Tax Working Group
Te Awheawhe Tāke

Tax Working Group Public Submissions Information Release

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In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

Introduction

1. This is the submission of Warren Forster, barrister and researcher currently based in Dunedin, New Zealand. This submission outlines that I will be recommending a system for disability that includes a funding model based on a sovereign wealth fund for disability in New Zealand.

2. In December 2017 I was awarded the New Zealand Law Foundation International Research Fellowship. The focus of my research is how to create a system for dealing with the consequences of disability that does not discriminate based on the origin or cause of the disability. The current system in New Zealand has been variously described as discriminatory, illogical, unfair, inequitable and inconsistent with New Zealand's international obligations.

3. At the outset, I can explain I intend the system to aspire to Sir Owen Woodhouse's original vision and comprise a system for disability including elements that are now covered by Ministry of Health, Ministry of Social Development and the Accident Compensation Corporation. I will refer to this future system as the Disability System.

4. This paper explains why my research is relevant to the tax working group. I ask the working group to, in the course of its deliberations and in its subsequent reporting:

    a. note my submission:

        i. that an sovereign wealth fund which I will call an "investment fund" in the style of existing NZ Superannuation and Accident Compensation funds should be created from existing and novel sources of capital and revenue;
        ii. that earnings from the fund should be used to finance a consolidated health and social welfare system for disability that does not discriminate based on cause of disability;
        iii. that this fund will, to a large extent, draw its funding from within current and reconfigured structures of the Disability System without imposing significant additional long-term burdens to levy and tax payers,
        iv. that a system of levies should be established to enable an appropriate Crown actor to impose general levies and specific levies on conduct that evidence shows unduly contributes to negative public health and disability outcomes, taking into account the human rights implications of the Convention on the Rights of Persons with Disabilities.

    b. note my submission that such an outcome meets the existing principles of New Zealand's system of taxation as put to the working group;

    c. indicate what opportunity will be available for me to discuss this with the working group in person and for further input into the working group to be provided as my research progresses, noting that a public discussion paper on my research is anticipated in August 2018.

Brief summary of preliminary research outcomes

5. My research is still in preliminary stages. From 12 March 2018 to 9 April 2018 I travelled to Europe to speak with various public policy experts on the systems for administering health and disability services. I visited Norway, Sweden, Finland, Denmark, United Kingdom, France, Belgium, and Switzerland.

6. I also had discussions with several institutions with interests in multiple countries including the Nordic Council of Ministers, United Nations High Commission for Human Rights, World Health Organisation, European Commission, Organisation for Economic Cooperation and Development, European Association of Service Providers for Persons with Disabilities, European Disability Forum.

7. I can report there is no existing model that I believe is suitable for adoption in New Zealand.

8. Health and social welfare systems directed towards disability suffer from a lack of funding that leads to restrictive definitions of who constitutes a person with a disability. This leads to discriminatory outcomes that are unacceptable from a human rights perspective. Accordingly, the new system would define disability as widely as possible in a manner consistent with the CRPD, and then tailor services according to need. One benefit of the system is that it could significantly reduce the burden of the current individual assessment of causal impact of impairment, for example injury, ageing, developmental factors and mental health factors.

9. The current boundary between the ACC system and the wider social welfare and health systems leads to attempts at cost-shifting and an associated increase in heated boundary disputes. An integrated system will remove the need for boundary disputes and re-focus dispute in the system on identifying issues of lawfulness and human rights, including the Government's or the institutions' compliance with a legislated system. All disputes would be against the state and turn on a human rights basis. From this perspective, it would be a rights based system.

10. The system will be arranged around the following kinds of services:

    a. Health, on a lifelong basis;
    b. Social support and support to engage in the community, on a lifelong basis;
    c. Financial and income support, limited to people of working age;
    d. Rehabilitation and habilitation, on an intervention basis across a person's lifetime.

11. To fund continually rising costs of health and social services, I was informed that the top rate of tax in Finland approached approximately 60%, which is unlikely to be accepted as legitimate by taxpayers or meet the Government's expectations that tax be kept to its current level in relation to GDP. At the same time, public confidence in the public health system in Finland was declining such that 85% of children currently born in Helsinki have private health insurance.

12. Social spending is limited by limited revenue from taxation due to reducing workforce population and increased cost and uptake on the health system.

13. Further, by relying primarily on revenue from taxation to fund health and social services, this pegs the well-being of people with disabilities to political cycles, which is inconsistent with the human-rights based regime New Zealand has committed to adopting.

14. New Zealand's also has obligations to its citizens under international instruments such as the United Nations Convention on the Rights of Persons with Disabilities.

15. I acknowledge that the system described in my research will have some consistency with te ao Māori and the Māori philosophy of hauora comprising taha tinana, taha hinengaro, taha whanau, and taha wairua. I consider synergies may exist with this research and te pae tawhiti, whanaungatanga and kaitiakitanga. As I conduct my research, I am committed to consulting with Māori.

