

The information in the report comes from interviews with and information provided by senior staff at the Office the NZ Ombudsman in February 2019. The New Zealand Ombudsman provided the following information after the report was finalised:

- The statistical reference (on page 14 of the report) to 80-90% of complaints being finalised through early resolution, without formal investigation, is not accurate with respect to the New Zealand Ombudsman.
 - The Chief Ombudsman's Annual Report to Parliament for the year 1 July 2018 to 30 June 2019 noted that 46% of complaints were resolved prior to a final opinion being formed (see page 58 of the Annual Report PDF; also footnote 119 which sets out exclusions).
- The report makes reference (on page 14) to the New Zealand Ombudsman's 'preliminary or pre-notification powers to ask questions and seek information from agencies to resolve complaints early and without investigation'.
 - While the New Zealand Ombudsman may request information when no investigation is being conducted, he or she has no statutory authority to require that information be provided before an investigation has been commenced.
- The report states (on page 21) that when an investigation is notified, 'agencies have 20 days under the legislation to respond'. The correct legal position is as follows:
 - When the New Zealand Ombudsman requires information to be provided for an Official Information Act or a Local Government Official Information and Meetings Act investigation, there is a statutory obligation on agencies to provide the information 'as soon as reasonably practicable.' While the obligation prescribes a maximum response time of 20 working days, an agency has the right to extend that time frame on limited grounds. However, the statutory duty on agencies is to provide the material 'as soon as reasonably practicable'.
 - When the New Zealand Ombudsman requires information to be provided for an Ombudsman Act investigation, no time limits are prescribed by that Act. It follows that no time limits can be imposed, although the Ombudsman's preference can be indicated.
- The report notes (on page 21) that where agencies are willing to try and resolve the complaint without formal investigation, 'the office leaves it to them to work directly with the complainant rather than acting as a go-between'.
 - The process described is an 'unassisted referral', where a complaint is referred to an agency for agreed remedial action. Unassisted referrals may be utilised if the issue is straightforward, if it seems that the complainant and agency can readily deal with each other, and if there is no risk that the agreed remedy will not be implemented without the Ombudsman's oversight. In such cases, the Ombudsman would close the complaint.
 - An 'assisted referral' involves the Ombudsman maintaining oversight of the agreed remedy. This process is utilised if the issue could potentially become complex if not resolved at an early stage, if the resolution is time-sensitive, if it may be difficult for the parties to deal direct with each other, or if the lack of Ombudsman oversight could leave the remedial process open to risk. In such cases, the complaint remains open during the referral.
 - › If the complainant is satisfied with the agency's actions, the complaint may be considered to be resolved and will be closed after correspondence is sent to both parties setting out the details of the complaint, the inquiries undertaken by the

Ombudsman's staff, the agreed action to be taken by the agency, and confirmation of the complainant's satisfaction with the action taken by the agency.

› If the complainant is not satisfied with the agency's actions, the matter is reviewed to determine what action(s) and outcome(s) would be appropriate in the circumstances.

- It follows from this that the statement in the report, that 'cases may be closed if the NZOmbudsman's delegate is satisfied with the outcome even when a complainant is not satisfied' (on page 21), is not strictly accurate.
 - In such cases, depending on the facts, the complaint may not be investigated.
 - However, it is also possible that an investigation may be made on the facts of the case.
- The report notes (on page 21) that '[s]taff commented that sometimes they have to say to complainants that the result of an early resolution process is the best possible outcome and nothing different can be achieved by six months investigation'.
 - It would be more accurate to say that in such cases, staff discuss with complainants what would be involved, including likely timeframes, and whether a formal investigation could achieve a better outcome.
- The report also notes (on page 21) that '[t]he NZ Ombudsman has gone straight to issuing a provisional opinion on the basis of information held after an agency failed to respond to information requests in an official information matter. It is rare for this to occur'.
 - Where an investigation is made, a provisional opinion may be formed on the basis of the information to hand, even if an agency has not fully addressed all of the matters raised by the Ombudsman. The provisional opinion affords the agency the opportunity to advance further information or arguments for the Ombudsman to consider before an opinion is formed on the complaint, or the investigation is discontinued, as appropriate.
- The point is made (on pages 14 and 21) that '[s]ome agencies want notification as it means the information they provide is exempt from official information requests'.
 - It would be more accurate to say that some agencies prefer to discuss the possibility of resolution in the context of an investigation. This enables them to be more free and frank in the expression of their views as the definitions of 'official information' in the Official Information Act 1982, and 'personal information' in the Privacy Act 1993, do not include information contained in correspondence and communications relating to an Ombudsman's investigation, other than information that existed before the commencement of the investigation.