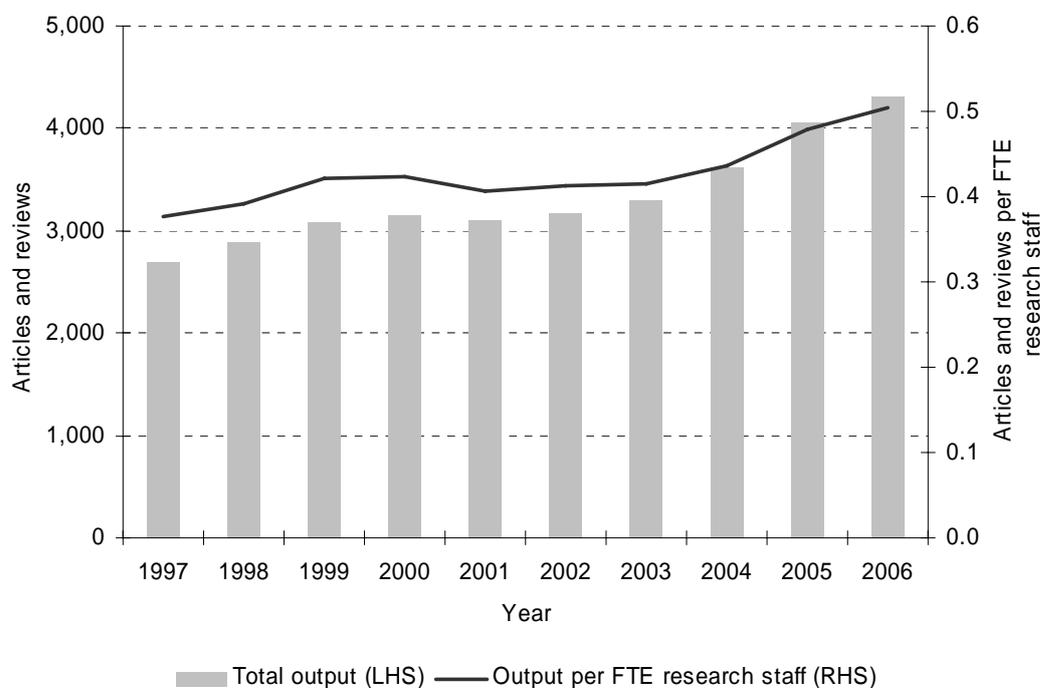


Source: Web of Science

The research productivity of individual universities is presented in Figure 2, where the focus is on how the productivity of an individual university has changed over time, rather than on a comparison of productivity between universities. There are a number of universities that display a significant increase in productivity following the introduction of the PBRF. One of the more obvious examples is the University of Auckland: between 2002 and 2004 the number of articles and reviews listed in the Web of Science per FTE fell by 4%, but was followed by a rise of 24% between 2004 and 2006.

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[14] The lag between research being carried out and being published can vary depending on the type of publication method and the discipline, and may take considerably longer than one year. However, due to the limited number of observations in this analysis a lag of one year in the research process is assumed.

[15] "Research staff" in this study includes academic and research-only staff.

The University of Canterbury is another university that exhibits a significant increase in the number of articles and reviews listed in the Web of Science per FTE following the announcement to introduce the PBRF. There was an increase of 26% in productivity at this university between 2003 and 2006, following a decrease of 16% between 2000 and 2003. The University of Waikato also exhibits an increase in the number of articles and reviews per FTE that coincides with the introduction of the PBRF and follows a period of relatively stagnant productivity. Between 2002 and 2006 publications per FTE increased by 31%, compared with a decrease of 25% between 1999 and 2002.

Although there is an increase in productivity of 36% at Victoria University of Wellington (VUW) between 2002 and 2006, the start of this upward trend appears to precede the PBRF. Also, VUW displays considerable variation in productivity during this time period, making it difficult to identify clear trends. As a result it is not clear how much of the increase in productivity exhibited by VUW in recent years is a result of the PBRF.

Massey University seems to display a long-term upward trend in productivity over time. However, there is a period of relative stagnation in productivity between 2000 and 2003, where productivity fell by 7%. This is followed by an increase in articles and reviews listed in the Web of Science per FTE of 30% between 2003 and 2006.

Lincoln University displays the greatest variation in research productivity, a reflection of its relatively small size. The evidence of a PBRF effect at Lincoln is not clear cut. Although there is an increase of 27% in the number of articles and reviews listed in the Web of Science per FTE in 2004 following a period of declining productivity, the publications per FTE fell by 12% between 2004 and 2006.

The steady increase in productivity at AUT reflects the continued maturing of research culture at this new university. Although there is a slight increase in the rate of growth in the number of articles and reviews listed in the Web of Science per FTE after 2003, separating the impact of the PBRF from the impact of a developing research culture at AUT is not easily achieved.

**Figure 2  Web of Science Research Publications per Full-time Equivalent Research Staff, by Publication Year**
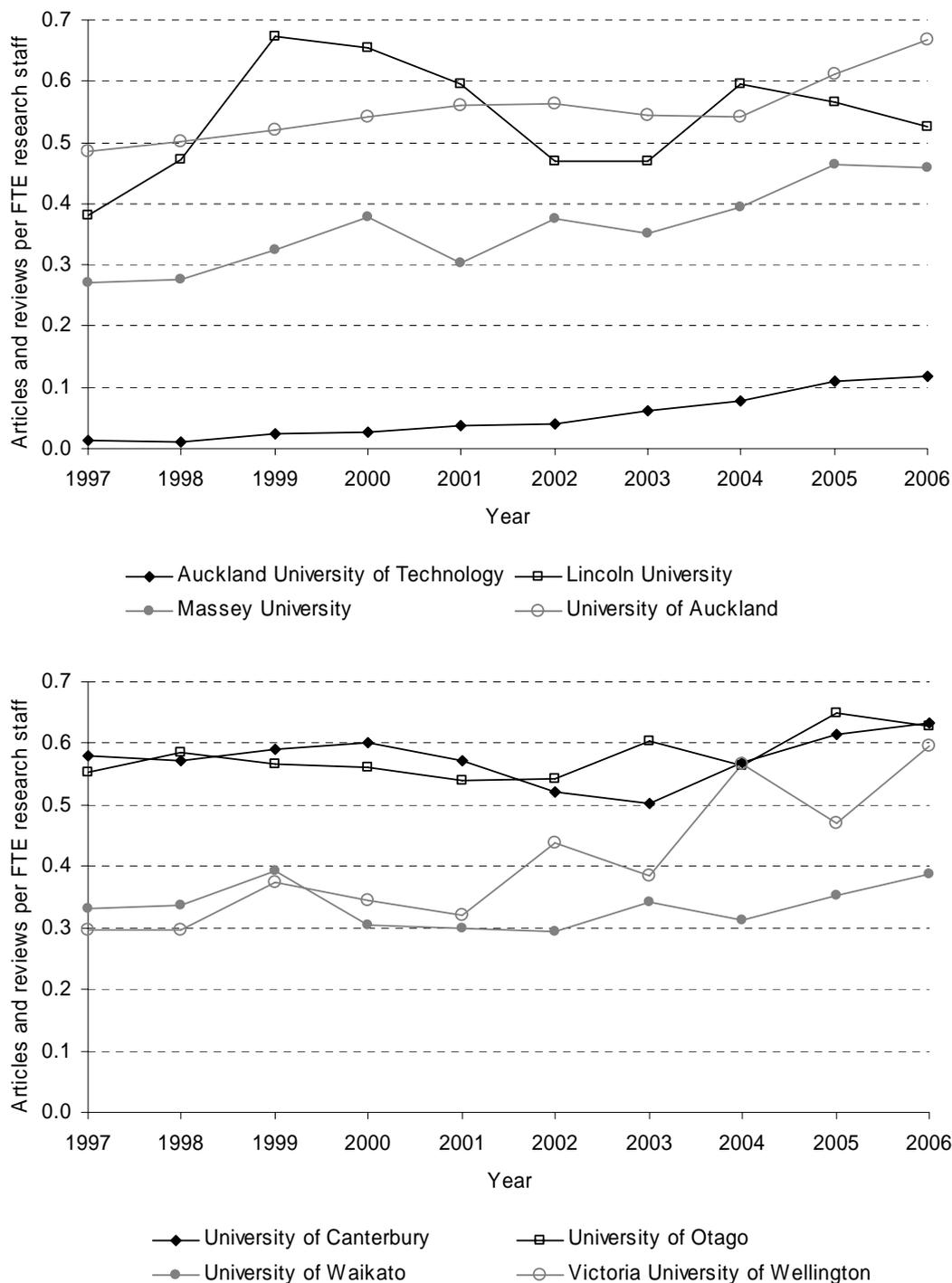




Source: Web of Science

Although the number of articles and reviews listed in the Web of Science per FTE increased significantly at most New Zealand universities following the introduction of the PBRF, it is possible this was simply coincidental and was part of a broader international trend. To test for this, Figure 3 compares the research output per FTE researcher at the two New Zealand's universities with the largest number of Web of Science publications, Auckland and Otago, with the Universities of Melbourne and Queensland – two of Australia's largest universities

in terms of Web of Science publications[16] and members of the Group of Eight research-intensive universities.[17]

