Free social injunctions: Art interventions as agency in the production of socio-legal subjectivities not yet imagined or realised

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Abstract

This PhD project/exegesis considers how socio-legal performance, as a series of art interventions in public spaces, might operate to question and critique social and legal norms that govern and give licence to preferred social behaviours in the public realm. The art interventions recognise and acknowledge the hegemonic relationships of space/place over time and, notwithstanding their public compliance and production, reveal alternative socio-legal subjectivities involving a participant's negotiation of the competing interests and rights present in the everyday.

A significant aspect of this project focuses on how the Treaty of Waitangi (1840), as Aotearoa New Zealand's only living treaty with Māori, may continue to operate as a cultural/political force that contributes to the ongoing development of the socio-cultural fabric of this country. These interventions explore the contribution that contemporary socio-legal artistic performances can make to reveal the tension, inherent in the 1840 agreement between British colonisers and Māori, as continuing to affect the foundations of law in Aotearoa New Zealand today.

This practice-based research presents art performances including: text, image, installation and humour as provocation to the ideas contained within the artwork. As a research project that trespasses across socio-cultural, physical and virtual spaces, these interventions seek to challenge and question existing social and legal hierarchies, suggesting the possibilities of an agency of production with blended hegemonies and socio-cultural subjectivities not yet imagined or realised.

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Attestation of Authorship

I hereby declare that this submission is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person (except where explicitly defined in the acknowledgements), nor material which to a substantial extent has been submitted for the award of any other degree or diploma of a university or other institution of higher learning.

Dated

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Free Social Injunctions

Art interventions as agency in the production of socio-legal subjectivities not yet imagined or realised

This is Not a Disclaimer

All events described herein actually happened and the fact that most of the persons depicted bear a strong resemblance to the author – whether real or fictitious – is deliberate and by no means a coincidence. Consequently, should any reader wish to question the veracity of any information presented in this document by freely inducing any such agency and/or production of socio-legality, the author accepts full responsibility that this may or may not give just cause to imagine or realise new knowledge.

Figure 1. *An unsuccessful attempt at chasing fog*, 2012, video still Layne Waerea

Date: February 18, 2012

Time: 6.43 a.m.

Instruction: To chase fog from a neighbouring farm.

Duration: 20 minutes

Conditions: Neighbouring farm, late summer, early morning fog, and civil and criminal laws as they relate to the act of trespass.[1]

Description: To consider the civil and criminal laws in Aotearoa New Zealand that may be invoked in the act of chasing fog. This intervention – to

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[1] The Law of Torts in New Zealand (4th Edition) defines the civil tort of trespass to land as "an unjustified direct interference with land in the possession of another" (Todd et al., 2005, p. 361). The civil tort of trespass is to be distinguished from the criminal act of trespass to land which can be found in the Trespass Act 1980. Section 3 of the Trespass Act 1980 states that every person commits an offence who trespasses on any place and, after being warned to leave that place by an occupier of that place, neglects or refuses to do so.

propose to chase away pockets of fog from a neighbour's farm – was an attempt to explore a sense of the physical and legal possibilities that can exist in a system of social and legal rules that it references. A proposed freeness,[2] where the failure to adhere to social and legal rules that discourage trespassing onto privately owned land and running (aimlessly) at that hour of the morning, was offered as analogous resistance to the expected modes of behaviour in this society.

Action: Late summer one Sunday morning at 6.43 a.m., I jump the fence of a neighbouring farm with the intention of chasing fog. The paddock seems about the size of four rugby fields and I can see fog over by the far boundary fence. The ground is wet, the grass length ankle deep and thankfully there are no stock currently grazing. I am wearing a lightweight rain jacket over a long-sleeved cotton t-shirt, jeans and running shoes. I place the video camera on a tripod and point it in the direction of the fog. With an ascending sun and the logistical difficulties in achieving my aim, failure, in a physical sense is anticipated. I am also regretting my decision to wear jeans. Undeterred and bullishly confident however, for the next 20 minutes I negotiate an uneven pace over boggy terrain, accompanied only by the occasional crowing of an indignant pūkeko.[3]

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[2] *Free"ness*, n.

1. The state or quality of being free (hyperdictionary, 2013)

2. The act of receiving goods and or services for no cost (urban dictionary, 2008).

[3] The pūkeko (Māori word for purple swamphen) is a bird that can grow to 50 centimetres long with a distinctive deep blue colour and black head. They are commonly found near swampy ground, lagoons, reeds, rushes and swamps.

Being in the public social

Free whereabouts

Figure 2. *MAORI LANE,* 2012, video still Layne Waerea

Date: September 18, 2012

Time: 10.35 p.m.

Instruction: To make a special lane for Māori

Duration: 2 hours, 13 minutes

Conditions: Cardboard stencil MAORI LANE, white chalk, bus lane, s 4(1) Summary Offences Act 1981 which states that "Every person is liable to a fine not exceeding $1,000 who, (a) in or within view of any public place, behaves in an offensive or disorderly manner."

Description: One Sunday night, about 9 p.m., I spent just over two hours darting out into traffic to stencil, in white chalk, the words MAORI LANE in the bus lane on a central Auckland street.[4] While seemingly creating a special and privileged lane for Māori, the plan was to open up and provoke discussion – with anyone passing by – on the issue of legal rights relating to the ownership of fresh water in Aotearoa New Zealand today.

Action: I am standing on the footpath a couple of steps away from the road. I am wearing a light grey hooded jacket over a dark blue t-shirt, jeans and a pair of old sneakers. I have an iPhone taped to my chest that is partially hidden by the hooded jacket. There are a few people around, heading up and down the street or stopping for a bite to eat at one of the fast food restaurants close by. I am waiting for the traffic lights up the road to turn red and for there to be a break in the traffic coming down the street. When the road is clear on my side, I will dart out into the bus lane, assume a crouched position and continue stencilling in chalk the next letter. I remind myself to keep the camera pointed at the road and to continue checking for any oncoming traffic. My aim is to get at least one letter stencilled before the traffic lights change and I have to return to the footpath.

Using the BUS LANE sign painted on the road ahead as my guide, I work my way through each cardboard letter in MAORI. Taping each stencil to the ground with masking tape I quickly fill in the blank cut-out with white chalk, rip it off then return to my pile of letters and extra chalk. Sometimes I have to leave it fixed on the road as a bus approaches. What I don't anticipate however is that some of the chalk doesn't settle and becomes smudged with every passing car or bus tyre. Maybe I can brush over it at the end?

I have just finished the letter A in LANE, when a man walking past stops to ask what I am doing. He says he has been watching from down the

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[4]Following legal advice, I have chosen not to reveal details of the location or the street name.

road and is curious. I tell him I am creating a special lane for Māori. He stays to chat and I decide to wait until he leaves before I resume stencilling, as I am feeling a bit self-conscious having an audience this close. I explain further that I am interested in the question of fresh water rights as they relate to the Treaty of Waitangi and how as a nation we might engage in discussion about future access and use of this resource. He tells me he is studying towards a business degree.

We notice a young man, possibly under the influence of alcohol, stagger past to sit on a chair on the footpath outside one of the restaurants. He doesn't appear to be interested in what I am doing nor is he intent on buying any fast food but I can see he has his eye on a portable computer on the table next to his. Even though there are two men sitting at that table he ignores them and keeps staring at the computer. A couple of staff members from the closest restaurant come out to check on him and, perhaps realising the two men are not going to give him the computer, the young man finally gets up and continues to weave his way up the street.

Not long after this, a police car arrives and parks directly over MAORI LA. I position my chest and camera at the road (and police car) in order to record this moment, at the same resisting a strong desire to quietly back away, out of sight. Holding my ground pays off; I realise it isn't me they are interested in as they speak with the staff members and then get back into their patrol car and head off in the same direction as the young man. Anxious to finish in case the police officers return, I say goodbye to my footpath companion and turn to collect the next letter for stencilling. With just two to go, I crouch down, tape the corners and quickly colour in the N and the E before another vehicle arrives.

Most of the time I am a mature, female, non-practising lawyer and non-practising lecturer in law, of Māori (Te Arawa and Ngāti Kahungunu) and New Zealand Pākehā descent. The rest of the time I am an artist. Relationships I have inherited, cultivated and applied for, that bring me into close contact with many different people and organisations that recognise differing agreements of social and legal conduct and participation. Sometimes there's a time-based and linear distinction. I leave home each morning as a tenant, operate a motor vehicle on a public road, and carry out my employment contract that requires me to be at work, at a certain place, for a minimum of 7.5 hours each working day. As an artist I might check the weather forecast, spend time thinking about making new work, or edit photographs or video footage for an online blog. Physical and virtual relationships, which engage rules of a social and legal nature that overlap, are repetitive and time-relevant, and ensure concurrent negotiations with the general public I interact with on a regular basis.[5]

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[5] Henri Lefebvre in "The Production of Space" refers to societal space as a social product where our participation in the public sphere is not only defined by but can also reinforce and help shape the multiple contexts and capitalist hegemony responsible for the social production of the space (1991). Lefebvre's understanding of production recognises "the means through which the living body as a deployment of energies, produces space and reproduces itself within the limits and laws of that space" (Butler, 2012, p. 42). Lefebvre's intention was to demystify capitalist social space and to explore how space is actually and actively produced.

Lefebvre identifies three aspects of space, namely, spatial practice, representations of space and representational spaces; which overlap, retain specific features, yet relate internally. Lefebvre refers firstly to the spatial practice of a society, understood "through the deciphering of its space" (1991, p. 38). For Lefebvre, spatial practices operate as physical practices, everyday routines and networks that mediate between the conceived and the lived, and are productive of the social spaces they inhabit. Representations of space are comprised of professionals and technocrats employed with an interest in the design and implementation of any space. A conceived space of thought and abstraction, that as the dominant space in society, reflects a particular ideology and set of power

In partial disclosure however, I don't always like following the rules. As a former lawyer and lecturer in law I have become practised at working with and around bottom-line legal thresholds. On a daily basis I make a concerted effort to assess which rules require my full attention, and what I need to do in order to avoid social or legal penalty. Will the electricity provider really disconnect the supply in the next 48 hours, or do I have a few more days after this to pay the outstanding bill? If I drive my car to work, where will I park in order to avoid an infringement notice for failing to display a current registration and warrant of fitness on the inside of the windscreen? And is the tofu in my fridge still good to eat – a week and a bit after it's sell-by date? If social and legal rules help identify and encourage performance of preferred behaviour and interaction, then my daily strategy

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relations tied directly to the relations of production. Finally, representational spaces are those "directly lived through its associated images and symbols", the users of which relying on a social imagination that may bring about appropriation and change (1991, p. 39).

Space, for Lefebvre, was not an empty container, recognising instead "an ensemble of relations and networks that make social relations possible" (Butler, 2012, p. 42). As a political instrument capable of creative and aesthetic expression, for Lefebvre, space is understood not just as a combination of geographical or physical locations but as indicative of the political and legal intersections – and in particular the nature of production and property ownership – that frame the relations of capitalist production (Lefebvre, 1991. p. 349).

Lefebvre believed that contemporary capitalism revealed powerful tendencies towards "abstraction of space" as characterised by its fragmentary, homogeneous and hierarchical orderings. Through the "slicing of space into discrete parcels" and its subsequent commodification and domination by economic and political ideologies, the production of abstract space has been used as a political and legal instrument to reinforce preferred notions of social order (1991). Recognising that the state actively intervenes in the production of space, through its roles as "the provider of infrastructure and manager of resources," Lefebvre argues that the systematic ordering of space according to private property relations and exclusion, relies on a system of spatial prohibitions and "sanctions imposed by the state through the legal order" (Butler, 2009, p. 16).

actively acknowledges these rules, at the same time seeking out alternative ways of operating in this same system.[6] Out of self-interest, I search for

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[6] To 'play by the rules' means acknowledging any temporal and spatial constraints – particular to a site or activity – and conforming to expectations of proper behaviour for that space or organized game. Brian Massumi in "The Political Economy of Belonging and the Logic of Relation" gives thought to the nature of "the rules of the game" as not only retrospective containment of any "unformalised proto-sport exhibiting a wide range of variation" but as player-incentive for alternative manoeuvres designed perhaps to play by, through or even before the rules have been formalised. Using the game of soccer (football) as his analogy, Massumi identifies the field of play as a space of potential: an event space where the potential is the modification of that space.

> The dimension of the event is above the ground, between the goals, between the players, and around the ball on all sides. It is that through which the substantial elements interrelate and effect global transformations. It is nothing without them. They are inert and disconnected without it, a collection of mere things, no less isolated for the shards of reflection and language they ferry. It is the event-dimension of potential – not the system of language and the operations of reflection it enables – that is the effective dimension of the interrelating of elements, of their belonging to each other. (2002, pp. 75-76).

While acknowledging the literal nature of the field as a formal precondition, it is the limitless interrelation of "every movement of a player or the ball in that space" that can modify "the distribution of potential movement over it". And while codification may enact "capture and containment' of the variations of play possible, according to Massumi, it is a player's distinctive 'style' that may activate any potential for change.

> Style is what makes the player. What makes a player a star is more than perfection of technique. Technical perfection merely makes a player most competent. To technical perfection the star adds something extra. […] The star plays against the rules. But not by breaking them. He plays around them, adding minute, unregulated contingencies to the charged mix. She

loopholes or spaces of ambiguity as an ongoing general enquiry as to the relative strength or flexibility of the rule in question.[7]

Once I received a postcard in my letterbox asking for "anyone knowing the whereabouts of Layne Melissa Waerea to please contact Greg on the following mobile number." I received this postcard on my birthday. At first I

> adds "free" variations: "free" in the sense of modulatory actions unregulated or unsubsumed by the rules of the game. (2002, p. 77).

A free-style, Massumi proposes, that activates previously unrecognised moments of tactical advantage that may ultimately draw a need for new rules of containment but inspiring at the same time an ongoing search for variations as yet unanticipated and unrealized (2002).

[7] "The Production of Space" points to "the multiple forms of violence that abstract space imposes on the body and the complicity of law's tendencies towards formalism, universality and reductionism in reproducing new modes of abstraction" (Lefebvre as cited in Butler, 2016, p. 257). Social hierarchies are produced and affirmed by the generality of legal rules coupled with an apparent equality of participation by its legal subjects. Legal decisions/judgments identify boundaries of permitted or prohibited behaviour, and exercise a form of coercive power that seeks to avoid social dissensus and legal disorder (1991).

Relations between conceived and lived spaces, Lefebvre believes, are in constant contestation and negotiation, ensuring an instability that acknowledges the political dimensions of space, and the possibility of space to operate as resistance. In this context, David Cunningham in "The Concept of Metropolis: Philosophy and Urban Form", argues for "the assertion of alternative forms of abstraction, without which no such space of a differential connectivity or social unity [would] be conceivable at all" (2005, p. 23).

New forms of concrete abstraction are of critical importance in order to address spatial components of thought and practice. Lefebvre advocates that counter-spaces and counter-hegemonic struggles that confront and contradict the sublimating force and daily assault of abstract space as the product, can challenge supporting legal and political frameworks and propose alternative use and the appropriation of space that prioritises the values of use and creativity over exchange and domination (1991).

was excited. I generally like postcards and I was feeling confident with the whereabouts. And with such fabulous timing, I thought it must be a present, courier-delivered and one too large to leave unattended near my post box. With this logic in mind, it was clearly a win-win. My excitement was short lived however, for I realised the blue rectangle of cheap cardboard, cut at an irregular angle, lacked any kind of personal attention (and birthday recognition) or sender identification. The two lines of simple text – that could have been mistaken for the intriguing "you were out when we called" note – on closer inspection resembled the generic and mass-produced advertising flyer. A public declaration that was casual in tone, but with no explicit details as to who had sent it, prompted an immediate mental scan of anyone or any organisation that might be trying to get in touch. At this point I realised this attempt to locate me was not to celebrate this significant date, but (most likely) to demand payment of an outstanding parking infringement fee of $65.00 – plus enforcement costs – I had received a month earlier.

By using publicly available information to trace my date of birth and postal address, the sender elected to surprise me (or any other reader) with the promise or suggestion of something special if I (or they) were to follow the instructions written on the back of the postcard. And despite my growing disappointment I have to admit I was tempted. Or maybe I could get a friend to call, just to find out. As a former lawyer however, I recognised this postcard as a cost-saving device to expedite the payment of the outstanding fee; a claim I believed lacked legal merit, where the tactic of surprise and confrontation was a last-ditch attempt to keep the promise of payment alive. If I was right about the sender's intentions then the only good reason I could think of for calling 'Greg' was that it presented a more public engagement with this dispute. He had gone to some effort so far, was entitled to, and now I could respond and exercise my own rights in an open and public process of negotiation and resolution.[8]

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[8] To pursue a private and civil claim in Aotearoa New Zealand, the party arguing the loss (the plaintiff) must prove on the balance of probabilities, that their case is

I do recall, however, feeling a little nervous. Having ignored two earlier letters reminding me of this original and overdue amount, and the subsequent costs allegedly incurred, I had, until that point, assumed the authors of the infringement notice would have decided it was less than economic to continue and given up their chase, thereby putting a silent end to the matter. The amount allegedly owing had increased to $185 and with any legal onus to continue resting with the car park owners, the postcard in my letterbox signalled the possibility of next-level debt recovery. Now, I wasn't so sure of their future intentions and the extent they might be prepared to go to recover what they believed was legally due. Granted, I had overstayed my parking privileges by 10 minutes, but any further engagement on my part would amount to an agreed and increased publicity or public-ness, warranting a careful consideration of how my defence to any over-parking and unpaid fee could withstand this heightened public scrutiny. And I didn't have the time or inclination to do that.

Realising I had two options available, I chose not to call. A superior response, I thought, lawful and with the single and legitimate intention of denying the postcard sender the coveted information. The car park owner, if they wanted to follow through on their threats of legal action, would have to spend time and money proving their claim with the full costs of recovery likely to exceed any expected returns. I harboured strong objections to their increasing demands, did not intend paying this amount and was unwilling to make their job any easier by getting in touch.[9]

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stronger than any defence or opposition. The plaintiff initiates the claim, pays a fee, carries the burden of proof and takes all necessary steps in order to facilitate due process of the legal proceedings. The defendant can and is entitled to participate in this process, although is under no onus or primary obligation to provide a stronger defence in the first instance (Miller, 2014).

[9] Political theorist Chantal Mouffe refers to the social as the realm of everyday practices, which reveal their political contingency and serve to reinforce the current social and political order. "Agonistics: Thinking the World Politically" (2013) brings together three decades of Mouffe's research on 'the political', and in particular development of an agonistic form of politics that promotes a plurality of

voices and different perspectives that acknowledge the two key concepts of antagonism and hegemony pertinent to understanding and working in the political domain. Firstly (and an idea she first developed with Ernesto Laclau in "Hegemony and Social Strategy", 1985), "to think politically requires recognising the ontological dimension of radical negativity…a form of negativity that cannot be overcome dialectically, that full objectivity can never be reached and that antagonism is an ever present possibility." This, Mouffe argues, means coming to terms with "the lack of a final ground and the undecidability that pervades every order" (2013, p. 2). Secondly, in recognising the hegemonic nature of any order, Mouffe draws attention to the "series of practices" as performed and produced in everyday society and whose aim is "to establish order in a context of contingency" (2013, p. 2).

The current hegemonic stronghold of capitalist consumerism, as supported and constitutive of a liberal democratic ideology (and manifest in its current neo-liberal form), according to Mouffe fails to countenance the possibility of antagonism, believing instead shared use of the public space and co-existence is ultimately possible (within this ideological framework) notwithstanding radical differences of individual and shared opinion. Leaving the natural forces of the free market to determine economic winners and losers, this ideological structure benefits and sanctions the individual pursuit, setting in place a system that promotes and protects the continual acquisition and exchange of private property with an implied promise of equitable participation. In reality however, a small percentage of the world's population has exclusive rights to property equal in value to the rest of the population's combined wealth. Capitalism, with all its contradictions, has produced fewer winners, managing to sustain itself on a series of practices that rely on (and exploit) extreme inequality with regards to living standards, employment conditions and legal and political stability.

In order to challenge the contested and capitalistic public domain, Mouffe writes of the necessity for a radical plural democracy; one that actively recognises the temporary and contingent nature of everyday practices and how the undecidability of social relations promotes a disagreement or dissensus as necessary counter-hegemonic interventions in the everyday. Thinking agonistically, the effective channelling of any public disagreement and articulation of diverse groups through recognised and reformed institutional channels would reduce any inherent antagonism (i.e. violence) and increase their

But even if I had thought about calling, could I argue on the balance of probabilities that I even knew the whereabouts of Layne Melissa Waerea, or what this meant if I did? Most days I traverse through and occupy different locations, observing different codes of conduct (social and legal) relevant to my relationships to these real and virtual spaces. This might manifest at home as a party to a residential tenancy agreement; as a motorist legally required to drive according to New Zealand's traffic regulations; or in my capacity as a contracted employee or artist, paying attention to rules of best practice when choosing to communicate, research and publish online. I am aware that these spatial relationships have rules of preferred engagement that may guide my behaviour and intention, but where I choose not to, their

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potential to participate in the democratic process and effect change to any of these social or institutional structures. Mouffe is insistent however, that adjustments or amendments be made to the existing system, and that any adjudication between contesting parties be settled according to an agreed set of rules and regulations. Notwithstanding the political nature of any legal system, especially as it relates to the exclusive ownership of property, Mouffe argues against legal pluralism, believing instead some consensus must be achieved in order to ever reach some kind of resolution. In her book "On the Political", she insists that, "a democratic society requires the allegiance of its citizens to a set of shared ethico-political principles, usually spelled out in a constitution and embodied in a legal framework, and it cannot allow the coexistence of conflicting principles of legitimacy in its midst" (2005, p. 22).

Political theorist Mark Wenman, in his book "Agonistic Democracy: Constituent Power in the Era of Globalisation", suggests Mouffe "promotes a model of agonistic democracy built around the need to construct order, unity, and authority, understood as prerequisites to agonistic freedom" (2013, p. 182). A conservative worldview with the potential to undermine its radical intentions yet is saved by Mouffe's "repeated stress on the link between the successful sublimation of antagonism and the future augmentation of liberal democracy" (2013, p. 182). Wenman identifies that for Mouffe, institutions of liberal democracy operate as the horizon of possibility for contemporary political struggles, and she envisions agonistic democracy as an ongoing (re)negotiation of the contradictions between liberal and democratic ideologies (2013).

activation and enforcement remains dormant as long as there is no witness to any criminal activity or breach capable of mobilising any social and legal potential.[10]

If I am to find alternative ways of operation, managing the degree and extent of my public whereabouts and culpability, therefore, is dependent on my willingness to 'make public' the potential of any action or spoken word. Activities, thoughts and behaviour that were once recognised as illegal and/or suitable only for the private domain, all have the potential to increase in public-ness (and some kind of social or legal liability) when witnessed by friends and strangers in real time or online. The testimony of a passerby or a single image, uploaded to a social networking site, may be all that is needed for this information to achieve the attention of a larger audience and an extended jurisdiction. I can broaden my public social for

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[10] In contrast to Mouffe's non-negotiable position regarding the need for an agreed legal system, political philosopher James Tully in "Strange Multiplicity: Constitutionalism in an Age of Diversity" (1995), argues that as a mechanism of the state and complicit in its multiple forms of domination, any regulatory measure should be capable of amendment or repeal. In agonistic politics, individuals and groups struggle incessantly to "free themselves from and to modify the conventions" that govern their "thought and action in the present" (p. 166). This, Tully identifies, is the source of constituent power, which has the capacity to transform and introduce something new.

"Strange Multiplicity" centres on a discussion of the politics of diversity alongside an ongoing endeavour for cultural recognition, including the struggles of indigenous people for recognition of their "diverse cultures, governments, and environmental practices" (1995, pp. 2-3). Tully argues that these struggles can be seen as exemplary of the broad spectrum of demands for cultural recognition characteristic of the new politics of diversity (1995).

Tully thinks of agonistic democracy in terms of a constitutive augmentation of existing liberal democratic institutions. Even though the present rules of recognition may harbour elements of injustice and non-consensus, the system is legitimate if the prevailing rules of law are always capable of revision, alteration and relevant adaptation (1995).

any length of duration, or be included in someone else's. Yesterday, I was a neighbour helping herself, unobserved, to the use of the clothesline next door to dry her clothes; tomorrow, thanks to a photograph uploaded to a personal blog, a potential defendant in a claim for trespass. The public interventions that I engage in, while seeking to challenge the status quo, require a selective visibility disconnected from any obvious location and authorial intention. A positional ambiguity, I respectfully submit, that affords an opportunity to question and critique, and the possibility of alternative modes of operation capable of existing in the everyday.

