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Public sector
accountability
through raising
concerns



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Public sector accountability through raising concerns

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Auditor-General's overview

The theme for my Office's 2014/15 work programme was *Governance and accountability*. One of the features that makes New Zealand's public sector management special is our dedication to transparency and accountability. Public sector accountability is built on principles of transparency, integrity, and fairness. Accountability is critical to the trust between an individual and the State. Being accountable means public entities taking responsibility for their actions, openly reporting on what they do, providing specific information when asked, welcoming scrutiny, and being responsive when challenged.

Anyone wanting to resolve a matter of importance to them should first gather all relevant information, including the reasons for decisions made, and then make their complaint or raise their concern directly with the relevant public entity. People should be able to do this easily and be heard by the public entity. If people remain dissatisfied, they can ask an independent organisation with the appropriate accountability function (inquiry agency) to look into their concerns.

Our starting point for this report was to "map" the accountability functions in central government, including how organisations and their accountability functions fit together. This was challenging. We identified about 400 different ways in which people can make a complaint or raise a concern. As far as we know, no policy agency has ever assessed whether these individual arrangements add up to a system that is comprehensive and effective for the people it serves. Based on this work, and our own experience of trying to find a source of help for people who contact my Office, this would be a worthwhile exercise.

In this report, we discuss how easily people can make their complaints and raise their concerns through various channels and what we have learned about the strengths of, and challenges facing, six particular agencies with public sector accountability roles – the Health and Disability Commissioner, Human Rights Commission, Independent Police Conduct Authority, Office of the Children's Commissioner, Office of the Ombudsman, and Office of the Privacy Commissioner.

Overall, I consider that we deserve our country's comparatively strong reputation for accountability and transparency. This is a tribute to the hard work and commitment of our politicians, public servants, the media, and the public. However, we cannot take our status for granted, and ongoing challenges remain.

Are there barriers to people making complaints or raising concerns?

In my view, making a complaint or raising a concern with a public entity can be difficult. If a person exhausts all of the entity's own complaint and review processes and remains dissatisfied, it can be difficult to work out where to go. People can become lost in a "black hole of bureaucracy". One reason for this is that little or no easily accessible information explains the subsequent options. When information is available, it can sometimes be difficult to understand.

In my experience, it is becoming more common for people to be passionate and sometimes forceful when presenting their complaint or concern. Although people usually prefer to be polite and reasonable, irritation is understandable when it is difficult and frustrating to access help. It can also take a toll on the staff who are dealing with frustrated members of the public.

How are the six agencies performing?

Despite the difficulties that some people have in accessing help, publicly available performance results suggest that the six agencies we looked at are finding smarter and more efficient ways to carry out their accountability roles.

Indicators reported by the six agencies show that they are largely meeting their performance targets for satisfying people who use their services and for completing their most urgent work in a timely way.

However, some inquiry agencies are coming under strain as matters become more challenging to deal with. For example, the six agencies are dealing with more complaints or concerns that involve more than one public entity. These matters can be difficult to deal with and take more time and resources to resolve.

Are there gaps or overlaps?

New Zealand's arrangements for making complaints and raising concerns are a complex web of accountability functions and agencies. Gaps, overlaps, and inefficiencies are more likely when these arrangements are not well connected.

In my view, these arrangements are not as well connected as they could be. Inquiry agencies work under different pieces of legislation and, because they need to protect people's privacy, there can be challenges to regularly working together.

However, some of the key inquiry agencies, including my Office, support the idea of collaborating with each other when this is lawful and appropriate. We agree that improving connections between inquiry agencies is likely to improve the quality and timeliness of services and improve how public services are used.

I encourage all inquiry agencies to continue to collaborate and look for new ways to improve their connections with each other. In the end, improving these connections will make it easier for people to get the right help soon enough.

I thank the many people who have contributed to this work.



Lyn Provost
Controller and Auditor-General

Introduction

*A democratic state exists to serve its citizens ... That many members of the public need assistance or support in dealing with a state agency is an implicit admission that that agency is still not sufficiently responsive to the needs of the user – that the law is too complicated, or that the agency's actions are not explained clearly enough or in a way which is accessible to every individual ...*¹

- 1.1 In this Part, we discuss:
- public sector accountability;
 - what we looked at;
 - what we did not look at;
 - how we did our work;
 - sharing the detailed information we had gathered; and
 - the structure of this report.

Public sector accountability

- 1.2 A public entity is accountable when it is required or expected to explain or justify its actions or decisions.
- 1.3 Layers of public sector accountability and how it operates in practice can be complex. For example, a public entity could be required or expected to be accountable by legislation, through reporting to Parliament, ministers, and monitoring agencies, through scrutiny by investigative bodies, through the courts, and by responding to questions from the media and/or matters that members of the public raise with them.
- 1.4 People can go to various bodies, officials, or agencies with public sector accountability roles (for simplicity, inquiry agencies) that can look into their concerns if people are not satisfied with the response they get directly from a public entity. Our Office is one of those inquiry agencies.

What we looked at

- 1.5 People should be able to easily make complaints or raise concerns with the public entity they have been dealing with and, if that fails, to approach the appropriate inquiry agency. This is a fundamental part of our democratic system.
- 1.6 In this report, we discuss how easily people can make a complaint or raise a concern about an action or decision of a public entity in central (rather than local) government through these channels. We include what we have learned about the strengths of, and challenges facing, six particular inquiry agencies.

¹ Secretary of State for Constitutional Affairs and Lord Chancellor (2004), *Transforming Public Services: Complaints, Redress and Tribunals*, London, page 48, available at www.webarchive.nationalarchives.gov.uk.

- 1.7 Our work builds on work we completed in 2014, looking at arrangements in the Accident Compensation Corporation and the Ministry of Social Development for handling complaints. We chose those public entities because they deal with a great many New Zealanders every year. We found room for improvement in how both entities handle complaints.
- 1.8 In this report, we discuss:
- what is working and what is not;
 - any barriers to access;
 - any barriers to effectiveness; and
 - any gaps and overlaps.
- 1.9 Our work on public sector accountability had three main components. We have:
- produced an overall “map” of the various functions and inquiry agencies;
 - looked more closely at a sample of six inquiry agencies and their activities; and
 - explored how people can make complaints or raise concerns, including some of the challenges to having complaints or concerns heard and resolved.
- 1.10 As far as we know, this information has not been compiled and made available in one place before.

What we did not look at

- 1.11 We have focused on public sector accountability in central government. We have not looked at how easily people can make complaints or raise concerns about local government organisations. In 2015/16, we are reviewing how Auckland Council handles complaints.
- 1.12 We did not look at the role of courts, tribunals, or Parliament because these institutions are not within our mandate.