## Figure 3 Web of Science Research Publications per Full-time Equivalent Research Staff for Selected Universities, by Publication Year
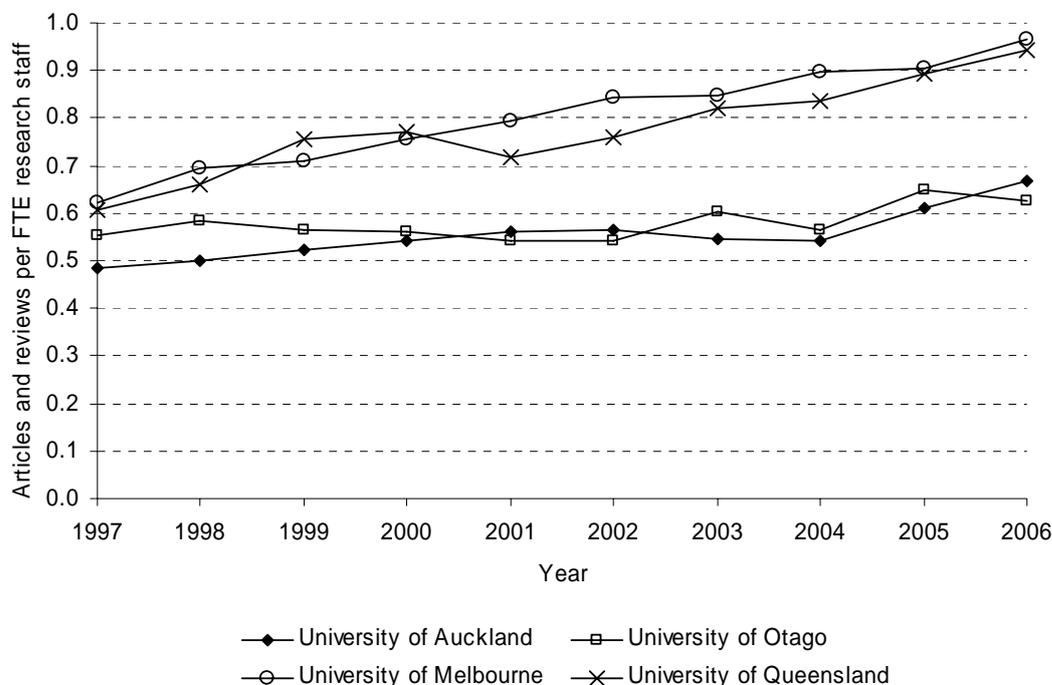


Source: Web of Science

As can be seen in Figure 3, the University of Melbourne displayed a relatively steady increase in productivity over time, with no evidence of an upswing in productivity from 2002 onwards.[18] This compares with the Universities of Otago and Auckland, which both experienced periods of declines in research output before displaying an increase in productivity over the last three to four years. Although the productivity of the University of Queensland does show an increase in productivity from 2002, this precedes the increases exhibited by the New Zealand universities. The differences in the trends in research productivity between the Australian and New Zealand universities would suggest that the PBRF effect is not simply a reflection of a wider international trend.

The widening of the gap in the number of articles and reviews listed in the Web of Science per FTE researcher between the Australian and New Zealand universities over the 10-year period in Figure 3 is not surprising, as government funding for research in New Zealand and

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[16] The number of Web of Science publications by the University of Sydney was the largest by an Australian university in 2006, but there was a lack of consistent FTE research staff data available for this university. The University of Melbourne had the second highest number of Web of Science publications and the University of Queensland the third highest of the Australian universities in 2006.

[17] The Group of Eight is an alliance of eight large metropolitan research-intensive Australian universities. The member institutions are: University of Melbourne, University of Sydney, University of New South Wales, University of Adelaide, University of Western Australia, Australia National University, University of Queensland and Monash University.

[18] Staffing data for the Australian universities was sourced from the Department of Education, Employment and Workplace Relations (2007).

Australia was allocated on a very different basis during this time. Research funding in Australia was partly allocated based on the quantity of research output,[19] while research funding at New Zealand universities was based on the number of domestic enrolments at bachelor's level and above until the phase-in of the PBRF from 2004.

The analysis of the number of articles and reviews per FTE researcher would suggest that productivity (by this measure at least) has improved significantly at a number of New Zealand universities following the introduction of the PBRF. However, attempting to establish a causal link between the introduction of the PBRF and increased research output is problematic given the multitude of factors that affect research performance (Adams and Smith 2006).

To control for some of these factors (such as the amount of research income, number of postgraduate research students and normal productivity improvements), regression analysis was applied to panel data for the eight New Zealand universities over a 10-year period. By controlling for these other factors, the impact of the PBRF on research output can be more clearly identified. It also allows for tests of statistical inference to be applied that indicate if any changes in research output following the introduction of the PBRF were statistically significant. The regression and production function methodology is presented in the next section.

## A PRODUCTION FUNCTION APPROACH

The production function approach used to model the research productivity of the New Zealand universities between 1996 and 2005[20] is based on the approach used by Abbott and Doucouliagos (2004) to model the research output of Australian universities. In this approach it is assumed that the research output of universities is determined by key inputs, such as academic staff and research income, along with other environmental factors such as size of institution and changes in technology over time.

The dependent variable in this analysis, *PUBLICATIONS* (mean = 437.3, SD = 345.3), is the number of articles and reviews listed in the Web of Science by researchers at each of the eight universities in each year. To take into account the lag that occurs in the publication process, the research publications in a particular year were matched to the inputs in the preceding year. For example, articles and reviews published in 2006 have been linked to inputs that were used in 2005.[21]

To allow for the dynamics of the research process, a lagged dependent variable (*PUBLICATIONS_LAGGED*) is included as an explanatory variable in the regression model. This also helps reduce the likelihood of serial correlation in the regression model (Abbott and Doucouliagos 2004).

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[19] This may change in the future if the proposals in the 'Excellence in research for Australia initiative' are implemented. These envisage the incorporation of measures of research quality into the framework for funding research in Australia's higher education sector (see Australian Research Council ,2008). .

[20] This time frame was selected because input data are available from 1996 onwards. There is a total of 80 observations in the model.

[21] The model was also estimated assuming a lag of two years, which produced relatively similar results. Longer lags were not used because they would have reduced the sample size in the model significantly.

The three input variables in the regression model are the number of FTE research staff at a university (*RESEARCH_STAFF*), the amount of research income earned by the universities (*RESEARCH_INCOME*) and the number of EFTs at master's and doctoral level (*POSTGRAD*) (mean = 1,270, SD = 799).[22] *RESEARCH_STAFF* (mean = 973.3, SD = 519.5) includes all academic staff and research-only staff at a university. *RESEARCH_INCOME* (mean = $24,638 thousand,[23] SD = $26,136 thousand[24]) captures the research income earned by the universities as reported to the Ministry of Education. This includes funding such as external research contract income, but excludes PBRF allocations and research top-ups funding. It has then been deflated using the Consumer Price Index to adjust for the effects of inflation.

A dummy variable with multiple categories (*PBRF*[#]) is used to capture the impact of the PBRF on research output. The reference category, *NO_PBRF*, represents the years 1996--2001, a period prior to the announcement of the intention to introduce the PBRF. Note that the year in this case refers to the year an input was used rather than the year the article and review were published. *PBRF$_{02}$* represents the year 2002, *PBRF$_{03}$* the year 2003, *PBRF$_{04}$* the year 2004 and *PBRF$_{05}$* the year 2005. By having separate categories for each year, an analysis of whether the impact of the PBRF on research productivity has altered over time can be made.

As discussed earlier, the coverage of the Web of Science favours those universities that have large science faculties and/or medical schools. To control for this, and also to capture any other provider-specific effects on research output,[25] a dummy variable with multiple categories representing each university (*INSTITUTION*[#]) is included in the regression model.[26] The reference category in the regression model is the University of Auckland.

Finally, a time trend variable is used to capture changes in technology (as in Abbott and Doucouliagos 2004). *TIME* takes a value of 0 for inputs used in 1996, 1 in 1997 and so on.

The regression model is presented in Equation 1 (below). Note that in this analysis a restricted trans-log specification has been applied. Also, the main input variables have been interacted with time to capture productivity; i.e. the effects of non-neutral or input-biased technology change increase over time. In addition, *RESEARCH_STAFF* and *POSTGRAD* are allowed to interact in the model.

$$\ln PUBLICATIONS_{it} = \beta_0 + \beta_1 \ln RESEARCH\_STAFF_{it} + \beta_2 \ln RESEARCH\_INCOME_{it} +$$
$$\beta_3 \ln POSTGRAD_{it} + B_4 \ln RESEARCH\_STAFF \times \ln POSTGRAD_{it} +$$
$$\beta_5 PBRF^{\#}_t + \beta_6 PUBLICATIONS\_LAGGED_{it} + \beta_7 TIME_t +$$
$$\beta_8 RESEARCH\_STAFF \times TIME_{it} + \beta_9 RESEARCH\_INCOME \times TIME_{it} +$$
$$\beta_{10} POSTGRAD \times TIME_{it} + \beta_{11} INSTITUTION^{\#}_i + v_{it} \qquad \text{(Equation 1)}$$

where ln is the natural log, *i* represents the university, *t* represents the time period and *v* is an error term.

With a wide range in the size of the universities, there is likely to be a problem with heteroscedasticity. Therefore, an ordinary least-squares procedure that adjusts for the

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[22] These data have been sourced from the Ministry of Education.
[23] $24.6 million.
[24] $26.1 million.
[25] Such as size of university.
[26] This has the effect of making this a fixed-effects panel data model.

presence of panel-level heteroscedasticity and produces robust standard errors was used to generate the coefficient estimates.[27] The regression output is presented in Table 1.

