



Investigation for Early Resolution

The Ombudsman's office conducts fit for purpose investigations that are proportionate to the type of complaint received and the complexity of the issues raised in the complaint. This flexible approach to investigations¹ allows for efficient and effective complaint handling.

INVESTIGATION FOR EARLY RESOLUTION

An investigation for early resolution is suitable for complaints that appear to be able to be resolved quickly and easily. The purpose of an investigation for early resolution is to resolve the complaint as efficiently and effectively as possible with minimal paperwork. The advantages of undertaking the investigation for early resolution process include:

- A focus on outcomes suitable to the complainant and the agency;
- Quicker resolution of complaints;
- Less onerous on agency resources (not needing to provide reports, files etc); and
- An easier process for complainants.

As with all investigations undertaken by the Ombudsman, it is important that the complainant understands the investigation for early resolution process and that their expectations are managed appropriately at the outset.

There may be potential risks in resolving a complaint 'early', such as:

- Systemic issues may be missed;
- The investigation may not be as comprehensive as a standard investigation;
- The agency may not properly consider the costs and benefits of any voluntary actions it proposes; and
- The complainant may not feel as though they have been 'heard' if they have not been provided an opportunity to comment.

However, we employ a number of strategies to reduce these risks. These include:

- For cases identified as high risk, approval is by a senior officer, at Assistant Ombudsman level or higher.
- Appropriate quality assurance for 'early resolution cases', for example through peer reviews of correspondence.;
- Early contact with the complainant to ensure we have understood their complaint and the outcomes they are seeking and have clarified our process;
- Dealing with the appropriate agency officer who has the necessary authority to make decisions; and
- Building relationships with agencies to ensure systemic issues are addressed as well as individual complaints.

¹ The Ombudsman may 'make such inquiries as he thinks fit' s19(3) *Parliamentary Commissioner Act 1971*

What is the difference between an investigation for early resolution and a standard investigation?

An investigation for early resolution means investigating a complaint to the Ombudsman without proceeding through the standard investigation process, that is, without providing a preliminary view and an opportunity to comment prior to the final view. Generally, a standard investigation is a more comprehensive investigation than an investigation for early resolution. The following table outlines some of the differences between an investigation for early resolution and a standard investigation.

Investigation for early resolution	Standard investigation
<ul style="list-style-type: none">Agency usually notified of investigation by email or telephone	<ul style="list-style-type: none">Agency usually notified of investigation by letter
<ul style="list-style-type: none">No report requested from the agencyInformation is usually gathered by telephone or email with a view to quick resolution	<ul style="list-style-type: none">Report may be requested from the agencyMore detailed information gathered, for example, the agency file may be requested
<ul style="list-style-type: none">Preliminary view not issued and opportunity to comment not provided prior to final view	<ul style="list-style-type: none">Preliminary view issued and opportunity to comment provided prior to final view
<ul style="list-style-type: none">Recommendations and suggestions are not made but voluntary actions may occur.	<ul style="list-style-type: none">Recommendations and suggestions may be made. Voluntary actions may also occur.

How do I know if I have undertaken an investigation for early resolution and not just an assessment?

Not every contact with the agency results in an investigation for early resolution. You may contact the agency for the purpose of an assessment only - for example, you may telephone the agency to determine if the complainant has been through the agency's internal appeals procedures. If they haven't, you may exercise discretion not to investigate and refer the complainant back to the agency. However, if you have contacted the agency and gathered information beyond what was required to assess whether the complaint is in jurisdiction and whether it should be investigated (discretion), you will have begun an investigation. For further information see [Definitions: Assessment and Investigation](#).

Is an investigation for early resolution considered a discontinued investigation?

No. A complaint that is resolved through an investigation for early resolution is not considered discontinued even though we have not completed the standard investigation process. If the complaint is not resolved then the options are to continue through the standard investigation process and issue a preliminary and final view or to discontinue the investigation. For further information see [Discontinuing an investigation](#).

OUTCOMES OF AN INVESTIGATION FOR EARLY RESOLUTION

'Investigation for early resolution' is the name we have given our investigation process – it is not the outcome of the complaint. Where this process is used, the outcome of the complaint will always be that it is resolved. This includes two categories:

- Complainant is satisfied that complaint is resolved; or
- Ombudsman considers agency action reasonable.

Complainant is satisfied that complaint is resolved

This outcome occurs when the agency voluntarily provides a remedy to the complainant and:

- The complainant expresses satisfaction or agreement or otherwise indicates that his or her complaint is resolved; or
- The outcomes the complainant was seeking have been achieved (in which case we would assume that he or she is satisfied that the matter is resolved).

As this only applies where some form of remedy has been provided, for a complaint to be resolved to the complainant's satisfaction there must have been some voluntary action taken by the agency to assist the complainant and this needs to be recorded in Resolve.

The action agencies may take, and that should be recorded as a voluntary action to assist the complainant, includes "acknowledgement of error" and "reasons for decision/action provided by agency" (for example where the defective administration relates to not providing adequate reasons for decisions or explanation of action taken).

For further information see [Recording the outcome of a complaint in Resolve](#).

Ombudsman considers agency action reasonable

This outcome occurs when:

- The Ombudsman is satisfied that, where there is evidence of defective administration, the agency has taken appropriate action to address the matter either before or after we became involved.

In this situation there will have been some form of remedy for the complainant, even though they may not be satisfied with it, and this should be recorded as a voluntary action to assist the complainant in Resolve.

- The Ombudsman is satisfied that there is no evidence of defective administration and that the action/s or decision/s of the agency prior to us being involved in the matter were reasonable.

This includes situations where the agency or a case officer has explained why the agency action or decision was not defective administration and the complainant has accepted that explanation.