For the purposes of this postcard, the attempt to establish my whereabouts was determined by a series of relationships manifest in a birth certificate, driver licence and tenancy agreement. Legal documents that recognise different starting dates, capabilities and duration, and a number of related rights and obligations that overlap, conflate and on occasion, override. A postcard, as a private inquiry made public, has provoked a participating silence and continued invisibility, intended to exploit this multiplicity and undecidability and/or to resist any formal culpability with respect to the car park owner's claim. If the purpose of this postcard was to identify my precise location (relative to the delivery time and letterbox coordinates) in order to give me further information regarding any legal consequences, then maybe a silence and indeterminability of my exact 'whereabouts' was the only true response I was capable of making.

Figure 3.*"I was only 10 minutes late"*, 2011, video still Layne Waerea

Date: September 2011

Time: 8.25 p.m.

Instruction: To leave a message in chalk, in the privately owned public parking space.

Duration: 20 minutes

Conditions: Jeans, t-shirt, cardigan and sneakers, car park space, chalk, s 11A of the Summary Offences Act 1981 which states that, "A person is liable to a community-based sentence or a fine not exceeding $2,000, or to both, if he or she damages or defaces any building, structure, road, tree, property, or other thing by writing, drawing, painting, spraying, or etching on it, or otherwise marking it, (a) without lawful authority; and (b) without the consent of the occupier or owner or other person in lawful control."

Description: I once received a parking 'breach notice' of $65.00 for allegedly exceeding the time I had paid for in a privately owned public car park. The notice advised that if I did not pay within 21 days, I would incur a further

$25 reminder and any other legal costs related to its enforcement. While I recognised something might be owing, to my mind, this fee did not accurately reflect the car park owner's 10-minute loss. As it was a privately owned car park, I knew that any 'breach' involved elements of contract law, and that if the plaintiff (car park owner) wanted to pursue their legal rights in court to recover any outstanding loss, it would be at their initiation and after payment of the $45 filing fee. Believing that the costs of enforcement would seriously outweigh the company's claim, I decided to do them a favour and leave a message in one of the parking spaces.

Action: One night in September 2011 – which may or may not have been the opening match of the Rugby World Cup New Zealand 2011 (All Blacks v Tonga) – I park my car about a block from the car park in question, checking to see how many people are around and most importantly whether any security guards are on patrol. It is a mild evening with only a handful of people walking down the street in various stages of pre-World Cup celebration. Wearing a light woollen cardigan over a cotton t-shirt, jeans and a pair of well-worn Converse-look-alike sneakers, I set the video camera on a tripod in front of an empty car park space that is well lit from the street lamp above. Looking again to see if anyone is sitting in a parked car or about to cross through the car park, I take a piece of coloured chalk and proceed to start writing in the empty space. Halfway through, it occurs to me that I may have forgotten to turn the video camera on, but I realise I can't stop or even start again even if I did forget, and can only hope that the camera is rolling.

Within 15 minutes I am finished and return to my camera relieved to see the red record light still blinking. I turn it off and walk quickly with my belongings back to the car. Returning one last time to take some photographs from the upper deck of the car park, I watch as a security patrol car drives past.

"I was only 10 minutes late back to my car to find an infringement fee of $65.00. Now that seems very unreasonable even with Swedish rounding. I accept some penalty may be due but 10 minutes is $ 0.75 cents (Bursary maths). I know it doesn't make $ sense to chase this. Silence is legal. Silence is golden. And [I need to] find another [car] park."

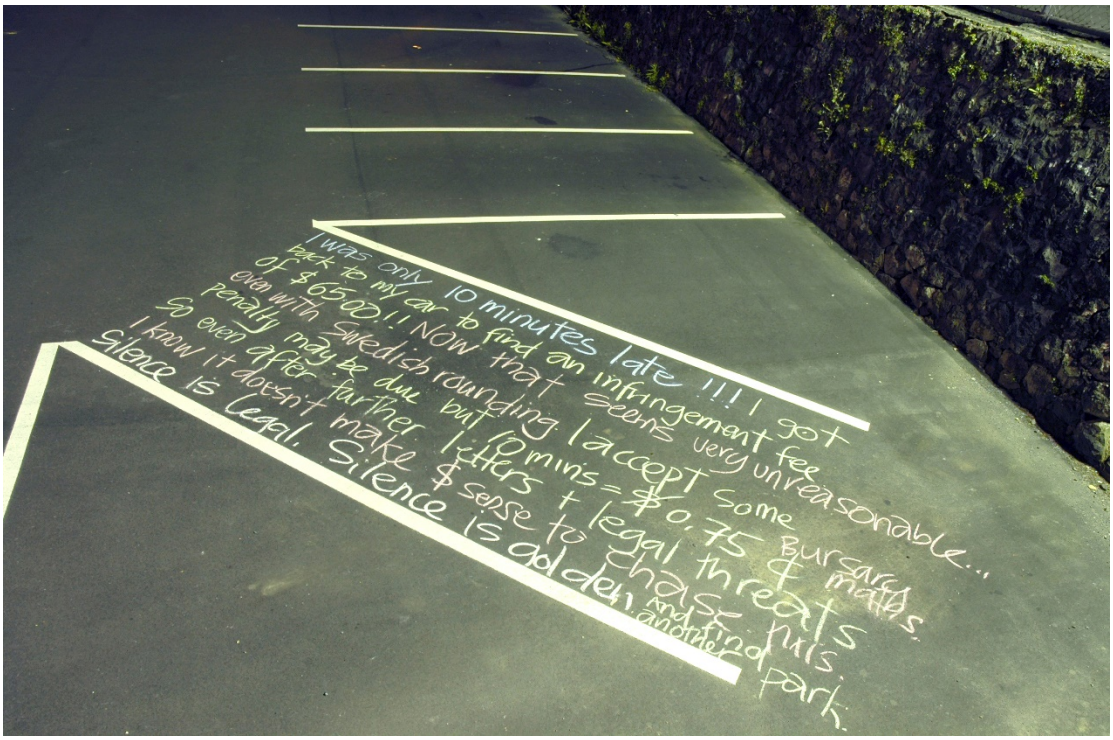

Figure 4.*"I was only 10 minutes late"*, 2011, photo Layne Waerea

Free witness statements

2010-2015

Berm #13

Figure 5. *Berm #13*, 2010, photo Tuafale Tanoa'i

Date: October 27, 2010

Time: 9.55 a.m.

Instruction: To mow random berms in Remuera, Orakei and Herne Bay, Auckland as a social protest in response to the local council's proposal to enact a new bylaw requiring the nearest landowner or occupier to maintain council-owned berms and grass verges

Duration: 25 minutes

Conditions: Lawnmower, large garden broom, small domestic shovel and pan, all-purpose black rubbish bags, red and black earmuffs, plastic safety glasses, plastic petrol container, grass berm, Auckland City Council No 20 – Public Places Bylaw 2008 which states that a person must hold an approval issued by the Auckland City Council when undertaking to carry out an event or when trading in public places.[11]

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[11] The Auckland City Council No 20 – Public Places Bylaw 2008 has now been replaced by the Trading and Events in Public Places Bylaw 2015 (Te Ture ā-Rohe

Description: As a strip of under-used real estate, the grass berm is located between the legal, front-facing boundary lines of city and suburban properties, and the road. As public property, there is an unofficial requirement that the nearest homeowner or occupant maintains these council-owned grass strips. While social rules of community living serve to ensure reasonable and regular compliance, proposed bylaws to allow enforcement of this social practice and therefore any relevant penalty, drew strong criticism and the temporary non-participation from members of the public likely to be affected and disadvantaged by this new legal rule. Responding in a form of social protest and solidarity, for the month of October, I packed my lawn mower, garden broom, protective eyewear and earmuffs into the back of my car, and set out to mow random grass berms in affluent suburbs of Auckland.

Action: Lifting an emerald green, 125cc lawnmower into the boot of my car requires a simple tactical approach. Wheeling the mower to a position directly behind the car and near the desired spot in the boot, I collapse the handle/lever over the motor, and grip one hand under each end of the body. Next, with bent knees, I jerk the motor body towards me, following through seamlessly up-and-over the lip of the boot frame to see the 31 kg mower land squarely and centre-placed in the well of the boot. A simple procedure and unremarkable at best, especially in the privacy of my own backyard, but a manoeuvre and positioning that is best practised in order to encourage a successful – albeit in reverse – repeat action, in public, at my first destination.

I drive with a friend, who will operate the video camera, to my old neighbourhood and a street near to where I grew up. I am wearing a cotton t-shirt over a long-sleeved thermal shirt, jeans and sensible shoes. Selecting

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Te Mahi Tauhokohoko me nga Takunetanga ki ngā Wāhi Marea 2015). Section 4 outlines the purpose of this bylaw to regulate and control any events and trading in public places, where the conduct of persons selling or offering services requires approval (s 6) and, in some cases, the payment of a licensing fee (s 12). This bylaw regulates events and filming in roads and other places.

a berm about halfway along the road, I surmise that it will just need a once-over and I am relieved the edges have recently been trimmed, as I don't own an edge trimmer. This mower has a catcher though, and I have also brought my garden broom just in case.

While my friend sets up the camera equipment, I carry out a walk-through survey of the first berm, mapping out my mowing routine as I go; arms out in front, concentric rectangles, keeping things to a minimum. Next, I don my protective eyewear and earmuffs, align the mower with the outside edge and try starting the mower. On the third yank of the pull cord, the one-cylinder-internal-combustion engine roars into life and I propel the mower along the edge of the berm, keeping to the rectangular shape and moving gradually to the centre. I try not to be distracted by the possibility of a car or pedestrian passing and in seven minutes I am finished. I cut the engine, gather up the broom (I decide it doesn't need a sweep) and with my camera operator in tow, I push the lawnmower along the road to another berm.

As I am finishing the second berm, a man approaches from his driveway and asks if we work for the local council. He says he knows the berms are council property but that he usually mows them himself, as he never knows whether the council is going to cut them. I hesitate to tell him we are artists, but he doesn't pause long enough for either of us to answer before telling me that I could have taken a little more care on the corners. Not waiting to see if I take him up on his suggestion he walks away, so my friend and I wheel the mower and assorted equipment back to my car, lift everything into the boot and drive home.[12]

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[12] The emergence of performance art since the 1950s, as both a method and means to convey artistic intention, has challenged Modernist and capitalist concerns that have prioritised the formal representation and commodification of the art 'object'. Amelia Jones, in her introduction to "Perform, Repeat, Record: Live Art in History", acknowledges the European and North American "renegade avant-garde movements such as Futurism and Dada" who declared "the museums 'dead' while activating their bodies on stages and in public" (2012, p. 19). By drawing attention

to the body, artists since this time looked to shift the focus to the process of art production, and "modes of action that extended the formal boundaries of painting and sculpture into real time and movement in space" (Stiles, 1996, p. 679). Through an insistence on the body as primary material, artists emphasised and attempted to engage viewers/spectators with the experiential nature of their work; activating the body and its cognitive features to explore and derive meaning from the social and political conditions of the time (Stiles, 1996).

Artist and art historian Kristine Stiles, in "Theories and Documents of Contemporary Art: A Sourcebook of Artists' Writings" (1996), provides an overview of the early and different forms of live actions that by the 1970s had become known as performance art.

> Performance artworks that varied from purely conceptual acts, or mental occurrences, to physical manifestations that took place in private or public spaces. An action might last a few moments or continue interminably. Performances could comprise simple gestures presented by a single artist, or complex events and collective experiences involving widely dispersed geographic sites and diverse communities. […] Performances could occur without witness or documentation, or they might be fully recorded in photographs, video film or computers. (p. 680).

Some examples included the unconventional theatre events, site-specific and outdoor installations of the Gutai group that developed conceptual ideas through installation and performance and were interested in "reinvesting matter with spirit" (p. 680); the Situationist International (SI) and their complete and revolutionary rejection of the commodification of everyday life; Allan Kaprow's happenings, as a multiplicity of everyday and artistic actions that operated in and "gave visual definition to the interstice between art and life" (p. 682); and Carolee Schneemann's "kinetic theatre" where she worked across different media to explore alternative and emancipatory representations of female sexuality and identity (p. 680).

In Jones' overview of key historical elements of performance art from the 1950s, she acknowledges a similar development in performance theory and in particular the notion of performativity as it related to the retelling of history as performative; J. L. Austin's theory of linguistic performatives; and sociologist Erving Goffman's

theory of human behaviour and the daily performance of the social self in relation to others as a "negotiation involving complex intersubjective cues and behaviors" (Jones, 2012, p. 40). The next three decades produced critique and development of these ideas in the fields of anthropology, literature, philosophy and the visual and performing arts. Derrida, in his essay "Signature Event Context" (1977), argued a temporal dislocation and contingency of performance between a writer and intended audience, thereby challenging Austin's notion of 'iteration' and the possibility of any prior agreed meaning and intention. This lack of fidelity to source or origin of intention, Derrida argued, rendered the linguistic 'utterance' party to "an infinitely recurring system of iterations, characterised in each instance by their deferral and difference" (Jones, 2012, p. 33). Judith Butler, with "Gender Trouble" (1990) and "Bodies that Matter" (1993), extended Derrida's arguments to propose identity as performative and in particular that "the body becomes its gender through a series of acts which are renewed, revised, and consolidated through time" (Butler as cited in Jones, 2012, p. 41).

In the last fifteen years since the beginning of the 21st century, there has been significant and renewed interest in body art, performance art and live art – works that "activate the body or bodies temporally" for an audience either in witness to the act or through some form of mediated presentation such as a photograph or video installation (Jones, 2012, p. 12). Actions that explore and challenge notions of temporal consistency, as Kristine Stiles noted (1996), which in their indeterminate and ephemeral nature raise questions as to any causal relationship with their documentation and/or audience.

Amelia Jones refers to the theoretical arguments that continue to question ontological propositions of performance theory, and in particular whether the life of performance art and live art is finite and distinct from any subsequent iteration, or conversely, capable of extension and transformation through its (residual) association with a script, photograph or verbal testimony. Jones cites Peggy Phelan's claim that "performance's only life is in the present" and that its reproduction "betrays and lessens the promise of its own ontology" (Phelan as cited in Jones, 2012, p. 41), against arguments rejecting this ontological status in favour of other lives that might present new kinds of knowing, in multiple and viral forms that operate to "produce an event as performance" (Auslander as cited in Jones, 2012, p. 42).

Philip Auslander, in "The Performativity of Performance Documentation" (2006), considers the nature and purpose of performance documentation, it's relationship to the performance and what bearing this may have on the knowledge or understanding a viewer/spectator may take from the work. Auslander's understanding of the theoretical arguments to date identifies the performance documentation as revealing both documentary and theatrical features. The documentary form endorsing an ontological relationship with the performance event as a record that provides access to and authorisation of the prior event, and the document as theatrical, referencing a deliberate and staged performance for and with the camera, where the "space of the document thus becomes the only space in which the performance occurs" (p. 2).

Auslander refers to Chris Burden's *Shoot* (1971), where he had a friend shoot him with a gun in a gallery, as an example of both the documentary and theatrical styles. Firstly, the black and white photographs that were taken during and after the performance, suggest they speak to and argue an ontological relationship to the original event. Yet with Burden's deliberate staging of the event in studio together with strategic documentation and promotion of the images "for display in exhibitions and catalogs" (Jones as cited in Auslander, 2006, p. 3), Auslander argues that these images counterclaim for their own event performance and independent audience (2006).

Vito Acconci's *Photo-Piece* (1969) is another artwork Auslander refers to, that he believes "raises some trenchant questions about the relationship between performance and documentation" (2006, p. 4). The documentation of Acconci's *Photo-Piece* features 12 black and white photographs of a street in New York City, arranged in grid formation above his written instructions for the work. The instructions reveal Acconci's intention to walk in a continuous line along the street, taking photos every time he is unable to stop himself from blinking. Premised on failure and the impossibility of refraining from blinking, Auslander points to the 'performativity' of Acconci's documentation as produced without audience and as part of the artistic process. In this regard, Auslander relies on J.L. Austin's model of the performative utterance to argue that the act of their documentation serves not to describe but constitute the event (2006).

The performativity of the documentation, Auslander believes, does not rely on the corroboration of a prior informed audience. The photographs reveal that at the time they were taken "the street was deserted – there were no bystanders to serve

Free Elections (part I), 2011

Figure 6. *Free Elections (part I),* 2011, photo Layne Waerea

as audience", and that if there had been other people present "they would have had no way of understanding they were witnessing a performance" (p.4). Acconci's performance therefore, as presented in an exhibition or promotional material, only exists for "an audience to interpret and evaluate his actions as a performance through his documentation (p. 6). A relationship, Auslander believes, that may ignore any singular need for ontological authenticity, and instead draws relevance from both the documentation "as an indexical access point to a past event" and in its own right a performance "that directly reflects an artist's aesthetic project or sensibility" (p. 9).

Figure 7. *Free Elections (part II)*, 2011, photo Layne Waerea

Date: November, 2011

Time: Various

Instruction: To participate in the General Election debate and provide suitable and appropriate punctuation to election billboards

Duration: 12 minutes

Conditions: Election billboards and hoardings, small domestic stepladder, A4 white adhesive sheets, scissors, s 11A of the Summary Offences Act 1981 which prohibits anyone from damaging or defacing any building, structure, road, tree, property or other thing by writing, drawing, painting, spraying, etching or otherwise marking it without lawful authority and owner/occupier consent.

Description: To carry out a form of artistic, political and grammatical protest of the election billboards erected during the 2011 General Election.

Action: Election billboards do not try to be aesthetically pleasing. They might be political advertisements, but due to their temporary nature and the large number used, the primary function is to inform and there are few frills. Instead, registered political party members/supporters dutifully

assemble these wooden hoardings (in prime positions) that feature confident text, surrounded (usually) by primary colours and a large-scale headshot of a hopeful politician. The clichéd language is often grammatically challenged or just plain incomplete. For nine weeks prior to the election day, these structures take over vacant corner sections, adorn grass berms and fence lines, and with council permission and legislative compliance, engage in a one-way conversation, with only the single act of voting operating as an exchange. Once election day arrives however, any activities (including advertising) promoting the election of a candidate or party, or attacking a party or candidate, are prohibited up until 7 p.m.

One afternoon, in the week before the 2011 General Election, I notice these billboards at the end of my street. Figuring the National Party candidate has forgotten to finish his "Building a brighter future" statement, I decide to return later that night, join in the conversation and help him out. Six hours later I am wearing a dark windbreaker over a t-shirt, jeans and my favourite running shoes, and hiding in the dark behind one of the billboards. I wait until there is a break in traffic (and no headlights), to stick a single question mark at the end of the phrase.

Rewriting the law on disorderly behaviour for Queen's Birthday weekend, 2012

Figure 8. *Rewriting the law on disorderly behaviour for Queen's Birthday weekend,* 2012, video still Ziggy Lever

Date: Queen's Birthday weekend, June 2012

Time: 4.45 p.m.

Instruction: To copy the entire New Zealand Supreme Court judgement of *Valerie Morse v The Police* [2011] NZSC 45 as it relates to disorderly behaviour

Duration: 19 minutes, 38 seconds

Conditions: Queen's Birthday, green plastic garden chair, *Valerie Morse v The Police* [2011] NZSC 45, s 4(1) Summary Offences Act 1981 which states that "Every person is liable to a fine not exceeding $1,000 who, (a) in or within view of any public place, behaves in an offensive or disorderly manner."

Description: To practise and test the current legal threshold for disorderly behaviour in Aotearoa New Zealand as referred to in the Supreme Court decision of *Valerie Morse v The Police* [2011] NZSC 45.

Action: One Thursday, about 4.45 p.m., I am getting ready to wade into a small public pond, somewhere in South Auckland. There's a fountain in the middle of the pond and I plan to sit in a plastic garden chair under the fountain and rewrite the entire Supreme Court decision – *Valerie Morse v The Police* [2011] NZSC 45 – which provides the current legal status of what constitutes offensive and disorderly behaviour in Aotearoa New Zealand.[13]

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[13] The 2010 Supreme Court decision of *Valerie Morse v The Police* [2011] NZSC 45, provides a legal summary and authority as to the law relating to offensive behaviour, within the meaning of s 4(1)(a) of the Summary Offences Act 1981, which prohibits public behaviour that restricts and prevents the reasonable use of any public space by other persons. As one of the regulatory forces governing public behaviour, the Summary Offences Act 1981 considers criminal activity that registers at the lower end of the spectrum. Section 4(1)(a) of the Summary Offences Act 1981 reads as follows:

> 4 Offensive behaviour or language
> (1) Every person is liable to a fine not exceeding $1,000 who, -
> (a) In or within view of any public place, behaves in an offensive or disorderly manner;…

In the 2010 Supreme Court hearing of *Morse v The Police*, Morse was appealing an original conviction in the District Court under s 4(1)(a) of the Summary Offences Act 1981 of behaving in an offensive manner in a public place and two subsequent and unsuccessful appeals in the High Court and Court of Appeal. At the time of the offence the appellant was situated in the grounds of the Law School of Victoria University in Wellington, where she proceeded to burn the New Zealand flag within view of the people assembled at the Wellington Cenotaph for the dawn service to commemorate Anzac Day 2007. The protest actions of Morse and her friends were directed against the presence of New Zealand military in Afghanistan and involvement in other foreign conflicts. The District Court regarded offensive behaviour as behaviour capable of wounding feelings or arousing anger,

resentment, disgust or outrage in the mind of a reasonable person of the kind actually subjected to it in the circumstances. Whether or not there was a disturbance of public order was not deemed relevant to constitute behaviour that was offensive within the meaning of s 4(1)(a). And even though the appellant's behaviour was a form of expression protected by section 14 of the New Zealand Bill of Rights Act 1990, the District Court Judge concluded that it was offensive in the context of the Anzac Day dawn service. Both the High Court and Court of Appeal agreed with this decision, requiring Morse to appeal to the Supreme Court for further consideration.

In making their decision, the Supreme Court Justices referred to an earlier Supreme Court decision of *Allistair Patrick Brooker v The Police* SC 40/2005 [2007] NZSC 30 which provided an historical and legislative breakdown of the court decisions and interpretations to date, relating to s 4(1)(a) of the Summary Offences Act 1981. The 2007 decision involved Brooker – the appellant – with a guitar, singing a protest song on a grass berm (verge), outside the home of a local policewoman. Brooker's song of complaint was directed at what he believed had been an abuse of her powers as a police officer when carrying out an earlier search warrant on his property. The judge at the District Court level agreed with the policewoman and decided that Brooker's actions, in a residential zone, were offensive and legally unacceptable, and accordingly Brooker was convicted of disorderly behaviour. Brooker appealed as far as the Supreme Court on the basis that his behaviour was not "more than unmannerly", and that there had been no disturbance of public order – an important element recognised for conviction. It was at New Zealand's final and most expensive level of appeal that the Justices of the Supreme Court finally acknowledged that the decisions made in the lower courts to convict Brooker were wrong; and that his playing an unamplified guitar and singing a (protest) song on a grass berm in a residential area, during daylight hours, was NOT offensive behaviour within the meaning of this section. While Brooker's actions may have personally offended the policewoman, there was no evidence presented of any disturbance of public order. Accordingly Brooker's Supreme Court appeal was successful.

For Morse, the Justices of the Supreme Court took into account her protest was of short duration (she put out the small fire as soon as she was requested to do so by the police); that there was no evidence offered indicating the public service had been interrupted or difficult to hear due to the protest; and that even though the

This watery move is inspired by an earlier case, *Kinney v Police* [1971] NZLR 924, where the presiding judge, Sir Owen Woodhouse, decided that a young man who had waded up to his knees in an ornamental duck pond at a "daylight festival of amplified pop music" in Napier's Botanical Gardens had been guilty of disorderly behaviour. At paragraph 925 Justice Woodhouse provided a summary of those possibly affected by the young man's enthusiasm to enter the public pond, "Normally it is occupied only by goldfish and a few wild ducks, but on this occasion they were joined for a few brief moments by the appellant. The ducks seemed unperturbed – they remained on the surface of the water with scarcely an increase in their rate of stroke. The attitude of the goldfish is unknown."