The results of the regression analysis indicate that the PBRF has been associated with increased research output at the New Zealand universities, and that its impact has increased over time, controlling for other factors. Although the coefficient of $PBRF_{02}$ is positive, it is not statistically significant. However, the coefficients of $PBRF_{03}$, $PBRF_{04}$ and $PBRF_{05}$ are positive and statistically significant. Converting these to percentages, it suggests that, controlling for other factors, research output at the universities was on average 20% higher in 2003 compared with the period prior to the introduction of the PBRF (1996 to 2001). In 2004 research output was 28% higher than prior to the PBRF, and in 2005 34% higher than prior to the PBRF. This suggests that the impact of the PBRF has been significant and is growing.

## Table 1 Determinants of University Web of Science Publications -- Regression Results

Dependent variable = PUBLICATIONS

| Explanatory Variables | Category | Coefficient | Std Error |
|---|---|---|---|
| RESEARCH_STAFF | | 1.491 | 1.076 |
| RESEARCH_INCOME | | 0.312** | 0.084 |
| POSTGRAD | | 2.061* | 0.947 |
| RESEARCH_STAFF x POSTGRAD | | -0.281* | 0.146 |
| PBRF[#] | NO_PBRF | Reference category | |
| | $PBRF_{02}$ | 0.060 | 0.047 |
| | $PBRF_{03}$ | 0.181** | 0.057 |
| | $PBRF_{04}$ | 0.249** | 0.068 |
| | $PBRF_{05}$ | 0.293** | 0.079 |
| PUBLICATIONS_LAGGED | | 0.269** | 0.110 |
| TIME | | -0.048 | 0.045 |
| RESEARCH_STAFF x TIME | | 0.069** | 0.017 |
| RESEARCH_INCOME x TIME | | -0.044** | 0.012 |
| INSTITUTION[#] | AUT | -1.871** | 0.482 |
| | LINCOLN | -0.958* | 0.474 |
| | MASSEY | -0.625** | 0.130 |
| | AUCKLAND | Reference category | |
| | CANTERBURY | -0.627** | 0.241 |
| | OTAGO | -0.149 | 0.157 |
| | WAIKATO | -1.182** | 0.286 |
| | VUW | -1.005** | 0.277 |
| CONSTANT | | -9.155 | 6.866 |
| $R^2$ | | 0.99 | |
| Wald $\chi^2$ | | p< 0.0000 | |
| N | | 80 | |

Note: * and ** denote statistical significance at the 5% and 1% levels, respectively. The regression output was obtained using STATA 8.2, xtpcse, option hetonly (Statacorp 2005).

Given the evidence that the PBRF was associated with a significant increase in articles and reviews listed in the Web of Science, a key question is whether the increase in this type of

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[27] The procedure used to generate the robust standard errors in STATA (Statacorp 2005) was xtpcse, option hetonly.

research output may have "crowded out" other forms of research publication, such as books and book chapters. Publication may also have shifted from non-refereed to refereed journal articles, or from local journals to ones that are contained within the Web of Science.

Figure 4 displays Web of Science research publications as a percentage of total reported research output at four New Zealand universities[28] between 2003 and 2006. There is little evidence of any "crowding out" effect from the increase in Web of Science research publications. At the University of Canterbury the proportion of Web of Science research publications remains relatively stable at around 24%. At VUW the proportion of Web of Science research publications fluctuates around 15% without displaying any clear signs of crowding out other types of research output. The share of Web of Science publications actually decreases at the University of Otago, indicating that other types of research output have increased at an even faster rate. Although the proportion of Web of Science research publications increases at AUT, the increase is still relatively small: from around 4% in 2003 to 6% in 2006.

## Figure 4 Web of Science Articles and Reviews as a Percentage of Total Reported Research Outputs
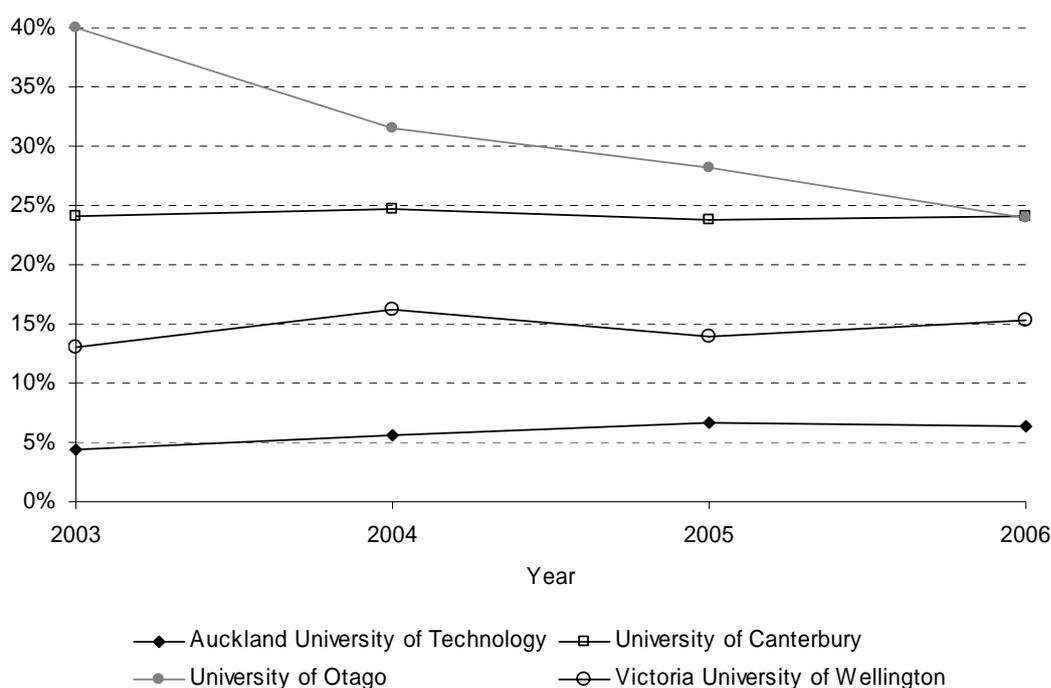


Source: Web of Science, Auckland University of Technology (2004--2007), University of Canterbury (2007), University of Otago (2008) and Victoria University of Wellington (2005--2007)

The regression output in Table 1 also provides a wealth of information about the other determinants of research output. For example, the negative sign of the coefficient for the interaction term *RESEARCH_STAFF×POSTGRAD* suggests that a higher loading of postgraduate students on research staff involved a trade-off with the number of articles and reviews listed in the Web of Science. This result is similar to that found by Abbott and Doucouliagos (2004) in their study of Australian universities, which they suggest is caused by the increased burden of supervision.

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[28] These universities reported research output in a consistent manner over this four-year period.

The positive sign of the coefficient for the interaction term *RESEARCH_STAFF×TIME* suggests that research staff became more productive over time. A number of factors may have contributed to this result, such as, improvements in information technology. Also, the maturing of the research culture at AUT would have helped to increase research productivity.

The negative sign of the coefficient of the interaction term *RESEARCH_INCOME×TIME* suggests that the contribution of *RESEARCH_INCOME* to research output diminished over time. A possible reason for this may be that the increase in *RESEARCH_INCOME* sourced from private businesses (Ministry of Education 2006) may have resulted in the publication of research findings outside the scope of the Web of Science.

The *POSTGRAD×TIME* interaction term in equation 1 was not statistically significant and so was dropped from the regression model.

Care should be taken when  interpreting the coefficients of the institutional dummy variables, which compare the number of articles and reviews listed in the Web of Science by the individual universities to the reference category, the University of Auckland. These coefficients illustrate the impact of a number of institution-specific factors on research output, some of which relate to the bias in the coverage of the Web of Science. For example, the relatively large social sciences and humanities faculties at the University of Waikato and VUW are a factor in the statistically significant negative coefficients. Similarly, as AUT was only granted university status in 2000, the negative sign of the coefficient for the variable representing this university is not unexpected.

## CONCLUSION

The PBRF was designed to improve the average quality of the research in New Zealand tertiary education organisations through linking government funding directly to research performance. This study has shown that the greater scrutiny the PBRF has placed on the research activities of the New Zealand universities has been associated with a significant increase in research productivity at most universities, measured by the number of articles and reviews listed in the Web of Science per FTE research staff. This increase in Web of Science research publications has not been at the expense of other types of research output.

Given the selective nature of the peer reviewed journal set included in the Web of Science, the increase in the number of research outputs appearing in the Web of Science database implies that the quality of research being produced by New Zealand universities has also improved. However, this is only something that can be measured directly and then confirmed through exercises such as the PBRF Quality Evaluations.

What this study does confirm is that linking government funding directly to institutional research performance and ensuring the publication of that performance has been associated with significant changes in institutional behaviour.

However, the increase in research productivity raises important the important question of whether it involves a trade off in other areas of university activity, such as teaching and service, and whether the productivity increase can be sustained over the long term.

The impact of increased research output on teaching activities at the universities is outside the scope of this analysis. However, using a distance function approach, which can directly model multiple input and multiple output technology and obtain measures of technical efficiency and productivity change, may offer better insights into the overall effect of performance-based funding on university performance.