16. In our current system, society and individuals argue over which aspect of our health and social system (health, mental health, social welfare, justice, ACC) should meet an individual's need. One response to that issue is to fund access to justice mechanisms to fairly resolve these disputes; including obtaining evidence and providing access to lawyers and courts. Alternatively, we can redesign the system to meet a person's needs without the need for most of the dispute that currently occurs.

An example of how the system would be funded

17. To illustrate the idea I offer a practical example of the capacity to grow the ACC fund over time and expand "cover" to all disability. The figures are by way of example only, using 2017 figures. Rather than reducing levies as has occurred between 2012 and 2017, if these continued to be set at approximately 2.5% of GDP, then $6.7 billion in levies would have been collected in 2017. After $3.7 billion in claims were paid, the $3 billion remaining from the levy collection could have been added to the "disability" investment fund in addition to the $4 billion income from the investment fund itself.

18. A total of $7 billion would have been added to the "disability" fund in 2017. If this pattern were to be continued over 25 years, the growth in the fund would result in the fund exceeding $200 billion (as adjusted for inflation to 2017 levels). At this level, it could fund a significant proportion of the future disability system without tax revenue, even after taking into account the fact that the costs of that are likely to increase over time.

19. I recognise that this analysis is simplistic and also that the levels of return on investment may well decrease. A more detailed analysis is required. My claim is that ACC has a proven track record of producing returns above benchmark over decades and is a proven funding model. I note any reduction in investment returns would simply extend the timeframe before the system could be self-funding. Any longer growth lower than anticipated could be offset by increasing levy funding.

20. I note that there is significant variation in ACC levies as a percentage of GDP for example, ranging from 1.6% for the year ended 30 June 2017 to approximately 2.4% for the year to 30 June 2012.[1] I understand from the Financial Statements of the Government that these levies are included in the "other" category (p 24).[2]

Relevance of my research to the tax working group's deliberations

21. One of the most significant limitations on achieving a health, social and disability system that does not discriminate based on cause or impose thresholds for access with negative policy consequences is the amount of public funding required. Conflicts over funding have led to cost shifting between and within systems.

22. The Tax Working Group has been tasked with taking into account:

    a. public confidence in social services;
    b. fairness of the tax system;
    c. changes in demographics including an ageing population;
    d. the changing nature of work.

23. While it is not for the tax working group to form a view on the likelihood of reform to the public health system, my submission is that such reform is likely. In support of that submission I refer to the following high-level sources:

    a. reporting by news media;
    b. the original Woodhouse report, the Law Commission's 1988 report on accident compensation;
    c. repeated public statements by Sir Owen Woodhouse and Geoffrey Palmer as architects of health and disability schemes and experienced policy commentators;
    d. the report of the Royal Commission on Social Policy (1988), and "Choices for Healthcare: Report of the Health Benefits Review (1986);
    e. public acknowledgements by the current government that the existing health system is in crisis, including the effects of limited public funding decisions made by the previous government on capital expenditure, for example;
    f. my own research and experience on the discriminatory and negative policy effects of the current ACC system;

[1] ACC annual report 2017 and ACC annual report 2012 recorded levies as $4,865 million and Statistics New Zealand reported GDP as $205,000 million (ISSN 1178-0290).
[2] ISSN 978-1-98-853440-4 2017 Financial Statements of the Government of New Zealand – B.11.

g. the government's inquiries into mental health and addiction services;
h. the likelihood that New Zealand will maintain a dynamically efficient economy for most of the foreseeable future
i. the likelihood that a well managed fund's return on investment exceeds growth in GDP for the foreseeable future (recognising that the gap between the return on investment and GDP decreases);
j. UNCRPD reporting processes and the Committee's enquiry into the differing level of services and support available to people on the ACC system as opposed to the wider health and disability system.

24. Further, it is widely acknowledged that the health system (including wider social services) does not deliver equally beneficial outcomes for Māori and that greater access to funding is required to provide equality of outcomes. Better access to funding for social and health services must be seen as beneficial for this outcome.

25. I submit that the working group is entitled to take account of this context given that public spending on health and social welfare is one of the biggest impositions on tax revenue.

26. I note that the working group has taken into account the United Nations sustainable Development Goals, including within the context of the Treasury's Living Standards Framework.

27. The greater use of a large investment fund and system of levies presents an alternative source of revenue for the Government that does not require some of the more controversial changes being considered, such as GST exemptions and a capital gains tax. It may also benefit from, rather than suffer from, base erosion and profit shifting.

28. I intend to seek expert input from economists but it is important that I broadcast my thinking to the working group at this early stage in case it would be considered.

29. I am aware that previously the social security system was funded with a specific tax from 1938 to 1968 and that this approach was abandoned. It reappeared in 1972 in the form of a levy system for ACC (but not "social security" or "health" in a wider sense) and this has remained in place since.

30. I am concerned to improve society's trust and confidence in both health and social services. Transparency go some way towards improving trust and confidence, but it could be that if people believed that their levies were going towards a system that was fair, equitable, sustainable, inclusive and efficient, without the need for doubling the levies, they would be more willing to pay levies even at a moderately higher rate.