I am wearing a rain jacket over a cotton t-shirt and tracksuit pants and I have decided to wear an old and favourite pair of sneakers into the pond. I am not sure whether the bottom of the pond will be muddy or concrete. I

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appellant's actions may have caused offense to the attending members of the public, they were still able to move about freely and experience the memorial service. Accordingly, the Justices of the Supreme Court were unanimous in deciding that the Courts below had not applied the correct legal meaning to the concept of offensive behaviour, in that the crucial factor of the impact on public order was missing from the analysis. On this basis, it was decided that the conviction entered against the appellant in the District Court could not stand and accordingly her appeal was allowed. As to whether Morse should be required to undergo a retrial with a correct application of the law, the Justices further agreed that given the time that had elapsed and the nature of the charge, the matter did not seem to warrant rehearing.

> "The question becomes whether the case should be remitted to the District Court for rehearing on the correct legal basis or whether the conviction should simply be set aside without any further order. I favour the latter course. The proceedings have already been on foot for four years and have been heard by all four Courts in our hierarchy. It would, in the circumstances, be inappropriate to require the appellant to undergo a retrial. I would therefore allow the appeal and simply set aside the conviction." [Tipping, J., para 74]

carry a plastic garden chair (lightweight) in one hand and I have a copy of the court judgement, yellow legal pad and pen in the other. I am happy to have an assistant who will operate as chief camera operator and 'lookout' for any people in the area. My assistant is crouching on the bank of the artificial pond with a video camera on a tripod, and he has my car keys in his pocket.

Stepping into the pond, the water level is about mid-calf and is freezing cold as I move slowly towards the fountain in the middle. I am not sure if there are any fish in the pond and I can't see or hear any ducks. The fountain spray pattern oscillates and I wait until it is out of range before I sit down in the garden chair directly underneath the fountain and begin writing. Sitting down in the plastic chair, the water level is now mid-waist and while my favourite sneakers provide some weight I have to resist moving around as the chair could easily tip over. It's getting dark and the water is still freezing cold so I write in large letters in order to see what I am doing. Every now and then when the fountain spray is directly overhead, my diligence is interrupted when what seems like a bucket of cold icy water descends on my head and legal pad. I try to time each burst of writing between downpours and I refuse to look up at my camera operator in case he has gone or there is someone else with him. Two loose-leaf pages from the court judgement end up in the pond and float away, and soon my pen refuses to work. I manage to complete only nine pages of the legal pad before I give up.

Free birthdays, 2012

Figure 9. *Free birthdays,* 2012, video still Ziggy Lever

Date: August 13, 2012

Time: 11.35 a.m.

Instruction: To give away money for free on my birthday

Duration: 24 minutes

Conditions: Free Birthdays sign, blue plastic ice cream container, $9 in coins, Auckland City Council No 20 – Public Places Bylaw 2008 which states that a person must hold an approval issued by the Auckland City Council when undertaking to carry out an event or when trading in public places.[14]

Description: To reconsider the practice of social charity on my birthday.

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[14] The Auckland City Council No 20 – Public Places Bylaw 2008 has now been replaced by the Trading and Events in Public Places Bylaw 2015 (Te Ture ā-Rohe Te Mahi Tauhokohoko me nga Takunetanga ki ngā Wāhi Marea 2015). Section 18 of the bylaw states that anyone carrying out any form of fundraising in public places must be registerd as a charity with the Department of Internal Affairs; be approved as a donee organisation with the Inland Revenue department; and have clearly indentified on any clothing or collection devices the appeal or organisation.

Action: Today is my birthday and I plan to give away money for free to anyone passing on the street. I am dressed for the city, with a grey cotton hoodie over a t-shirt, dress trousers and comfortable shoes. It's almost high noon on a weekday and I am positioned between two sets of traffic lights on a small traffic island near the art gallery. I hold a blue plastic container with $9.00 of loose change and a sign. My camera operator is positioned opposite (and out of sight) but ready to move if necessary.

As the lights change, pedestrians flow past from both sides. I shake the blue plastic container with the coins and hold the sign erect hoping someone might engage. Most people pass by ignoring me, but soon a woman I know from work sees me, hesitates and comes over. I explain what I am doing and after an initial reluctance she dips her hand in to take some coins, declaring it will be her bus money. On the next signal change a man in a suit challenges me with a glare as he passes by. I smile, say "happy birthday" and rattle the container, but he doesn't take up the offer. Not long after this another man passes by and even though he is smiling, doesn't stop at my suggestion to have a happy birthday. He must have had second thoughts though as he returns and then proceeds to empty several coins into the plastic container. I protest (quietly) but he has already moved on and across the street. Looking into the container I see that my initial float has now doubled, so realising this exercise has been a successful failure I decide to quit while I am ahead and go to lunch with my director of photography.[15]

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[15] Lisa Le Feuvre's edited book, "Failure" (2010), brings together contemporary voices on the notion of failure, and how it is that artists have defined, manipulated, and responded to moments of artistic 'imperfection'. Failure as a methodological tactic and outcome has the potential "to stumble on the unexpected", when artistic intentions that give way to either logistical error or viewer/participant/spectator disappointment (Le Feuvre, 2010, p. 12) can present opportunities for open experimentation and unforeseen questions – the answers to which may be capable of developing the ideas in the work (Le Feuvre, 2010).

Le Feuvre's compilation presents four distinct sections that address notions of dissatisfaction and rejection, and the impossibility of achieving artistic perfection; idealism and doubt, as contrasting starting points that acknowledge both a

resistance and resignation to the possibility of failure; error and incompetence, where failure as repetition highlights perseverance and an unyielding investigation as opposed to mere consequence; and experiment and progress which celebrates the "poetic potential and the satisfaction that non-achievement can nevertheless generate in the field of artistic creation" (Martins, 2015, para. 20).

Sara Jane Bailes proposes that "the discourse of failure as reflected in western art and literature seems to counter the very ideas of progress and victory that simultaneously dominate historical narratives" (2011, p. 2). In particular, failure as a space of alternative narrative challenges and "undermines the perceived stability of mainstream capitalist ideology's preferred aspiration to achieve, succeed, or win, and the accumulation of material wealth" as rationalised proof and justification for its continued dominance (2011, p. 2). In her book, "Performance Theatre and Poetics of Failure: Forced Entertainment, Goat Island, and Elevator Repair Service" (2011), Bailes refers to Ranciere and Heidegger's conceptions of poiesis, where poetics point to a "state of becoming" and a creative process that is never fixed, or capable of any final resolution (2011, p. 38). A poetics of failure that acknowledges and embraces 'difference' as reflective of the unexpected range of outcomes possible and direct challenge to the capitalist prescription of successful objectives and the value systems that support them (2011).

Theatre company Forced Entertainment champions the underachiever and the idea of the professional amateur "intentionally doing something badly", as playful challenge to the inequalities faced by those who fail to succeed or win in everyday life (2011, p. 93). Goat Island, on the other hand, makes a deliberate attempt to experiment with the impossible, revealing through their limitations, the everyday capitalist strategies engineered to reward some of the population at the expense of the other. Public and human awkwardness, as part of Elevator Repair Service's poetics of failure, confronts the power relations that exist within the theatre industry; providing a platform for those who have been rejected by the traditional fields of performance and any associated affirmations of success.

The element of doubt that is fundamental to live performance, "offers challenging ways to learn and know the potentialities of inefficiency within and across disciplines". Spaces marked by "difficulty, doubt and indeterminacy" acknowledge "what is unintelligible and what wants to be understood", and present learning opportunities which seek to extend boundaries of personal and performance knowledge (2011, p. 200). Rather than insisting on a preferred and

Free Sunday frost-skidding, 2015

Figure 10. *Free Sunday frost-skidding*, 2015, photo Layne Waerea

Date: June 23, 2015

Time: 8.20 a.m.

Instruction: To go frost-skidding on a local rugby field

Duration: 25 minutes

Conditions: Rugby field, frost and ss 4(1) and 11A of the Summary Offences Act 1981 as they relate to disorderly behaviour and the unauthorised 'marking' of private property respectively.

Description: To develop the skills required for a safe and graceful navigation of a rugby field covered in a thin coating of winter frost.

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successful outcome, the poetics of failure permit an on-going openness without "an ending or destination", and circumstances that invite and celebrate the incomplete, the unfinished and the unsuccessful (Adorno as cited in Bailes, 2011, p. 200).

Action: One Sunday morning during winter, I am up early to chase fog. I am wearing a sweatshirt and jeans and my sneakers have no tread. But it's colder than I anticipated and there is clearly no fog. Allegedly the ideal conditions for fog to form require clear skies at night, light winds (usually less than 5 knots) and humid air. When moist air cools below its dew point by contact with a cold land surface that is losing heat by radiation, then you get fog. Today the sky is indeed clear and a radiant blue, but I see my breath in front of me and driving past a sports ground I notice a fine layer of frost coating the local rugby field. Despite the cold temperature I wonder if I might be able to glide effortlessly across the field, like an ice skater, only wearing jeans and a pair of flat, wide-fitting shoes.

Lining up at midfield I set the camera on a tripod and think through what I will do: leading with my right leg, I push out to the right then to the left, with my arms helping to propel me forward. I imagine that as I gracefully gain speed I will be able to attempt an old softball feat – a standup or pop-up slide.[16] Starting out tentatively I soon realise that the hardened field does not encourage or enable anything graceful (and definitely not a pop-up slide) and I have to reduce my movements to small slippery skids, not out to the side but one in front of the other. Shuffling at this speed I am reminded of the cold and after about 30 minutes of skidding

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[16] In softball, a standup or pop-up slide is when you slide into a base and quickly bounce up off the ground to return to an upright position, ready to advance to the next base. Similar to the standard figure-four slide, you begin by sprinting to the base and when you are within three or four strides of the base you start to lower your body by bending your knees deeper with each stride, leaning back and shifting your weight to your left side. As you approach the base, you bend your left leg and tuck your left ankle behind your right knee, remembering to lean back so you can avoid 'sitting up.' As your right foot reaches the base first, it is important to use the momentum from your sprint to allow your foot to touch and push up off the base, with your left leg and foot helping to push you up off the ground at the same time. After completing the pop-up slide, you should now be in a position to advance to the next base if the opportunity arises (iSport, 2016).

I head back to my car noticing that a local police officer has stopped on the side of the road in his car, to watch.

the *chasing fog club* (Est. 2014)

Annual General Report

Figure 11. *the chasing fog club (Est. 2014): Margy and Layne (Cosgrove Road)*, 2014, video still Margaret Mehana [click here to view]

Date: March 18, 2014
Time: 7.20 a.m.
Instruction: To chase fog
Duration: 9 minutes
Conditions: Cosgrove Road, public park, fog, *chasing fog club* (Est. 2014) inaugural Awards.

Description: To chase fog in order to enter the inaugural *chasing fog club* (Est. 2014) Awards.

Action: It's Tuesday morning about 7.20 a.m. and I am driving to work. It's the middle of March, early autumn and I am hoping to chase fog this morning. It was a warm evening last night, followed by a sudden drop in temperature this morning. My friend Margy is sitting in the passenger seat and is holding and ready to use a digital SLR camera. As President of the *chasing fog club (*Est. 2014) I am keen to begin posting evidence of any fog-chasing attempts to the new *chasing fog club* (Est. 2014) blog. And Margy, as the newly-appointed Vice President is happy to help. I have asked her to operate the (video) camera as we drive along Cosgrove Road and that we

both refrain from talking while the video is recording. Margy has never used this camera before, nor has she chased fog, but I talk her through what is required and as President (and driver) I am very grateful for her assistance.

Sighting fog to our right, back from the road and settled behind a row of trees, I reduce the car's speed to allow Margy to get the camera into a steady position as we drive along parallel to the fog. Margy positions the camera on my left arm near my shoulder, and with the lens pointed towards the driver's window she starts recording. Keeping my arms steady on the steering wheel, my eyes (mostly) on the road ahead, we continue driving, in silence, along Cosgrove Road, into Mill Road and in the direction of Manukau. The fog appears every now and then from behind a tree or farm building. At one point I lower my side window to allow Margy to get a clearer view and whenever the car goes over a bump or rise in the road the green-tinted shield enters the video frame. With the window down, it's getting cold and traffic is starting to build up, so I break the silence with a firm, "Cut" and Margy turns the camera off.

As we come to the top of the hill, the gully at the bottom of a local park to the left is drenched in thick fog. I convince Margy to join me on a detour as I turn the car into the park and, on foot, head down the path in the direction of the fog. I am dressed for work so I resist the urge to run, and instead keep up a reasonable pace trying to keep the camera steady in my left hand, waist height. I watch as two cyclists emerge from the gully floor and begin their ascent to the park summit. The cyclists manage a pleasant "Good morning" and I keep walking further away from the car park and my friend. I know we are going to be a bit late for work, but this fog is so close. Another 20 metres along the path and suddenly there is heavy breathing behind and then passing me. I pause to hold the camera still as an early-morning runner heads down the gully path and into the morning mist.

Figure 12. *the chasing fog club (Est. 2014): Passing Layne*, 2015, video still Layne Waerea [click here to view]

Figure 13. *the chasing fog club (Est. 2014): t-shirt*, 2015, photo Layne Waerea

OFFICERS 2015

President: Layne Waerea

Vice President: Margaret Mehana

the *chasing fog club* (Est. 2014) committee: Layne Waerea, Margaret Mehana

the *chasing fog club* (Est. 2014) sub-committee: Layne Waerea, Margaret Mehana

Committee 2014–2015

Figure 14. *Bruce Pulman Park, Papakura*, 2014, video still Layne Waerea

AGENDA

1. Welcome
2. Apologies
3. Minutes of the 2014 Annual General Meeting
4. Matters arising from the 2014 AGM Minutes
5. President's Report
6. Election of Officers for 2015–2016
7. Notice of Motion
8. General Business
9. the *chasing fog club* (Est. 2014) Awards 2015
10. President's Report

1. Welcome

The President Layne Waerea welcomed Margaret Mehana to the 2015 Annual General Meeting. Layne announced the 2015 AGM open and introduced Margaret Mehana as Vice President.

2. Apologies

There were no apologies.

3. Minutes of the 2014 Annual General Meeting

Margaret explained that as the club was established in 2014 there were no minutes recorded for any previous AGM. It was moved Layne Waerea, seconded Margaret Mehana, "That the unavailability of Minutes of 2014 Annual General Meeting be taken as read." CARRIED

4. Matters Arising from the 2014 AGM Minutes

There were no matters arising from the 2014 AGM.

5. President's Report

It was moved Layne Waerea, seconded Margaret Mehana, "That the President's report be taken as read." CARRIED

Layne Waerea – Towards the end of the chasing fog season in 2015, Margaret Mehana mentioned out loud that this season would be her last. After due consideration Margaret Mehana has advised the committee that she has changed her mind. The President expressed great relief at this change of heart and reminded the committee of Margaret's true value to the club and that Margaret has been one of the hardest working Vice Presidents of all time.
Layne Waerea moved, Margaret Mehana seconded, "A vote of confidence and the committee to approve a bunch of flowers to say thanks for the many early mornings, chasing fog in low visibility and cold conditions, on her way to work during her year as Vice President." CARRIED
Layne Waerea – The club needs to focus on new ways to market new members.

6. Election of Officers 2015–2016

Nominations:
President
One nomination – Layne Waerea
As there was only one nomination for President, Layne Waerea was duly elected.
Vice President
One nomination – Margaret Mehana
As there was only one nomination for Vice President, Margaret Mehana was duly elected.

Margaret Mehana – Margaret thanked the President for the 2015 appointment as Vice President and requested to know if there were any opportunities for promotion in the near future.
The President, Layne Waerea, advised that it was probably too early to tell and that the Vice President's request be tabled for future consideration.

7. Notices of Motion

Motion One:

"That the range of colours for the *chasing fog club* (Est. 2014) t-shirt is extended to include a selection other than light and charcoal grey."
Layne Waerea – The President explained that the free t-shirt is available only in two shades of grey, light and dark. This motion is to extend the selection available to new members.
President called for vote on motion – Motion Carried.
Motion Two:
"That the committee arrange to cover all related Wi-Fi and Internet costs for maintaining the *chasing fog club* (Est. 2014) blog."
Layne Waerea – The President confirmed the *chasing fog club* (Est. 2014) is largely self-funded and that the attempts by the committee to locate any sources of public and/or private funding, so far, have been limited. This motion is to ensure the club stays 'connected' to a more energetic public via the latest form of social media and Internet communication. The *chasing fog club* (Est. 2014) blog will allow the club to continue to pursue ways to increase club membership.
President called for vote on motion – Show of hands – Motion Lost.
Motion Three:
"That the *chasing fog club* (Est. 2014) hold a raffle to raise funds."
Margaret Mehana – The Vice President reminded the committee that the *chasing fog club* (Est. 2014) is largely self-funded and that this raffle will allow the club to raise funds.
President called for vote on motion – Show of hands – Motion Carried.
Motion Four:
"That the committee revisit the previous motion of organising and running a *chasing fog club* (Est. 2014) boot camp as a way to generate new membership and to train all members in the legal art of chasing fog."
President called for vote on motion – Show of hands – Motion Carried.
Motion Five:
"That the 'Comments' feature on the *chasing fog club* (Est. 2014) blog be enabled to allow interested and genuine members of the public to comment on anything related to the club."
President called for vote on motion – Show of hands – Motion Lost.

8. General Business

The President commented on the future plans to hold a club raffle and advised the committee to be careful about raffle-generating systems that aren't always truly random. Layne said she had read somewhere that this type of raffle machine had recorded the same winning number in consecutive draws. Layne also mentioned that the habitual user of that raffle number was reported to be very happy.

Margaret asked whether the *chasing fog club* (Est. 2014) should apply for a Club Gaming Licence under the Gambling Act 2003. Layne told the committee that in 2013 the Department of Internal Affairs advised the public that there would be changes to the way clubs applied for their Gaming Licence. The President and Vice President confirmed they had no prior or current knowledge as to how to obtain a Club Gaming Licence.

Layne wanted to reassure aspiring club members that the possibility of a first-ever chasing fog boot camp was high on the list of decisions the new 2015–2016 committee would make. The President recalled that she had fielded at least two calls from members of the public seeking information about boot camp start-dates and costs. Due to this continued demand the committee has decided to set up a sub-committee to investigate the physical, financial and legal considerations for a *chasing fog club* (Est. 2014) boot camp.

9. the *chasing fog club* (Est. 2014) Awards – 2015

Layne Waerea – Background

The President reported that the inaugural *chasing fog club* (Est. 2014) Awards was an innovative way to celebrate and acknowledge the act of chasing fog, boost membership and to encourage new international goals for chasing fog. Layne explained that from March 1–April 30, 2015, new and existing members could submit photographic or video evidence of chasing fog, and if successful these images would be posted to the club blog and included for consideration in the club's fog chasing Awards, winners to be announced

end of May 2015. All new members would receive a free *chasing fog club* (Est. 2014) t-shirt. Details of the competition and application criteria were advertised on various social networks and media.

Layne Waerea – Summary

The club offered this fog chasing competition as a way for genuine members of the public to engage in the public act of chasing fog, on terms almost entirely at their own discretion. For the duration of the qualifying period, aspiring members emailed solo and accompanied efforts; one-offs and multiple attempts of what they believed represented the act of chasing fog. Judging the better efforts was a difficult task for the committee and eventually the executive decision was made to let the public decide. Blog statistics revealed how many times a member of the public viewed each post. The following awards were made based on the larger number of views made by the public. For legal purposes and in all instances the winners have been referred to by their first names only.

List of Awards for the *chasing fog club* (Est. 2014)

Best aesthetic effort at chasing fog

Best conceptual effort at chasing fog

Best legal effort at chasing fog

Best enduring effort at chasing fog (mist)

Best overall effort at chasing fog for 2015 (Best fog chaser)

Best aesthetic effort at chasing fog – Laura won this award with her efforts in Tuakau.

Figure 15. *Laura, Tuakau*, 2014, photo Laura Marsh

Best conceptual effort at chasing fog – Mat won this award by challenging the committee with the quiet and cryptic, "Am *I* chasing fog?"

Figure 16. *Mat, Braunschweig*, 2015, video still Mathew Cowan

Best legal effort at chasing fog – Harriet proved that her skills at operating a camera, motor vehicle, mobile phone and her legal rights all at the same time were second to none.

Figure 17. *Harriet, Northwestern Motorway*, 2015, photo Harriet Stockman

Best enduring effort at chasing fog (mist) – Margy and her record number of entries to the blog places her as the most enduring member of the club. Margy's efforts have been posted to the blog more than 57 times. She says "Murchison is notorious for mist, and one either loves it or hates it. We love it. We wake up three mornings out of five to mist, sometimes stealthy, river-sneaking, dragon-whisper mist…and sometimes rollicking, overflowing cappuccino mist that froths out of valleys and spills over roads."

Figure 18. *Margy, Tasman District*, 2015, photo Margy Pearl

Best overall effort at chasing fog for 2015 (Best fog chaser) – Paul for his award-winning *Fog film, Auckland* entry. Paul's entry deftly records moments during his chasing fog excursions (over a period of several weeks) with his family fog-chasing team. The committee was very impressed with Paul's entry, admiring the tension and technical freeness and a sense of spirit that attracted significant public appeal. Paul also demonstrated a knack for using social media to promote his entry. The entry *Paul: Fog film, Auckland*, received (by far) the most views from the public during the competition timeframes. At a special Awards ceremony last year in May, the committee was very happy to award Paul of Auckland with the title of Best fog chaser for 2015.

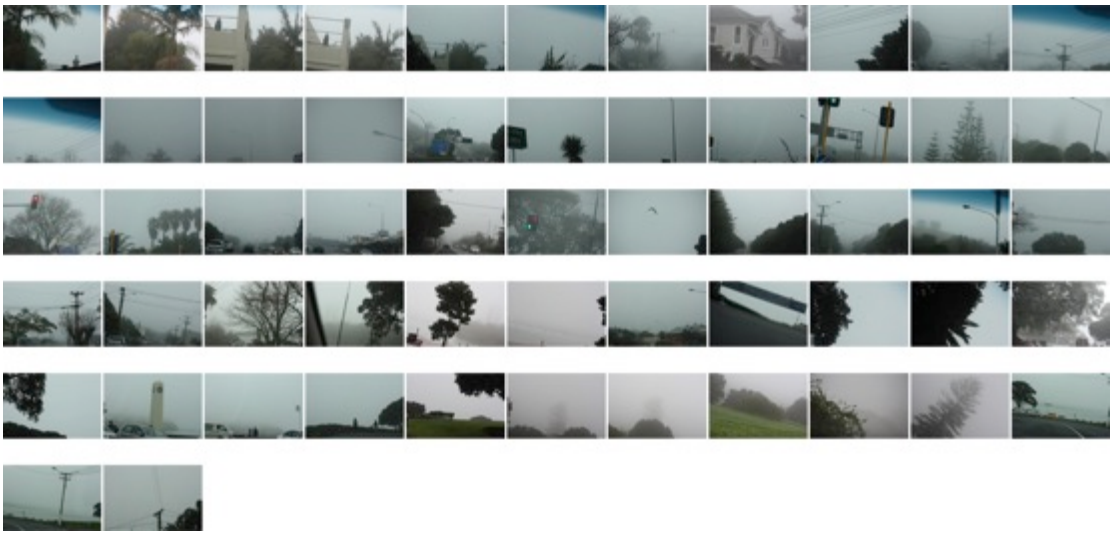

Figure 19. *Paul, Fog film, Auckland*, 2015, photo Paul Redmond

10. President's Report

Introduction

My name is Layne Waerea and I chase fog. As the President of the *chasing fog club* (Est. 2014) it gives me great pleasure to present my first Annual General Report.

This has been a busy first year for the *chasing fog club* (Est. 2014) committee and myself. In just over 12 months we have welcomed over 90 new members to the club, launched the club blog, carried out the inaugural *chasing fog club* (Est. 2014) Awards and have started plans to offer an off-season boot camp for all members to fine-tune their fog chasing skills and to learn about key socio-legal rules influencing the act of chasing fog in public spaces.