How we did our work

- 1.13 We looked for information about making complaints and raising concerns about the action or decisions of public entities. It quickly became clear that there was no comprehensive or easily accessible list of inquiry agencies. We set about compiling such a list – identifying the various public sector accountability functions that are available and the inquiry agencies responsible for them.
- 1.14 We recorded the information about functions, roles, and inquiry agencies in a large spreadsheet. We also recorded who they could act for.

- 1.15 It made sense to us to exclude organisations for which the accountability function is:
- internal – effectively reconsidering its own decisions or actions; or
 - not in use – where the function exists in legislation but not in practice.²
- 1.16 To stay within our mandate, our focus needed to be on the public organisations that watch over or review the actions of one or many other public entities. We also excluded organisations set up to regulate industries or activities that include, but are not exclusive to, public entities, such as the Electricity and Gas Complaints Commissioner.
- 1.17 After removing internal or industry-related organisations, and those that cover private entities, we were left with a list of about 50 inquiry agencies. We then looked for and identified:
- relationships and connections between them;
 - the public entities or topics they watch over;
 - who they could intervene on behalf of; and
 - what powers they had.
- 1.18 We also spoke to representatives of six inquiry agencies and reviewed the inquiry agencies' corporate documents. We put that information together with what we had learned through the work so far and used it to identify common challenges for the inquiry agencies. The six agencies were the:
- Health and Disability Commissioner;
 - Human Rights Commission;
 - Independent Police Conduct Authority;
 - Office of the Children's Commissioner;
 - Office of the Ombudsman (Ombudsman); and
 - Office of the Privacy Commissioner (Privacy Commissioner).

Sharing the detailed information we gathered

- 1.19 It was clear to us that the information we gathered for this work could be useful to those who work directly with the public and provide advice and support to people in need.
- 1.20 To be useful, this information needs to be kept up to date and in a user-friendly format. We are not best placed to do that. After talking with some government and non-government organisations, the Govt.nz team at the Department of Internal Affairs agreed to use the information we had gathered to supplement the

² In the course of our work, we identified some legislation that we suspected was redundant or partly redundant. We referred these to the Treasury for consideration as part of the 2015 Statutes Repeal Bill.

website at www.govt.nz. That website is an all-of-government site that aims to make it easier for people to understand and find government agencies.³

- 1.21 We hope that, with the right technical expertise, the information we have gathered can help in connecting people to inquiry agencies more easily and quickly.
- 1.22 In October 2015, we hosted a meeting to introduce interested inquiry agencies to the Govt.nz team. The Govt.nz team intends to collaborate with those agencies to work out how best to use and present the information that we have provided.

The structure of our report

- 1.23 In Part 2, we discuss concepts and principles that are important to public sector accountability. We also describe how the scrutiny of public entity performance supports public sector accountability.
- 1.24 In Part 3, we list the many organisations that are responsible for aspects of public sector accountability. We discuss the activities common to inquiry agencies, what they can do to help, and what they can look into.
- 1.25 In Part 4, we discuss the increasing complexity of some complaints and concerns, the increasing workloads of the six agencies, their resource constraints, and some service results.
- 1.26 In Part 5, we discuss accessing public entities and inquiry agencies to make complaints or raise concerns, the effectiveness of inquiry agencies, and collaboration between them.

³ The work of the Govt.nz team was recognised in November 2015, when it won the WriteMark Best Plain English Website — Public Sector/Non-Government Organisation award.

Understanding public sector accountability

2

2.1 In this Part, we:

- discuss concepts and principles that are important to public sector accountability;
- describe how Parliament's scrutiny of public entities' performance supports public sector accountability;
- discuss complaint processes; and
- give examples of some other options for making complaints or raising concerns.

Public sector accountability concepts and principles

2.2 Accountability is an important element of good government. It is about the relationship between the State and its citizens, and the extent to which the State is answerable for its actions. The concept of accountability refers to the legal and reporting framework, organisational structure, strategy, procedures, and actions to help ensure that any organisations that use public money and make decisions that affect people's lives can be held responsible for their actions.

2.3 Public sector accountability is not led by any one agency but a range of entities, agencies, and institutions. For example, accountability for overseeing how public resources are used involves members of Parliament, public entities, courts and tribunals, inquiry agencies, and, often, monitoring by civil society groups and the media.

2.4 The principles and concepts important to public sector accountability include transparency, fairness, integrity, and trust.

Transparency

2.5 Effective public debate requires transparency, which strengthens public sector accountability and promotes fairer and more effective and efficient governance. In the context of this report, transparency refers to a public entity's openness about its activities – the extent to which it provides information about what it is doing, where and how this takes place, and how it is performing.

2.6 Transparency includes responding to requests for information. It is about providing people with the information they need to engage in the decisions that affect them. In that way, transparency is an ongoing dialogue between a public entity and its stakeholders about the provision of information. In New Zealand, individuals have powerful rights to transparency. These rights are enshrined in the Official Information Act 1982.

Integrity

- 2.7 In a public sector accountability context, integrity is about exercising power in a way that is true to the values, purposes, and duties for which that power is entrusted to or held by public entities and individual officer-holders.
- 2.8 Transparency International reports on 12 “pillars” that represent the main governance systems operating in a country, to assess whether they function well and in balance with each other to prevent the abuse of power.⁴
- 2.9 In its last assessment, Transparency International found that New Zealand’s integrity system (our “institutions, laws, procedures, practices and attitudes that encourage and support integrity in the exercise of power”)⁵ remains fundamentally strong. But our system faces increasing challenges. Transparency International concluded that New Zealand should take protecting and promoting integrity more seriously.

Fairness

- 2.10 The concept of fairness is about dealing with a matter in an equitable and unbiased manner. In practice, it means that inquiry agencies act independently and with an open mind, and that they consider all relevant information carefully and without undue delay. In most instances, acting fairly will also include giving the party that is subject to the grievance a chance to comment on any adverse findings against them before a final decision is made.

Trust

- 2.11 The essence of trust is consistency between what is said and what is done. When parties act fairly, transparently, and with integrity consistently over time, each party comes to know what to expect from each other. From this, the parties learn that they can rely on one another and can develop trusting relationships. Public reporting by public entities on their performance can influence the degree of trust in the public services that are being delivered and the public entities that deliver them.

Parliament’s scrutiny of public entity performance

- 2.12 Parliamentary scrutiny of public entity performance is important because it helps to demonstrate whether public entities can account for what they have done and what they have achieved.

4 For more information about the 12 pillars, see Transparency International’s website, www.transparency.org.nz.

5 Transparency International (2013) *Integrity Plus 2013 New Zealand National Integrity System Assessment*, Wellington, page 5, available at Transparency International’s website, www.transparency.org.nz.