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# PUBLIC AND MEDIA RESPONSES TO THE FIRST TOBACCO LITIGATION TRIAL IN NEW ZEALAND (POU VERSUS BAT)

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## Abstract

This paper focuses on awareness of and attitudes towards issues arising from New Zealand's first tobacco litigation trial. It is based on a national telephone survey and a content analysis of related print and radio media relating to the trial. Interviewees showed a moderate level of awareness about the trial and verdict. Only a minority supported the plaintiff (Janice Pou) in her claim for damages against the tobacco companies. The majority of support was in favour of the tobacco companies (68%). The reasons cited for this support included: the information about the effects of smoking was widely known at the time Pou became addicted, she did not try hard enough to quit, and the tobacco companies reasonably informed the public about the effects of smoking their products. In contrast, the majority of media coverage about the trial and verdict was in favour of Janice Pou, or neutral. Thus, contrary to expectation and the support of the media, the New Zealanders' surveyed were reluctant to support litigation as a means of addressing the costs to the country caused by smoking-related illness. Tobacco industry denormalisation strategies could help to shift public support in favour of litigation and corporate accountability.

## BACKGROUND

Janice Pou was diagnosed with lung cancer in 2001. After watching a television programme about the deceptive behaviour of tobacco companies, she started legal proceedings against British American Tobacco New Zealand (BAT). She died in 2002, and the case was continued by her estate. In essence, the case argued that the tobacco companies failed to adequately inform the public about the risks associated with tobacco smoking, despite evidence that these risks were well appreciated by the two companies at the time Janice Pou started smoking in 1968 (aged 17 years). Ms Pou's case also argued that by the time the full

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health risks of tobacco use were public knowledge she was heavily addicted to smoking. The case went to trial in the New Zealand High Court in February 2006. The judgement released 10 weeks after the end of the trial found that the tobacco company had adequately informed smokers of the dangers of smoking cigarettes and that Janice Pou was "under a duty to immediately take reasonable steps immediately to stop smoking, but she did not do so" (Lang 2006).

Up until 2006 tobacco companies in New Zealand enjoyed a litigation-free providence, having not been held accountable in a court of law for any of the health effects or deaths caused by the use of their products. The media attention aroused by the *Pou v. BAT* case was testament to the audacious nature of the trial. The media were treating New Zealanders to a rare glimpse of the face of the New Zealand tobacco industry, an industry kept largely in the background while their products themselves remain dominant in retail outlets across the country. There was little precedent for this type of trial, and we could only look abroad to evidence of success or otherwise. Australia has gained some tobacco litigation experience in the past decade, with *McCabe v. British American Tobacco Australia (BATA)* being particularly conspicuous due to evidence of document destruction, which ultimately led to BATA's defeat in the Supreme Court of Victoria in 2002. Wakefield and colleagues conducted a thematic frame analysis of Australian newspaper coverage of the *McCabe v. BATA* trial. They found that messages were either positively or negatively slanted and tended to frame the debate around "smoking as an individual choice for which smokers are responsible", or "tobacco companies were dishonest and needed to be controlled by government" (Wakefield et al. 2003). In conclusion, the authors drew attention to the implications of these responses from the media, suggesting the need for more effective public communication about the nature of addiction to tobacco and the health implications of being addicted to smoking.

Tobacco litigation offers considerable opportunity to advance the objectives of tobacco control and is argued to be more than merely a battle of (disproportionate) power between corporate body and individual citizen. Litigation cases, particularly when they are uncommon, as in Australia and New Zealand, generate considerable publicity about the effects of smoking and the behaviour of the tobacco industry. As noted by Liberman, litigation also plays a significant regulatory function by raising the price of tobacco products (to cover liability costs) and providing compensation to the victims, among other effects (Liberman 2004, Daynard 2003). New Zealand has a comparatively successful tobacco control record: adult smoking prevalence rates are now 19.9% and smoking among adolescents and young people is also steadily declining (Ministry of Health, 2008). New Zealand has generally responded sympathetically to the introduction of smoke-free policies, the most recent being a ban on smoking in bars and restaurants in December 2005 (Thomson and Wilson 2006), and the introduction of graphic warnings on tobacco products is to be phased in from 2008 (O'Connor 2007). These strategies are undoubtedly contributing to the overall decline in smoking prevalence. However, until 2006 there had been no litigation case in New Zealand to recover costs from the tobacco industry responsible for promoting and selling products that have catastrophic consequences on health.

The *Pou v. BAT* trial presented a unique opportunity to evaluate public opinion on tobacco litigation in general, while seeking to identify some of the pervasive beliefs that underpin support for, or resistance to, the role of litigation as a possible new tool for tobacco control in New Zealand. The aim of this study was to explore the awareness of, and attitudes towards, the *Pou v. BAT* trial, including differences by demographic factors and by source of

information. Beliefs about the addictiveness of tobacco were assessed in order to explore possible underlying factors influencing attitudes towards litigation in New Zealand. It was expected that those who perceived that it was *not difficult* to quit smoking would be less likely to be in support of the Pou case and therefore would be *less likely* to support litigation against tobacco companies in general. Socio-demographic and smoker status differences in support of litigation were also anticipated, as were group differences in awareness and recall of the trial.

## METHODS

### Sample

A national sample of 750 adults (aged over 18 years) participated in a computer-assisted telephone interview (CATI) survey between 13 and 17 May 2006. Interviews were conducted by market research company UMR Research in the week following the announcement of the verdict of the *Pou v. BAT* litigation trial. UMR operates under the jurisdiction of the Association of Market Research Organisations (AMRO) and is accredited to conduct telephone surveys.

### Procedure

Telephone numbers were sourced from a directory of residential and commercial addresses. The sample was stratified by geographical location, which included 23 directory regions in New Zealand. A filtering strategy was employed to ensure only private households were telephoned. A maximum of five call-backs were made to households with no-response. In addition, the interviewers offered to call back at more convenient times to ensure the sample was as representative as possible. Data collection was weighted by age, sex and household size in order to achieve appropriate proportions of the sample in each region.

### Questionnaire

The brief questionnaire included 20 items, the majority of which concentrated on the issue of awareness of, and attitudes towards, the *Pou v. BAT* tobacco litigation trial. Standard socio-demographic information was collected, including age, sex, Māori[2] or non-Māori ethnicity, and income level. Trial-specific items included: (unprompted) awareness of the trial (response yes or no); and for those aware of the trial, awareness of the outcome of the trial (response yes or no), and source of information about the trial (newspaper, television, radio, internet, magazines, family/friends) (response yes or no). Those aware of the trial who were unsure or incorrect about the trial result were told of the outcome. All those aware of the trial were asked about who should have won the trial (Janice Pou or BAT) and on what basis (open-ended). For the whole sample, additional items also assessed opinions about tobacco addictiveness (on a five-point scale from "not at all" to "extremely addictive") and tobacco companies' openness about the risks of smoking (on a five-point scale from "not at all" to "fully"), and two items assessed the perceived impact of the outcome of the trial for smokers and for the tobacco companies (open-ended).

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[2] The indigenous people of New Zealand.

## Data Analysis

Data from the completed questionnaires were entered into SPSS[3] version 12.0. Descriptive statistics such as frequencies and proportions were used to report results from the primary-level analysis of each item. Further analyses were conducted to assess socio-demographic differences across the main outcome items: awareness of the case, opinion about the verdict, and the basis for beliefs about the outcome of the trial. The point estimates represent results from weighted data.

## Media Analysis Coding Procedure

Our sample included news / current affairs coverage of the *Pou v. BAT* trial in all national daily newspapers and the three standard news channels (TV1, TV3 and Prime television) from 1 January 2006 to 12 May 2006. This covered the period of highest media coverage of the case, and was likely to be the most influential for forming participants' knowledge and opinions because of the scale and recent proximity. Articles included in the analysis had to refer to the *Pou v. BAT* case specifically for at least five lines. The selection of media articles was focused on articles relating specifically to, or referencing, the *Pou v. BAT* trial. Keywords for the search therefore included "Janice Pou" and "British American Tobacco" and/or "WD & HO Wills".

The print media article samples were purchased from the Chong media clippings (Chong Media Bureau 2006) and the television footage and radio newsbytes were purchased from the University of Auckland's Robert and Noeline Chapman Archive (University of Auckland 2006).

## Coding Framework

A coding system was developed based on the methodology presented by Durrant et al. (2003), which was in turn based on the work of Clegg-Smith et al. (2002). A modified version of the methodology was adopted for the present study. Articles were analysed by the coding team to determine the opinion slant in each of them. An article was coded pro or anti if it included more than one statement indicating bias to either side of the case. Each article was coded only on the basis of the strongest slant deciphered by the coder. The coding framework was agreed upon between three members of the research team, but only one member undertook the media content analysis.

## RESULTS OF CONTENT ANALYSIS

A total of 108 news articles were extracted between 1 January 2006 and 12 May 2006. This included: 29 (27%) from national newspapers, 78 (72%) from local newspapers and one magazine article. Of the total sample (n = 108) of print media stories, three-quarters 75% (n = 81) were news stories, 16.7% (n = 18) were letters to the editor, and 8.3% (n = 9) were opinion pieces and editorials. The articles were coded as: pro-Janice Pou (n = 50, 46.3%), neutral (n = 30, 28%), anti-tobacco industry (n = 16, 15%), anti-Janice Pou (n = 10, 9.3%) and pro-industry (n = 2, 1.9%).

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[3] A data mining, statistical analysis tool for the social sciences.