The *chasing fog club* (Est. 2014) encourages a form of public, artistic participation (on terms and conditions mostly at the discretion of any aspiring club member) that presents as both collaborative and un-cooperative, defies meteorological wisdom and challenges socio-legal expectations relating to orderly public behaviour. You have to chase fog. Over the past 12 months, aspiring members have sent details of their fog chasing efforts to chasingfog@gmail.com and when selected by the club committee, successful still images and video have been posted to the blog and new members have received a free *chasing fog club* (Est. 2014) t-shirt and full entry to the *chasing fog club* (Est. 2014) Awards. An open call that provides wardrobe

benefits and an online publication that considers how the act of chasing fog challenges preferred modes of public behaviour; and operates as a form of social agonism to present alternative ways of participating in the everyday.[17]

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[17] Chantal Mouffe, in "Artistic Activism and Agonistic Spaces", considers whether artistic practices are capable of playing a critical role in a capitalistic and consumerist society. Given the deliberate counter-culture nature of artistic critique and production that has been appropriated into its ever-increasing paradigms of consumer normalcy and conformity, Mouffe argues that artists must broaden the fields of intervention and enquiry, in order to activate and engage multiple and new social spaces. Mouffe contends that if art is to successfully critique the dominant capitalistic hegemonies of modern-day society, artists must acknowledge the political nature of working in the public realm as well as "the contingent nature of any type of social order" (2007, p.1).

The hegemonic nature of the current capitalist society, as argued by Mouffe, is manifest in a series of "practices attempting at establishing order in a context of contingency", diverse in nature and over time perceived as natural, taken for granted and lacking any alternative (2007, p. 2). Luc Boltanski and Eve Chiapello, in "The New Spirit of Capitalism", emphasise the degree to which artistic critique has become an integral element driving capitalist production, citing counter-culture strategies such as the search for an aesthetic that fosters authenticity, self-management and autonomy (2006). Boltanski and Chiapello point to capitalism's reliance on semiotic techniques and the need to create and keep creating different "modes of subjectivation" in order to survive. Advertising plays an important role in the production of specific goods and fantasy worlds, where to buy something is to enter into a specific world, to become part of an imagined community. To maintain its hegemony, the current capitalistic system needs to constantly mobilise people's desires and shape their identities. It is the construction of the very identity of the 'buy' that is at stake in the techniques of advertising and its relation to the production of subjectivity.

Felix Guattari, in his essay "Subjectivities: For Better or Worse", argues that the notion and production of subjectivity cannot be reduced to any singular articulation as a given or essential status, acknowledging instead its creative potential as an on-going and diverse processural development. By recognising its production as not limited to biological and social factors, Guattari proposes an

ethicoaesthetics that reflects the multiplicity – and complex negotiation – of social and political forces we encounter and absorb/reject as active participants in our own subjective and machinic production (1995). By being aware of the heterogeneous elements of subjectivation, and the influence our encounters with technology, institutions and art can play in the production of subjectivity, we can harness what Michel Foucault refers to as the positive potential of power to facilitate new modes of self-understanding and self-development and the discovery of subjective enterprises not yet realised or imagined (as cited in Lacombe, 1996).

Mouffe proposes that artistic and cultural practices, while integral to capitalistic productivity, can still offer critique and dissent by recognising and embracing an "agonistic conception" with regards these features of the capitalist machine and the nature and site of interventions in public spaces. Mouffe asserts:

> In the current stage of post-fordist capitalism, the cultural terrain occupies a strategic position because the production of affects plays an increasingly important role. Being vital to the process of capital valorization, this terrain should constitute a crucial site of intervention for counter-hegemonic practices." (2013, p. XIV).

For Brian Massumi, in "The Autonomy of Affect", affect is a non-conscious experience of intensity that registers and reacts in and on the body. Distinct from an emotion or a feeling, an affect speaks to a bodily experience that resists formal qualification in form, understanding and expression, and exists always prior to or outside of consciousness (1996). Affect, as Eric Shouse writes in "Feeling, Emotion, Affect", is the body's way of preparing itself for action in a given circumstance by adding a quantitative dimension of intensity to the quality of an experience" (2005, para. 5).

Contemporary art, since Derrida's reconfiguring of "the discourse of aesthetics as a discourse of/on representation", has once again embraced the role of affect within art, recognising art as a bundle of affects or "as Deleuze and Guattari would say, a bloc of sensations, waiting to be reactivated by a spectator or participant" (O'Sullivan, 2001, p. 26). How we perceive art, depends on our understanding of the dynamics of movement and our capability, in our viewing of movement, in what first looks like a fixed form. Movement in the viewing of a sealed tin can for example, that may encompass a past, a present and a future in terms of a temporal

mobility, let alone a myriad of other movements. Massumi refers to this as "movement we can't actually see but can't not see either", an abstraction that supplements the actual form of the art object, and a double vision that allows the viewer to see "*with* and *through* the actual form" (2008, p. 3, original emphasis). The form of the object, for Massumi, presents "a whole set of active, embodied potentials", that may translate into a sense of movement or a sense of touch as our bodies try and relate to what it is we are experiencing at that particular moment in time.

The affect, as a creative event or happening, activates the body and a virtual space of potential, creating what Massumi refers to as a "semblance" or "place-holder in present perception of a potential "more" to life" (2008, p. 10). While experiencing the art object, a viewer can also experience "what it's like to experience its presence", and a perception that anticipates something more to come. The object-thing as viewed over time, can enact variations of itself, the range of which offering access in the present tense to a "future variation, and at the same time a Doppler for variations past" (p. 10). The object viewed and understood as a "situation" has the potential to open up and reveal not just the more explicit modes of interaction and understanding but also the lived relations that the artwork may afford (p. 13).

Alfredo Jaar is a 'project artist' whose works respond to specific issues in different and specific public spaces. Chantal Mouffe refers to Jaar's counter-hegemonic interventions as attempts to disarticulate the 'common sense', in public spaces where the "dominant hegemony is established and reproduced, contributing in this way to the development of counter-hegemonic moves" (2013, p. 94). In *Questions Questions* (2008), Jaar's public intervention in Milan was a response and challenge to the Italian Government's control of public space, and involved the placement of placards on billboards and subways with questions such as "Does politics need culture?" and "Is the intellectual useless?" as a way to stimulate and restore the meaning of the public space as one capable of resistance and free speech (Mouffe, 2013, p. 95). Mouffe writes that rather than foster a form of art that believes in "giving people lessons about the state of the world" so they will feel moved to respond or participate, "Jaar aims at moving people to act by creating in them a desire for change" (2013, p. 95). Jaar's mode of practice is to set in motion a process that he hopes may give people the opportunity to question any unexamined

Brief history of the club

The *chasing fog club* (Est. 2014) was launched in March 2014 and references an earlier and unsuccessful attempt at chasing fog in 2012 [Figure 1]. Realising that I still had work to do, the formation of the *chasing fog club* (Est. 2014) was a natural and necessary step in order that I may improve my

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beliefs; a personal awakening that may allow for personal reflection and consideration of how their lives could be different.

Mouffe identifies as important Jaar's understanding of the role of affect in the construction of new forms of subjectivity, where engaging with people at the affective level can induce emotional responses that allow us to see things differently and to consider alternative possibilities. Mouffe believes that Jaar's interventions are designed to "bring about, through aesthetic means, new modes of identification" that can present critique, reason and resistance to the dominant institutional hegemonies operating in the public realm (2013, p. 97).

Jaar's work *Skoghall Konsthall* (2000) was carried out in the Swedish city of Skoghall, known for being the 'paper mill town'. Jarr wanted to explore the idea that when there is something missing in your life it can inspire a desire for change. Recognising that the city did not have any public space to hold an exhibition, Jaar collaborated with the major paper mill to design and construct a temporary art gallery called the Skoghall Konsthall, made entirely out of paper. The first and last exhibition was to feature local and emerging artists and 24 hours after the opening, as part of Jaar's advertised plan, the paper construction was to be burnt down. This prompted a protest from a group of citizens who asked that the building be saved or that the materials be recycled and put to another use. While Jaar was willing to hear and consider their reaction, ultimately his final decision to torch the paper building was because he did not want to impose on a community an institution that they had never fought for.

Over time and as a result of Jaar's project, local residents began to recognise that their town was lacking something and that it could be different. And while certainly not in the 'heat of the moment', seven years later the city invited Jaar back to design and help build the new Skoghall Konsthall. A decision, Mouffe argues, the city had eventually been able to articulate as a result of the original project (Mouffe, 2013).

own skills and at the same time encourage others to experience the fun and challenge of chasing fog.[18]

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[18] According to Mouffe, the public space when seen in relation to the agonistic model "is a battle ground where different hegemonic projects are confronted, without any possibility of final reconciliation" (2005, p. 3). A multiplicity of spaces which in their diversity of articulation offer no unifying principle of participation, and instead, attempt to upset or overturn the existing dominant hegemony through an active assertion of the different points of view capable. In this respect, the expectation of reaching a Habermasean rational consensus is a "conceptual impossibility" as it would be prefaced on "a consensus without exclusion" and a result the agonistic approach contends is unachievable (p. 4).

A reconnection to or reinvigoration of the uniqueness of a particular site or space in "establishing authenticity of meaning, memory, histories and identities" is evident in socially engaged site-specific art to emerge since the late 1990s (Kwon, 2002, p. 157). In "One place after Another: Site-Specific Art and Locational Identity", Miwon Kwon locates this "differential function" as a return to and distinction from earlier manifestations of anti-commercial site-specific art practices in the late 1960s and early 1970s. But a production of difference regarding the particularities of space, and "the recent nomadism of artists" able to travel to and re-imagine multiple sites, that Kwon argues, raises critical questions as to how this recent practice is merely a reflection of the driving force of capitalism to accentuate and profit from a desire for spatial authenticity through difference (2002, p. 157).

The art of the encounter has been at the centre of socially-engaged modes of site-specific art production, where artists have collaborated with practitioners from multiple disciplines to critique the dominant hegemonies. This mode of production has drawn criticism and disagreement as to its relative function and aesthetic value within a contemporary art world and market, with art critics and authors Claire Bishop and Grant Kester taking different and opposing positions on the aesthetic and political nature of art that is socially engaged. While Bishop argues for the autonomy of the artist as integral to the aesthetic and critical function of collaborative art, Kester believes the ethics of an equality of participation – in order to engage with non-art people – is what gives the collaborative nature of socially engaged art production its political edge.

In “Artificial Hells: Participatory Art and the Politics of Spectatorship”, Claire Bishop refers to the increase and re-turn of the socially engaged and participatory art practices employing methods of artistic engagement reminiscent of early avant-garde movements from the Russian Constructivists, the nihilistic Dadaists, through to the post-war critique and artistic turnaround of capitalism carried out by Situationist International. Renouncing the consumption and spectatorship brought about by capitalism, participatory and collaborative artworks invite and activate the viewer to rethink traditional relationships to the art object, where its collective production challenges artistic authorship and provides an alternative process with different outcomes to the prevailing Modernist, aesthetic experience of art. Preferring the autonomy of the artist and art object as having political potency, Bishop is keen to question whether the counter-aesthetic and attention given to the process of socially-engaged, dialogic or discursive art practices, can adequately contribute to the discourse of contemporary art or even converse with other disciplines or paradigms in today’s societies (2012).

Art historian and curator Grant Kester, in “The Device Laid Bare: On Some Limitations in Current Art Criticism” (2013), discusses a series of artists whose works are primarily performative and process-based with an emphasis on context rather than content. Workshops, discussions and other modes of co-production highlight the importance of dialogue as part of the artistic process and an aesthetic that questions and challenges traditional understandings of contemporary art and other systems of knowledge in the public sphere. In contrast to Bishop, Kester goes on to argue that the changes in conventional relationships between art and the social, and the artist and viewer, have allowed and fostered new relationships between artists and practitioners in other fields of knowledge production. New relationships, he believes, which require critics and historians to re-evaluate the methodologies used to critique contemporary art where new ways of thinking through action and participation point to the broader aesthetic experience offered by socially produced art.

Dave Beech, “In search of new art publics”’ (2010), argues that instead of believing in and making art for new or undiscovered art publics, that we acknowledge the need to re-evaluate what already exists, adopting a “new qualitative approach to what it is and how it is that artists engage with artworks and art making in the public realm.” If art is to have any revolutionary function, it

must be "wholeheartedly committed to the task of transforming its 'empirical' public into a new public – a really new public" (p. 17). Central to this notion of a (re)newed public, Beech believes, is the broadening of the aesthetic experience of art – an experience that no longer privileges the individual viewer and art object – and instead presents the art encounter, and the promise of shared participation as capable of this transformative task. In doing so this would encourage a shift in focus from the individual to the collective effort, subordinating the artist/author voice and opening "the artist up to a multitude of previously unavailable roles, discourse and modes of address" (p. 22).

For Beech, these new inter-human relational artworks have no viewer. Contemporary practices that engage "concepts of relationality, participation, collaboration and performativity" produce/provoke social relations where the participants are not viewers, but a "subject expanded with a range of new activities and new styles of engagement". The true value of the displacement of the viewer, Beech believes, is only attainable if we think beyond previously conceived ideas of participation. For Beech, Kester's "Conversation Pieces" (2004), focuses not on the dialogic structure of the artworks but more on the dialogical encounters with communities, emphasising the contrast between a "patronising form of tourism" and "a more reciprocal process of dialogue and mutual education" (p. 24). Kester proposes a new role for the artist – "one defined in terms of openness, of listening…intersubjective vulnerability relative to the viewer or collaborator" (Kester as cited in Beech, 2010). By focusing on the conduct of the artist in relation to the communities he or she encounters. Beech argues however, that Kester's model defaults to a moralising analysis, and relies heavily on social models and techniques derived from a political context. Beech asks, why restrict the art of encounter to only political forms of organisation and communication?

Beech argues that 'participation', as with the art of encounter, is often mistakenly thought of as being able to resolve issues with prior forms of cultural engagement, "from the elitism of the aesthete to the passivity of the spectator, and from the compliance of the observer to the distance of the onlooker." Occupying a seemingly benign and subsumed position, the participant becomes unified with the 'whole', engaged in a process of creating new social relations and subjectivities. A type of participation, Beech warns, that is capable of exploitation when used to perpetuate existing social and power relations. Miwon Kwon, in "One Place After Another" (2002), argues against the rhetoric of a participation that promises the

democratisation of art with "pluralist activity, multicultural representation and consensus-building that shifts the focus from the artist to the audience, from object to process, from production to reception, and emphasises the importance of a direct, apparently unmediated engagement with particular audience groups" (p.107).

Just because an artistic practice proclaims political intent doesn't mean it will succeed. According to Massumi, their subsequent failure may not be a result of the political content but the dynamic form of the artwork. Massumi elaborates:

> An art practice can be aesthetically political, inventive of new life's potential, of new potential forms of life, and have no overtly political content. […] When it is, it's because care has been taken not only to make sense but to make semblance, to make the making-sense experientially appear in a dynamic form that takes a potential-pushing distance on its own particular content. (2008, p. 15).

Natalie Jeremijenko is an artist whose work attempts to engage participation through environmental issues and the nature of human-animal relations. In one project, "the ideational content was doubled by a perceptual becoming", where the participants are encouraged to perceive themselves like a fish. Massumi explains that the "thinking-feeling-like-a-fish was a semblance in the situation of the situation, pointing beyond it" (p. 15). Participants were offered an experience that could unveil new thoughts, sensations, that neither the participants not the artist had foreseen; and an aesthetic experience that can realise the creative potential and "distinctive lived quality" of the interaction (2008, p. 15).

The critique of participation, within the art world, must be located within the differential field of culture's social relations, as a particular form or style of cultural engagement with its own constraints, problems and subjectivities. Typically, the participant is not cast as an agent of critique or subversion but rather one who is invited to accept the parameters of the art project. To participate in a project is to enter into a pre-established social environment that casts the participant in a very specific role. The critique of participation must move beyond a simple binary logic, which opposes participation with exclusion and passivity. If participation entails its own forms of limitations on the participant then the simple binary needs to be replaced with a constellation of overlapping economies of agency, control, self-determination and power. Within such a constellation,

Club membership

A highlight of the year ending 31 March 2015 has been the growth in domestic and international membership. At the time of writing, the *chasing fog club* (Est. 2014) features members chasing fog in New Zealand, Australia, the United Kingdom, the USA, Sweden, Germany, Japan and the United Arab Emirates. Evidence of the successful attempts is available on the free blog at chasingfogclub.wordpress.com. The committee has kept a good eye on all new applications and would like to continue to encourage members of the public to join. On behalf of the *chasing fog club* (Est. 2014) I would like to extend a warm thank you for your valuable and consistent efforts to date.

the *chasing fog club* (Est. 2014) t-shirt

Following complaints regarding the limited range of colours to choose from with the free t-shirts – light and dark grey – the committee has agreed to extend this selection to include navy and black. The club will endeavour to provide a suitable range of colours, but in any event reserves the right to do so depending on stock and funding availability.

the *chasing fog club* (Est. 2014) Awards

The club's decision to announce on social media the very first *chasing fog club* (Est. 2014) Awards, was directly related to the unprecedented increase in membership numbers. A deadline for evidence of fog chasing was set right in the middle of autumn, triggering sharp spikes in blog statistics, eleventh-hour t-shirt printing and a steady increase in club numbers. Participants exercised a freedom as to when they chased fog, where and for how long, the only requirement being that they send lens-based evidence of any fog-chasing effort to the committee (President and Vice President) who would then consider each application and post all successful attempts to the blog.

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participants take their place alongside the viewer, observer, spectator, consumer and the whole panoply of culture's modes of subjectivity and their social relations (Beech, 2010).

Individual acts varied in effort and methods of presentation, and on most occasions applications to join were successful. New club members were sent a free t-shirt and encouraged to keep chasing fog. Actual conditions specifying the criteria for successful selection were never identified, the committee wishing to keep this information confidential as well as not wanting to limit and restrict any fog chasing possibility.

Weather conditions, technique and legal consequences (boot camp)

For the sole purpose of chasing fog, engaging in social spaces requires an awareness of the socio-legal and cultural constraints capable of defining the space at that time. As a former practitioner and lecturer in law, I would like to assure all existing and future members that successful membership is not about breaking the law. The *chasing fog club* (Est. 2014) offers a form of participation with a clear intention to engage and challenge socio-legal and meteorological expectations. Actions that might assert and test boundary thresholds, or as intentional non-participation of the full extent of the rules, question and exploit any legal and social ambiguities that can exist in the everyday. Accordingly, the club is developing plans to offer workshops relating to understanding the ideal weather conditions required for (chasing) fog and a few of the legal consequences that might result. The boot camp (to be advertised at a later date) will include a visit from a weather enthusiast, several senior club members, and a local lawyer with a PowerPoint presentation on the relevant legal rules club members should be aware of.

Conclusion

As president of the club, I acknowledge that our participation in the public sphere helps shape this domain. Chasing fog as an action and metaphor seeks to enact counter-spaces as both a challenge to these rules promoting preferred public behaviour, and as alternative forms of spatial arrangement that derive inspiration and benefit from the everyday forces directing our public participation. The *chasing fog club* (Est. 2014) offers a form of membership, a sense of belonging and a free t-shirt; and in turn relies on the

generosity and wherewithal of any member of the public to engage, in any number of social spaces, in the act of chasing fog.

Every photographic or video post to the club blog does well to disguise any recent memory of getting up early, in colder damp temperatures to go running across a boggy, unstable field. Digital files that provide public evidence of club membership and participation that could be subject to social and/or legal scrutiny. As current or future club members, you need to be able to weather the conditions and above all to be prepared. Fog creeps up on you, and disappears even faster. So if you suddenly find yourself in or within a public place, wearing sensible shoes, a camera ready and wondering whether chasing fog might get you into any trouble – think about that later – or at least after you take a photograph and email the club. Until such time, I wish you all the best for the coming season.

Layne Waerea
President of the *chasing fog club* (Est. 2014)

Free light bulbs and free air

Free promises

Figure 20. *Free Promises,* 2013, photo Monique Redmond

Date: July 21, 2013

Time: 12 noon

Instruction: To give away free promises to the public as part of the 5th Auckland Triennial – *If you were to live here…*

Conditions: Free Promises sign, free promises, Auckland Art Gallery.

Description: As part of the 5th Auckland Triennial, 2013, *Transforming Topographies* was a collaborative art project with the Auckland Art Gallery and students and staff from AUT University, University of Auckland and

Unitec. For the month of July, AUT students from the Schools of Visual Art and Spatial Design inhabited a gallery during opening hours in the Auckland Art Gallery, providing a working and participatory laboratory that featured a variety of projects responding to the Triennial theme of how "to live here".[19] *Free Promises* was a service offering free promises to the general public, scheduled at 12 noon, outside the main entrance to the gallery (for one hour,) for two days of the exhibition.

Action: I always feel nervous uttering the words, "I promise". Whether as a preface to some future undertaking or assurance of a previous pledge, these words assert a personal confidence I don't always know I will have the wherewithal to sustain. And as much as I like the idea of following through on any verbal or written guarantee, it seems foolish to deny the possibility that circumstances may change, and notwithstanding any prior intention, I might find myself unable or unwilling to consummate the earlier commitment. This future uncertainty reminds me that any altruistic gesture is always subject to disappointment and the likelihood of whatever was promised remaining underperformed, unfulfilled, or even undesired.

On the morning of the second scheduled day to give away free promises, I am at home getting ready. I accidentally missed the first session the previous day, as I got my days wrong. I only realised this when I received a text 15 minutes after 12 noon, from one of the organisers, asking where I was. Today, though, it's a beautiful winter's day and I am not sure whether I should wear my black calf-length coat or chocolate brown puffer jacket. I decide on the coat, a woollen jumper, causal trousers and a pair of running shoes. With about two hours to go, I am suddenly beset by the realisation

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[19] The 5th Auckland Triennial invited artists and the general public to identify and question the intimate positioning of locale as both a physical home and licence to participate in its on-going evolution. *If you were to live here…* aimed to "provoke and promote discussion about how contemporary art influences urban transformation and creates active, powerful, accidental opportunities for interaction between artists, visitors and Aucklanders" (Hanru, 2013).

that this project might fail; that I may have to make obligations I am not interested in completing and furthermore, deal with a dissatisfied public as to the covenants I am prepared to offer. It's also really cold and I now have no intention of standing outside the Auckland Art Gallery entrance for the times advertised. Deciding not to go ahead with the project, I send a text to one of the exhibition/project organisers outlining my new intentions.

Most of the time I enjoy shopping. If I am planning to buy something I really want, say food, clothing, art materials or on occasion a new lawnmower, I usually enjoy the act of the transaction. From the selection of the product in store or online, the artificial yet upbeat conversation with a shop assistant, through to the self-satisfying finality and relief as a credit card transaction is approved – shopping is generally fun. But if things don't go according to what I imagine and hope the shopping experience will be, and I have to match the enthusiastic chitchat from a salesperson, ask for a larger size while shopping for clothes, or anticipate the feeling of impending public shame with any transaction decline, it can be tedious and even embarrassing.

The sole purpose of shopping, I believe, is to enact the promise of a better (and brighter) future. If I accept the advertiser's challenge, I *will* enjoy eating this packet of cereal before June 2017, I *will* look younger with this hair-colour fix, and reduced-effort lawn maintenance is within my reach if I just move up a price range. Shopping tactics come in handy and are empowering; accepting anything that's free, remembering to buy two of anything (that everyone agrees) you look really, really good in, and when product promises remain unfulfilled, recognising the best time to assert and enforce your rights as a consumer.[20]

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[20] New Zealand consumer protection legislation operates to guide and sanction market behaviour when trading in the public realm. The Fair Trading Act 1986 (FT Act) makes it illegal for anyone in trade to "mislead customers, give false information, or use unfair trading practices" (Commerce Commission, 2014). The Consumer Guarantees Act 1993 (CG Act) identifies the guarantees that are required by law with respect to goods and services, of the types as identified under the CG Act, that are normally acquired for personal use (Commerce Commission, 2014). When an advertising campaign misleads, or a product or service does not live up to promised expectations, a competing retailer and/or consumer (and even a potential consumer) can engage the legal processes to make public the illegality and misleading intent of any business promotion and to recover any loss (Miller, 2014). In spite of these regulatory guidelines however, retailers continue to incur penalties for pushing boundaries in terms of pricing irregularities, ambiguous fine

Occasionally I am loyal, I have cards to prove it. But it's a confused and fair-weather loyalty; on one hand I convince myself I am not persuaded by any rhetoric employed by advertising agencies, but in reality many of my shopping choices are still heavily influenced by the price, colour and any purchase incentives. I choose generic brands before eco-friendly, the already-assembled demonstration model, and if there is anything free in the mix I'm already tempted. If I am loyal, it's to the inherent promise of something better or just something more.

But I really don't like buying light bulbs. Actually I dislike buying anything out of necessity, as it's just no fun, and having to replace a light bulb does not inspire me to go shopping. I don't *want* to buy these items, and

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print and product/service underperformance, suggesting some suppliers and/or manufacturers might be willing to take a risk, knowing that only if 'caught in the act' by an informed shopper or competitor, will they have to withstand a penalty and any accompanying bad publicity.

