



## Process and criteria used by Ombudsman to determine whether to undertake systemic intervention

### Scanning and initial scoping

We assess information from multiple sources to identify potential systemic issues across the public sector. Sources include complaints and other internal scanning, and external sources including agencies and the media. Following assessment, we determine whether to:

- take no further action;
- continue scanning;
- add the matter to a watch list; or
- refer the matter for preliminary scoping.

Matters referred to preliminary scoping are assessed using a 'traffic light' system that analyses the overall value of initiating systemic intervention. The following issues are considered:

- seriousness of total impact (both actual and potential) on affected individuals;
- agency involvement;
- systemic causation;
- availability of adequate alternative remedies;
- public interest;
- relevant UN Conventions and international human rights obligations;
- public perception of issue;
- strategic alignment; and
- cost/benefit of intervention (incorporating risk assessment).

Following this assessment a determination is made as to whether the matter should be:

- subject to further scanning/scoping;
- referred to an external agency to deal with (e.g. HDC);
- the subject of formal resolution intervention with the agency concerned; or

- considered for a self-initiated investigation of the systemic issue.

## **Formal resolution intervention**

Formal resolution is initiated by the Chief Ombudsman contacting the Chief Executive of the agency concerned, to discuss a process for formal resolution of the systemic issue. A proposed terms of reference for the intervention is provided.

If the agency agrees to commence the formal resolution initiative, the terms of reference and an action plan is agreed, with set timeframes and engagement opportunities.

Engagement between the Ombudsman and the agency then commences, with direction and involvement from senior managers on both sides. A process for regular reporting on progress to the Chief Ombudsman and agency Chief Executive is set up.

After a defined and agreed period of time, the formal resolution initiative will be wrapped up. The Chief Ombudsman will consider the success of the formal resolution initiative and next steps.

## **Self-initiated investigation – in depth scoping**

Potential systemic investigations are the subject of a further in depth scoping. We assess various matters under the broad categories of “The nature of the problem” and “The proposed solution” as follows:

### **The nature of the problem**

- Systemic significance:
  - adverse impacts of the issue
  - extent of agency involvement in the issue
  - systemic causation, eg the systems, culture, processes contributing to the issue
- Ombudsman role (external):
  - extent of alternative remedies
  - to what extent will the issue undermine public confidence in the agency/sector
  - extent an investigation will be in the public interest
  - impact on vulnerable or minority people/groups including Maori, Pasifika, youth, the disabled community, people in detention
  - relevant international conventions
  - ongoing impact if the matter is not investigated
- Ombudsman fit (internal):
  - strategic alignment and priorities

- are we the best placed agency to undertake an investigation
- Cost and benefits of the investigation
  - Impact on agency and Ombudsman

## The proposed solution

- The act/decision/omission/recommendation to be investigated
- The desired outcome
- The scope of the investigation:
  - Summary of information/evidence required to form an opinion
- Risks and issues
  - Details of known risks and issues and proposed mitigation
- Has a similar topic been investigated by an overseas Ombudsman or other oversight body
- Relevant law, policy and practice
- Proposed methodology:
  - Who should be notified
  - How the different types of evidence will be gathered (i.e. documentary, physical, interviews, e-info, research, international best practice)
  - Legal/expert or independent advice
  - Report writing (length/style/author)
  - Public engagement
  - Interested parties (details of parties that will need to be notified or consulted)
- Resource requirements
  - People
  - Costs
  - Timeframes

The next step after the in-depth scoping is to make a decision on which matters to investigate.

## Investigation decision

- A Committee meets regularly to assess and prioritise potential investigations that have been the subject of in depth scoping.
- A recommendation is made to the Chief Ombudsman regarding prioritisation. The Chief Ombudsman decides which issue(s) to investigate.