Between 1 January and 12 May 2006, 21 stories were presented in radio and television media. Of the total sample (n = 21) for television and radio, over half (52.4%, n = 11) appeared on TV1, 23.8% (n = 5) were from Radio New Zealand, 14.3% (n = 3) were from TV3, and 9.5% (n = 2) were from Prime TV. The stories were coded as pro-Janice Pou (n = 12, 57%) or neutral (n = 9, 43%) and anti-Janice Pou (n =10, 9.3%).

RESULTS OF SURVEY

In total, 750 interviewees completed the telephone survey from a sample of 2,953 New Zealanders aged over 18 years, resulting in a 25% overall response rate. The survey data were weighted according to age, sex and household size; a 92% weighting efficiency was achieved, suggesting that the sample obtained closely represented actual population demographic characteristics (Table 1).

**Table 1  Demographic comparison of the New Zealand population and the survey population**

|  | New Zealand population* | Survey population / number | |
|---|---|---|---|
| Gender (Male) | 49% | 48% | 359 |
| Ethnicity (Māori) | 15% | 11% | 82 |
| Smoking status (smoker) | 23% | 18% | 137 |
| Median age | 36 years | 35−39 yrs | 107 |
| Median income | $24,000 | $40, 000 | − |

* Based on 2006 New Zealand Population Census data (Statistics New Zealand 2006).

The sample comprised 10.9% Māori (n = 82) and 89.1% non-Māori (n = 668). Males made up 47.8% (n = 359) of the sample and females 52.2% (n = 391). Smokers made up 18% (n = 137) of the sample, and 36% (n = 222) of the sample were ex-smokers. The sample population was slightly older, with better income, and included fewer smokers and Māori, compared to the proportions represented in the general population.

Awareness of Trial

Participants were asked whether they were aware of a high court trial between the estate of Janice Pou and BAT. Unprompted responses indicated that 82.5% (n = 619) of the total sample were aware of the trial, 16.1% (n = 121) were unaware of the trial and 1.3% (n = 10) were unsure. When a standard description of the trial was read to participants who were previously unaware or unsure of the trial (n = 131), 25.2% (n = 33) then reported that they now recalled being aware of the trial, while 74.8% (n = 98) remained unfamiliar with the trial. Thus, when prompted, 652 (87%) were aware of the trial.

Of the total sample who were aware of the trial (n = 652), 76% (n = 493) were aware of the trial verdict, 21% (n = 137) did not know the outcome and 3% (n = 22) were unsure. Of those who were aware of the trial, older participants (over 60 years) were more likely to report being aware of the outcome than others. Māori participants (n = 49, 69%) and current smokers (n = 80, 69%) were less likely to report being aware of the outcome of the trial compared to non-Māori (n =  413, 76%) and non-smokers (n = 413, 77%).

Recalled Details about the Trial

Of those who had heard of the trial (n = 652), 56% (n = 365) said they were unable to recall specific details about the trial. A further 80 (12%) were unsure, and were found to not recall specific details. Of those who did recall details about the trial (n = 207), the details included:

Janice Pou died before the case was resolved and her family continued the trial (29%, n = 60); Janice Pou was suing BAT because they failed to warn her about the risks of smoking (25%, n = 52); and Janice Pou stated that she was unaware of the risks of smoking before she started smoking (17%, n = 35). The remainder of the sample recalled other details of the trial, including that Janice Pou was too addicted to quit (15%, n = 31) and that BAT argued that Janice Pou knew the risks and could have quit if she tried (14%, n = 29).

## Opinion on the Outcome

Of the sample who were aware of the trial (unprompted and prompted) (n = 652), 65% (n = 421) said that BAT rightfully won the case; 13% (n = 84) felt that Janice Pou should have won the case, and 23% (n = 147) reported being unsure. More males compared to females (17% vs 9%; p < .01), Māori compared to non-Māori (21% vs 12%; p = .05) and smokers compared to non-smokers (18.3% vs 11.7%; p = .107) reported that Janice Pou should have won the case.

Table 2 presents the open-ended responses to the question "On what basis do you think that, in your opinion, BAT should have won this trial" by those who said that BAT rightfully won the case (n = 421). The most common responses by this group (interviewees could give several responses) included: "information about smoking risks was widely available" (39.1% n = 165), and it was "her personal choice and responsibility that she chose to smoke" (34 %, n = 143). Of those who supported Janice Pou (again, interviewees could give several responses) (n = 84), the majority of participants suggested that "the risks of smoking were unknown at that time" (54.8%, n = 46), "tobacco companies were deceptive about the risks" (31%, n = 26), "smoking was more socially acceptable then" (26.2%, n = 22), and "smoking is addictive and therefore difficult to quit" (25%, n = 21).

**Table 2  Reasons given for why BAT/ Wills tobacco companies should have won the trial (n = 421)**

|  | % |
|---|---|
| **Information on smoking widely available**<br>She knew the risks (16%)<br>There is information in the public domain and freely available then and later (18.1%)<br>The dangers of smoking are written on the packet and information is given at school (5%) | 39.1 |
| **Personal choice and responsibility**<br>It was a personal choice / done of own free will (27.5%),<br>Companies produce hazardous items, but should take responsibility for her actions (6.6%) | 34.1 |
| **Could have quit if she tried / strength of character**<br>If she had wanted to give up she could have (20.7%)<br>I managed to stop smoking and so could she (3.3%)<br>She didn't have the strength of character to give up, and should have tried harder (4.8%)<br>She had many chances to give up (1.4%) | 31.6 |
| **Common sense**<br>Everyone knows that smoking kills (12.1%)<br>Ignorance is no excuse (3.1%)<br>It's common sense that it's bad for you (3.5%) | 18.7 |
| **Disagree with suing culture**<br>If she'd been successful where would it have stopped? (1.9%)<br>Don't approve of "the suing culture"; should take personal responsibility / company not responsible / I wouldn't sue (1.1%)<br>She was just after the money for her children (1.0%) | 4.0 |
| **Weak legal case**<br>Her legal case was not strong and the judge was right (2%) | 2 |
| **Other** | 5.6 |

* Data were based on 64% of respondents who were aware of the trial and felt that BAT should have won

## General Attitudes towards Addiction and Tobacco Litigation in New Zealand

Perceived addictiveness of tobacco smoking was assessed on a scale from 1 (very addictive) to 5 (not addictive). The results showed that 55% (n = 410) of all 750 participants perceived that smoking is "very addictive", compared to 22% (n = 166) who reported that smoking is moderately addictive and 6% (n = 44) who considered it slightly or not addictive; 17%, (n = 130) were unsure. Among the sample of current smokers (n = 137), 65%, (n = 89) perceived that smoking is very addictive compared to 53% (n = 325) of the 613 current non-smokers, $F(1,800) = 4.370$, $p < .05$. An analysis of variance between groups was conducted to determine whether preference for the outcome of the trial was associated with perceived addictiveness of smoking; the results showed that those who believed that smoking was *moderately addictive* or *not addictive* were more likely to support BAT compared to those who thought smoking was *highly addictive* $F(5,651) = 2.332$, $p < .05$.

Of the total sample (n = 750), 55%, (n = 412) believed that tobacco companies informed the public about the risks of smoking, 26% (n = 195) were neutral or unsure, and 19% (n = 143) felt that tobacco companies did not adequately inform the public about the risks of smoking. Similarly, 38% (n = 285) did not think the tobacco industry was responsible for the health effects or deaths caused by smoking cigarettes, 32% (n = 240) were unsure and 30% (n = 225) stated that the industry was responsible. Furthermore, there was little support for the New Zealand Government to sue tobacco companies for the recovery of taxpayer-funded health care costs due to smoking. Of those who responded to this item (n = 749), 65% (n = 487) were not supportive and 27.7% (n = 207) were supportive; 7.3% (n = 55) were unsure. Males were more likely to support suing (31%, n = 113) compared to females (24 %, n = 95), as were participants aged less than 40 years (58%, n = 120) compared to participants aged over 40 years (42.3%, n = 88), although the differences were not statistically significant (p = .406).

## DISCUSSION

This study was undertaken to explore New Zealanders' opinions of the recent tobacco litigation case between BAT and the family of Janice Pou. Overall, awareness of the trial was high, with the majority of participants sourcing information from newspapers and television. Media stories were generally either sympathetic to Janice Pou or were perceived to be unbiased. The New Zealand media did not, however, place responsibility with the tobacco industry.

### The Support for BAT and its Implications

The majority of the participants thought that BAT rightfully won the trial, citing that smokers were "aware of the risks" and "it's a matter of individual choice and responsibility". Other possible reasons for majority support for BAT (or against individual claims) may reflect a general distaste for the introduction or mainstreaming of corporate litigation cases in New Zealand, or a lack of knowledge of the opportunities for tobacco control progress with tobacco litigation (Wakefield et al. 2003, Hammond et al. 2006). It is also possible that the New Zealand public remain relatively uninformed about the behaviour of tobacco companies, due to their low profile in this country. Despite the apparent high awareness of the addictiveness of tobacco smoking, there may remain in New Zealand (as elsewhere) a fundamental belief in the individual's responsibility for decision-making and health

behaviours. This belief may also be confounded by the current (relatively) high level of public knowledge of the health risks of smoking that makes it difficult for people to imagine a time when these health risks were not known by most adults.