Over the last three years, changes have been made to the Fair Trading Act 1986 in order to better reflect, "the commercial, and often digital, world New Zealanders operate in" (Commerce Commission, 2016). The Commerce Commission, as New Zealand's competition enforcement and regulatory agency, outlined on its website that these changes have extended the Fair Trading Act's ambit to include e-commerce as well as strengthening the Commission's powers to investigate and to impose penalties for any breach (2016).

Two of the key provisions of the amended legislation relate to substantiation and online selling, where – under s 12A(2) – a person, in trade, must not make unsubstantiated representations (Fair Trading Act 1986), and when selling online, to ensure that their identification as a trader is clear, and to extend consumer rights previously unavailable under the Consumer Guarantees Act 1993 for sales by auction or tender (Commerce Commission, 2016).

Penalties and remedies available under the FT Act invoke both criminal and civil sanctions and can include a fine not exceeding $600,000 for a company or $200,000 for an individual, injunctive relief to prevent the continuation of any misleading campaign and a range of other orders to disclose correct information or to vary or cancel trading contracts (ss 40–43).

as objects I find them boring and incredibly smug. At my local supermarket, they can be found some distance from the entrance, in an unfamiliar aisle between the electrical goods and a limited range of entertainment DVDs. Seriously plain packaging, unbothered by a Best Before Date, where each flimsy carton features a series of numbers in a large font that should mean something but in quiet reality boasts *I don't care. You need me.*

And it's true I do need them, at least two. Whenever another filament fades, I usually test the light switch a couple of times before moving to a brighter part of the house to continue what I am doing. Ignoring any obvious inconvenience, I congratulate myself on my dogged refusal to purchase another 60-watt incandescent bulb anytime soon, believing this strategy is actually saving money *and* energy and therefore of benefit to me and a supreme act of environmental friendliness.

Typically, your general-purpose (and cheapest) incandescent light bulb, if used approximately 2.7 hours a day, is supposed to last the equivalent of 1000 hours. It says so on the box. And if I ignore the arbitrary nature of this claim, that's enough artificial light for approximately three hours every day/night over 12 months, with the fine print guaranteeing customer satisfaction. The advertised guarantee of customer satisfaction on the light bulb carton, while reassuring in a printed form, promises no more than what is already expected by law.

If a light bulb does prematurely stop burning, then as a consumer I can rely on a legal framework to find a suitable remedy. Hypothetically, I could argue that this light bulb is of an unacceptable quality as it is no longer able to perform its primary purpose for a reasonable time and furthermore contradicts the representations made on the packaging as to the number of hours of burn time. Had I known this in advance I would not have bought this particular light bulb and therefore believe I have a strong argument for either a new one or the return of my $1.09.[21]

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[21] The Consumer Guarantees Act 1993 guarantees that goods should be of acceptable quality; be fit for their purpose; match their description; match the sample or demonstration model; be sold by a trader who has the right to sell them

In middle-class Aotearoa New Zealand, electricity is an everyday necessity. Electricity allows me to cook and refrigerate food, heat and use water, operate digital (and a few analogue) devices and light up dark spaces. For some it also provides access to emergency and life-saving health equipment. For this service I get billed once a month and I am entitled to a 20% discount if I make an early payment. Without an oven, fridge, hot water cylinder, washing machine, light bulbs and fittings however, I would not be able to consume and be charged for this service. While it is possible to own a refrigerator or water heater for many years, it is common to have to replace a light bulb.

The range of light bulbs available includes the (cheap) incandescent, (more expensive) compact fluorescent and (generally most expensive) LED (light-emitting diode). Targeting an ecologically aware consumer market, manufacturers justify the LED's higher price by focusing on the bulb being mercury-free, and capable of longer burn times and greater light density. But I think light bulb makers and electricity providers could do better. It is a fact that incandescent light bulbs can last longer than even the optimistic 15 years life/light span of an LED bulb, with the best known example first installed in 1901 and still burning continuously today at a fire station in

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and be supported by available spare parts and repair facilities (ss 5–13). Section 2 of the CG Act defines 'goods' as including,

"(i) goods attached to, or incorporated in, any real or personal property:
(ii) ships, aircraft, and vehicles:
(iii) animals, including fish:
(iv) minerals, trees, and crops, whether on, under, or attached to land or not:
(v) non-reticulated gas:
(vi) to avoid doubt, water and computer software;" (1993).

With respect to services, they must be provided with reasonable care and skill; be fit for the purpose; and provided within a reasonable time and at a reasonable price (ss 28–31). As the CG Act only applies if you buy goods and services from sellers "in trade" (s 2), it therefore does not apply to private sales. Civil remedies available under the CG Act where suppliers have failed to meet the guarantees can include repairs, a replacement or, with serious breaches, a refund and/or cancellation of the service contract (ss 18, 32).

California, USA.[22] Manufacturers, I might argue, rely on a general ignorance and consumer apathy and offer no incentive to discontinue this reliance upon a disposable and therefore inherently breakable and environmentally harmful object. Without a functioning light bulb, however, I cannot be billed for electricity services related to their use. Perhaps the laws relating to acceptable quality as to the supply of electricity[23] could be used to encourage a different and mutually beneficial service and business environment. Where enduring product performance (i.e. as similar to a water heater and refrigerator), is accepted – and rewarded – as part of the contracted supply and service of this everyday necessity. A supply and service that meets customer expectations and satisfies the commercial and legal promises made.

So I have an idea that might encourage and over time ensure the production of longer-life light bulbs: a plan that accentuates the service of the supply of electricity, where the longer lasting and durable light bulb is considered integral to the provision of that service. If there were a legal requirement for electricity retailers and homeowners to provide

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[22] The Livermore Centennial Light Bulb, at Fire Station #6, Livermore, California, USA, has been burning since it was installed in 1901. According to the Guinness World Records, "as of 2010, the hand-blown bulb has operated at about 4 watts, and has been left on 24 hours a day in order to provide night illumination of the fire engines. There has only been one break in its operation when it was removed from one fire station and fitted in another." The Guinness World Records website notes that as at June 27, 2015, the bulb had been burning for more than 1,000,000,000 hours. (Guinness Book of Records, 2016).

[23] In 2014, the New Zealand Government enacted an amendment to section 7 of the Consumer Guarantees Act 1986. This amendment stated "there is a guarantee that the supply of gas by a gas retailer, and the supply of electricity by an electricity retailer, to a consumer is of an acceptable quality." This amendment provides that the supply of electricity must be safe, reliable and that the quality is suitable for consistent use. While s 7B makes clear electricity is neither a good nor, in its supply, a service (as defined by the CG Act), legal redress is now available which recognises the importance of a quality daily supply.

environmentally friendly light bulbs as part of this necessary service, this might encourage development of a product that endures. A Best Before Date that boasts of its longevity, and when offered 'free' as part of any provision of electricity, has the power to persuade and attract new customers as well as rewarding the loyal and reducing negative consequences for the environment.

When houses are built and first connected to an electricity supply, longer-life light bulbs could be installed and included in the service provided by the electricity retailer. Existing homeowners (and landlords) would be expected to install (and replace) light bulbs that are regulation compliant. This would ensure access to an important resource and meet the minimum standards for basic living offered in any agreement for sale and purchase or residential tenancy agreement, and be recognised as satisfying a legal obligation and guarantee as to the acceptable quality in the supply of electricity. With consumer laws protecting agreements that include the supply of services and free goods (as a fixed part of the package), electricity retailers would be expected to replace faulty or expired bulbs, thus encouraging the production of a bulb with a longer life as both a business incentive and gesture of environmental goodwill.

The promise of something free remains a successful marketing strategy and consumer aphrodisiac. Discounts can confuse and even mislead, whereas 100% more is easier to understand. With the current government shifting full public ownership of electricity generators to a 50/50 mix of public and private ownership, the electricity industry is becoming more competitive and the number of interested stakeholders in the manufacture and provision of electricity likely to increase. Electricity suppliers will need to engage new strategies to secure and keep customers, and the longer-lasting, environmentally friendly light bulb, promised free as part of any agreement to supply electricity, could be a leading light in that direction.[24]

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[24] In the event of something given away 'free' failing to meet any of the guarantees, s 24 of the Consumer Guarantees Act provides remedies for donees – those who have received goods for free – as if they had acquired them from the supplier in the

In the meantime, I realise that if I am to pursue my legal rights as a consumer, it may take a little time, confidence and stamina. And it helps to have the receipt. I have driven across town to return seven aerosol cans of waterproofing (liquid repellent) solution recommended for multiple surfaces, that clearly didn't repel. I have received replacement t-shirts and printing (and an apology) after the original order of 25 included a spelling mistake, and I have stood my ground with an older and knowledgeable sales assistant when demanding a new lawn mower after its motor blew and I had lost my proof of purchase. While manufacturers and suppliers might assume a blown light bulb may not warrant (or summon) as much individual effort, sometimes a simple objection can become a collective complaint, delivering the kind of market feedback required to ensure the fulfilment of product promises and the certainty of customer satisfaction.

So I need to keep to practising. Two months ago, I tried to purchase a canister of 'Pure New Zealand Air' from a Christchurch business – Breathe Ezy – advertising their product online as some of the "freshest and purest air in the World."[25] The company website claims that the "Westerly Trade Winds bring pure and uncontaminated air to New Zealand", and that this company has access to air that is "crisp and clean." Cool. For NZD$30–32, I can purchase a pressurised canister of air that has been "collected, triple-filtered and bottled in locations throughout the South Island of New Zealand." If I go up a price level, as a special customer, they "are able to fly in by helicopter and land on glaciers in the high alpine, collecting air directly from beneath the snow capped peaks of the Southern Alps." I have to buy at least 50 but they will be personally labelled and the shipping is free.

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first place. For example, if an espresso machine that was offered free with any new lawnmower and stopped working after 1 week, legally a consumer could argue that as it has failed to perform its advertised function for a reasonable period of time – subject to any defence available to the supplier – they should be entitled to its repair or replacement (1993).

[25] For more information, please visit the company website located at http://www.breathezy.biz/

Excited about the prospect of consuming "crisp, clean uncontaminated air" and the company's promise that "we are committed to bringing you only the purest air so that's why we ensure each batch is randomly tested by an independent laboratory for purity", I emailed the company to find out more details. The first reply I received expressed genuine pleasure at the prospect of future business. The woman from Corporate Gift Ideas asked if I owned a souvenir shop and if so, details of where I was located and how many boxes I was interested in purchasing. I explained that I was an artist, interested in fresh air, and that I was considering purchasing some air to give away at an upcoming exhibition. I also asked if it was possible to sample just one canister, preferring to do that before committing to the whole carton of 55, and that I would pay for shipping. Despite the sales woman's early enthusiasm however, I have yet to receive her follow-up reply.

The company's lack of follow-through made me think – why on earth would I want to buy South Island air? For a start, I live in the North Island, so this might be a shock to my system. But since this air is pure and crisp and has been triple-filtered, I should be fine, right? Apparently this new company has already sold 10,000 canisters to customers overseas and by their own account business is steadily increasing. I am also unaware of any North Island distributors at this stage. But buyer beware, if I were to buy unfamiliar air it wouldn't hurt to shop around and check how this South Island product fares against international competition. Allegedly there are businesses in Canada and England that are capitalising on the demand for this product, and according to the New Zealand company Breathe Ezy, an Australian competitor – Green and Clean Air – was reported to be actively farming and selling air from Bondi Beach, the Blue Mountains *and* New Zealand.[26]

Canadian company Vitality Air promises 100% Rocky Mountain air. For $32 Canadian dollars I can buy eight litres of fresh clean air that will make me feel rejuvenated, improve my focus at school and will allow me to recover

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[26] For more information please visit the company website located at http://www.greenandclean.com.au/

from a serious night of socialising. The website claims the 8 L canister of Rocky Mountain air is ideal for heavily polluted areas, only weighs 150g and guarantees upwards of 160 'shots'. If I were to buy in bulk, a ten-pack of Banff air offers a $70 saving. The company emphasises the benefits of 'fresh air,' targeting mothers, pregnant woman, children and grandparents.[27] Similar to their New Zealand competition, Vitality Air employees travel to find the freshest Rocky Mountain air and collect around 20,000 L each time. On location, it is subject to a clean compression via large containers, and then once back at the depot is transferred to the individual canisters for delivery. I did note, as well, that the company has increased its product range to include flavoured air – available in strawberry, root beer and grape – with the standard delivery time being 7–10 business days.

The British company Aethaer (pronounced eath-air) derives its name from the ancient Greek word for pure, fresh air, which according to legend was only available to the gods: an inferior version consumed by mortal humans. This aside, "the AETHAER project provides clean, fresh and pure natural air in bottled form. The process involves travelling to some of the most beautiful, pristine areas of countryside, far away from industrial pollutants, motorways, and impurities, in search of the most immaculate quality of air."[28] Places with pretty names such as Dorset, Somerset, Wiltshire and Yorkshire provide sources of this previously divine air that is "individually packaged in premium quality, crystal-clear, heritage-style glass jars." Preferring an airtight rubber seal and a metal fastener, the jar provides a label of authenticity stating the area from which it was collected, and will be shipped to me within at least 14 business days after making an order.

When considering all of this, while I might be intrigued by 8 L of strawberry-flavoured air and a heritage jar, tightly fastened, with pure air

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[27] For more information please visit the company website located at https://vitalityair.com/why-use-canned-air/

[28] For more information please visit the company website located at http://www.aethaer.com/#!about/c10fk

sourced from Somerset, I think it might be the delivery time that helps me to decide. And furthermore whether the laws of these countries require manufacturers to provide a Best Before Date on every consumable product. If it takes 21 business days (collection, compression and international delivery) to arrive on my doorstep, can I really expect to have bought fresh air? And if it is still ok to consume, how long will this product last before it becomes unsafe to use? In this regard, what are my legal options should I wish to pursue any remedies related to any product deficiency and customer dissatisfaction?

Recognising I am at a legal disadvantage when buying online and overseas, I decide to forgo the international options and return to the New Zealand company website to discover that it is now possible for me to buy, online, a single canister of fresh South Island air. I don't have to own a souvenir shop or endure the dismissal of a disinterested (or negligent) sales employee, I just have to enter my credit card details and postal address and in 3–5 working days I should receive one canister of Breathe Ezy air. I am excited and eager to trial this new product and to see whether it does actually live up to the bold promises featured on the company's website. Maybe this pure New Zealand air, described as some of the purest in the world, really will improve my lung capacity to absorb more oxygen and reduce any coughing and discomfort brought on by breathing in atmospheric pollution. Maybe it won't.

Air is undoubtedly recognised and promoted as a life-giving necessity, vital for the continuation of on-going participation in everyday life. If the company fails to deliver on its promises then I can at least avail myself of the consumer protection laws currently in place.[29] Legal action could

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[29] Author's note: The guarantees contained within the Consumer Guarantees Act 1993 do not at this stage, apply specifically to the purchase of air as it is not included within the definition of 'goods' as outlined in s 2. If a consumer or trader is concerned that a company may be engaging in conduct that is misleading, or likely to mislead about the advertised product, future legal claims may have to invoke s 12A(2) of the Fair Trading Act, as it relates to the making of unsubstantiated

simultaneously remind the business community of their responsibilities and facilitate legislative changes that ensure the production of quality goods and a mutually beneficial service environment, where perhaps one day, like the humble light bulb, fresh air could be available in every household – free of charge.

representations without reasonable grounds (1986). Please note that as the law in this area, as it relates to the sale of fresh air, is untested, the information contained within this footnote should not be treated as legal advice and that if you do have any concerns as either a consumer or competitor that you contact your lawyer immediately.

Figure 21. *Clouds for sale: Buy one, get one free,* 2013, photo Layne Waerea

Date: June 18–July 6, 2013

Time: 10 a.m. to 5 p.m.

Instruction: To sell and give away clouds to the public for free

Conditions: Approximately 80 plastic bags (with date tag) filled with air, trestle table with a glass top, blue ice cream container for koha or donations, Ho Tzu Nyen's *The Cloud of Unknowing* (2013), public foyer outside Gallery II, ST PAUL St, Auckland.

Description: The intervention was carried out in the public foyer of Gallery II, ST PAUL St during the 5th Auckland Triennial, 2013. From June 18 to July 6, approximately 80 plastic bags filled with air ('clouds') were placed on a trestle table with a glass top, outside Gallery II and Singapore artist Ho Tzu Nyen's *The Cloud of Unknowing* (2013). Nyen, the artist, had no knowledge of, and was never asked whether he agreed to, this installation

directly outside the gallery door. The blue ice cream container collected the total sum of $39.00[30] for the duration of the intervention.

Action: For a period of 19 days this trestle table remained positioned outside Gallery II where students and staff passing by could buy clouds and deposit their donation or koha into the blue ice cream container on top of the table. Each day I would check to see if there had been any sales and whether the stock needed replenishing. On day four I received a message from the gallery director informing me security were concerned about the money being left on the table after hours, but I insisted that it was ok, in order to provide some loose change should a member of the public require it. Sales were slow at first but gradually coins started to appear in the container, requiring me to replace the clouds that had been sold. At some point a visitor from Australia graciously left some of their local currency, bringing the total to nearly $40.00. By this stage it was day 19 and, having decided I had reached my sales target, I enlisted the help of friends to deinstall and release those clouds still unsold.

[30] The sum of $39.00 included foreign currency (AU$20 and $5 notes), some loose change and an original float of $9.00.

Figure 22. *Clouds for sale: Buy one, get one free (Deinstall)*, 2013, video still Layne Waerea [Click here to view]

How to sue yourself and win

Free Statement of Claim

Between	Layne Waerea, PhD Candidate, Learning Advisor, of Auckland Plaintiff
And	Layne Waerea, Artist, of Auckland Defendant

STATEMENT OF CLAIM

THE PLAINTIFF SAYS:

1. The Plaintiff, Layne Waerea, is a mature female of Māori and New Zealand-Pākehā descent and a non-practising lawyer and lecturer in law. She is currently completing her PhD at AUT's School of Art & Design and is gainfully employed (part-time) in Student Learning.

2. The Defendant, Layne Waerea, is an artist.[31]

BACKGROUND

3. The Plaintiff's claim will show that the Defendant/artist has carried out numerous actions in public and private spaces that have affected the Plaintiff's social and legal reputation. The Plaintiff will rely on the civil law tort of negligence in establishing that the Defendant/artist owed the Plaintiff a duty to take care when performing artistic interventions in public spaces; that the Defendant has been careless and has breached this duty of care owed to the Plaintiff and that as a result of this carelessness the Plaintiff has suffered foreseeable loss.

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[31] The ever-possibility of changing legal subjectivities is both fundamental to, and a consequence of, engaging and participating in the New Zealand legal system. As a legal person, participation in the court's system can be by choice – as a plaintiff asserting to enforce their rights – or as a defendant party to someone else's claim or a state prosecution (Miller, 2014). This system consists of rules and processes that guide and measure the conduct of social, cultural and political production in the public sphere. Processes that encourage a performance of certain agreed duties or obligations, identify superior rights and where juridical conclusions (judge-made law) affirm existing rules and precedents (of their interpretation) or through amendment or appeal, provide new legal direction for the circumstances in dispute (Miller, 2014). This legal subjectivity and priority of related rights, however, always remains subject to further challenge and appeal, reminding participant/contestants that the duration of any pole position is never fixed or predetermined.

4. In so much as the Plaintiff will argue that the Defendant has been careless, the Plaintiff's claim will achieve this by referring to the law of trespass to land, and the civil and criminal legal consequences that are likely as a result of the Defendant's repeat actions of entering onto private land owned by other people, without their consent or permission. The Plaintiff will also reference s 197 of the Electoral Act 1993, and how the artistic intentions of the Defendant on Election Day in 2011 subjected the Plaintiff to criminal sanctions and the possibility of a maximum fine of $20,000. The Plaintiff's claim in negligence will clearly show how the cumulative effect of the Defendant's actions over the last six years give rise to and substantiate a claim of negligence, and the injunctive relief sought.

5. This claim will show how the Plaintiff and the Defendant are both parties to a social contract[32] that requires a concurrent duty and obligation to

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[32] A social contract, as delineated and argued by philosopher Jean-Jacques Rousseau, refers to the agreement an individual makes with society and themselves; where civil rights are promised in return for giving up certain personal freedoms together with an obligation to respect the rights of other free and equal people (Rousseau, 1762/1992). A fusion of social and legal rights, the latter offering any person or party the option of pursuing legal action for any perceived failure or underperformance of the legal promises to the standards agreed and expected. A social right or agreement however, is not legally binding, and can only be enforced if it has been acknowledged within any existing legal rule or principle.

Judge-made decisions rely on an historical starting point – or a previous legal threshold – as measuring stick for contemporary interpretations. The legal doctrine of precedent (within the New Zealand legal system) seeks to provide legal handholds and a consistency that assists all parties negotiating the process. When judges make their decisions, they must rely on (and follow) the legal reasoning (ratio) of any previous like decisions from a higher court. In other words, if the legal territory is identical, circumstances similar, then the same test for culpability or liability is used. Judges are bound to follow decisions of a higher

respect the rights of others. The Plaintiff will argue that the Defendant has failed to perform key obligations central to this social agreement, and that over the last six years, the Defendant has engaged in a series of public interventions that were premeditated in design and likely to cause the Plaintiff social and legal harm. The Plaintiff will present photographic evidence that provides overwhelming and relevant corroboration of the Defendant's multiple breaches and the extent to which this information – and the adverse affect regarding the Plaintiff's social and legal reputation – is now in the public domain. As a result, the Plaintiff contends that as a free and equal person she has been deprived of a certain quiet and equitable enjoyment of life and that the negligent actions of the Defendant have most certainly caused the Plaintiff foreseeable social and financial loss.

PRIVATE AND CIVIL LAWS

6. The Plaintiff's claim, by its very nature, is a matter of civil law, and in particular the law of torts where the Plaintiff argues that the Defendant has committed a series of civil wrongs against the Plaintiff.[33] These legal

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New Zealand court, and can be persuaded of the merit (and relevance) of any decision from the same or lower level or from another jurisdiction (Courts of New Zealand, n.d.).

[33] A tort is a civil wrong, and the case-law area of tort law provides the appropriate legal boundaries of approved public and civil behaviour, and the penalties for any breaches as determined by a court of law. Distinct from a criminal and contractual wrong, a tort could include trespass (your neighbour entering onto your property uninvited and without permission, and then refusing to leave), nuisance (your neighbour mowing her lawn regularly at 3 a.m. on a week night) and/or negligence (your neighbour failing to secure and prevent one of her ladders from collapsing onto and damaging the boundary fence during a storm that had been forecast in and by the local media). Any aggrieved party seeking to recover foreseeable costs as a result of the tort or civil wrong (e.g. building a new fence to prevent people from trespassing, the installation of double-glazed windows and any emergency repairs to the new fence following the damage sustained during the storm) must then prove that the Defendant owed the Plaintiff the duty not to do anything that would

proceedings will reveal how the Defendant has been negligent by failing to fulfil a number of social (and legal) promises owed to the Plaintiff and as a result of the Defendant's carelessness the Plaintiff has suffered loss. Any claim for reasonable compensation will be proven by the Plaintiff – on the balance of probabilities – that the Plaintiff respectfully submits will return the Plaintiff to the position she would have been in had the social agreement with the Defendant proceeded as intended or expected.

7. The Plaintiff will refer to and distinguish the 1985 Court of Appeal case from the Third District of California, *Oreste Lodi v. Oreste Lodi*. In this claim the Plaintiff (Mr Lodi) issued pleadings against himself for 'action to quiet title equity' and seeking an order entitling him to the estate currently in the Defendant's (Mr Lodi's) possession. The Plaintiff completed service of the court documents on the Defendant and when the Defendant did not respond in time, the Plaintiff proceeded to have judgment entered against the Defendant. As the Court was unable to identify any specific facts affirming a cause of action, the Plaintiff's claim was dismissed and there was no order as to costs. In direct contrast to *Lodi v. Lodi*, the Plaintiff (Layne Waerea) will show clear and multiple causes of action and the reasons why court orders for injunctive relief – against the Defendant (Layne Waerea) – should be made.