- 2.13 At its most simple, the work of public entities follows a regular annual cycle of:
- planning – deciding which activities to carry out, including identifying priorities and performance goals;
 - performing – doing the planned activities to agreed standards of quality, cost, and timeliness;
 - reporting – describing the results of the work carried out, demonstrating economy, efficiency, and cost-effectiveness; and
 - scrutiny – reports are reviewed to ensure that public entities are properly accounting for their performance.
- 2.14 As part of the reporting phase, Budget information, statements of intent, and period-end financial and service performance reports are provided to members of Parliament. These set out:
- what the Government is trying to achieve;
 - the goods and services the Government buys to achieve these outcomes;
 - the cost of producing these goods and services;
 - the financial performance expected from departments, State-owned enterprises, and Crown entities; and
 - the actual service and financial performance achieved.
- 2.15 The scrutiny phase follows these reports. New Zealand’s select committee system enables members of Parliament to look at matters in more detail than is possible in the House of Representatives. Select committees examine the Government’s spending and the performance and operations of Government departments, Crown entities, and State-owned enterprises. They do this by reviewing the Budget and end-of-year information, commenting on them, and reporting to Parliament.
- 2.16 Select committees can also provide the public with an opportunity to comment on and suggest changes to draft legislation, and to participate in other Parliamentary functions, such as inquiries. They also report to Parliament on reports received from the Officers of Parliament (such as our Office).

Complaint processes

- 2.17 Sometimes, people are unhappy with a public entity’s decisions or actions. In these instances, their first step is to make their complaint or raise their concern directly with the relevant public entity.

- 2.18 Members of the public have rights to information that are enshrined in legislation. With that information, they are able to comment, make complaints, or raise concerns, and expect the public entity they have been dealing with to hear them. Enabling people to do this is an important aspect of public sector accountability. Complaints are a mechanism through which people can query a decision, action, or policy, and look to receive an adequate response to their complaint or concern. How an organisation manages complaints is a useful barometer of its commitment to service delivery that meets people's needs.
- 2.19 As well as resolving a person's complaint or concern, a public entity can benefit from investing in an effective complaint process. For example, complaints can provide valuable insight into poor service, systemic errors, or problems with specific processes, and can prompt a public entity to improve its business.
- 2.20 Handling complaints well can help a public entity to resolve a problem quickly and before it becomes worse. It allows the public entity to learn from the problems that arise and take steps to improve internal processes. Handling complaints well and monitoring them effectively can also:
- reassure people that the public entity is committed to resolving problems and improving relations with the public;
 - save time and money before complaints multiply and escalate to the point where external intervention may be sought; and
 - improve the public entity's transparency and accountability.
- 2.21 For a complaint process to work well, public entities need to make it easy to access and understand. Complaints also need to be thoughtfully analysed, openly reported, and acted on. Complainants can make public entities' complaint processes work well by providing the public entity with relevant – and as complete as possible – information about their complaint.
- 2.22 In 2012, the Ombudsman identified the following principles on which to model an effective complaint process:
- fairness – complaints are dealt with on their merits in an equitable, objective, and unbiased way;
 - accessibility – the complaint process is easy for complainants to access and understand;
 - responsiveness – complaints are acknowledged in a timely manner and addressed promptly and the complainant is kept informed throughout the process; and
 - efficiency.⁶

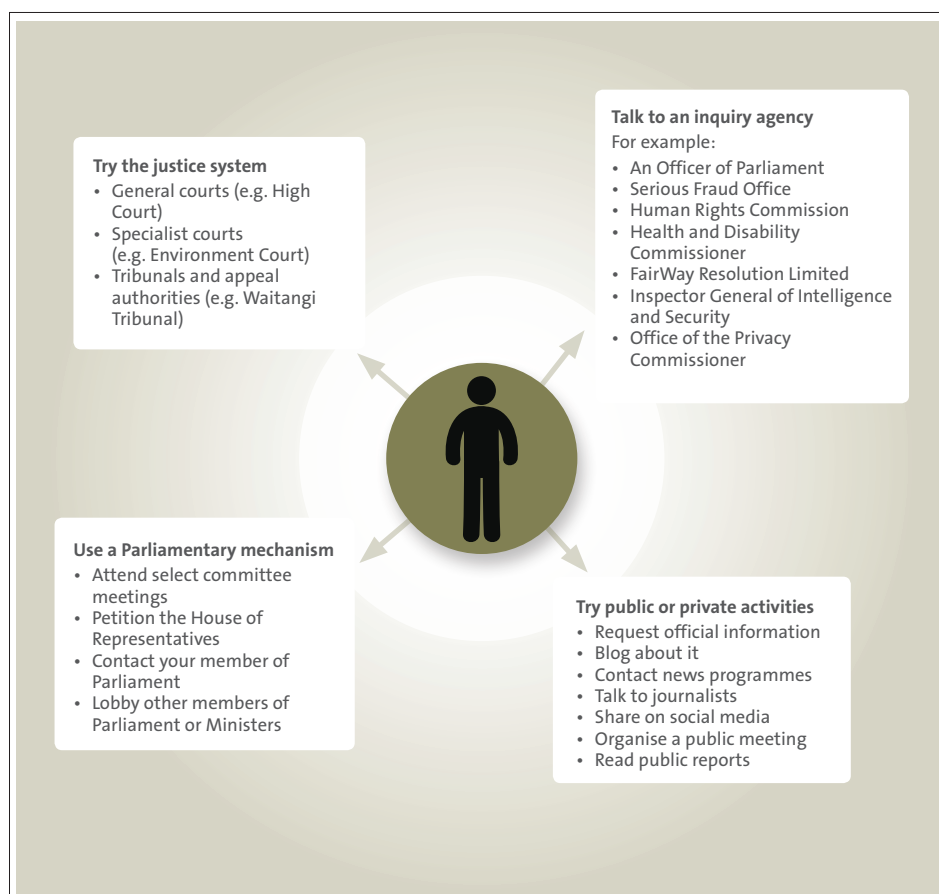
6 The Ombudsman (2012), *Effective complaint handling*, Wellington, page 5, available on the Ombudsman's website, www.ombudsman.govt.nz.

2.23 Although people have a right to comment, make complaints, and raise concerns, this right is not unlimited. When a public entity demonstrates that it has carefully considered and responded to a complaint, it should be able to make a final decision and close the complaint file. A sound and effective complaint process can help public entities to give this assurance and closure to a complainant even if the person disagrees with the entity's final decision.

Seeking resolution through other means

2.24 Sometimes, after complaining to a public entity, people are not satisfied with the outcome. When this happens, a range of options are available. Figure 1 summarises these options, which include taking the matter to an inquiry agency, using a Parliamentary mechanism, or accessing the justice system.

Figure 1
Options for people who want to make a complaint or raise a concern about a public entity



3

About inquiry agencies

- 3.1 In this Part, we:
- identify the many organisations, including inquiry agencies, that are responsible for aspects of New Zealand’s public sector accountability; and
 - discuss common activities of inquiry agencies, what they can do to help, and what they can look into.