Relevant policy considerations from tax working group background paper

31. The use of a large investment fund would enable revenue to fund social services to be drawn from international sources, including investment in international stocks and properties. Taking into account the projections for Government Expenditure and Revenue (Table 1, p 10), a model along the lines that I am researching might meet (or go a long way towards meeting) the balanced shortfall of 1.2% in 2030 and 4% in 2045. The return on investment of the existing ACC fund in the 2016 and 2017 years was 1.6% and 1.3% of GDP. Whilst there will be fluctuations, if the investment fund was increased from approximately $40 billion to $200 billion, over the next 20-30 years, there is no reason why the working group's projected shortfall in the vicinity of 1-5% of GDP could not be largely met by return on investment from the fund.

32. The use of an investment fund would also mean that revenue is drawn from capital rather than labour sources reflecting the changing nature of work and population demographics.

33. I am also considering the benefits that an investment fund based approach could have for "future-proofing" health and social services: for example, by the adoption of "lifetime cost" models currently being used by MSD and ACC in particular. Such a model may allow us to

finally address the social determinants of health by taking an integrated approach to addressing the social need and enjoy the benefits of healthier people and communities.

34. I see the following “challenges, risks and opportunities” (p 4) as being relevant to the funding model I am suggesting for my research:

    a. changing demographics, ageing population and associated fiscal pressures;
    b. the treaty and equal access to services for Maori and equality of outcomes;
    c. the changing nature of work;
    d. growing concern about inequality;
    e. the impacts of globalisation including profit shifting and base erosion.

35. Acknowledging that there is on-going debate, a save as you go system (as opposed to a pay as you go system) is an accepted part of our approach for superannuation. There appears to be no reason why that thinking cannot also be applied to other areas including health and social services.

36. Access to sufficient funding for broad-coverage high quality social and health services are also highly relevant to the four “capital stocks” for intergenerational wellbeing (p 4), particularly human and social capital. It would also increase the ability of everyone to participate in society (p16). It would also create financial capital and contribute to physical capital (by providing a funding mechanism for projects like transmission gully).

37. The system is consistent with existing approaches taken to products with a documented impact on health and social outcomes, with targeted taxation (or levying, in this case) on tobacco and alcohol. While generally taxation is not used to modify behaviour, ACC does levy based on risk of activity causing harm or injury and this would be logical once the health and social system takes on greater responsibility for the costs of conduct which causes adverse health outcomes.

38. By creating an investment fund, the suggested amendments would also meet the criteria used in past tax reviews (p 5):

    a. efficiency and the enhancement of economic growth and avoid distortions to the use of resources;
    b. fiscal adequacy;
    c. revenue integrity;
    d. reduction in compliance and administration costs;
    e. generate coherence in the raising and spending of tax on social services.

39. The quality and coverage of public healthcare and social services are crucial to public perception of the legitimacy and fairness of taxation.

40. This applies with equal force to the highest taxpayers who, while funding a significant proportion of the tax required for those services, may not rely on them in favour of private providers because of a perception of the quality and coverage of public services.

41. I note the working group’s comments on taxes and behaviours (p 26). I consider that the levy system I propose would allow the externalities from economic activity to be managed through a levy system which allows policy to be developed and implemented to internalise these within the risk causing groups. This is consistent with the broad base low rate system that currently exists and it also allows for management of particular risks and behaviours.

42. I note the efficiency of ACC levy collection (approximately 0.9%) is slightly less than IRD (0.85%) (p 42), however if the levies were to increase to $6 billion and the efficiency gains from the new technology rollout (Shaping Our Future) are realised, this could drop well below the current IRD efficiency figures. This cost of levying would increase if targeted levying was developed (which would need to be considered against the benefits of increased revenue and modification of behaviour) or the cost of levying would decrease if flat rate levying were used (as originally proposed by Sir Owen Woodhouse).

43. There is another issue with product liability for imported goods. If there is going to be a revenue collection from these imports, consideration might be given to a levy to fund product liability for dangerous products that carry risks.

44. There are also potential problems with hypothecation. The ACC system has dealt with this on the basis of social solidarity. Potential shortfalls can be addressed through increased levies, although the effects of these should be smoothed out through long term levy planning. Importantly, these also provide a very effective mechanism for risk pooling in a way that will allow system learning and therefore innovation. This does not allow for the limiting of expenditure in this area if there is limited tax funding available, however by taking a long term view and developing the fund, the return on investment will eventually be able to offset the need to entirely fund the disability system from tax revenue.

45. Finally, I note that the system will provide for an intergenerational, long term approach to address social and health related issues within New Zealand society. It provides a forum to develop that debate and a mechanism to implement change in a sensible, sustainable way as we transition from where we are now to a different funding model.

Requested outcome

46. I would appreciate the opportunity to speak with you further on this in person and to hear any concerns or criticisms you may have that might allow me to emphasise certain aspects of my research enquiry.

47. I ask that you please note my submission in any reporting along with any conclusions drawn on the funding model I am suggesting.

48. I hope to have further detail on my proposal by August of 2018 to allow for public consultation before finalising my research in late 2018.

Warren Forster
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2017 New Zealand Law Foundation International Research Fellow
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