***Oreste Lodi v. Oreste Lodi,* 1985**

8. In the originating District Court proceedings, in the State of California, USA, the Plaintiff (Mr Lodi) alleged that the Defendant (Mr Lodi) was the

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be likely to cause the Plaintiff harm; that the Defendant has committed some breach or legal transgression and has failed to reach the reasonable standard of care required in the circumstances; and as a direct result of the Defendant's actions, the Plaintiff has suffered loss. While the law of torts continues to develop the definition and nature of a civil wrong, the principal function is to compensate individuals for foreseeable harm done to them or their property by other members of the public (Todd, Hawes, Atkins, & Cheer, 2016).

beneficiary of a charitable trust, the estate of which would revert to him as the Plaintiff, on notice. The Plaintiff asserted that the Defendant had controlled the estate for the full 61 years (since the Plaintiff/Defendant was born) and that since notifying the Defendant of the termination of the trust, the Plaintiff was seeking an order confirming he was entitled to possession of the estate, and complete insurance against any and all future claims against the estate by the Defendant.

9. The Plaintiff duly served the Defendant with the court application and when the Defendant failed to answer or respond to the claim in time, the Plaintiff applied to enter judgment. At the hearing, the trial court refused to enter judgment against the Defendant, and with the court's inherent powers of application, dismissed the claim and made no award as to costs.

10. In Lodi's appeal, the only question the Court of Appeal had to consider was whether the trial judge had properly dismissed the complaint on its own accord, despite there being no official application brought or request made by either party for the court to do so. Finding no grounds for the existence of any trust, the Court of Appeal affirmed the earlier decision, holding that the Plaintiff's complaint had failed to establish a primary cause of action which consisted of a right owed to the Plaintiff by the Defendant, and any wrong done by the Defendant.

11. In summary, the complaint failed in form with the laws of the state and was therefore properly subject to the court's inherent powers to strike the application out. In making their decision, the court held the result could not be unfair to the litigant, since, although as Plaintiff and Appellant he lost, it was equally true that, as Defendant and Respondent he won.

12. Finally as to the question of whether the Respondent/Defendant and/or beneficiary should be awarded his costs of this appeal, which he could thereafter recover from himself, the court held that justice would be better served if each party was required to bear their own costs on appeal.

CAUSE OF ACTION – NEGLIGENCE

13. Liability for the tort of negligence arises when a duty of care owed to another is breached, and loss is caused to that person as a result of the breach. In order to establish liability for a negligent act or omission it is first necessary to establish that the Plaintiff is owed a duty of care by the Defendant; that the Defendant has breached that duty and lastly; that as a direct result of the breach, the Defendant has caused the Plaintiff foreseeable harm and loss.

14. As evidence of the Defendant's carelessness, the Plaintiff will refer to the law of trespass to land and how the Defendant's unauthorised attempt to harvest rainwater on someone else's property is a direct interference with that landowner/occupier's right to a quiet enjoyment of the property. This interference, the Plaintiff will argue, bears directly upon the legal rights of the Plaintiff in the form of either civil or criminal liability for the unauthorised act and is therefore a breach of the duty owed to the Plaintiff and likely to cause foreseeable harm and loss.

15. Furthermore the Plaintiff will show that the Defendant's carelessness includes a breach of s 197 of the Electoral Act 1993 and relates to actions undertaken by the Defendant on Election Day in 2011. The Plaintiff will rely on photographic evidence that clearly shows how the Defendant has breached her duty not to carry out any form of artistic public actions that could influence the voting public on Election Day.

16. Notwithstanding the legal implications for the Plaintiff referred to above, the Defendant has made clear her intentions to continue to trespass onto other people's privately owned land by organising a game of golf to be played on a former golf course that has been designated for a future housing development. As well as the recovery of any financial loss the Plaintiff has

incurred as a direct result of the Defendant's actions, the Plaintiff also seeks injunctive relief against any future acts of negligence by the Defendant that may have significant social and legal consequences for the Plaintiff.

TRESPASS TO LAND

17. Trespass to and over land is a possessory right that protects an owner or occupier from direct interference of the use of the land by another person. To commit trespass requires a positive act (walking, jumping, throwing) with respect to another person's land without their permission or consent. While recognised for the purposes of this claim as a tort, trespass over land is also a criminal offence, the elements of which are found in section 3 of the Trespass Act 1980.[34] Trespass becomes a criminal offence if a trespasser remains on the land after being asked to leave by the owner/occupier.

18. On August 2nd, 2014, 1.30 p.m., the Defendant entered onto a property not owned by the Defendant, and proceeded to hang 11 grey plastic buckets (with 11 green plastic pegs) on a clothesline situated at the far end of the empty section, away from the road [Figure 23]. The section was located next to a main road and suburban train line, and in full view of any and all passing motorists, train passengers, pedestrians and any neighbouring landowners or occupiers. The Plaintiff is aware that the Defendant was asked by a member of the public, "What on earth are you doing?"

19. As the Defendant has close proximity to the Plaintiff, the Defendant should have known her actions could cause the Plaintiff loss. The Defendant has deliberately subjected the Plaintiff to potential legal action. The Plaintiff has incurred economic loss in the purchase of the said buckets (and

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[34] Section 3 of the Trespass Act 1980 states that every person commits an offence against this Act who trespasses on any place and, after being warned to leave that place by an occupier of that place, neglects or refuses to do so.

pegs) and has suffered considerable social loss and embarrassment when observed by any neighbouring homeowners and/or occupiers and passersby.

WHEREFORE THE PLAINTIFF CLAIMS:

20. An injunction or trespass order prohibiting the Defendant from entering onto privately owned land with any rain-catching devices without reasonable excuse or permission;

21. Damages as quantified that relate to the purchase of the said buckets (and pegs);

22. Interest;

23. Costs.

Figure 23. *(Waiting for) Free rain,* 2014, photo Layne Waerea

Date: August 02, 2014

Time: 1.30 p.m.

Instruction: To catch free rain by hanging 11 buckets on someone's washing line

Duration: 1 hour 38 minutes

Conditions: 11 grey plastic buckets, 11 green plastic pegs, vacant section, someone's washing line, civil and criminal laws as they relate to the act of trespass.

Description: South Auckland, an empty section located next to a main road and train line, with a clothesline in one corner. This intervention involved hanging 11 buckets on a clothesline and waiting for rain. While potentially an act of trespass, that may have been witnessed by neighbouring home owners or occupiers and clearly visible from the road and passing trains, this work was an invitation to consider different ways of harvesting rainwater and the potential ownership of same. Furthermore, this backyard foray was to test a recent scientific and social hypothesis of mine: that no matter where you place a clothesline in the backyard it will always attract rain.

Action: There is an empty section located next to the Southern train line not far from Papakura in South Auckland. The section is easily visible from the trains that pass or from the vehicles that stop on either side of the signal barrier. The vacant section is rectangular in shape, flat and well maintained, and completely fenced on all sides. Nearest to the road, a 1m high wire fence runs L-shaped along the short end of the property, and marks the outer limit next to the train tracks. On the other side, a 2m high wooden fence separates this property from the neighbouring house, with a built-in and connecting door at the rear that opens onto a path leading to a rotary clothesline.

It's early afternoon and the sky is overcast. I am wearing a rain jacket, grey sweatshirt, loose-fitting trousers and a new pair of sneakers. It takes two trips from the car to bring 11 grey plastic buckets, pegs, my camera and a tripod. I find a gap in the fence where the wire meets the wood, to climb through, and set up the camera and tripod about 15 metres in front of the

clothesline. I then peg the buckets to the clothesline, wait until they stop swinging and then proceed to photograph them. Every now and then I am reminded of an approaching train by the ringing signal bells but I try not to look up. Out of the corner of my left eye, I see someone approaching from the front of the neighbouring property. I pretend I haven't noticed him until he is standing right next to me. He tells me he and his father have been watching from next door and want to know what I am doing. He seems friendly, perhaps bemused by seeing the buckets hanging on the line. I explain that I am looking at other ways of harvesting rainwater and that this underused clothesline seemed perfect for my trials. He tells me that his father owns this section and that neither he nor his father has ever thought of doing this. He also says he is a photographer and would I mind if he watched while I took some more photographs. His request makes me nervous and I begin to think it's a ploy to keep me here while his father calls the police. But of course I say, "Not at all" and try to hide a rapid onset of performance anxiety as I adjust the tripod, fiddle with the lens on the camera and look up at the sky for inspiration and condensation. After what seems like a reasonable lapse of time, I assure him I am finished, he gives me his Facebook details and I load the buckets and camera equipment into the car and leave.

THE ELECTORAL ACT 1993 – s 197

24. The purpose of the Electoral Act 1993 is to provide the legal guidelines for the holding and management of the General Elections in Aotearoa New Zealand. To ensure legitimacy of the three-yearly General Election, the Electoral Act identifies the legal limits that relate to the selection of election candidates, Election Day procedures and the banning of election advertising, and any penalties for infringement and offence. Section 197 of the Act prohibits actions or words, on Election Day, which might interfere with or influence any voter either in the polling station or on their way to cast their vote.

25. On September 20th, 2014, 11.30 a.m., the Defendant placed an advertising chalkboard with the message 'Free Air + Rain' written in chalk on a public footpath, perpendicular to a VOTING sign directing voters to a local polling station [Figure 24]. At approximately 11.34 a.m. a member of the public was photographed walking past the chalkboard in the direction of the temporary General Election polling station. By placing the chalkboard in close proximity to the VOTING sign, the Defendant has unduly interfered with, or influenced the voters on their way to casting their votes at this particular polling station.

26. As the Defendant has close proximity to the Plaintiff, the Defendant should have known her actions could cause the Plaintiff loss. The Plaintiff has incurred economic loss in the purchase of the said advertising chalkboard (and chalk) and has suffered considerable social loss when witnessed by any members of the public in the vicinity at the same time.

WHEREFORE THE PLAINTIFF CLAIMS:

27. An injunction or trespass order prohibiting the Defendant from exhibiting any public message on Election Day without reasonable excuse or permission;

28. Damages as quantified that relate to the purchase of the said advertising chalkboard (and chalk);

29. Interest;

30. Costs.

Figure 24. *Voting (Free Air + Rain)*, 2014, photo Layne Waerea

Date: September 20, 2014

Time: 11.30 a.m.

Instruction: To carry out my civic duties by voting in the General Election

Conditions: Advertising chalkboard, Free Air + Rain, General Election polling station, s 197 Electoral Act 1993.

Description: Section 197(1)(a) of the Electoral Act 1993 prohibits any form of action or words that might interfere with or influence any voters exercising their democratic right to vote on Election Day. Every person who commits this offence may be liable on conviction to a fine not exceeding $20,000 if they interfere with any elector, "either in the polling place or while the elector is on the way to the polling place with the intention of influencing or advising the elector as to the elector's vote." Subsection (1)(g) "prohibits at any time on polling day before the close of the poll exhibits in or in view of any public place, or publishes, or distributes, or broadcasts,—
(i) any statement advising or intended or likely to influence any elector as to the candidate or party for whom the elector should or should not vote;

It is a defence to s 197(1)g) if the exhibition was inadvertent or the defendant caused the exhibition to cease as soon as they were notified of their breach."

Action: On Election day in 2014, I drive to a local primary school to cast my vote. The primary school is located down a suburban street and there is an orange advertising board on the footpath outside, with the words VOTING and a black arrow pointing in the direction of the polling station.
The weather forecast is for rain and I am wearing a grey sweatshirt, jeans and a pair of casual shoes. I also have one of those advertising chalkboards, with the words Free Air + Rain written in large letters on the side. I leave my advertising board next to the VOTING sign while I go inside the polling station to vote. Fifteen minutes later, I return to collect my sign, get in my car and drive home.

FUTURE ONGOING DUTY OF CARE

31. The Defendant owes the Plaintiff a duty not to carry out any actions in public spaces that may attract the attention of the police; obstruct and interfere with the ordinary use of the space by any genuine members of the public; or adversely affect the Plaintiff's current employment status.
The Defendant has proposed to organise and hold a round of golf on private property – a former boutique golf course – that the new owners plan to develop into a housing subdivision. The Plaintiff argues that the Defendant's plan to play golf could interfere with the landowner's rights relating to this land; that a member of the public may call the police and furthermore that the Defendant's intentions could adversely affect the part-time employment status of the Plaintiff. As the Plaintiff is so closely and directly affected by the Defendant's actions, the Defendant ought to consider the Plaintiff's interests when planning to carry out these acts.

FUTURE BREACH OF DUTY OF CARE

32. On Sunday October 9th, 2016, 11 a.m. the Defendant entered onto privately owned property in Papakura [Figure 25]. The Defendant was observed – by the Plaintiff – carrying a 4-wood golf club and several golf balls, and was present on the property for approximately 1 hour and 13 minutes. The property is privately owned and to the best of the Plaintiff's knowledge is not owned by the Defendant. The Defendant has since advertised that she intends to organise a final game of golf to be held, at the Papakura Golf Complex, some time in November-December 2016. The Plaintiff contends that this advertised intention could amount to a breach of the Defendant's ongoing duty of care owed to the Plaintiff.

FUTURE DAMAGE AND CAUSATION

33. As the Defendant has close proximity to the Plaintiff, the Defendant should know that her future artistic actions could cause the Plaintiff loss. The Defendant has previously committed trespass and as a result the Plaintiff has incurred economic loss in the purchase of the said golf clubs (and golf balls) and has suffered considerable social loss when observed by other members of the public.

WHEREFORE THE PLAINTIFF CLAIMS:

34. An injunction or restraining order prohibiting the Defendant from carrying out performance interventions in public spaces, and in particular from organising and playing a game of golf at the Papakura Golf Complex at any time without permission or consent;

35. Damages as quantified that relate to the purchase of the golf clubs (and golf balls);

36. Interest;

37. Costs.

CONCLUSION

38. The Plaintiff has made a very clear case of how the Defendant's actions have been wilful, transgressive and negligent, and in breach of the Defendant's duties and obligations owed to the Plaintiff as a free and equal person as party to a social agreement. The Plaintiff has presented facts and photographic evidence that clearly prove the Defendant has been negligent by willingly over-extending and abusing her right to free expression – at the expense of the Plaintiff – in the public sphere. The Plaintiff respectfully asks that the Court provide injunctive relief in favour of the Plaintiff and to make a suitable award as to damages.[35]

Figure 25. *Free golf (first location scout),* 2015, photo Layne Waerea

[35] Disclaimer: The plaintiff/defendant/author would like to make clear that while the information contained within may resemble some actual laws in Aotearoa New Zealand it is not intended as free legal advice. Seriously.

Date: November 18, 2015

Time: 1.30 p.m.

Instruction: To conduct a walk-through of the privately owned land formerly known as the Papakura Golf Complex

Duration: 1 hour, 13 minutes

Conditions: Papakura Golf Complex, 4-wood golf club and 7 golf balls, s 3(1) Trespass Act 1980 which states that every person commits an offence against this Act who trespasses on any place and, after being warned to leave that place by an occupier of that place, neglects or refuses to do so.

Description: In preparation for a final round of golf (at a date yet to be decided) at the Papakura Golf Complex and before the proposed housing development begins, I undertake a walk-through of the former public nine-hole course.

Action: I decide to park the car at the local supermarket carpark and walk to the golf course from there. My car doesn't have a current warrant of fitness or registration so I need to keep it off public roads and away from council-owned carparks. The supermarket carpark affords me 90 minutes of undisturbed and unregulated parking and I should really buy some new light bulbs before I return home. It's about 1.30 p.m. and judging by the cloudy horizon there is a strong possibility of rain. To combat a cool wind, I am wearing a rain jacket over a fleece top and cotton t-shirt and I have my reliable track pants on. My old running shoes are for the long grass and a boggy terrain.

Fifteen minutes later I am turning left into Bellsomething Street to follow the "golf course" signs to the driveway. At the gate there is another sign telling me the course is actually a "golf complex" which probably means it's not the full 18 holes. Which is perfect as I usually get bored after the first nine. Walking down the driveway I notice someone has put in place concrete bollards at the end of the driveway lane, perhaps to prevent anyone driving in and onto the grounds. I have no problem, as I sneak through a gap and make my way to the first tee. As I pass several houses lining the

complex grounds, I tell myself to walk with purpose and to not keep looking over my shoulder. I have also deliberately timed this walk for mid-afternoon as I am hoping most of the locals will be at work or out. The purpose of this walk is to assess the state of the grounds in order to plan a final round of golf. The course grounds have been in fallow for nearly three years, with the complex having closed its gates to the paying public in 2013. Developers have since acquired the necessary resource consents and in the near future these grounds will feature new roads and new homes. Any opportunites for a final round of golf are therefore limited and I need to get a move on.

Standing at the first tee, I try to imagine the golf course as it used to be. Having played a little bit of golf in the past, I plan to use this information to guage the direction I need to take in order to reach each putting green, and thereafter the next tee. As I start walking down the first fairway I notice there are wooden stocks dotted around the course that I presume signpost each tee and should give an indication of distance, but there's still a bit of guesswork involved, as it becomes clear that most of the details have been worn away by the weather and there is no evidence of any putting greens. The ground is indeed boggy and it's not long before I have wet shoes and wet socks. Walking the first three holes takes me onto the back of the course and I can see the complex carpark through the trees. The walk has not been too arduous and I haven't seen anyone at the windows in any of the houses that surround the course. At the fifth tee I pry away one of the tin signs still attached to the wooden stock (par 5, women's distance 301m and men's 315m) and decide to head back to the complex carpark where I entered the grounds. While its clear the grounds have definitely seen smoother and better-maintained days, I am confident this aging complex is capable of hosting a final round of golf before any development begins. Carrying the fifth tee sign, I walk the 15 minutes back to my car, pop the sign in the boot and head inside the supermarket to buy some light bulbs.

Treaty of Waitangi (1840)

Free commentary

Figure 26. *Waitangi Day spin (I'm against it)*, 2012, photo Layne Waerea

Date: February 6, 2012

Time: 12 noon

Instruction: To dry my washing on my neighbour's washing line

Duration: 9 minutes

Conditions: Washing (damp t-shirt), 2x plastic pegs, stepladder, neighbour's washing line, gentle breeze, Treaty of Waitangi 1840, civil and criminal laws relating to the act of trespass onto privately owned land.

Description: On February 6, 2012, I jumped the neighbouring fence to hang my washing on my neighbour's clothesline. This action of social and neighbourly transgression was to consider the nature of land ownership in Aotearoa New Zealand and the rhetoric of disagreement that arises every year around Waitangi Day (February 6) and the Treaty of Waitangi. A day that commemorates the 1840 signing of this country's only and living treaty; and an agreement that continues to draw debate as to its future significance to Aotearoa New Zealand's constitutional, legal and cultural frameworks. With no witnesses to claim offense or loss, this action was my participation

in the ongoing debate as to the continued relevance of the Treaty of Waitangi to Aotearoa New Zealand today.

Action: I try knocking on my neighbour's front door. At first a light tentative knock, listening out for any tell tale noises indicating someone is at home, but perhaps reluctant to answer the door or unaware of my presence. Hearing no sounds within the house I try again, this time a bit more confident and anticipating a positive outcome: no one home. Assured that no homeowner or occupier is present or awake, I return home to get ready. I am wearing a t-shirt, jeans and bare feet. Placing a small domestic stepladder next to the boundary fence, I climb to the top step and lift my tripod over to the lawn on the other side. With my camera around my neck and a damp t-shirt over my right shoulder I move from the top step, over the fence onto the ground on the neighbouring property next to the tripod. I reach over and bring the stepladder to the neighbour's side of the fence, position the camera in front of the clothesline, and turn it on. Then I peg the t-shirt to the wire line and begin to spin the rotary head, attempting to dry the t-shirt. After about 22 firm revolutions I let go and wait until the clothesline stops spinning and the t-shirt comes to a stop in front of me. Switching the camera off, I unpeg the t-shirt, walk back to the fence and climb the ladder again, lift the camera and tripod back over to my side and repeat the jump back onto safe territory. I reach back for the stepladder, lift it over the fence and then head inside.

In the week before Waitangi Day (February 6) 2016, I read in the *Northern Advocate* about the ongoing disagreement between local Māori and the regional government regarding the central government's policy and future plans for freshwater management in Aotearoa New Zealand. In her article "Rights to fresh water get clouded," local journalist Alexandra Newlove gave insight into the Northern Regional Council's attempt to rally support to *oppose* Māori fresh water rights in favour of affirming its right to administer and manage fresh water resources. Local Māori on the other hand were reported to be frustrated at having to participate in a bureaucratic process to secure a right of use and management of a resource they believed had already been promised to them by the signing of the Treaty of Waitangi in 1840.[36]

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[36] The Treaty of Waitangi when signed in 1840, acknowledged the accord and intention of two distinct cultural groups eager to enjoy and develop the social and economic benefits of living together, sharing and acknowledging common rules, and having equal and equitable opportunities to fulfil any future cultural, political or legal aspirations. As a mechanism that promised to protect indigenous interests and to blend cultural norms and law/lore, within two decades after its signing local Māori were forced to seek redress for alleged breaches by the Crown of the promise in Article II of the Treaty to protect taonga/ treasured property of Māori.

By itself, the Treaty of Waitangi as a socio-cultural agreement is unenforceable. This means that any aggrieved parties, wishing to seek any form of redress related to perceived breaches of the Treaty, must rely on legislation in which its principles of partnership, protection and participation have been interpreted and incorporated. As a state document ostensibly designed to allow people of different cultures to co-exist, the Treaty has always been subordinate to a culturally distinct and British legal system. This has required Māori to tactically employ mechanisms of the state system in order to enforce the rights contained within – and recognised prior to – the signing of the Treaty.

In 1975 the Waitangi Tribunal (Tribunal) was established under the Waitangi Tribunal Act 1975, as a permanent commission of inquiry with recommendatory powers to report on any prior and ongoing alleged breaches of the Crown. The Tribunal's jurisdiction and mandate has been to report on any claims by Māori that they had been prejudicially affected by legislation, policy or practice the Crown had

enacted or omitted to enact on or after February 6, 1840. The Tribunal's 'voice' has provided the clearest cultural-legal position for Māori in Aotearoa New Zealand operating under different and wider terms than any ordinary civil or criminal court, with each claim generating extensive records documenting historical claimant evidence. But this voice only has the power to recommend, rendering it second in line against any Parliamentary legislative or administrative intention.

A public understanding of the Treaty of Waitangi has been influenced mainly by a succession of historic claims and the return of, or compensation related to, confiscated land, forests, and other places of cultural significance. As a cultural icon and unenforceable legal instrument, the Treaty has been shaped and manipulated by a culturally distinct British legal system, fostering a public impression that it is a document of and for the past. While the existence of the Treaty document has allowed for eventual settlement and apology for historic grievances, a 2011 Waitangi Tribunal Report "Ko Aotearoa Tēnei" ("This is Aotearoa" or "This is New Zealand," Wai 262) argued for mātauranga Māori (knowledge) to take/assume its place in contemporary Aotearoa New Zealand law, and government policy and practice. Identifying different and concurrent systems of legal, social and environmental management, this Tribunal report recommended that if the Crown-Māori relationship was going to develop and move away from being grievance and repair-based, then any future decisions the Crown may make regarding the cultural, political and legal welfare of Māori should honor this development with due consideration of cultural knowledge/tikanga that includes practices such as kaitiakitanga alongside national laws where and when relevant.

The notion and practice of kaitiakitanga as a concept within Māori worldview is integrated with the spiritual, cultural and social life of indigenous Māori. Identifying people within the concept of the environment, the practice of kaitiakitanga emphasises relationships and obligations, where a collective responsibility is determined through whakapapa (lineage) and tikanga Māori (cultural and customary way of doing things). A kaitiaki or guardian can be entrusted to care for, protect and actively benefit from a particular natural geographical feature or resource, a right of relationship as guaranteed under the Treaty of Waitangi. This practice, as part of and inseparable from tikanga Māori, has gained recognition within a Western legal framework having been included within certain pieces of legislation and agreements between the Crown and Māori iwi (tribal groups) to co-own and manage significant landmarks in Aotearoa New

The journalist forecast that the Prime Minister was going to make an announcement on Waitangi Day that promised an update of the talks between iwi/tribal leaders and central government about the proposed freshwater reforms. While the article didn't hint at any specific details likely to be revealed, or even the identification of a reliable government source, I was excited to think that perhaps this announcement might offer something different for Māori and non-Māori to celebrate. That given its February timing in advance of this year's Waitangi Day ceremonies with the Prime Minister, some senior ministers and the host Māori tribe, instead of being an annual day of protest at the history of Treaty breaches,[37] the journalistic

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Zealand, in some instances as a condition of settlement and compensation for historic grievances.