Our “map” of inquiry agencies

- 3.2 When we started this work, we expected to be able to create a clear “map” of the many organisations that administer public sector accountability arrangements. Doing so proved more difficult than we had anticipated.
- 3.3 We searched legislation for the word “review”. Our search returned 783 pieces of legislation. We worked through each piece of legislation and identified 399 different ways (or functions) to challenge or complain about an action or decision of private and public entities.
- 3.4 Some functions were in more than one piece of legislation, and we found more than 90 inquiry agencies and other organisations responsible for administering those functions. We did not find an explanation or guide that helped us to make sense of the various functions, officials, agencies, and organisations that deliver them.
- 3.5 Figure 2 is our summary of New Zealand’s accountability arrangements. It shows the many organisations responsible for public sector accountability arrangements. It also includes private sector and personal activities.
- 3.6 For the purposes of our work, we focused on organisations with public sector accountability roles or functions. These inquiry agencies are external to the original decision-making entity.
- 3.7 The other parts of our summary are:
- public entities – in the first instance, people should go directly to the public entity they have a grievance with and use its complaint and review processes;
 - Parliament – people can raise concerns with elected representatives and Parliamentary select committees, and contribute to processes that could improve the matters they are dissatisfied with;
 - courts and tribunals – people can use the justice system to try to get certain decisions amended or to hold people to account for their actions; and
 - public or private activities – people can share their concerns by talking to journalists, placing advertisements, organising petitions, sharing their stories on social media platforms, hiring lobbyists, or taking other action.

Activities, powers, and functions of inquiry agencies

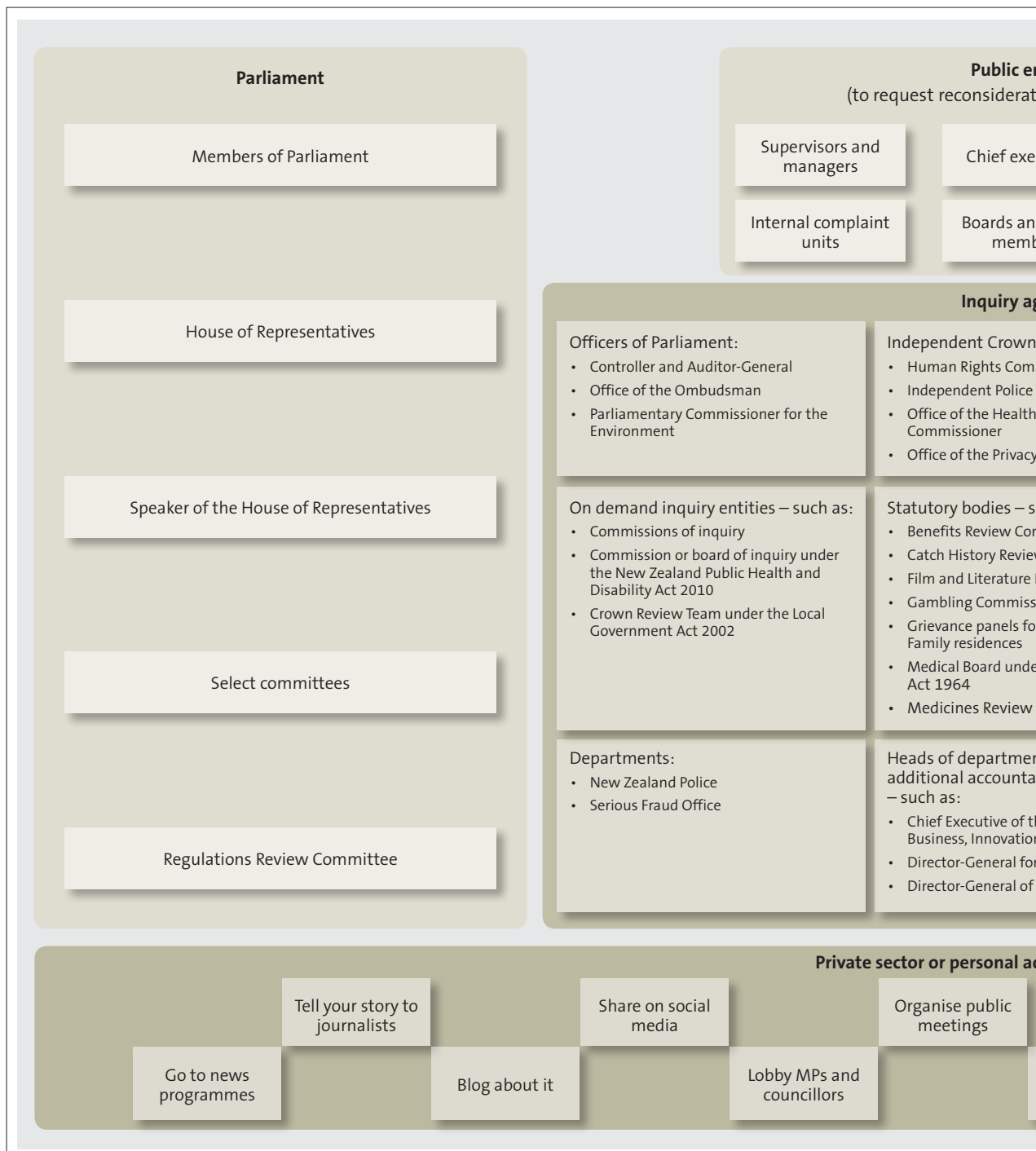
Activities

- 3.8 The inquiry agencies' usual activities when they are carrying out their accountability roles include:
- considering complaints about the conduct of public entities and their employees;
 - reviewing decisions of a public entity (especially whether a proper process was followed);
 - investigating, or carrying out an inquiry into, the activities of a public entity; or
 - mediating in disputes between people and public entities.
- 3.9 Many inquiry agencies carry out more than one of these activities, and some carry out other activities, such as providing advocacy support for complainants or making recommendations about the conditions of detention facilities.

Powers

- 3.10 If an inquiry agency finds that a public entity has done something wrong, then, depending on the inquiry agency's powers, it could:
- change or reverse the decisions of the public entity;
 - order the public entity to act (such as require the original decision-making entity to reconsider its decision); or
 - publish a report with its findings and any recommendations for change.
- 3.11 For example, the Gambling Commission can overturn the decisions of the public entities that it oversees (and order changes to be made). The Customs Appeal Authority can order the return to owners of items that the New Zealand Customs Service has seized.
- 3.12 We have the power to report on what we find when we agree to carry out an inquiry. Our inquiry reports often include recommendations that are intended to help public entities improve their systems or processes.

