



# **Managing Unreasonable Complainant Conduct Policy**

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## Document Authorisation and Control

<b>RESPONSIBLE OFFICER:</b>		Manager of Governance, Risk and Corporate Planning (MGRCP)			
<b>REVIEWED BY:</b>		Management Executive Team (Manex)			
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2	03/10/2023	Resolution 14.09/20 carries.	Amendments are administrative only and include adjusting the Policy to fit the new Policy template plus adding some relevant legislation.	MGRCP	Council
	24/09/2020	14.09/20	Creation of the Policy from the NSW Ombudsman's Managing Unreasonable Complainant Conduct Model Policy.	Manager of Administration and Human Resources (MAHR)	Council



.....  
General Manager

27/2/24

.....  
Date

# Chapter 1 Preliminary

## Acknowledgement of Country

Glen Innes Severn Council (Council) acknowledges and pays respect to the Ngarabul people as the traditional custodians of this land, their elders past, present and emerging and to Torres Strait Islander people and all First Nations people.

### Part 1 Introduction

This policy is based on the NSW Ombudsman's *Managing unreasonable conduct by complainants - Model Policy* – July 2022 (Model Policy) and combines both the policy and procedures into one document.

#### 1. Policy Statement

Council is committed to being accessible and responsive to all complainants who approach Council for assistance and/or with a complaint. At the same time, the success of Council depends on:

- Council's ability to do its work in the most effective and efficient ways possible,
- the health, safety, and security of its staff, and
- Its ability to allocate its resources fairly across all the complaints it receives.

When complainants behave unreasonably in their dealings with Council, their conduct can significantly affect Council's resources and service delivery. Consequently, Council will take proactive and decisive action to manage any complainant conduct that negatively and unreasonably affects Council and will support staff to do the same in accordance with this policy.

#### 2. Purpose

This policy has been developed to assist all staff members to better manage unreasonable conduct by complainants (**UCC**).

#### 3. Applicability

This Policy applies to all Council staff when handling UCC.

#### 4. Outcomes

The aims of the policy are to ensure that all staff:

- Feel confident and supported in taking action to manage UCC,
- Act fairly, consistently, honestly and appropriately when responding to UCC, and
- Are aware of their roles and responsibilities in relation to the management of UCC and how this policy will be used.

## Part 2 Defining unreasonable conduct by a complainant

Most complainants who come to Council act reasonably and responsibly in their interactions with staff, even when they are experiencing high levels of distress, frustration and anger about their complaint.

However, in a very small number of cases some complainants behave in ways that are inappropriate and unacceptable, despite Council's best efforts to help them. They can be aggressive and verbally abusive towards staff. They may threaten harm and violence, bombard Council offices with unnecessary and excessive phone calls and emails, make inappropriate demands on staff time and resources and refuse to accept Council's decisions and recommendations in relation to their complaints.

When complainants behave in these ways, Council considers their conduct to be unreasonable. UCC is any behaviour by a current or former complainant which, because of its nature or frequency, raises substantial health, safety, resource or equity issues for the organisation, staff, other service users and complainants or the complainant him / herself.

UCC can be divided into the following five categories of conduct:

- unreasonable persistence,
- unreasonable demands,
- unreasonable lack of cooperation,
- unreasonable arguments,
- unreasonable behaviours.

### 1. *Unreasonable persistence*

Unreasonable persistence is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on Council, staff, services, time, or resources.

Some examples of unreasonably persistent behaviour include:

- An unwillingness or inability to accept reasonable and logical explanations, including final decisions that have been comprehensively considered and dealt with (even when it is evident the complainant does understand the information provided).
- Persistently demanding a review simply because it is available, and without arguing or presenting a case for one.
- Pursuing and exhausting all available review options, even after Council has explained that a review is not warranted – and refusing to accept that Council cannot or will not take further action on their complaint.
- Reframing a complaint to get it taken up again.
- Multiple and repeated phone calls, visits, letters, emails (including cc'd correspondence) after Council has repeatedly asked them not to.
- Contacting different people within or outside Council to get a different outcome or a more sympathetic response to their complaint – this is known as internal and external 'forum shopping'.

## **2. Unreasonable demands**

Unreasonable demands are any demands expressly made by a complainant that have a disproportionate and unreasonable impact on Council, staff, services, time, or resources.