A belief in self-reliance rather than hand-outs may underpin the reluctance to support an individual claim for damages against the tobacco company. It is also possible that the New Zealand public are resistant to litigation for fear that it may lead to large monetary rewards for individual smokers and their families, precluding the opportunity for thousands of other equally worthy smokers and ex-smokers. As Wakefield and colleagues (2003) found in their analysis of news media coverage of the McCabe trial, the Australian media were reluctant to show support for Rolah McCabe for several reasons, one of which was fear of the "slippery slope" -- that a win for McCabe might invite others to follow. New Zealand's legislative and cultural landscape is generally not supportive of personal injury litigation. Legislation formulated in 1972, further amended in 1982 and 1992, established the Accident Rehabilitation and Compensation Insurance (ACC) scheme. This landmark legislation established a publicly funded no-fault compensation system for the vast majority of accidents and injuries (Campbell 1996). Given the lack of personal injury suits in New Zealand, it is perhaps not surprising that the public is not supportive of those seeking compensation.

Among those who agreed that BAT should have won the trial, more than a third felt that Janice Pou could have quit if she had really tried -- indicating a lack of sympathy for those who do not manage to overcome their addiction to nicotine. Compared to smokers, non-smokers were significantly less likely to say that tobacco is very addictive, suggesting that a significant proportion of the population underestimate the nature of nicotine addiction. Those who perceived that smoking is not very addictive were more likely to express support in favour of BAT, and therefore appeared less likely to support litigation against tobacco companies in general.

Other studies have identified that smokers and the public underestimate the extent of illnesses caused by smoking (Hammond et al. 2006, Schoenbaum 1997, Strecher et al. 1995) and that would-be smokers underestimate the addictiveness of smoking (Romer and Jamieson 2001). This suggests that the public may wrongly assume that smokers are knowingly responsible for their situation. In Canada, Ashley and Cohen (2003) found that although there was public support for some regulatory measures against the tobacco industry, the majority of the sample considered that the tobacco industry was not mostly/completely responsible for smoking-related illness, and were not supportive of suing for taxes lost from smuggling.

Results from the New Zealand survey reveal a reluctance to challenge the status quo when it comes to tobacco industry conduct in this country. The small proportion of anti-tobacco industry (as opposed to pro-Pou) articles in the sample period suggests a reticence about presenting stories that challenge fundamental beliefs about corporate autonomy and individual responsibility, as identified by Wakefield and colleagues (2003). Furthermore, it is possible that the low profile of the tobacco industry's operations in New Zealand (i.e. no advertising or explicit promotion) may be highly effective in reducing the public awareness of industry conduct. Unlike in the United States, tobacco industry denormalisation themes, such as plain packaging (which raise awareness about tobacco industry responsibility) have seldom been the focus of tobacco control initiatives in New Zealand (Laugeson and Swinburn 2000, Thomson and Wilson 2005a, Hersey et al. 2005).

Changing public perceptions and increasing support for stronger tobacco control measures are possible, and media representations of tobacco issues remain a highly effective public communication and monitoring tool. Media coverage of tobacco control issues continues to demand attention, particularly when events of public interest arise, such as the introduction of graphic warning labels on cigarette packets. Morning newspapers, evening television news and work-breaks are vehicles of critical consumer / public policy opinion. Public support for smoke-free bars remained low for several years prior to the legislation that banned smoking in all New Zealand workplaces. Only 38% of people supported smoke-free bars in an April 2001 opinion poll, but this number almost doubled to 69% just five years later in April 2005 (Thomson and Wilson 2006). This suggests that increasing public familiarity with tobacco industry denormalisation strategies may lead to increased public support for litigation as part of a broader tobacco control agenda.

## Limitations

Interpretation of the results of this study needs to take into consideration several limitations. Firstly, the low response rate from the telephone sampling procedure creates the possibility of selection bias in the sample. As previously acknowledged, the sample population was comparable to the general population on gender and ethnicity, but was slightly older, there were fewer smokers, and the average income of participants was higher than the population median.

The survey was also carried out immediately following the verdict, but this was 10 weeks after the trial had actually ended. The coverage of the case in the media peaked when the case was being heard and also when the verdict was reached. Because of the time from the end of the trial, the recall of the trial may have been compromised or altered at the time of the survey. The survey was carried out in the week after the verdict was announced, so there is the possibility that the opinions of the judge helped to determine some of the participants' opinions, rather than the evidence given in the trial. A survey before the verdict would have avoided this possibility. The inability to recall trial details by 445 of the 652 who recalled the trial indicates that opinions about the trial may have been based on little information except for the verdict.

In addition, no specific time period was included in the question addressing whether the tobacco industry adequately informed the public about the risks of smoking. Given that the industry has publicly acknowledged some of the health consequences of smoking in recent years, the answers to this question may have been distorted by this recent change. Finally, the media content analysis was conducted on media collected over the four months from just before the High Court trial started (January 2006) to after the verdict was announced (May 2006). There is potential for further content analysis of the media from the start of publicity about the case (2001) to the present to enable a fuller, more representative analysis.

The public may now be better positioned to receive robust information about the behaviour of tobacco companies and the role of litigation as an effective tobacco control measure. Clearly, the interest sparked by the *Pou v. BAT* trial was evidence of the depth of interest and opinion about the case, supportive or otherwise, and these debates are necessary for tobacco control in New Zealand to move forward as a truly comprehensive public policy strategy. The *Pou v. BAT* case captured the essence of the most fundamental and resilient issues underpinning tobacco control efforts internationally: tobacco industry accountability and responsibility, lack of sound public knowledge about addiction, and awareness of the continued surreptitious

nature of tobacco promotions. Until there is strong public support, it is unlikely that the political and legal climate will sufficiently change for successful legal action (either inquiries or litigation). Even the enforcement of present New Zealand laws on tobacco companies, such as those about deceptive statements in trade, requires political decisions on funding and government structures, and has political consequences (Thomson and Wilson 2005b).

## Conclusion

Despite significant advances in tobacco control, public attitudes toward the *Pou v. BAT* trial reveal the broad discomfort within the New Zealand public regarding legal confrontation with the tobacco industry. There are several possible reasons for this, including a limited understanding of several key features of tobacco use (such as the irresponsible behaviour of tobacco companies) and the considerable pressure on youth to take up smoking. Alongside continued support for reducing uptake and quitting support, tobacco control advocacy efforts should focus on increasing the profile of anti-industry messages in news media coverage (Farrelly et al. 2002). Tobacco industry denormalisation strategies may be one way to raise awareness of tobacco industry behaviour and shift public support in favour of litigation and corporate accountability.

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# TRACKING THE AVAILABILITY OF DRUGS IN NEW ZEALAND: IMPLICATIONS FOR POLICY RESPONSE

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## Abstract

Drug use imposes a range of health and social costs on New Zealand society. Measures of the availability of drugs are important for understanding levels of drug use and changes in drug use over time. Policy makers can directly affect levels of drug availability through a range of policy tools, including age restrictions, vendor regulation, varying levels of enforcement, and changing the legal classification of drug types. This paper presents population-level data on the current availability, and recent change in availability, of the 11 most commonly used drug types in New Zealand. Alcohol, tobacco and BZP/TFMPP party pills (i.e. the legally available drugs) were found to be by far the easiest drug types to obtain. Cannabis was the most easily available illegal drug, although it was much less available than the legal drugs. Cannabis was assessed by last-year users to be relatively more difficult to obtain in 2006 compared to 1998, 2001 and 2003. Amphetamine was also assessed to be relatively more difficult to obtain in 2006 compared to 2001. The decline in the availability of amphetamine occurred during a period after 2001 of sustained focus by drug enforcement agencies on disrupting clandestine methamphetamine manufacture and supply. A fall in the availability of nitrous oxide in 2006 followed a tightening of the rules concerning its sale by the Ministry of Health. Our findings suggest that policy makers can negatively affect the availability of a drug and, in turn, its level of use, with effective policy interventions.

## INTRODUCTION

Drug use imposes a range of health and social costs on New Zealand, including death, illness, mental health problems, injuries from accidents, violence, property crime, family and relationship breakdown, and child neglect (Ministerial Committee on Drug Policy 2007). Much of the monitoring of drug use has traditionally involved measures of the prevalence of

use of a drug type within the population, and how the population prevalence changes over time (see Black and Casswell 1993, Field and Casswell 1999, SHORE 2004, Wilkins, Casswell, et al. 2002). However, measures of the availability of a drug type can also provide valuable information that can be used to inform the development of effective drug policy.

Measures of drug availability are of particular interest to policy makers because drug policy can directly affect levels of drug availability through a range of policy tools, such as purchase age restrictions, product taxation, vendor licensing, hours of trading, vendor density, advertising restrictions, increasing enforcement, and changes to a drug's legal classification (see Babor et al. 2003, Ministry of Health 2004). The level of use of a drug is generally closely related to its availability: greater availability can lead to more convenient purchase, which in turn can lead to increased use. Rising availability of a drug type can often be a forewarning of future increases in the use of a drug. In the case of illegal drugs, increasing levels of availability can indicate increased dealing, smuggling and clandestine manufacture, or more open public selling of illegal drugs, such as from street drug markets. Measures of drug availability can therefore assist in understanding changes in use, and consequently inform policy responses (Wilkins, Bhatta, et al. 2002, Wilkins et al. 2006).

The concept of drug availability has been most widely used in relation to legal drugs, such as alcohol and tobacco (Ministry of Health 2004, World Health Assembly 1999). In the alcohol literature, availability is most often used to refer to the "accessibility or convenience" of purchasing alcohol (Babor et al. 2003:117). In the illegal drugs literature, availability is discussed under the term "search costs", which refers to the time buyers must spend finding sellers and completing transactions in the illegal drugs market (see Kleiman 1992, Moore 1977). In this paper we use the term "availability" in its widest sense, meaning the ease or difficulty of physically obtaining a drug.