Figure 2
Organisations that administer New Zealand’s public sector accountability arrangements



Note: We have compiled this chart and the grouping of organisations within it. The information is not legal advice and should not be relied on as such.

Entities
(in the name of their decisions)

Executives

Mayors

Local board members

Councillors and Councils

Agencies

Entities:
Commission
Conduct Authority
and Disability
Commissioner

Crown company:
• Fairway Resolutions Limited

Such as:
Committee
Law Committee
Board of Review
Commission
for Child, Youth and
Family Services
Commissioner for the Social Security
Commissioner

Statutory officials – such as:
• Commissioner of Patents
• Director of Human Rights Proceedings
• Inspector of Corrections
• Inspector-General of Intelligence and Security
• Investigator under the Fisheries Act 1996
• Reviewer under the Food Act 2014

Ministers with
additional
accountability functions
Minister of the Ministry of
Business, Enterprise and Employment
Minister of Primary Industries
Minister of Health

Ministers with additional
accountability functions – such as:
• Minister for Land Information
• Minister of Health
• Minister of Conservation

Courts and tribunals

General courts:

- District Court
- High Court
- Supreme Court

Specialist courts – such as:

- Environment Court
- Family Court
- Māori Land Court
- Māori Appellate Court

Tribunals and appeal authorities – such as:

- Accident Compensation Appeal Authority
- Alcohol Regulatory and Licensing Authority
- Customs Appeal Authority
- Government Superannuation Appeals Board
- Human Rights Review Tribunal
- Immigration and Protection Tribunal
- Land Valuation Tribunal
- Legal Aid Tribunal
- Maritime Appeal Authority
- Psychoactive Substances Appeals Committee
- Social Security Appeal Authority
- Student Allowance Appeal Authority
- Taxation Review Authority
- Tenancy Matters Appeal Body
- Valuation Appeal Committee
- Visiting Justices
- Waitangi Tribunal

Activities – including:

Attend council meetings

Request official information

Review publicly available reports

Comment on proposals

Call talkback radio

Watch and discuss debates in the House of Representatives

Functions

- 3.13 The governing legislation of an inquiry agency defines its public sector accountability functions and which public entities it can look into. Figure 3 lists the inquiry agencies (within our mandate) that we identified and the government functions that they focus on.

Figure 3
Government functions for inquiry agencies

Government functions	Inquiry agencies
<p>Activities common to most public entities</p> <p>Acting and making decisions in a way that is fair, responsible, lawful, and consistent with human rights and other treaties.</p> <p>(Most of these agencies can also look into matters in the other functional areas listed below.)</p>	<p>Director of Human Rights Proceedings</p> <p>Human Rights Commission</p> <p>New Zealand Police</p> <p>Office of the Controller and Auditor-General</p> <p>Office of the Ombudsman</p> <p>Office of the Privacy Commissioner</p> <p>Serious Fraud Office</p> <p>State Services Commissioner</p>
<p>Commercial and primary industry</p> <p>Regulating commercial activities and primary industries, such as agriculture and fishing.</p>	<p>Alcohol Regulatory and Licensing Authority</p> <p>Catch History Review Committee</p> <p>Film and Literature Board of Review</p> <p>Gambling Commission</p> <p>Maritime Appeal Authority</p>
<p>Detention of people</p> <p>Detaining people in corrections or care facilities.</p>	<p>Health and Disability Commissioner</p> <p>Human Rights Commission</p> <p>Independent Police Conduct Authority</p> <p>Inspector of Corrections</p> <p>Office of the Children's Commissioner</p> <p>Office of the Ombudsman</p>
<p>Education</p> <p>Providing education to the public.</p>	<p>International Student Contract Disputes Resolution Scheme</p> <p>Student Allowance Appeal Authority</p>
<p>Environment</p> <p>Protecting and conserving New Zealand's natural resources, or acting in a way that does not damage the environment.</p>	<p>Parliamentary Commissioner for the Environment</p>

Government functions	Inquiry agencies
<p>Government administration and support (including care of children)</p> <p>Making decisions about people's obligations (such as paying tax) and rights (such as the ability of immigrants and refugees to live in New Zealand).</p> <p>Providing support to people in need (such as financial and housing support and legal aid).</p>	<p>Benefits Review Committee</p> <p>Community Housing Regulatory Authority under the Housing Restructuring and Tenancy Matters Act 1992</p> <p>Government Superannuation Appeals Board</p> <p>Grievance panels for Child, Youth and Family residence(s)</p> <p>Medical Board under the Social Security Act 1964</p> <p>Office of the Children's Commissioner</p> <p>Review Authority under the Legal Services Act 2011</p> <p>Social Security Appeal Authority</p> <p>Taxation Review Authority</p> <p>Veterans' Entitlement Appeal Board</p>
<p>Health</p> <p>Providing health care to the public or support to injured people.</p>	<p>Accident Compensation Appeal Authority</p> <p>District Inspector appointed under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003</p> <p>District Inspector appointed under the Mental Health (Compulsory Assessment and Treatment) Act 1992</p> <p>FairWay Resolution Limited</p> <p>Health and Disability Commissioner</p> <p>Medicines Review Committee</p> <p>Mental Health Review Tribunal under the Mental Health (Compulsory Assessment and Treatment) Act 1992</p> <p>Office of the Complaints Investigator (ACC)</p> <p>Psychoactive Substances Appeals Committee</p>
<p>Land, property, and local government</p> <p>Regulating how people use their land or property and community resources.</p>	<p>Valuation Appeal Committee</p>
<p>Safety and security</p> <p>Looking after the safety and security of people, including crime prevention, dealing with national security threats, and regulating unsafe goods.</p>	<p>Customs Appeal Authority</p> <p>Independent Police Conduct Authority</p> <p>Inspector-General of Intelligence and Security</p> <p>New Zealand Police</p>

4

Challenges and encouraging results

- 4.1 In this Part, we focus on six inquiry agencies. We discuss:
- the increasing complexity of some complaints, matters, and challenges;
 - increasing workloads of the six agencies ;
 - resource constraints; and
 - some encouraging results.

Increased complexity of complaints, matters, and challenges

- 4.2 In a recent report, we discussed the context of change in which public services are delivered. The changes include an ageing population, urbanisation, a more diverse population, financial constraints, and increasing expectations of public services.⁷
- 4.3 We noted that the context of change presents challenges and opportunities for public entities, including:
- how to involve people, families, and communities in designing, planning, and delivering services;
 - how to use and share data and information to design, plan, and communicate about service delivery;
 - how to work with others to deliver connected and integrated services; and
 - how best to measure service performance and benchmark services to provide accountability and inform improvements in service delivery.
- 4.4 In response to these challenges, public entities are changing their approach to service delivery, and inquiry agencies are seeing increasing complexity in the complaints and concerns that people raise with them.
- 4.5 Complexity manifests itself in many different ways and can have many different effects. One type of complexity we have observed is that inquiry agencies are dealing with more complaints that involve multiple entities. Multiple-entity matters can be more complex because:
- the inquiry agency needs to understand the systems and processes of each entity involved to understand the matter before it;
 - the inquiry agency also needs to understand the interaction between the entities and their processes; and
 - the inquiry agency has to manage communications with and requests of the different entities, which can be more difficult when the entities work to different time frames and have different priorities.

