

- 8.001 It is impossible for the Executive and its agencies to function without incurring some risks. Whenever there are risks, unfortunate events can occur. After such events, it often falls to Parliament to try to determine whether or not some Minister or officials should be held accountable and, if so, who and for what.
- 8.002 We believe Parliament needs more information about risk than it is currently receiving. In this chapter we set out what we see as the fundamental issues. We also make some suggestions which, if adopted, may assist Parliament to form a clearer view when unfortunate events do occur.

What Information Does Parliament Need About Risk?

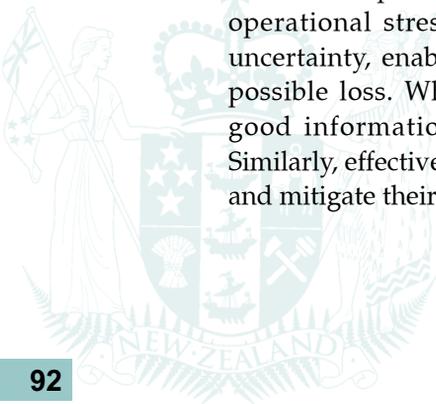
- 8.003 In recent times, both private and public sector managers have paid considerable attention to the identification and management of risk. Departmental chief executives are now expected to implement well-founded plans for risk management.⁴² Such plans relate to conventional “business risks” (that is, failing to produce the required outputs or incurring avoidable injuries, inefficiencies or losses in doing so). We endorse and support this development, but believe that it is also necessary for departments to assess and seek to mitigate the risk of not achieving the Government’s desired outcomes.
- 8.004 There are, as well, other and more direct risks. The tragic events surrounding the collapse of the Department of Conservation’s viewing platform at Cave Creek threw into sharp relief many of the complexities inherent in the relationship between Parliament and Ministers and between Ministers and their chief executives. The key problem can perhaps be summed up in a simple question: “How can a fair regime of Parliamentary accountability be applied in circumstances where resources are scarce and both Ministers and public servants must necessarily incur some risks?”

42 The State Services Commission has produced a set of expectations relating to risk management based on the standard AS/NZS 4360: 1995. See *Responsibility and Accountability Standards Expected of Public Service Chief Executives*, State Services Commission, June 1997.

8.005 The size of the risk associated with some adverse event is affected by both the probability of that event occurring and the size of the loss (often estimated in monetary terms) that will result if the event occurs. Risk is managed by taking steps to reduce the probability of the event, the size of the consequential loss, or both. Risk management itself consumes scarce resources and ceases to be cost-beneficial if the cost of the resources applied to mitigate the risk (including their economic opportunity cost) exceeds the estimated reduction in the size of the risk.

8.006 We believe that it is worth making the following observations:

- In reality, estimates of the probability of an adverse event are almost always uncertain and estimates of the size of the consequential loss may also be uncertain. Hence, no method of estimating risk can produce a precisely accurate result. Any estimate, however good the data and however skilled the person who makes it, will be somewhat uncertain and therefore open to challenge (especially with the benefit of hindsight). Decisions on what resources to devote to mitigating the risk are also uncertain and open to challenge.
- The occurrence of an unfortunate event does not, by itself, imply that a risk assessment was deficient or that actions taken (or not taken) to mitigate the risk were inappropriate or negligent. Even if the probability of an adverse event is very small, it *might* still occur.
- Risk is closely inter-related with organisational capability, especially information and control systems. Organisations become more risk prone when their capability is depleted. Unless they have some reserve capacity, they may be unable to cope effectively with even modest amounts of operational stress. Good information systems reduce uncertainty, enabling better assessments to be made of possible loss. When such losses compound over time, good information systems facilitate early detection. Similarly, effective control systems help to avoid problems and mitigate their consequences.



What Is the Relationship Between Risk and Accountability?

- 8.007 We have stated earlier, and restate here, that it is fruitless to purport to hold individuals to account for events or outcomes over which they have little or no control. One curiosity of both the State Sector Act 1988 and the Public Finance Act 1989 is that accountability relationships are not defined (and, indeed, the term “accountability” is nowhere used).
- 8.008 Given that the current regime of public management is founded on accountability relationships, this omission is singular and probably unhelpful. Parliament may wish to consider whether or not it would be useful to clarify the nature and scope of key accountability relationships – for example, by amendments to the existing legislation.
- 8.009 It follows from our observations in paragraph 8.006 that we believe the key consideration for accountability in relation to risk management is not that some unfortunate event has occurred. Rather, it is whether or not someone who had the capacity to mitigate that risk in a prudent and cost-beneficial way was negligent in not doing so.
- 8.010 For chief executives, we believe the diligent management of risk requires that:
- a comprehensive and professional assessment of all the organisation's risks is undertaken;
 - where resources permit, a suitable regime for the cost-beneficial management of those risks is devised, implemented, operated diligently and monitored continuously; and
 - where resources do not permit, the chief executive has informed the Minister in a timely manner of the nature and extent of the risks identified, and the resources that the chief executive believes would be needed to manage those risks in a cost-beneficial way.

- 8.011 If a chief executive's actions conform to these three requirements, we believe that it is reasonable to conclude that he or she has discharged any reasonable duty of care and has a sufficient defence against any allegation of negligence on that account. However, where chief executives or their staff take decisions to incur risks outside the regime described above, the chief executive and/or staff member is likely to become primarily accountable for the consequences.
- 8.012 The accountability of Ministers is complicated by a range of considerations, including the convention of collective ministerial responsibility and the unavoidable obligation of governments to allocate scarce resources between competing priorities. For example, a government decision to apply resources to mitigate one area of risk may mean that another cannot be addressed. We believe that it must be left to Parliament to determine (on a case-by-case basis) whether, and to what extent, a Minister should be held to account.
- 8.013 We also believe that it is reasonable for Parliament to be informed regularly about risk assessments and risk management activity. This information could be provided in departmental forecast reports and in annual reports. In the event that a department or agency reported that a desirable risk management regime could not be put in place for lack of resources, that circumstance would be subject to parliamentary scrutiny. Under current Standing Orders, it would be open to any member of Parliament to seek to amend the *Estimates* in order to provide the resources.

Summary of Conclusions

- 8.014 At present, Parliament generally does not receive any information about what risks have been identified by Crown-owned organisations and how those risks are being managed. In our view the accountability dialogue between Parliament and the Executive should take account of risk and risk management.
- 8.015 We believe that accountability relationships and expectations need to be clarified. Chief executives should undertake a robust and professional risk assessment and inform Ministers about the risks that have been identified, what

should be done to mitigate them, and what the implications are for resources and capability. Ministers should convey that information to Parliament, so that Parliament has an opportunity to intervene if it considers that the level of risk being incurred is unacceptable.