In this situation there would be no voluntary actions to assist the complainant recorded in Resolve.

The Ombudsman may consider a complaint is resolved even though the complainant is dissatisfied with the outcome of our investigation or the agency's response. Complainants may have unrealistic expectations regarding the resolution of their complaint, for instance they may be seeking retribution or punishment even when the administrative deficiency that led to their complaint has been rectified. In these

circumstances, the complaint may be resolved to the satisfaction of the Ombudsman although the complainant remains unhappy.

A case officer will need to exercise judgment as to whether a matter is resolved or not, particularly where the complainant remains dissatisfied. The following factors may assist in determining whether a complaint should be closed on the basis that it is resolved to the Ombudsman's satisfaction:

- Has the agency taken reasonable steps to address the complaint either as a result of our involvement or prior to our involvement?
- Is there any other action that the agency could and should reasonably take?
- Will further investigation result in any practical benefit for the complainant?
- Are the complainant's expectations reasonable?
- Does the evidence indicate the decisions, actions and the reasons given for the decisions/actions by the agency were reasonable, that is, there is no evidence of defective administration?

Example 1 – outcome of an investigation for early resolution

- We receive a complaint from a prisoner who alleges that his property went missing when he was transferred to a new prison.

Upon deciding to investigate, the case officer makes enquiries with the appropriate contact person within the prison. The case officer determines that the prisoner's property has already been located and returned to him. Therefore, **the complainant is satisfied that the complaint is resolved** because the outcome he was seeking has been achieved.

Example 2 – outcome of an investigation for early resolution

- We receive a complaint from a prisoner who alleges that the prison has miscalculated his canteen spends.

Upon deciding to investigate, the case officer makes enquiries with the appropriate contact person within the prison. As a result of our enquiries, the prison re-calculates the prisoner's canteen spends confirming that their original calculation is correct. Therefore, **the Ombudsman is satisfied that the action taken by the agency** in response to our involvement in the matter **is reasonable**, even though the complainant may still disagree.

THE INVESTIGATION FOR EARLY RESOLUTION PROCESS

The process outlined below is designed to assist case officers to think about the steps involved in undertaking an investigation for early resolution. Some of the steps are not necessarily mutually exclusive and may occur concurrently.

• Is early resolution appropriate?

An investigation for early resolution is suitable for complaints that appear to be able to be resolved quickly and easily. Some factors to consider when determining whether an investigation for early resolution is appropriate include:

- the number of documents;
- the complexity of the issues;
- prior knowledge of the agency and its processes; and
- the behaviour of the complainant.

- **Determine the issues for investigation**

The issues of complaint are usually ascertained from the complainant's letter/email/complaint form. However, if the issues are unclear you may need to contact the complainant for clarification. The issues of the complaint should be translated into possible defective administration and framed in such a way that allows them to be tested, that is, proved or disproved.

- **Determine what outcomes the complainant is seeking**

These may be specified by the complainant or implied in the substance of the complaint. For example, if a prisoner complains about missing property, it is implied that the outcomes he/she is seeking is to have the property returned. If the outcomes the complainant is seeking are unclear you may need to contact them for clarification.

- **Determine what information is needed to resolve the complaint**

This may include a verbal explanation from the agency, copies of relevant documentation, or written advice as to the action the agency will take to resolve the complaint. For example, if a Homeswest tenant complains about a high tenant liability charge, a copy of the documentation showing how the Department calculated the charge will assist in determining whether or not it was reasonable. Alternatively, if a complainant is seeking a refund he/she is entitled to, an email from the agency officer stating when the refund was paid may be sufficient to resolve the complaint.

- **Gather information from the agency**

Contact the agency, usually by telephone in the first instance, and advise that you are investigating/making enquiries into a complaint. You need to speak to our designated contact officer (for example, the Ministerial Liaison Officer) or someone with an appropriate level of authority, such as a Superintendent or Manager, but it does not have to be the CEO or Director General.

- Explain the issues being investigated and ask for their understanding of the matter.
- Request copies of any relevant documents which will assist you in resolving the complaint. It may be appropriate to follow up any verbal request with an email.

- **Determine the agency's view**

- Determine whether the agency considers there has been defective administration.
- Determine whether the agency has or is willing to take action to resolve the complaint.
- Explore possible outcomes (if appropriate).

- **Analyse information and evidence**

This is where you are forming an opinion regarding the reasonableness of the agency's actions – e.g. did the agency do anything wrong in the first place? If so, have they taken reasonable action to rectify it, either before or after our involvement?

- You may need to gather further information from the agency or the complainant to assist your analysis of the evidence.

- **Is the complaint resolved?**

Yes:

- The complaint is resolved if the complainant is satisfied that the complaint is resolved or the outcomes sought by the complainant have been achieved. This may involve contact with the complainant to determine whether they are agreeable to the agency's proposed action. If the complaint is resolved to the complainant's satisfaction, ensure a voluntary action is recorded against the complaint.
- Where the complainant is not satisfied, but there is no evidence of defective administration or you consider the agency's actions to provide a remedy to be reasonable, the complaint can be resolved to the Ombudsman's satisfaction.

No:

- If the complaint cannot be resolved, you will need to consider whether to discontinue the investigation (which requires approval by DART or AOCR) or proceed to a standard investigation (in IRT).

- **Advise the complainant of the outcome of the investigation**

Write to the complainant (by email or letter) advising them of the outcome of the investigation:

- their complaint appears resolved;
- the outcomes they sought in making their complaint have occurred;
- you are satisfied that there is no evidence of defective administration; or
- you consider the decisions or actions of the agency to be reasonable. You may need to provide an explanation of the agency's decisions or actions.

It is prudent to also advise the agency of the outcome of the investigation. This may be telephone, email or letter.