- 4.6 When a complaint or concern involves both private and public sector entities, it can be more difficult to deal with. This is because it can be difficult for inquiry agencies to work out how much, or which aspects, of the complaint they are authorised to look into. For example, after expressions of concern, our Office began an inquiry into the process that the Ministry of Economic Development (the Ministry) followed leading up to the Government's decision to negotiate with SkyCity Entertainment Group Limited (SkyCity) about developing an international convention centre in Auckland.
- 4.7 We found that although the decision to negotiate with SkyCity was based on appropriate considerations, there were a range of deficiencies in the process that the Ministry followed. We did not have a mandate to look into the activities of SkyCity. Our inquiry could look at only the parts of the process that the Ministry was responsible for, and identifying those aspects of the negotiations that were within our mandate could be complicated.⁸
- 4.8 Using new technology in the delivery of services can also contribute to an increase in the complexity of a complaint or concern. The Independent Police Conduct Authority gave an example of how this has affected it:
- Police operations are increasingly reliant on the use of technology, as an aid to both routine preventative policing and the detection of offending after it has occurred. This impacts on the nature and range of complaints and referrals received by the [Independent Police Conduct] Authority. We must understand the nature of the technology with which police work, its importance to effective policing, and its implications for the privacy of individuals.⁹*
- 4.9 In this instance, the Independent Police Conduct Authority needs to increase its capability, or get access to the expertise it requires, to carry out its role effectively.

Increasing workloads

- 4.10 Increasing workloads were mentioned often during our discussions with inquiry agencies. We identified three aspects that contribute to increasing workloads. Some inquiry agencies face:
- more public demand for their services;
 - more complex complaints or concerns; and
 - more material to review.

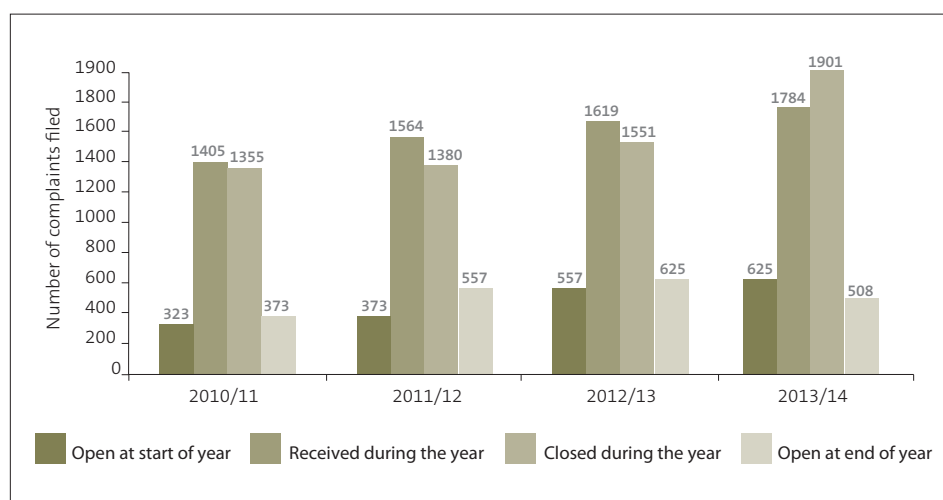
8 Controller and Auditor-General (2013), *Inquiry into the Government's decision to negotiate with SkyCity Entertainment Group Limited for an international convention centre*.

9 Independent Police Conduct Authority (2014), *Statement of Intent 2014/15 to 2017/18*, Wellington, pages 16-17.

Public demand and work completed

- 4.11 Public demand, as measured by the number of complaints or other requests for services that inquiry agencies receive, can be changeable. Our review of the annual reports of the six agencies showed that, although public demand for the services of some has remained constant or declined, demand for the services of others has increased significantly.
- 4.12 In 2014, the Human Rights Commission reported that the number of unlawful discrimination complaints it received had remained fairly constant in recent years. However, it noted that the total number of enquiries and complaints received is declining.
- 4.13 Similarly, the Privacy Commissioner reported that the number of complaints it received in 2013/14 had reduced from 2012/13. The Privacy Commissioner attributed the decline to the effect that some high-profile breaches had during 2012/13.
- 4.14 For the Office of the Children’s Commissioner, the number of enquiries received on its Child’s Rights Line decreased by 38% between 2011/12 and 2013/14.
- 4.15 In contrast, in 2014 the Ombudsman reported that it had received 11,044 complaints and other work – the second highest amount it had ever received in a year. This was 13% more than the average amount of work it had received in each of the previous 10 years. During the same year, the Ombudsman completed 11,505 complaints and other items of work. The Ombudsman noted that this represented 19% more than the average amount of work completed each year in the previous 10 years.
- 4.16 The Health and Disability Commissioner reported a 27% increase in the number of complaints received between 2010/11 and 2013/14. It also reported a 40% increase in the number of complaints files closed between 2010/11 and 2013/14 (see Figure 4).

Figure 4
Number of complaints received by the Health and Disability Commissioner and complaint files closed, 2010/11 to 2013/14



Source: Health and Disability Commissioner (2014), *Annual report for the year ended 30 June 2014*, Wellington.

Complex nature of complaints and concerns increases workloads

- 4.17 In the past, when complaints received were usually directed at a single public entity, inquiry agencies had to understand the systems and processes of that public entity. Today, more often, inquiry agencies have to understand the systems and processes of many public entities involved in a matter and how they interact with each other.
- 4.18 Another result of some complaints becoming more complex is that individual complaints can take longer and require more resources to resolve or respond to. This means that, even if the number of complaints or requests for services decreases over time, it remains possible for the workloads of inquiry agencies to increase.

Increased volumes of material to review

- 4.19 In this digital age, it has become easier to transfer a lot of information. Some inquiry agencies told us about receiving more material to support a person's complaint or concern. For example, one inquiry agency told us that some people attach many electronic documents, all of which they have to review to understand the facts of the matter. People may also email a complaint or request, and any attachments, to multiple inquiry agencies at the same time. Each inquiry agency has to review the documents and decide whether it is best placed to resolve the matter.
- 4.20 Although access to additional information can improve the quality of decisions made, reviewing the additional information requires more time and resources than in the past.