The aim of this paper is to present data on the current availability, and change in availability, of the 11 most commonly used drug types in New Zealand. Longer-term trends in the availability of cannabis, amphetamine and ecstasy are also examined. The final section of the paper places the findings in the context of recent drug policy in New Zealand.

## METHOD

National household surveying of drug use was conducted in New Zealand in 1998, 2001, 2003 and 2006 using the same Computer Assisted Telephone Interview (CATI) survey methodology (see Field and Casswell 1999, Wilkins, Casswell, et al. 2002, SHORE 2004, Wilkins, Sweetsur, et al. 2006). Respondents were informed that the study was being conducted on behalf of the Ministry of Health and that everything they said would be confidential. The age range of the respective survey waves were truncated to those aged 15-45 years old for the purposes of our analysis to allow valid comparisons back to the 1998 survey. The general population samples of each survey wave were compared.

Those respondents who reported using a drug type in the past 12 months were asked to describe the drugs current availability using a four-point scale (i.e. very easy, easy, difficult, very difficult), and to indicate whether the drugs availability had changed in the past 12 months using a three-point scale (i.e. easier, same, harder).[2] In the 2006 survey wave,

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[2] There was an exception in the case of cannabis. In the 2001 and 2003 surveys only those who had purchased cannabis in the past 12 months were asked about the change in the availability of cannabis.

respondents were asked to describe the current availability and change in availability of a range of drug types. .The 1998 survey asked respondents about the change in the availability of cannabis compared to a year ago, and this question was asked in the subsequent 2001, 2003 and 2006 survey waves. In the 2001 survey, respondents were asked about the change in the availability of amphetamine and ecstasy (MDMA) compared to a year ago, and these questions were included in all subsequent survey waves. The respective sample sizes for each survey wave were: 5,475 in 1998, 5,504 in 2001, 3,042 in 2003 and 1,902 in 2006. The response rates for the survey waves were 79% in 1998, 80% in 2001, 68% in 2003 and 69% in 2006.[3]

To provide an overall quantitative measure of the current availability, and change in availability, of a drug type, we calculated the mean score for each drug type by enumerating the scale provided[4]. These values were defined as follows.

Current availability scores
1    Very easy
2    Easy
3    Difficult
4    Very difficult

Change in availability scores
1    Easier
2    Same
3    Harder

## RESULTS

### Current Availability of All Drug Types

Table 1 presents the current availability of the 11 most commonly used drug types from the 2006 survey. The drug types considered by last-year users to be most easily available were alcohol (mean score 1.3), tobacco (1.3) and BZP/TFMPP (i.e. benzylpiperazine and trifluoromethylphenylpiperazine) party pills (1.3). Approximately three-quarters of last-year users of these drug types described their current availability as very easy. Cannabis was considered by last-year users to be the most easily available illegal drug (2.0), with 31% of last-year users saying cannabis was very easy to obtain at present. Amphetamine (2.5) and ecstasy (MDMA) (2.5) were judged by last-year users to be at similar overall levels of current availability, although more amphetamine users considered amphetamine to be very easy to obtain at the moment. LSD (3.0), cocaine (3.1) and hallucinogenic mushrooms (3.1) were considered by last-year users to be the most difficult drugs to obtain at present. Forty-five percent of those who had used cocaine in the past year described it as very difficult to obtain at the moment.

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[3] The response rates quoted are for the original age ranges of the surveys. It was not possible to recalculate the response rates for the different surveys for the truncated age range because we cannot distinguish the non-response by age.

[4] One-way ANOVAs were used to test for differences in the mean score for a question between 2006 and the other survey waves. To ensure reliable statistical comparisons, we restricted our analysis to the drug types that included 10 or more respondents in the 2006 wave. All analysis was completed in the SAS statistical environment and controlled for the effects of weighting and stratification.

**Table 1 Current availability of different drug types, 2006**

| Drug type | Very easy (%) [1] | Easy (%) [2] | Difficult (%) [3] | Very difficult (%) [4] | n | Mean score |
|---|---|---|---|---|---|---|
| Alcohol | 74 | 22 | 3 | 1 | 1633 | 1.3 |
| Tobacco | 72 | 24 | 4 | 0 | 653 | 1.3 |
| BZP/TFMPP party pills | 76 | 20 | 3 | 0 | 292 | 1.3 |
| Cannabis | 31 | 39 | 28 | 3 | 299 | 2.0 |
| Kava | 30 | 32 | 21 | 17 | 30 | 2.3 |
| Nitrous oxide | 21 | 42 | 21 | 16 | 51 | 2.3 |
| Amphetamines | 22 | 23 | 43 | 13 | 57 | 2.5 |
| Ecstasy (MDMA) | 12 | 34 | 49 | 5 | 69 | 2.5 |
| LSD | 9 | 10 | 56 | 26 | 33 | 3.0 |
| Hallucinogenic mushrooms | 6 | 13 | 43 | 39 | 25 | 3.1 |
| Cocaine | 14 | 6 | 35 | 45 | 21 | 3.1 |

## Change in the Availability of All Drug Types

Table 2 presents findings from the 2006 survey on how the availability of the drug types had changed compared to a year ago. The drug types which the greatest proportion of last-year users considered to have become easier to obtain in the past 12 months were BZP/TFMPP party pills (1.6), kava (1.7), ecstasy (1.8) and alcohol (1.8). Forty-five percent of those who had used party pills in the past 12 months said that party pills were easier to obtain in 2006 compared to 12 months ago. Thirty-two percent of last-year ecstasy users said that ecstasy was easier to obtain in 2006 compared to the previous year. Twenty-four percent of alcohol drinkers considered alcohol to be easier to obtain in 2006 compared to a year ago. In 2006 the overall availability of amphetamine and cannabis was considered to be stable.

The drug types which the largest proportion of last-year users considered to have become harder to obtain in the past 12 months were hallucinogenic mushrooms (2.3) and nitrous oxide (2.4). Fifty-three percent of last-year users of nitrous oxide said that it was harder to get in 2006 compared to the previous 12 months. Approximately one-third of last-year users of LSD and cocaine considered these drug types to have become harder to obtain compared to a year ago.

**Table 2  Change in the availability of different drug types, 2006**

| Drug type | Easier (%) [1] | Same (%) [2] | Harder (%) [3] | n | Mean score |
|---|---|---|---|---|---|
| BZP/TFMPP arty pills | 45 | 50 | 5 | 261 | 1.6 |
| Kava | 29 | 68 | 3 | 27 | 1.7 |
| Ecstasy (MDMA) | 32 | 52 | 16 | 69 | 1.8 |
| Alcohol | 24 | 71 | 6 | 1600 | 1.8 |
| Tobacco | 17 | 74 | 9 | 646 | 1.9 |
| Cannabis | 16 | 64 | 19 | 292 | 2.0 |
| Amphetamines | 26 | 52 | 22 | 58 | 2.0 |
| LSD | 18 | 51 | 32 | 30 | 2.1 |
| Cocaine | 20 | 49 | 31 | 21 | 2.1 |
| Hallucinogenic mushrooms | 16 | 43 | 41 | 24 | 2.3 |
| Nitrous oxide | 17 | 30 | 53 | 54 | 2.4 |

## Change in the Availability of Cannabis

Table 3 presents last-year cannabis users' assessment of how the availability of cannabis has changed compared to a year ago, from the 1998, 2001, 2003 and 2006 survey waves. It is worth noting that there was some change in the types of respondents who answered this question between the survey waves. In 1998 and 2006 all those who reported using cannabis in the past year were asked the question about the change in the availability of cannabis. In 2001 and 2003 only those who reported purchasing cannabis in the past year were asked the question. As those answering the question are asked to assess the cannabis environment (i.e. any changes in the availability of cannabis) rather than report their own individual behaviour, we have included a comparison between all survey waves.

The statistical test between 2006 and 1998 compares identical groups of respondents (i.e. last-year users of cannabis). Cannabis was assessed to be relatively harder to obtain compared to a year ago in 2006 compared to 1998 (2.0 vs. 1.7, $p < 0.0001$). This was largely due to a lower proportion of last-year cannabis users saying it had become easier to get cannabis compared to a year ago in 2006 compared to 1998 (16% vs. 34%). Cannabis was also judged to be relatively harder to obtain compared to a year ago in 2006 compared to 2001 (2.0 vs. 1.8, $p < 0.0001$) and compared to 2003 (2.0 vs. 1.9, $p = 0.0437$). As with the comparison between 2006 and 1998, these differences were largely due to a lower proportion of last-year users saying it had become easier to get cannabis compared to a year ago in 2006 compared to 2003 and 2001.

**Table 3  Change in availability of cannabis, 1998, 2001, 2003 and 2006**

|  | 1998 | n | 1998 vs. 2006 | 2001* | n | 2001 vs. 2006 | 2003* | n | 2003 vs. 2006 | 2006 | n |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Easier [1]** | 34% | 272 |  | 33% | 164 |  | 31% | 59 |  | 16% | 45 |
| **Same [2]** | 54% | 470 |  | 52% | 272 |  | 49% | 121 |  | 64% | 190 |
| **Harder [3]** | 12% | 97 |  | 15% | 76 |  | 20% | 47 |  | 19% | 57 |
| **Mean score** | 1.7 |  | $p < 0.0001$ | 1.8 |  | $p < 0.0001$ | 1.9 |  | $p = 0.0437$ | 2.0 |  |

* In 2001 and 2003, only those who had purchased cannabis in the past year were asked this question

## Change in the Availability of Amphetamine and Ecstasy (MDMA)

Table 4 presents last-year amphetamine users' assessment of how the availability of amphetamine had changed compared to a year ago, from the 2001, 2003 and 2006 survey waves. Amphetamine was assessed to be relatively more difficult to obtain compared to a year ago in 2006 compared to 2001 (2.0 vs. 1.7, $p = 0.0049$). This result was largely due to a lower proportion of last-year amphetamine users saying that amphetamine had become easier to obtain compared to a year ago in 2006 versus 2001 (26% vs. 47%), and a higher proportion saying that amphetamine had become harder to obtain compared to a year ago in 2006 versus 2001 (22% vs. 13%).