[37] Every year around our nation's birthday, Waitangi Day, social and national media willingly give voice to those critical of either the government's under-action in respect of its obligations under the Treaty of Waitangi (1840), or those asking whether this state document still bears relevance to a modern, Western and multicultural society. An annual and public contest as to the ongoing understanding of this country's only living treaty, this media circus provides an opportunity each year for New Zealanders to re-engage with the surviving (and contested) Treaty principles of partnership, protection and participation with respect to any Crown action or under-action. Within these principles it is the concept of partnership that has always been critical to the success or failure of this bicultural framework, and whether the terms and conditions that informed the parties at the time of signing the Treaty of Waitangi can survive adaptation and development to sustain its living name and appeal in contemporary Aotearoa New Zealand. As a living partnership that promises to treat each culture with cultural, legal and political respect, history has shown that the Crown has repeatedly failed to live up to its Treaty promises (especially in relation to the protection of Māori customary interests) requiring Māori to tactically deploy and exercise rights of recognition affirmed by the Treaty and to a large extent, already in existence at the time of its signing. Waitangi Day is a reminder for both Māori and the government of their respective Treaty obligations and, as a cultural accelerant underpinning the unsettled state of race relations in this country, begs the question as to whether it may ever be possible for these two politically and culturally differing worldviews to occupy the same socio-legal space in this country?

heads-up might be a sign that this government wanted to foster a stronger bi-cultural relationship for the future. And since the announcement related to water resources, an attempt to rectify the cultural trauma brought about by the previous government's hasty enactment of legislation that effectively removed all potential Treaty claims/rights to the foreshore and seabed.[38]

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[38] In 2004 the Foreshore and Seabed Act was given the Royal assent to become law in Aotearoa New Zealand, vesting in the Crown title to all the foreshore and seabed (not already in private ownership) and making some provision for indigenous Māori customary interests to be recognised in limited circumstances. The Foreshore and Seabed Act 2004 identified as its object "to preserve the public foreshore and seabed in perpetuity as the common heritage of all New Zealanders" yet in reality this new piece of legislation relegated customary Māori interests subject to any private interests already formalised and the general 'right' of the public to have access to the seashore. Ignoring significant public opposition from Māori and non-Māori that the law-making process was rushed and the final enactment discriminatory against Māori and in breach of Article II of the Treaty of Waitangi (1840), this legislative and pre-emptive move (sitting under urgency) was an attempt to provide certainty over ownership and to thwart any attempt by Māori for recognition and redress of any significant rights related to the foreshore and seabed that may have existed prior to and affirmed with the signing of the Treaty of Waitangi in 1840.

The enactment of the Foreshore and Seabed Act 2004 was a direct and swift response to a 2003 Court of Appeal decision (*Ngāti Apa & Anor v. Attorney-General & Others* [2003] NZCA 117) stating that Māori may still have customary rights related to the foreshore and seabed and that the Māori Land Court had the necessary jurisdiction to declare land to be customary land under Te Ture Whenua Māori Act 1993. While the Court of Appeal decision refrained from making any statement regarding actual 'ownership' of the foreshore and seabed, the indication that this could be tested in the Māori Land Court was tantamount to declaring this area as Māori customary land and therefore capable (but not guaranteed) of conversion to a freehold title. The government's hasty decision, however, to legislate rather than appeal and let the legal process run its course resulted in a major political and legal controversy over Māori claims of ownership, as recognised in Article II of the Treaty, to the foreshore and seabed. A controversy kept alive by

a cultural fear (promoted and fostered by the government, the media and a willing public) that unless the government took immediate steps to clarify the Crown's position re ownership (that would protect the rights of all *other* New Zealanders), Māori, if successful, would immediately restrict/charge/deny non-Māori access to the beach.

Igniting an annual and ongoing public debate about race relations and in particular the role of the Treaty of Waitangi with regards this country's constitutional makeup, the Foreshore and Seabed Act 2004 was an ill-conceived exercise of parliamentary privilege that would eventually be repealed at a significant cost to the taxpayer and the Labour Government as primary author of this culturally divisive state document. Any worthwhile intentions of achieving legal clarity were effectively overshadowed by a government effort determined to deny Māori, as Treaty partners, the same due process afforded to all New Zealanders.

With a new National Government in 2008 collaborating with the newly formed Māori Party, and a government commissioned review (Pākia ki uta pākia ki tai: Ministerial Review of the Foreshore and Seabed Act 2004) that concluded (amongst other things) the Foreshore and Seabed Act 2004 was discriminatory against Māori, steps were taken to repeal and replace this piece of legislation with the newly named Coastal Marine Area (Takutai Moana) Act 2011. This name change was an attempt to expunge any residue of the Foreshore and Seabed Act from the legal arena and public memory; to restore customary rights previously extinguished; and most importantly, to re-affirm the right of Māori to use the legal system should they wish to seek clarification concerning any foreshore and seabed-related legal interests.

The architects (and their supporters) of the Foreshore and Seabed Act 2004 miscalculated the cultural temperature of everyday Aotearoa New Zealand and in particular how the Treaty of Waitangi continues to bear and be deployed with significant cultural and political force. The Treaty as a state agreement between the British Crown and Māori chiefs, and first signed in 1840, continues to generate a bubbling undercurrent of tension and disagreement either with Māori seeking resolution of alleged breaches or non-Māori arguing it bears no contemporary relevance. A cultural tension, inherent in the original agreement, that keeps the government on notice, and a disagreement capable of making a modern-day appeal

As the week unfolded, however, I realised my early optimism was completely unfounded. The announcement on Waitangi Day was never made as other events took media precedence, namely whether or not the Prime Minister was even going to be invited to attend the annual ceremonies in light of the growing opposition from Māori and non-Māori towards the Government's conduct and signing of the Trans-Pacific Partnership Agreement (TPPA) two days earlier. This free trade agreement (currently unratified), the Government promised, would see a significant boost to our economic development by liberalising trade and investment between 12 Pacific-rim countries. Protesters, on the other hand, complained about a lack of transparency and public consultation and drew attention to potential threats regarding this country's sovereignty – objections of a similar nature to those echoed every year by Māori at Waitangi.

Nearly three weeks after Waitangi Day, the Ministry for the Environment released "New steps for fresh water: Consultation document" (Consultation document) outlining the Government's vision for improved freshwater management and seeking feedback from the public on the suggested proposals. The Consultation document identified key objectives to improve environmental outcomes that would enable sustainable economic growth to support new jobs and exports, and to improve Māori involvement in freshwater decision-making. The timing of its release significant in its proximity to both the signing of the Trans-Pacific Partnership Agreement and Waitangi Day, I believe, was both provocative and assertive. While the Northland pre-Waitangi Day newspaper article offered no false promises on the substance of the announcement, it performed its role in drawing attention to and being a part of this cultural space acted out every year. Provocative in that the subsequent (and related) Consultation document was a clear reminder of the Government's continued position that at common law no one owns water, and furthermore, an assertive strategy to

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as to the future role the Treaty could play in the socio-cultural fabric of Aotearoa New Zealand.

circumvent, or at least frustrate, any future claims by Māori seeking legal determination.

The Consultation document confirmed that the Government recognises iwi have rights and interests in fresh water, a position already indicated by the Waitangi Tribunal and suggested by the Supreme Court, but that these rights amounted to something other than legal ownership, the nature and extent of which has yet to be defined. According to the Government, the best way forward was through consultation and dialogue with iwi as Treaty partners in order to design a freshwater management system that benefits everyone. [39]

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[39] A contemporary question referencing the Treaty centres on the nature and extent of the proprietary and/or residual rights some Māori may have in respect of fresh water. Since the 19th century, Māori have made claim to own rivers, harbours and other water bodies, with government recognition and reassurance that the Treaty protected Māori rights in rivers recorded in the government's Māori newspaper as early as 1842 – the Waitangi Tribunal concurring in a number of recommendatory decisions – and more recently reaffirmed, although undefined, in the 2016 Government "New steps for fresh water: Consultation document." Whether this can amount to 'ownership' of water is a sensitive issue and a question that remains undetermined by the courts, nor legislated by any government. As a life-giving and necessary resource, the careful and sustainable management (kaitiakitanga) of this precious resource is even more important as it gains in value as a market commodity. Should the government decide to legislate in favour of these customary rights however, there is likely to be widespread public disagreement and protest. But as with the foreshore, a cultural tension that could allow for and create spaces of discussion, cross-pollination and action and a working and living definition of partnerships *to treat* across two worldviews.

With regards to more recent legal decisions concerning freshwater rights and the Treaty of Waitangi, a 2013 Supreme Court decision – *The New Zealand Māori Council* v *The Attorney-General* SC 98/2012 – considered an appeal of the New Zealand Māori Council's claim to stop the Government's proposal to sell 49% of its public shareholding in an electricity company on the Waikato River, arguing the sale could restrict the Crown's ability to remedy any Treaty of Waitangi breach in respect of Māori interests in the river. The Supreme Court ultimately rejected and

In the space of one month the Government made two announcements; first that it *was* prepared to enter into trade agreements with other countries that could arguably increase access for some New Zealand companies to international markets but at the same time run the risk of multinationals dominating our own domestic market and the exploitation of our natural resources.[40] And secondly, that it *was not* prepared to allow its

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dismissed this particular claim but signalled that the separate issue (not included within the application for appeal by the Supreme Court) as to whether Māori may have proprietary claims to freshwater rights would still have to be addressed. A legal benchmark affirming the Government's right to sell the public shares in the electricity company, and a cultural and legal warning for all New Zealanders, as this judicial comment indicated future legal and public discussion on how it is that Māori and non-Māori could view the ownership, management and use of fresh water.

[40] There is no current provision in Aotearoa New Zealand's legal system for the ownership of fresh water. Instead, the use of water is regulated and managed primarily through the Resource Management Act 1991 (RMA), which sets out an all-encompassing regime for the sustainable management of land, air and water, and delegates the day-to-day management of these natural resources to regional and local councils. The key provision regarding freshwater management is s 14, which provides that no person may take, use, dam or divert water unless expressly allowed by a regional plan or resource consent. Conditions may be attached to resource consents in order to avoid, remedy or mitigate any adverse effects. The maximum duration of any consent issued under the RMA is 35 years although they are commonly issued for shorter periods and sometimes with an automatic right of renewal.

Sections 6-8 outline that when issuing resource consents decision-makers must recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, waters, sites, wāhi tapu and other taonga; have particular regard to kaitiakitanga; and take into account the principles of the Treaty of Waitangi. Legislative handholds that should provide a legal basis for recognition of Māori interests, but in reality have often been outweighed by other statutory considerations given governmental and economic priority. This has led to general dissatisfaction amongst Māori with regards freshwater governance and a call to the Government to re-engage in new discussions that could strengthen Māori

legal subjectivity either through new or significant changes to existing legislation (RMA) or with the implementation of effective collaborative measures to ensure a Māori voice has more options to be heard.

Resource consents to take and use water are granted on the basis of the application from the interested party and if conditions are satisfied, the holder of the consent has exclusive rights over and above any other individual or organisation for a maximum duration of 35 years. The RMA, however, does not allocate water consents on merit and despite the recognition required to be given in ss 6-8, local authorities have shown little interest in taking into account debates about a fair and equitable usage of water by overseas companies profiting from the local supplies. While the legal rights pertaining to resource consents do not amount to ownership, the exclusivity of use and the right of renewal ensures the equivalent legal protection for almost 40 years. While the government may insist, "no one owns water", in reality the system as it stands serves the economic interests of some domestic and international companies, over and above any cultural and legal rights yet to be determined for Māori.

Within the Aotearoa New Zealand context, freshwater supplies are generally in abundance, subject to seasonal and geographical variations and in some regions, a legal but unequal access due to an over-allocation of use rights allocated under the Resource Management Act 1991. Central for its importance in domestic use, farming, industry and socio-cultural life in Aotearoa New Zealand, a continued consistent supply of clean, fresh water is vital for the ongoing socio-cultural fabric and economic wellness of this country. Already recognised for its primary life-necessary use value, it has been the rapid rise in the status of fresh water as a valuable economic commodity that has resurrected this demand for local and cultural recognition and a shift in attention (and priority) from quality and its use value, to its exclusive ownership and future economic potential.

The sensitive issue of 'ownership' of such an important resource, if brought before the courts for determination, or affirmed in any direct negotiation with iwi, is likely to unveil cultural and public disagreement, as the Government wrestles with arguments by local Māori for customary precedence, and some non-Māori agreeing with the Government's position that no one owns water. A disagreement however that could remind us of how commodities can be valued – both for their relative use *and* exchange value – and how the importance of having access to clean water could revitalise the Treaty principles of partnership, protection and

own indigenous constituents to exercise and benefit from similar legal rights affirmed in an earlier trade agreement – as some might contend – signed in 1840. An outcome the newspaper journalist may well have been giving her readers a rain check about, and a double whammy that might require and inspire a form of entrepreneurial *condensation*-transgression. One that sidesteps the unresolved legal positions as they pertain to freshwater supplies and at the same time takes advantage of the future trade benefits with the other 11 Pacific-rim signees.

This has precipitated a plan. It's in the early stages of development but already I am excited about the prospects of its business potential on the international life-style scene. A natural resource in abundant supply that as yet is unrecognised and unregulated as a consumer good and therefore out of scope with regards any government ambitions to control and monopolise any associated economic benefits. My plan is to collect and sell fog. A natural mix of water droplets suspended in air that could be generated locally from any nearby body of water, like a lake or the ocean, or even closer to home from a particularly moist backyard or farmland marsh. A fresh source of two elements essential for sustaining life, that when packaged in a convenient and lightweight atomizer, could easily tap into a recently existing niche elemental market by selling fog and its dispenser as luxury goods.

Aotearoa New Zealand – "land of the long white cloud" – has a geographical predisposition to producing low-lying clouds, otherwise known as fog. And according to Māori mythology, the first voyagers to New Zealand were guided during the day by a long white cloud and at night by a long bright cloud, establishing a cultural connection that has the potential to be realised in a modern-day form. If the government refuses to acknowledge the legal and economic potential for Māori with regards freshwater bodies such as lakes, rivers and aquifers, then it might be necessary to jump the queue and access the source before it becomes mired in legal ambiguity and

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participation in order to ensure a reasonable and equitable availability to all, of this vital resource.

government inaction. Fog that's freely available could be this country's next liquid gold and this business plan an opportunity to take advantage of any form of freshwater rights loopholes whilst I can. It's incredible no one has thought of this before.

Figure 27. *Free Air (Governor Fitzroy Place)*, 2014, video still Layne Waerea [click here to view]

Date: August 23, 2014

Time: 11.10 a.m.

Instruction: To give away air for free in a public space

Duration: 15 minutes

Conditions: 1 large custom-made and inflated plastic pillow, sandwich board with Free Air written in white chalk, rock.

Description: To test the freeness of the public space and street known as Governor Fitzroy Place in Auckland.

Action: This intervention was carried out in Governor Fitzroy Place (formerly Lorne Street, Auckland Central). Once a public road, Governor Fitzroy Place now operates mostly as a public pedestrian plaza for staff, students and other members of the public wanting to cut through the university precinct. Keen to test the free public nature of this space, I secure a large, plastic pillow of air with a rock in the middle of the plaza. Located near the plastic pillow is a sandwich board with the words Free Air written in white chalk. I then wait to see if anyone will respond to my invitation/instruction. For the duration of the 15-minute intervention,

passersby ignore or express little interest in the large plastic structure located in the middle of the plaza, choosing to glance quickly or ignore it completely as they walk past. Finally it is the actions of one young male student who proceeds to dislodge the rock by giving it a good kick, which allows the inflated pillow of air to float away, causing an impromptu squeal from a member of the public and leaving the sandwich board and its statement of Free Air as the only obvious trace of this intervention.[41]

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[41] Robert FitzRoy, who first visited New Zealand as commander of the Beagle in 1835, was Governor from 1843, succeeding the late William Hobson. He served until 1845, when he was recalled to Britain and replaced by George Grey. During FitzRoy's governorship the Crown had a monopoly on purchasing land (pre-emption), which had been confirmed in the Treaty of Waitangi. Due to a lack of funds the Crown was unable to purchase land for resale to settlers. This resulted in settler and Māori agitation, and an ever-worsening economic situation. FitzRoy's solution was to allow Māori to deal directly with settlers who wanted to acquire land. The Colonial Office in London disapproved, and with the outbreak of war in the north of New Zealand, he was recalled to Britain in May 1845.

FitzRoy retired from active service in 1850. In 1854 he became chief of the new meteorological department of the UK Board of Trade. He instituted a system of storm warnings or 'forecasts' and published these first as a daily weather report on September 3, 1860 (Wards, 2013).

Free Humour

An invitation to treat

Figure 28. *Free jokes*, 2011, photo Tuafale Tanoa'i

Date: October 16, 2011

Time: 7.58 p.m.

Instruction: To give away jokes for free during the Rugby World Cup NZ 2011

Duration: 35 mins

Conditions: Free jokes sign, Rugby World Cup NZ 2011, Major Events Management Act 2007 enacted to prevent unauthorised commercial exploitation of a major event and in particular to prohibit advertising that might intrude on a major event activity.

Description: In November 2005, New Zealand successfully secured the rights to host the Rugby World Cup for 2011. The New Zealand Rugby Union's bid included a commitment to ensure adequate provisions were put in place to protect the sponsors of major sporting events from ambush marketing – a tactic whereby a company engages in promotions that may interfere with or take advantage of a rival's sponsorship. In 2006 the Minister for the Rugby World Cup announced Government plans to introduce legislation that would support this commitment and in 2007 the

Major Events Management Act was enacted. One of the key purposes of this Act – as outlined in s 3(1)(a)(ii) – made clear that unauthorised commercial activities were banned during the staging of any major event. Areas referred to as 'Clean Zones' would be established that prohibited unauthorised commercial exploitation within 5km from the boundary line of any of the major sporting arenas hosting the events.
In 2007 an Order in Council was passed by the Executive branch of the Government confirming the Rugby World Cup NZ 2011 as a 'major event' thereby securing the protection offered by the Major Events Management Act 2007 that related to any ambush marketing. These new laws gave 'super-ordinary' powers of delegation and enforcement to local councils – a constitutional prerogative normally reserved for Parliament – to ensure only the official sponsors would benefit from the staging of the Rugby World Cup in 2011.

Action: On the night of the semi-final game between New Zealand and Australia, I arrive at Eden Park about an hour before kick-off. In the public space outside the stadium there are thousands of people, and many are wearing black. Occasionally I see someone in the colours of the opposition as they bravely tried to work their way to the stadium entrance. Wearing a long-sleeved dark grey thermal hoodie over jeans and tennis shoes, I position myself with my sign close to the entry gates, hiding my face behind the cardboard placard that purported to offer jokes for free. My social protest and public offering is aimed at the extraordinary legislative measures the Government has been prepared to take in order to protect the business interests of a few. My temporary stand is an attempt to champion the backyard entrepreneurialism commonly found at events such as these – a DIY spirit that encourages the likes of pop-up sausage sizzles that provide a social service and the opportunity to earn a few dollars at the same time.

I have prepared a list of standard jokes of short duration, a copy of which is tucked inside my back pocket, and while passers-by make remarks or laugh (presumably at me and the sign), I am relieved that very

few are prepared to interrupt their determined gait to take advantage of this free – and unauthorised – commercial enterprise. I fully expect someone might ask me for a joke, but now that I am actually standing outside a major sporting venue before the start of a major sporting event, I am suddenly overcome by an intense sense of stage fright. What if I forget the joke mid-way through it's telling? Even if I did manage to get to the end what will I say or do if no one laughs? After about 15 minutes of silent sign holding, a group of teenagers approach and ask for a joke. I proceed to give them my best – or what I thought was my funniest prepared joke – but I can tell by their awkward response that they don't share my sense of humour. In fact they tell me they can do much better and ask if they can give me one. Desperate at this stage to hear someone laugh – even if it is myself – I respond and wait with pathetic enthusiasm.

"What's brown and sticky?"
"A stick."

***Free Humour*. Only $29.99. Buy now while stocks last.**

[Advertisement]

Our Promise

At *Free Humour* we provide our customers with the best and the freshest necessity of life – canned humour. *Free Humour* is an exciting, state-of-the-art company, where we capture the best humour, and package it into a lightweight yet highly durable aluminum can for your convenience. You take it wherever you go. To your next office meeting, your annual dental appointment, or even when visiting your local art gallery. Our product will be there when you need it most.

The human body functions at its best with a regular supply of high quality humour. The human body can easily live without food and water for weeks, and without sleep for around 7 days, however the physical and sociological effects of a lack of humour can happen in the same time it takes to send one ill-penned email/tweet or photoshopped selfie uploaded to a social media website.

Here at *Free Humour*, we believe in the importance of humour as necessary to our everyday lives and that our bodies require a regular supply of premium humour in order to function at our peak performance. By supplying our customers with fresh clean humour, we allow them to boost energy levels in a natural way, that helps with hangovers, unreasonably sensitive teeth, and when completing any online market research survey.[42]

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[42] Humour, as a temporary social space, has the potential to unveil something socially, culturally or politically contentious that could easily remain politely unsaid. Manifest in a verbal or textual exchange or interplay, a gesture or thing, humour has been broadly defined to refer to "anything that people say or do that is perceived as funny and tends to make others laugh, as well as the mental processes involved in both creating and recognising the humorous stimulus and the resulting affective response" (Martin, 2007). Simon Critchley's book "On Humour" situates

Why We Started *Free Humour*

We are entrepreneurs, humour lovers and people with 3x low-paying part-time jobs. Admittedly this venture into the humour industry started as a joke, after we listed a Ziploc baggie of humour on Trademe as a gag. "One bag sold for $1. And then another bag of humour sold for $2." But the joke has the potential to become a viable business, and we anticipate selling on average 3 cans per month online, as well as being stocked on two shelves in a local hardware store. Our Research and Development department has recognised that there is a demand in the marketplace for quality humour that is not being met by existing products.

- Existing products recycle humour that isn't very funny and definitely sounds familiar. Using cutting-edge technology, our product gives the customer a unique humorous experience at a reasonable price.
- Greeting cards and Xmas crackers are the most common product you can buy that promises humour. With *Free Humour* we give you the opportunity to enjoy humour every season and every day.
- Free-market pricing and concerns about climate change have made buying humour difficult to afford. Our state-of-the-art technology

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humour as a subversive force with the potential to reveal and critique the inconsistencies and incongruities present in the power structures of the everyday (2002). As a tactical intervention and exchange, humour can operate as both social agitation and subterfuge, offering a softer, social framework to consider contentious and alternative viewpoints or opinion (Mulkay as cited in Martin, 2007). While social and legal codes may guide the deployment of humorous words and gestures in the public realm however, the subjective and ambiguous nature of humour – and the consequences of its positioning – render its practitioners subject to an operational unpredictability that offers no guarantee of any new and shared understanding as a preferred outcome. A social practice and product that promises a softer and safer platform to consider and enact unspoken alternatives and paradoxically a social cushion that may end up serving the status quo, diminishing any attempt at socio-cultural transformation and inadvertently reinforcing the social patterns it seeks to undermine (Meyer, 2000).

makes canning humour and delivering it to your doorstep cheaper and cleaner for the environment than it has ever been.

We think this product matters, and we know there are people out there who deserve to experience a funnier day. We are committed to delivering the best, and intend investigating the possibility of marketing our product to the United States, Belgium and Australia.

Staff

At *Free Humour* we believe that everyone should have access to fresh clean humour, but we know this isn't always possible due to ever-changing social, political, cultural and legal circumstances. We at *Free Humour* however have taken it upon ourselves to deliver you the freshest and funniest humour at the reasonable price of $29.99. Our goal is to continually strive towards humorous perfection and we are committed to developing the best possible humour, capturing it in state-of-the-art methods and delivering it to our customer/s well within industry sell-by dates.

Layne Waerea is the founder of *Free Humour*. As a former lawyer and teacher of English as a second language, Layne has always been interested in circumstances that create and foster humour. Listening to the creative use of English as both an alibi and excuse, Layne has used this experience in court and the classroom to ensure that only the bestest quality humour is developed and available for purchase at *Free Humour*.

Scientific Background

Humour and laughter are sometimes used interchangeably, but the two things are actually different.