Resource constraints

- 4.21 The inquiry agencies that we spoke with told us that adequately resourcing their work is a challenge. They told us that, when faced with difficult resourcing decisions, they often had to put aside completing work in a timely way and carrying out proactive investigations or inquiries.
- 4.22 Some inquiry agencies told us that they were making efforts to resolve complaints and issues before they escalate to more resource-intensive methods of resolution. For example, the Human Rights Commission has a focus on using alternative dispute resolution and mediation processes to resolve matters early. Staff from the Human Rights Commission said that this can be less expensive and better for the relationship between the parties compared to resolution through the Employment Relations Tribunal, Human Rights Review Tribunal, or the courts.
- 4.23 Despite efforts to reduce costs, inquiry agencies are making difficult choices about how they meet expectations of them as best they can. For example, some of the six agencies have been drawing on their financial reserves to meet their operating costs. In its 2014 briefing to the incoming Minister, the Office of the Children's Commissioner noted that it could maintain its functions in 2014/15 only by drawing further on its limited financial reserves. It noted that, without a baseline increase, it would have to reduce its functions from 2015/16 onward.
- 4.24 Staff from the Office of the Children's Commissioner have since told us that they have identified and implemented a range of initiatives to reduce costs and can continue to deliver statutory functions within baseline funding. For example, the Office of the Children's Commissioner has moved to online publishing only, to reduce printing costs. The Office of the Children's Commissioner has also changed

the frequency of monitoring and visits to Youth Justice and Care and Protection residences from an annual visit to visiting residences every 18 months. We were told that these changes have been made so that the Office of the Children's Commissioner can manage within current staffing and resourcing levels.

- 4.25 Many public entities face similar challenges relating to resource constraints. We make no comment on the Government's policy decisions about funding or resourcing. Our role is to comment on the implementation and consequences of those decisions.

Encouraging results

- 4.26 Despite increasing complexity and workloads, and the challenges of operating within resource constraints, we found that – according to the high level information in their annual reports – the six agencies continue to provide a reasonable level of service to the people who contact them. In particular, we looked at:
- satisfaction rates among the users of the six agencies' services; and
 - whether the six agencies completed work promptly.

Measuring satisfaction with the six agencies' services

- 4.27 Several of the six agencies report on people's satisfaction with their experience of the agencies' services. In most instances, the people surveyed are complainants or other members of the public. However, the Independent Police Conduct Authority also asks the police officers they investigate how satisfied they are with the investigation. The Ombudsman surveys the satisfaction of complainants and State sector agencies.
- 4.28 The six agencies largely meet their performance targets for satisfaction with their services. For example, the Human Rights Commission reported that:
- 97% of people surveyed in 2013/14 were satisfied or very satisfied with the mediation process (the performance target is 90%); and
 - 99% were happy with the neutrality of the mediator who worked with them (the target is 90%).
- 4.29 Where the information was available, we reviewed the results from various measures of satisfaction from 2010/11 to 2013/14. Although the results for each satisfaction measure fluctuated, the difference between satisfaction rates in 2010/11 and in 2013/14 was often 5% or less. In our view, this relatively small

variance suggests that the six agencies are maintaining a level of service delivery that is consistently satisfactory.

Completing their work in a timely way

- 4.30 The six agencies reported that completing work promptly was the most challenging aspect of their service performance. We were told that, often, the six agencies' work is not timely when they are under pressure because of a lack of resources or an increase in workload or complexity of work. Despite this, we saw some encouraging signs.
- 4.31 The Ombudsman is one inquiry agency that appears to be having difficulty meeting all of its performance targets for completing work promptly. Although the Ombudsman met two of three targets for the timely completion of urgent investigations in 2013/14, it had more difficulty meeting its performance targets for completing priority investigations and completing investigations for complaints that it considers to be outside its jurisdiction.¹⁰ A factor that might have contributed to these results is the significant increase in the volume of complaints and other work received in the past five years.
- 4.32 Some of the six agencies are consistently achieving performance targets for completing their work in a timely way. Between 2010/11 and 2013/14, four of the six agencies met all, or nearly all, of their performance targets for completing work in a timely way.

¹⁰ After preliminary investigation of all complaints received, the Ombudsman may determine that some complaints are outside its jurisdiction. In some instances, the Ombudsman refers the complainant to another inquiry agency.

Accessibility, effectiveness, and collaboration

- 5.1 In this Part, we discuss:
- accessing public entities and inquiry agencies to make complaints or raise concerns;
 - effectiveness of inquiry agencies; and
 - collaboration between inquiry agencies.

Accessing public entities and inquiry agencies

Complaining to public entities

- 5.2 Public entities are at the heart of public sector accountability. However, raising a matter with the relevant public entity in the first instance can be difficult.
- 5.3 As part of our 2014 report about how the Ministry of Social Development (the Ministry) deals with complaints, we surveyed people who had complained to the Ministry. Most people surveyed said that their complaint was resolved and that the Ministry's final decision was fair. However, we found that some information on the Ministry's website was difficult to understand and could cause confusion about how to lodge complaints.
- 5.4 In 2014, we also reported on how the Accident Compensation Corporation (ACC) deals with complaints. We found that ACC needed to make information about how to make a complaint easier to find, and that it needed to make the information it provided more helpful and easier to understand.
- 5.5 As part of our work for this report, we tested how easy it was to get help when faced with a particular problem with a public entity. Some of our staff received a scenario where they disagreed with the decision of a public entity. We asked them who they could go to for help or to challenge the decision. The participants found that:
- None of the public entities provided information that gave clear and easy-to-find directions about how to start the complaint process or who to complain to.
 - All participants said that the information on the public entities' websites was difficult to understand and that the language tended to be too legalistic.
 - Some found the amount of information on the public entities' websites overwhelming – they did not know where to start and thought that it would be tempting to give up.
- 5.6 Although there were mixed experiences in terms of difficulty, the overall consensus was that the process was not as easy as people thought it would

or should be. The main difficulty was inaccessible language and little or no information explaining the process for challenging a decision.