**Table 4  Change in availability of amphetamine, 2001, 2003 and 2006**

|  | 2001 | n | 2001 vs. 2006 | 2003 | n | 2003 vs. 2006 | 2006 | n |
|---|---|---|---|---|---|---|---|---|
| **Easier [1]** | 47% | 103 | | 46% | 44 | | 26% | 16 |
| **Same [2]** | 40% | 95 | | 29% | 26 | | 52% | 29 |
| **Harder [3]** | 13% | 26 | | 25% | 23 | | 22% | 13 |
| **Mean score** | 1.7 | | p = 0.0049 | 1.8 | | p = 0.1653 | 2.0 | |

Table 5 presents last-year ecstasy users' assessment of the availability of ecstasy compared to a year ago from the 2001, 2003 and 2006 survey waves. There was no statistically significant difference in the assessment of change in the availability of ecstasy (MDMA) between the survey waves.

**Table 5: Change in availability of ecstasy (MDMA), 2001, 2003 and 2006**

|  | 2001 | n | 2001 vs. 2006 | 2003 | n | 2003 vs. 2006 | 2006 | n |
|---|---|---|---|---|---|---|---|---|
| **Easier [1]** | 48% | 77 | | 38% | 26 | | 32% | 21 |
| **Same [2]** | 38% | 60 | | 35% | 21 | | 52% | 36 |
| **Harder [3]** | 14% | 19 | | 28% | 18 | | 16% | 12 |
| **Mean score** | 1.7 | | p = 0.1004 | 1.9 | | p = 0.6643 | 1.8 | |

## CONCLUSION

The findings from the 2006 wave of national household surveying provide the most complete picture of the current availability of different drug types in New Zealand. It is important when interpreting these results to note that these are assessments of the availability of a drug type by last-year users of the drug, rather than the wider general public. Because current drug users are already connected with social networks of sellers and users, their assessments of the availability of a drug type do not generally reflect how available the drug is to the wider population of non-users. Current drug users do, however, provide informed assessments of the availability of a drug type and hence "expert" insight into current levels of supply and ease of purchase.

The legal drug types -- alcohol, tobacco and BZP/TFMPP party pills -- were considered, by far, to be the most easily available drug types in New Zealand. In 2006, these drug types were all legitimately sold from public retail outlets. It is worth noting that while cannabis was the most widely available illegal drug, it was considered to be much less available than these legal drugs. The difference in availability between the illegal cannabis and the legal drug types illustrates the negative impact prohibition can have on the supply and sale of a drug type. It is not the case, as is sometimes claimed, that cannabis prohibition has no impact on the availability of cannabis in New Zealand.

The relatively high availability of cannabis compared to the other illegal drugs in New Zealand reflects the size of the illegal market for cannabis and the fact that it is the drug type most often sold from semi-public "tinny" houses and from street drug markets. Findings from the 2006 Illicit Drug Monitoring System (IDMS) indicate that 30% of the frequent drug users who had purchased cannabis in the past six months had done so from a tinny house, and 15% had purchased cannabis from the street (Wilkins et al. 2007). A study of the impact of cannabis tinny houses in New Zealand indicated that 15--17-year-olds were more likely to

purchase their cannabis from public tinny houses than through private personal networks (Wilkins et al. 2005). The New Zealand Police have undertaken a number of raids on tinny houses in recent times, and these operations have confirmed the central role that gangs play in the operation of these drug retail outlets. The ability of gangs to quickly find new personnel to reopen tinny houses following a police raid makes it difficult for the authorities to close down these places for any length of time.

A number of innovative, low-intensity drug enforcement tactics have been used in other countries to disrupt open street drug markets, such as a high-profile police presence at selling locations; the confiscation of the cars and sending of police warnings to the owners of cars observed soliciting for illegal drugs; altering traffic flows to reduce the ease of access to selling locations; and increasing both formal and informal surveillance of selling sites through the use of CCTV surveillance and appointment of site managers (see Edmunds et al. 1996, Kleiman 1992, Reuter and Kleiman 1986, Reuter and MacCoun 1992). The advantage of these low-intensity tactics is that they disrupt the viability of street drug markets by making potential customers reluctant to return to the selling location for fear of identification and arrest, without swamping the criminal justice system with low-level drug prosecutions.

Legal BZP/TFMPP party pills was the drug type which the greatest proportion of last-year users judged to have become easier to obtain compared to a year ago in 2006. The marketing and use of party pills increased rapidly in New Zealand around 2004. Early attempts by the Expert Advisory Committee on Drugs (EACD) to recommend a classification of BZP/TFMPP party pills were undermined by the lack of scientific research on the health and social risks of recreational BZP use (i.e. the main active ingredient of party pills) (Expert Advisory Committee on Drugs 2004). In order to obtain the necessary information to classify BZP, the Government commissioned a series of research studies to investigate the health and social risks of BZP party pills. While this research was being completed the Government acted in October 2005, establishing an age limit of 18 years old on the purchase of BZP products, banning the distribution of free promotional samples containing BZP, and prohibiting the advertising of BZP party pills in major media, including television, radio and print media. The Expert Advisory Committee on Drugs (EACD) reviewed the findings of the completed research in late 2006 and recommended that BZP be classified as Class C drugs under the Misuse of Drugs Act 1975 (Expert Advisory Committee on Drugs 2006). In December 2006 the Government announced its intention to follow the advice provided by the EACD, but was required to go through a formal public consultation process before reaching a final decision. The legislation to schedule BZP as a Class C drug was drawn up and passed in late 2007 with the ban coming into effect on the 1 April 2008. To facilitate a smooth transition to the new law an amnesty on the possession of small amounts of BZP for personal use was put into effect until September 2008. Our findings from the 2006 survey suggest that the initial age and advertising restrictions imposed on BZP/TFMPP party pills in October 2005 had little impact on the availability of party pills to current users. In the 2006 survey, which was conducted in February to March of that year, only 5% of party pill users surveyed indicated that the availability of party pills had become harder to obtain compared to 12 months ago. By this time the use of BZP/TFMPP party pills was well established among young people, and the age and advertising restrictions did not address the number and type of retail outlets which sold party pills, including places which sold alcohol, or the price of these products to young people.

Our findings concerning changes in the availability of cannabis and amphetamine are broadly consistent with subsequent trends in the population prevalence of these drug types. Cannabis

was assessed by last-year users to be relatively more difficult to obtain in 2006 compared to 1998, 2001 and 2003. The prevalence of use of cannabis declined in 2006 compared to 2001 (i.e. from 20% in 2001 to 18% in 2006) (Wilkins and Sweetsur 2007). A number of factors are likely to have impacted on the availability of cannabis during this time including changes in young peoples drug preferences, and the greater profit available to drug dealers and drug smugglers from manufacturing and selling other drug types such as ecstasy and methamphetamine. Annual seizures of cannabis plants made by the New Zealand Police increased in 2003--2005 compared to the previous three years (i.e. 105,131 plants in 2000, 90,857 plants in 2001, 73,772 plants in 2002, 193,740 plants in 2003, 162,263 plants in 2004, and 137,863 plants in 2005) and this may have also been a factor. Amphetamine was assessed to be relatively more difficult to obtain in 2006 compared to 2001. The prevalence of amphetamine use was found to have levelled off in 2003 compared to 2001 (Wilkins et al. 2006). The declining availability of amphetamine, and the levelling out of its use, occurred during a period of sustained focus by drug enforcement agencies on amphetamine manufacture and supply after 2001. The number of clandestine amphetamine laboratories dismantled each year by the New Zealand Police increased from 41 laboratories in 2001, to 170 in 2002, to approximately 200 in the subsequent years (i.e. 202 labs in 2003, 182 in 2004 and 204 in 2005). The number of tablets of ephedrine (i.e. the main ingredient used to manufacture methamphetamine) seized by the New Zealand Customs Service increased from 33,000 tablets in 2001 to 255,000 tablets in 2002, 1.9 million tablets in 2004 and 2.0 million tablets in 2005. Methamphetamine was also reclassified as a Class A drug during this time.

Last-year users of nitrous oxide indicated that nitrous oxide had become more difficult to obtain in 2006, with 53% of last-year users saying nitrous oxide was harder to obtain compared to 12 months ago. The fall in the availability of nitrous oxide followed a government campaign to tighten up its conditions of sale, with the Ministry of Health writing to retailers explaining that it was illegal to sell nitrous oxide for recreational use and warning that prosecutions could follow.

Our findings suggest that policy makers can have a negative impact on the availability, and in turn the level of use, of drugs with effective policy interventions. They also show that measures of drug availability can help to understand the levels of drug use and changes in drug use. Consequently, measures of drug availability should be viewed as important information by policy makers when developing and evaluating drug policy responses.

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