Humour is the tendency of particular cognitive experiences to provoke laughter and provide amusement. Anyone who is able to experience humour, i.e. be amused, smile or laugh at something funny, is considered to have a sense of humour. Whereas those lacking a sense of humour might

find the same behaviour strange, offensive or irrational. Psychologists believe that humour is subjective, and may vary according to geographical location, culture, maturity, level of education, intelligence and context. Laughter, on the other hand, is a physical reaction in humans whereby the body and in particular the diaphragm, produces rhythmical and audible contractions, resulting in a vocal expulsion of air from the lungs that can range from a loud burst of sound to a series of quiet chuckles and is usually accompanied by characteristic facial and bodily movements.
Laughter can be a spontaneous and unexpected, and is considered a visual expression of joy, mirth, happiness and relief.

Most people tend to take humour for granted because it is an abundant substance. However, increasing stress in our daily lives has led to a decline in humour quality, which has resulted in health problems for some people. Humour which is heavily contaminated with cynicism and sarcasm can provoke unsavoury situations where people are capable of general distrust and a tendency to mock or convey contempt. Low quality humour can sometimes be seen in the comments section of online posts, happy birthday/greeting cards aimed at mature women and the ongoing proliferation of reality TV cooking shows. Good quality humour therefore is vital for our general good health and wellbeing, for without it the body must work harder to meet the everyday demands required at home, work and the local library.[43]

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[43] Humour as a theory and practice has resisted any clear and singular definition or comprehensive theoretical understanding. Historically, humour has featured, at some point and to varying degrees, in the work of a number of prominent thinkers that include Plato, Aristotle, Henri Bergson, Immanuel Kant, Søren Kierkegaard, Sigmund Freud, Thomas Hobbes and Arnold Schopenhauer (Morreall, 2009). As a consequence, a broad range of sometimes conflicting theoretical models have emerged in an attempt to address its origins, nature and function across many intellectual and academic fields.

Central to the research on the origins of humour have been the superiority, relief and incongruity theories. The triumph of the superiority perspective offered

Health Benefits

Everyone knows that quality humour produces quality laughter, either at home by yourself or when having lunch with your accountant/lawyer. Laughter is a powerful antidote to stress, pain, and conflict. Nothing works faster or more dependably to bring your mind and body back into balance than a good laugh. Humour, and its sidekick laughter, distracts you from your unrealised hopes and dreams, and instead connects you to like-minded others who have already discovered the many benefits of humour+laughter and at times appear more grounded, focused, and alert. These are just some of the benefits our Research and Development team has identified as extremely important.

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the sense of victory over an opponent, with Rod Martin in "The Psychology of Humor: An Integrated Approach" proposing that it "may have evolved as a way to communicate safety to others, suggesting that for now, humans may have won" and are capable of controlling their situations (2007). The release of nervous energy in the form of humour or laughter, according to psychoanalyst Sigmund Freud, provided temporary relief and a socially shared zone for dealing with any stress and awkwardness related to "social taboos such as sexuality, death, fear, embarrassment and aggression" (Rancer & Graham as cited in Meyer, 2015). The incongruity theory attempted to explain the cognitive element of humour, where the experience of humour results as preconceived patterns are disrupted or surprisingly overturned and replaced with something alternative or contradictory (Schopenhauer as cited in Morreall, 1987).

While humour theorists in the eighteenth and nineteenth centuries attempted to advocate an overarching theory explaining how humour worked as a mode of expression, a cultural product and as a serious topic for discussion, contemporary humour research concedes that "no all-embracing theory of humour and/or laughter has yet gained widespread acceptance" (Chapman & Foot, p. 4). Humour as a key element of human life continues to captivate and inspire ongoing theoretical discourse; multiple conversations that reference earlier attempts to define the nature and origins of humour, matched with a contemporary awareness that suggests "we are now in a period of mini-theories, where individual contributions are solving individual problems without there being a macro-theory to which they can all in the end be referred" (Freeman, as cited in Parkin, p. X).

- Physical benefits – Boosts immunity, lowers stress hormones, decreases pain, relaxes your muscles, prevents heart disease.
- Mental benefits – Adds joy and zest to your life, eases anxiety and fear, relieves stress, improves mood, enhances resilience.
- Social benefits – Strengthens relationships, attracts others to us, enhances teamwork, helps defuse conflict, promotes group bonding.

Our Canned Products

Our specially designed one-piece aluminum can allows us to capture and retain the freshness of the humour inside. No forgotten punchlines, no awkward pauses. Our product is good to the last laugh and we are confident there will be no waste.

Prior to a new batch being processed, one of our cans undergoes a thorough inspection and is then subject to significant testing in the office lunchroom, at home and with genuine members of the public at a local cafe.

After completing a comprehensive checklist of over 3 check items, the rest of the cans are then carefully packaged by our Quality Control Technician. Prior to shipping, a photograph of your personal product will be taken with our Quality Control Technician and shipped along with your Quality Control Certificate.[44]

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[44] Integral to any definition of humour are references to its social ambiguity: fundamental to human interaction and at the same time refusing to be restricted by any one explanation or understanding. John C. Meyer's, "Understanding Humor through Communication: Why be Funny, Anyway?" summarises that humour and laughter suggest human capacities to perceive words and actions as funny, a willingness to recognise and respond to something as amusing or the ability to initiate moments of humour (2015). Common to this understanding is that humorous events acknowledge patterns of communication and then a disruption of those patterns. Of course, what someone finds funny may not register the same for another, but being able to perceive these symbolic pattern-shifts can give rise to

further humorous moments and opportunities for alternative patterns or viewpoints to result.

The Italian artist, Piero Manzoni, is known for having produced 90 individually numbered cans – weighing 30gr each – of his own excrement. He valued them at the same price per weight as gold making clear reference to the Modernist tradition of the artist as *alchemist* and declared each can a collectible item of personal significance to and of 'the artist'. In 2002 the Tate Gallery in England, drew criticism for spending 22,300 pounds of public money to secure *Can 004,* a decision they justified by explaining Manzoni "was an incredibly important international artist. What he was doing with this work was looking at a lot of issues that are pertinent to 20th-century art, like authorship and the production of art. It was a seminal work" (Howarth, 2000).

The *Merda d'artista* (1961), according to aritst and critic Jon Thompson, was "Manzoni's critical and metaphorical reification of the artist's body, its processes and products", with the sealed can as a way to understand "the persona of the artist and the product of the artist's body as a consumable object". Allegedly the product was able to dry naturally – without the assistance of any form of preservative – and existing as the "the perfect metaphor for the bodied and disembodied nature of artistic labour: the work of art as fully incorporated raw material, and its violent expulsion as commodity" (Howarth, 2000). Mazoni's work revealed an awareness of how the role of the artist had become instrumental in the cycle of consumption; as something to be (re)packaged and (re)processed, and typifying the on-going and relentless pursuit for profit as a cornerstone in Neoliberalist thought and economic policy.

There are no clear records as to how many cans were actually sold or whether the cans did actually contain Manzoni's faeces, but this work joined a limited range of his ideas that played on a sense of humour and were aimed at the pretentiousness of consumer culture. Previous unrealised works included wanting to mark eggs with his fingeprints before eating them; selling balloons filled with his own breath, and a competition between artists to see who could draw the longest line. As clearly shown by the Tate's willingness to hand over more than 20,000 (GBP), this work proved to be a humorous and profitable critique against consumer culture, ironically fulfilling the artist's original intention/ hope as nearly 45 of the 90 cans have subsequently exploded, some time after being purchased.

Quality Control Certificate

Our Quality Control Certificate provides confirmation that each can of humour that we ship out has met our quality control minimum

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Meyer proposes that the concept and process of sharing meaning is central to communication and humour. Through the use of words, actions and images, humour as an integral part of the human experience manifests in daily conversations and interactions, acknowledging and challenging social patterns of thought and behaviour, where meaning is conveyed, shared and observed, allowing individuals to reflect on their own response, and in turn, how this exchange can influence perceptions of significant and symbolic everyday events. Meyer believes "humour helps us to understand important patterns or routines in life, along with recognising and coping with interruptions or failures of those patterns" (p. 3). Humour presupposes a pattern-violation, and a "social trial and error" that "can facilitate learning about language and communication and how social relationships may develop" (2015, p. 3).

While humour reveals itself through external indicators such as laughter and smiling, the cognitive element is key to understanding and responding to humour. Individuals 'see' humour in a myriad of spaces and situations with no promises or guarantees as to how individuals may perceive any given humorous moment. This variety and unpredictability stimulates consideration of new or alternative responses to the patterns previously observed. Meyer refers to Arthur Koestler's "The Act of Creation: A Study of the Conscious and Unconscious Processes of Humor, Scientific Discovery and Art" (1964) which situated humour as a central component of creativity and capable of stimulating new perspectives to once held social patterns of thought and behaviour (2015).

Failure to communicate the same meaning, however, can mean humour may not always register as a shared and positive experience. While humour can forge social bonds, it may also instigate disagreement and discord and unless participants acknowledge a shared 'script' what was intended as an amusing and funny exchange is now at risk of social indifference, alienation and rejection. Recognising the subjectivity of social interaction, and the facilitating role of humour, are key aspects of humour theory and as Patricia Keith-Spiegel argues, heavily influenced by how each one of us is located in our own socio-cultural environments (Spiegel as cited in Reichl & Stein, 2005).

requirements. For public health and safety reasons each can should be used by the best before date marked on the Quality Control Certificate included in your delivery. You can still use your can of *Free Humour* after this date as it should still be safe but it may have lost some quality. Make sure you store your cans in a safe and accessible place and they should not at any time be refrigerated. Please follow all and any instructions for use we may have put on the label.

Why You Should Try Free Humour

Remember the day when people laughed freely and without fear of censorship and public shame? "Humour? I hear it all the time in the locker room at my local gym and I am sure there is a free app I can download from the Internet why would I want to buy a can?" The truth is we've begun to appreciate the clean, pure and refreshing taste of *quality* humour. We offer original Knock Knock jokes, simple and short one-liners that are easy to recall at the right moment *and* guaranteed to raise the office and/or post-workout mirth rate to unprecedented levels.[45]

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[45] Humour as a serious concept within contemporary art is capable of augmenting and activating the ability of art to provide a critical space, not just of the form and ideas contained within the work but how it is that the humorous experience allows for the possibility of multiple and even paradoxical perspectives to exist simultaneously. As a concept within art practices, the use of humour allows for and plays off its ambiguous nature, giving it free rein to manifest in a variety of forms such as an object, verbal interplay, and/or performance. Exercising a multiplicity and freedom of expression has meant humour – as informing both methodology and method – has been able to trespass through various modes of artistic practice, a tactical strength that resists any permanent home or positioning but perhaps at the expense of any serious and sustained theoretical recognition. This creative freedom, however, remains central to its importance and continued relevance for contemporary art forms, where the ability to entertain both the ambiguous and the paradoxical ensures humour can activate an ongoing critical discourse and practising unconstrained by any artistic dogma and/or hegemony.

Humour in the form of jokes, slapstick, satire, irony, parody and caricature "has contributed to transformations in practice and the experience of art, from the early twentieth century avant-garde period to the present" (Higgie, 2007, p. 12). Early practitioners such as the Dadaists used "a wild absurdist humour" to respond to the horrors and indiscriminate mass destruction carried out during the First World War (Higgie, 2007, p. 13). Acknowledging the inherent contradictions present in a society that could condone such orchestrated carnage, the Dadaists chose to reveal and assert these inconsistencies through outlandish and outrageous public performances. Marcel Duchamp and Francis Picabia used humour in the form of the readymade to provide critique of the Modernist institutional priority of form over content, expounded upon by the Surrealist insistence of composition and relational juxtapositions. This post-war period also revealed the works of Leonora Carrington and Hannah Hoch, as examples of early feminist satire seeking to challenge the prevailing dominance of the white male artist within the canons of Modernist artistic thinking and practice (Higgie, 2007).

Sheri Klein in "Art and Laughter" posits that Duchamp, through his use of the everyday mass-produced object and in particular his use of a men's urinal as a finished art work, utilised humour as a means to challenge our expectations about art in ways no other artist had managed to achieve (2007). While Modernist tendencies favoured the artwork as the creative output of a genius, that was to be experienced through its formal qualities such as shape, colour and texture, Duchamp's readymades humorously disabled the agency attributed to the artist and disarmed viewer and critic predilection as to what constituted art at this time. According to Klein, Duchamp's influence on Postmodern art can be seen in the way "contemporary artists continue to exert their disillusionment in art and the state of the world in a way that defies defeat, exalts resistance, and comes to terms with cynicism, nihilism, alienation and meaningless in contemporary life" (2007, p. 4).

The artists featured in Klein's "Art and Laughter" (2007) focused less on previously revered formal qualities of art and instead chose to deal with subject matter relating to issues of culture, identity, representation and gender. And where the tactical use of humour was used to perpetuate or challenge norms or stereotypes and to induce pleasurable experiences. Klein argues that a sense of humour is the "ability to recognize the ludicrous or the incongruities presented to us, and of course, to find them funny" (p. 12). A critical function necessary if a

Our Research and Development team is discovering that our senses are finely tuned to tell the difference between poor and quality humour. Just like bottled air, premium humour is a growing industry because people are noticing the difference. We stand behind our product and believe it will appeal to your senses. At *Free Humour* we utilise state-of-the-art technology and have gone to exceptional lengths to employ only the best and most qualified staff. Furthermore, and as testament to our dedication and desire to offer a broad and inclusive range of humour, future plans are in place to source humour from international locations.[46] Now with *Free Humour*,

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viewer is to appreciate and understand the relevance of any incongruities depicted by artists.

Klein identifies several major kinds of humour associated with art that include parody, satire, pun, paradox, and irony – all of which are characterised by distinctive and subtle shifts that add their own inflections to the discussion on humour in art. Parody, she states, "allows for a respectful exploitation of artworks with a twist of novelty" (2007, p. 13). Postmodern artists utilised parody to critique issues relating to "contemporary culture, personal and social histories and the art world" (2007, p. 14). Satire in a visual form delivered a more forceful message by pointing to "the knowledge and behaviour of a culture or group to overemphasize and exaggerate aspects of life and its foibles with the hope of provoking laughter or a change of attitude or ways" (2007, p. 14). The use of the pun allowed for an image to register multiple concurrent meanings and alternative translations of the ideas presented with the use of paradox, according to Klein, allowing artists to make contradictions apparent in order to reveal another truth (2007). Irony, she noted, allowed artists to combine words and images to express something completely different from their literal meaning.

[46] Richard DeDomenici is a British artist whose work, as he describes it, "sets out to confound" and/or, "to create the sort of uncertainty that leads to possibility" (DeDomenici as cited in Trueman, 2016). He has created a full-scale igloo out of Kendal Mint Cake, orchestrated public protests against himself, burnt his own effigy on the streets of Berlin and sat on pavements holding out cash to passers-by (a process he calls reverse begging). In September 2013, he inspired residents of the British coastal town of Brightlingsea to invest in an alternative currency called 'Knitcoin.' Inspired by the unusually high number of knitting shops per capita in the seaside town of Brightlingsea, DeDomenici proposed an opportunity for visitors

to generate their own and alternative currency called Knitcoin, which involved mastering a particular crocheting method (training of one hour), which could then be used to trade at an "exclusive selection of local shops and businesses" (DeDomenici, n.d.). The artwork, as part of the Pilot festival, referenced the town's unsettled economic history and the possibility of closure for one of the town's local banks. *Knitcoin* as an artwork was designed to encourage local trade, would have parity with the British pound and would have a guaranteed exchange rate for the duration of the festival. DeDomenici hoped that Knitcoins would "help catalyse the town's local economy and to attract inward investment." The artist also ensured state-of-art security features designed to prevent counterfeiting and money laundering, specific details of which would only be made available at the time of the festival (DeDomenici, n.d.).

DeDomenici has created *The Redux Project*, an ongoing series of artworks as re-enactments of iconic scenes from old Hollywood movies and more recently well-loved British television programmes, in their original locations. Reshooting scenes from *The Matrix, Priscilla, Queen of the Desert* and *Blue Peter* has provided audiences with a firsthand experience of the banality involved in not only the idea of the 'location' but also the process of the big-budget film industry. Scenes of *Avengers: Age of Ultron* were shot in Norwich, described as the regional administrative centre for East Anglia and located about 100 miles north east of London. Matt Trueman, writing for the Guardian, descibes DeDomenici's work as an overlap between "art, humour and activism." DeDomenici says he chooses humour for the ability of laughter to disarm and relies on his early experiences accompanying his mother on protest marches as a child (2016, para. 6).

As part of a festival about contemporary London, DeDomenici led a funeral procession to mark the death of social housing. While acknowledging that artists often get the blame for inner-city gentrification, this work draws attention to the way local government officials (housing corporations) refer to the process of 'decanting' as the eventual forced departure of social housing, and therefore their residents, due to the unviability of maintaining sought-after real estate when property demand in London is at an all-time high. While his work might not be readily identified as protest, his interventions in public spaces point to underlying systems of power that are supported by prevailing economic norms. He makes a valiant effort not to get arrested, has turned office-chair-spinning into a sport and has served airline food at a pop-up restaurant. The Guardian newspaper describes

anyone can access and benefit from this high quality, convenient and affordable luxury experience.

Guarantee

Our promise is that this product is 100% friendly and just right for a variety of uses. Whether you are preparing for a public speech, going on a first date, or recovering from a hard workout, our can comes in two sizes, both of which are more than likely to fit inside your briefcase, purse, or pilates bag. Whatever the occasion, our product will be by your side or on your back.[47]

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him as "a random art-happening generator", who "uses idiocy as a disguise" (Trueman, 2016, para. 8).

[47] Sheri Klein in her article "Humor in a Disruptive Pedagogy: Further Considerations for Art Educators" considers the purpose and value of humorous art as disruptive pedagogy designed to facilitate a form of critical engagement (2013). Utilising symbols, images, language, story, the Trickster draws attention to her own problems and limitations, pointing out the familiar through self-effacing humour so that we may consider and address our own shortcomings (Molon & Rooks, 2005, p. 8).

Allan Ryan in "The Trickster Shift" (1999) regards the notion of the 'trickster shift' as embracing "serious play" that can make possible "a radical shift in viewer perspective" (Beam as cited in Ryan, 1999, p. 5). Citing the work of anthropologist Paul Radin, and in particular a profile of the Trickster as found in Native American mythology, the element of trickery is seen as important to any tactic of deception. Ryan refers to Gerald Vizenor's work on contemporary Trickster narratives, where his emphasis is on the Trickster as a "doing" rather than an essence. And while the Trickster may manifest as a being, these creations serve more to illustrate the doing as "being curious, ingenious, playful, irreverent and resilient" (Ryan, 1999). Central to the idea of the "doing" are the comic qualities associated with the Trickster, where the ultimate goal of the comic element "is a radical shift in viewer perspective and even political positioning by imagining and imaging alternative viewpoints" (Ryan, 1999). Lawrence Sullivan believes the use of irony is central to the Trickster figure where the Trickster's character and

Refund & Exchange Policy

In the unlikely event you are not satisfied with our products, please contact the *Free Humour* Complaints Department immediately. Please ship the package to the designated address provided by our staff. Customers will have to cover the shipping fee for the package return. We will send back a replacement package. We can only accept exchanges; we are not able to give refunds for items, faulty or otherwise.

***Free Humour* Testimonials**

Thank you *Free Humour* for letting me experience humour without having to leave my home or even talk to anyone else! Easy to use and results are instant. As long as *Free Humour* keeps cannin' I'll be buyin'.
Sandy, February 05, 2016

This is exactly what I have been looking for. The sharp, wittiness of this canned delight is a pleasant surprise as I didn't know you could get this kind of humour in New Zealand. All it takes to put a smile on my face and a chuckle in the throat is one breath of clean, fresh canned humour. I used to believe that humour was something only 'other people' got but now I realise with one can of *Free Humour* I can be funny too. Thanks *Free Humour*.
Trevor, February 05, 2016

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exploits embody the process of ironic imagination. His dynamism of composition mocks, shatters and re-forms the overtly clear structures of the world and the overly smooth images of the mind. In him the "double-sidedness of reality reveals itself" (Sullivan as cited in Ryan, 1999, p. 8).

The trickster-pedagogue therefore, when operating in a disruptive pedagogue, uses humour to encourage "dialogue, critique and boundary crossing" (Klein, 2013, p. 35), creating learning spaces that expect contradictions, ambiguity and chaos and are capable of the "shaking up and waking up of his or her learning community through working with both conscious and unconscious beliefs and thought patterns" (Klein, 2013, p. 36).

My family and I live in an area with no humour. Or so I thought. After one breath of this 'fresh' humour, I realised I live near some really funny people. Does *Free Humour* have any future plans to make the cans bigger?
Candace, February 05, 2016

I love my can of humour, respiration is just more fun now.
Gail, February 05, 2016

This humour is so fresh and so clean. Does it come in any different colours?
Janice, February 05, 2016

Bought some *Free Humour* for a friend and colleague who sometimes likes to tell jokes at work. After using this product her colleagues told her she was more witty and a great social asset. Also she's glad that this product is fresh and in no way spoiled as she is very sensitive to any jokes about flatulence and old people.
Craig, February 05, 2016 [48] [49]

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[48] Humour as a mode and means of communication is capable of inciting both pleasure and discomfort. While the intention of the person using humour – and its concomitant delivery – may direct any preferred outcome, it is the audience that has the final say as to its ultimate success or failure. John C. Meyer, in "Humor as a Double-edged Sword: Four Functions of Humor in Communication" refers to this potential to both unite and divide as the paradox of humour (2000). Michael Billig also identifies the paradoxical nature of humour, in that all cultures can recognise something as funny but not always in the same way; that it can simultaneously include and exclude; and despite the lack of any definitive analysis of humour it is still possible to arrive at some shared understanding as to its nature and function (2005).

Meyer identifies four functions of humour in communication that traverse "identification and unification to differentiation and social exile" (2000, p. 323). The identification and clarification functions allow the use of humour to unite the audience and speaker on similar and familiar playing fields, engendering agreement with respect to the norm or issue involved. The enforcement and

differentiation functions, however, serve to divide as the humour relies on the fact that both speaker and audience do not share the same humorous perspectives. If humour is used therefore to persuade, this dualism as a consequence serves to make humour a "double-edged sword" capable of uniting and dividing any audience and superseding and/or defeating any prior intention or expectation of the humorous moment (2000, p. 329).

The use of humour as a key instrument of critique within contemporary art practices is therefore subject to this paradoxical feature. While artists may favour a particular and positive outcome, attempts to reveal, question and critique through the use of humour will always be vulnerable to viewer disagreement, rejection and/or ambivalence. This playful doubleness however, and an ongoing resistance to any formal and singular disposition, renders the ambiguity of humour a compelling tactic, and through its potential to invoke both agreement and disagreement sustains the possibility and probability of alternative viewpoints existing in the everyday.

[49] The author would like to acknowledge that some of the content of this advertisement might bear an uncanny resemblance to that used to sell 'vitality air'. This was intentional and not a coincidence and therefore the author would like to express thanks to the company for their healthy contribution.

Figure 29. *Free Excuses (weakforce4)*, 2013, photo Layne Waerea

Date: Various, December 2013

Time: Various times

Instruction: To give away to the public excuses for free

Duration: 4x 1-hour sessions

Conditions: The Excuse Agency,[50] advertising chalkboard, free excuses, s 9 Fair Trading Act 1986 which states that no person in trade shall engage in conduct that is misleading or deceptive or likely to mislead or deceive.

Description: *Free Excuses*, 2013, was part of weakforce4, an international, collaborative, visual arts project at ST PAUL St Gallery, Auckland. This project explored how and why artists work together or collaborate, and the notion of authorship within a collective and the process of art production in the public sphere. *Free Excuses* operated out of the Projects from the Caravan,[51] and on certain days of the month-long exhibition members of The Excuse Agency were to give away excuses for free. The idea was to explore

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[50] The Excuse Agency consisted of Joe Jowitt, Ziggy Lever, Deborah Rundle and Layne Waerea.

[51] For further details on weakforce4 and Projects from the Caravan see http://uft-gravity.com/

the nature and relationship of 'the excuse' as not only a social irritant but also one with significant force when interacting with other artists or members of the public.

Action: *Free Excuses* as an artwork, however, did not quite go ahead as planned. Staff training – with a particular emphasis on ensuring compliance with the Fair Trading Act 1986 – occupied the majority of the scheduled public sessions. The Excuse Agency was therefore only able to offer its services for *a limited* time and on a *select basis*. Notwithstanding that there were conversations between Agency members and the public – and genuine requests for free excuses at other times during the exhibition – The Excuse Agency would like to apologise for any inconvenience caused as a result of *Free Excuses* – as a promised artwork – not being available during the scheduled and publicised times.

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