Making a complaint to or raising a concern with an inquiry agency

- 5.7 In our view, it can be difficult to work out where people can go after they have exhausted all of the relevant public entity's review and complaint processes and remain dissatisfied. If they do find the right inquiry agency, it can be difficult to find out what its mandate covers, what its processes are, and how it can help (for example, whether it can overturn decisions or ask the public entity to reconsider its decision).
- 5.8 Inquiry agencies told us that they are aware that people find it difficult to know where to go when they want to make a complaint or raise a concern. Staff of the inquiry agencies described a lack of transparency about how to enter and use the "system" of public sector accountability because no entry point was obvious. This can lead to people trying to use any and/or every agency they can find. The inquiry agencies described this as people "shopping for help".
- 5.9 Another consequence is that referrals to and from inquiry agencies can be inconsistent. They told us about instances where people have been referred from one inquiry agency to another and sometimes back again (by a member of an inquiry agency's staff) without the person's specific concern being addressed. This was described as a danger that people could get lost in a "black hole of bureaucracy".
- 5.10 Sometimes, there may be no obvious source of help for a particular problem. Nevertheless, inquiry agencies expressed concern about how these types of experiences may be affecting people. For example, they told us that they sometimes have to deal with difficult, dangerous, or unreasonable complainants. They said that these people might become "vexatious" because of their experiences, including frustration with the difficulties they have had trying to access help soon enough.
- 5.11 They told us that inquiry agencies had a part to play in highlighting the entry points for people – that inquiry agencies could do more to be discoverable and clear about their roles and powers.
- 5.12 In November 2013, we published the results of our inquiry into the Mangawhai community wastewater scheme.¹¹ We set out three lessons for organisations dealing with concerns from the public. We said that organisations need to:
- talk to one another and share appropriate information;
 - keep an eye on the big picture (such as signs of bigger problems with a public entity causing people to complain) alongside the detail; and

- be aware of the dangers of inadequate communication and assuming that people are familiar with the details of the organisations' roles and how they work.¹²

Effectiveness of inquiry agencies

- 5.13 In paragraph 2.22, we discussed four principles that the Ombudsman identified in 2012 on which complaint processes should be modelled. These are:
- fairness;
 - accessibility;
 - responsiveness; and
 - efficiency.
- 5.14 From what we have seen, the six agencies achieve some of these principles better than others. For example, with responsiveness, although completing work promptly is challenging for the six agencies, they largely meet their targets for completing work in a timely way (see paragraphs 4.30-4.32).
- 5.15 However, inquiry agencies have difficulties that are likely to reduce the effectiveness of their work. In paragraphs 5.2-5.12, we discussed how people can find it difficult to take a matter to the relevant public entity in the first instance and to know which is the most appropriate inquiry agency to go to if they are not satisfied with the public entity's response.
- 5.16 An aspect that inquiry agencies reported having difficulty with is equitable access to public sector accountability functions. They expressed to us their concern that they might not be reaching the population groups that most need their help. We were told that the people least likely to complain are usually the most vulnerable and marginalised. As well as having complaints or concerns, these people sometimes hold experience and information that inquiry agencies need to deal with a matter effectively. One inquiry agency told us that the challenge for all inquiry agencies is to find ways of helping those people speak up.
- 5.17 We found that individual complaints or concerns might not be fully resolved because each of the inquiry agencies involved addresses only some of the matters raised. For example, we heard how, in some instances, each inquiry agency involved in a matter focused on the part that they were responsible for, rather than the matter as a whole. This can sometimes be because of the nature of the matter raised – there might be no obvious and accessible inquiry agency to go to for help. The six agencies also told us that this sometimes happens because of the legal bounds of the functions and powers that they must work within.

12 Controller and Auditor-General (2013), *Inquiry into the Mangawhai community wastewater scheme*, page 286.

5.18 In our 2013 report on the Mangawhai community wastewater scheme, we noted that several agencies have a role in scrutinising the work of local authorities and holding them to account. Each does so within the limits of its role and statutory mandate. We said:

Each agency focused on its own functions and the limits of that role ... Viewed as a whole, the body of complaints contains allegations and, in some instances, information that could have indicated that problems with the scheme were wider than the wastewater targeted rate. However, each agency addressed each complaint as it came. At no point did the three agencies pool their information or jointly consider what an appropriate response might be.¹³

5.19 The six agencies also talked to us about the difficulty they can have distinguishing between one instance of a service delivery failure and a systemic problem that needs addressing. This can affect the efficiency of their operations, if they end up dealing with multiple complaints caused by the same systemic problem.

Collaboration between inquiry agencies

5.20 All of the inquiry agencies we spoke to supported the notion of collaborating more with other inquiry agencies. They agreed that improved connections between them is likely to improve the quality and timeliness of services for the public and likely to improve the use of public resources.¹⁴

5.21 We saw some examples of inquiry agencies collaborating formally and informally. For example, after the Canterbury earthquakes in 2010 and 2011, people raised concerns about how the Earthquake Commission was handling information requests under the Official Information Act 1982 and the Privacy Act 1993. The Ombudsman and the Privacy Commissioner did a joint investigation that enabled them to manage the matters that spanned both of their agencies.

5.22 The Human Rights Commission told us that it is mindful of not duplicating effort when it makes its decisions about what to work on. For example, it does not work directly on issues where the Office of the Children's Commissioner has a mandate, but supports this work with aligned advocacy activities. This involves both inquiry agencies being clear about what each is working on and looking for opportunities to contribute to each other's work.

5.23 In practice, inquiry agencies face challenges in working more closely together that they must consider, including:

- legislative provisions that sometimes make collaboration difficult;

¹³ Controller and Auditor-General (2013), *Inquiry into the Mangawhai community wastewater scheme*, page 256.

¹⁴ For more information about collaboration between inquiry agencies in Western Australia, see: Wilkins P, Phillimore J, and Gilchrist D (2015), *Collaboration between watchdogs: Learnings from the Western Australian Experience*, Curtin University, available at the Curtin University website, www.curtin.edu.au.

- a lack of certainty about what other inquiry agencies are working on; and
- relying on informal networks when more formal arrangements are needed for managing real or perceived overlaps in their public sector accountability roles and for referring complaints to other inquiry agencies.

5.24 The inquiry agencies that we met with felt that regular meetings between them about matters of concern would not be the best use of their time or resources. However, they agreed that they should look to more proactively share information with each other:

- on a case-by-case basis, where relevant and consistent with legal obligations;
- about work programmes;
- to better manage cross-overs between inquiry agencies; and
- to identify opportunities to put collective energy into being proactive when a common risk or systemic problem is appearing.

5.25 In paragraphs 1.19 to 1.22, we discussed how our Office made the information we gathered for this work available so that it can be used as a resource for inquiry agencies, public entities, and the public. Our intention is for this to help people more easily and quickly identify which public sector accountability and/or complaints services they should access. Also, we hope that an improved understanding of their roles will help inquiry agencies to collaborate more effectively.

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- Principles for effectively co-governing natural resources
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- Delivering scheduled services to patients – Progress in responding to the Auditor-General’s recommendation
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- Earthquake Commission: Managing the Canterbury Home Repair Programme – follow-up audit
- Ministry for Primary Industries: Preparing for and responding to biosecurity incursions – follow-up audit
- Governance and accountability of council-controlled organisations
- Queenstown Lakes District Council: Managing a conflict of interest in a proposed special housing area
- Reviewing aspects of the Auckland Manukau Eastern Transport Initiative
- Annual Report 2014/15
- Inquiry into Health Benefits Limited
- Service performance reporting: Results of the annual audits of TEIs for the year ended 31 December 2014

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