Some examples of unreasonable demands include:

- Issuing instructions and making demands about how to handle their complaint, the priority it should be given, or the outcome to be achieved.
- Insisting on talking to a senior manager or the Director/General Manager personally when the reasons that this is not appropriate or warranted have been carefully explained to the complainant.
- Emotional blackmail and manipulation resulting in intimidation, harassment, shaming, seduction or portraying themselves as being victimised when this is not the case.
- Insisting on outcomes that are not possible or appropriate in the circumstances, for example asking for someone to be fired or prosecuted, or for an apology or compensation when there is no reasonable basis for this.
- Demanding services of a nature or scale that Council cannot provide, even after Council has explained this to them repeatedly.

## **3. Unreasonable lack of cooperation**

Unreasonable lack of cooperation is when a complainant is unwilling or unable to cooperate with Council staff, or its complaints process – resulting in a disproportionate and unreasonable use of Council services, time, or resources.

Some examples of unreasonable lack of cooperation include:

- Sending Council a constant stream of complex or disorganised information without clearly defining the issue at hand or explaining how the material provided relates to their complaint (where the complainant is clearly capable of doing this).
- Providing little or no detail around their complaint or providing information in ‘drips and drabs’.
- Refusing to follow or accept Council instructions, suggestions, or advice without a clear or justifiable reason for doing so.
- Arguing that a particular solution is the correct one in the face of valid contrary arguments and explanations.
- Unhelpful behaviour such as withholding information, acting dishonestly and misquoting others.

## **4. Unreasonable arguments**

Unreasonable arguments include any arguments that are not based on any reason or logic, that are incomprehensible, false, or inflammatory, trivial, or delirious, and that disproportionately and unreasonably impact upon our organisation, staff, services, time, or resources.

Arguments are unreasonable when they:

- Fail to follow a logical sequence that the complainant can explain to staff.
- Are not supported by any evidence or contain pseudo/amateur legal arguments.
- Lead a complainant to reject all other valid and contrary arguments.
- Are trivial when compared to the amount of time, resources, and attention that the complainant demands.
- Are false, inflammatory, or defamatory.

### 5. *Unreasonable behaviour*

Unreasonable behaviour is conduct that is unreasonable in all circumstances (regardless of how stressed, angry, or frustrated a complainant is) because it unreasonably compromises the health, safety and security of Council staff, other service users or the complainant themselves.

Some examples of unreasonable behaviours include:

- Acts of aggression, verbal abuse, derogatory, racist, or grossly defamatory remarks.
- Harassment, intimidation, or physical violence.
- Rude, confronting, or threatening correspondence.
- Threats of harm to self or third parties, threats with a weapon or threats to damage property, including bomb threats.
- Stalking in person or online.
- Emotional manipulation.

All staff should note that Council has a zero-tolerance policy towards any harm, abuse or threats directed towards them. Any conduct of this kind will be dealt with under this policy, the *Model Guidelines – Managing and Responding to Threats, Aggressive Behaviour and Violence from Members of the Public*, and in accordance with Council’s duty of care and work health and safety responsibilities.

## Part 3 Roles and Responsibilities

### 1. *All Staff*

All staff are:

- responsible for familiarising themselves with this Policy as well as the Individual Rights and Mutual Responsibilities of the Parties to a Complaint (**Appendix A**).
- encouraged to explain the contents of this document to all complainants particularly those who engage in UCC or exhibit the early warning signs for UCC.
- responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) within 24 hours of the incident occurring. Incident reporting is to be done through Reliansys – Incident. The Public Officer will receive an automated notification of all incidents reported through the system.

*An Unreasonable Complaints Register* will be maintained by the Governance Team.



- Staff are also encouraged and authorised to use the strategies and scripts provided at the NSW Ombudsman's website – see *Part 2 of the Managing unreasonable conduct by a complainant Manual (3rd edition)*.

## 2. The Public Officer

The Public Officer, in consultation with relevant staff, has the responsibility and authority to recommend a restriction on a complainant's access to Council services in the circumstances identified in this policy. When doing so, he or she will consider the relevant criteria and will aim to recommend any service changes/restrictions in the least restrictive ways possible. The aim, when making such recommendations, should not be to punish the complainant but rather to manage the impacts of their conduct. Recommendations will be made in a report to the General Manager for approval.

When applying this policy, the Public Officer will aim to keep at least one open line of communication with a complainant. However, Council recognises that in extreme situations all forms of contact may need to be restricted for some time to ensure the health and safety and security of Council staff and / or third parties.

The Public Officer is also responsible for recording, monitoring and reviewing all cases where this Policy is applied to ensure consistency, transparency and accountability for the application of the Policy. They will also manage and keep a file record of all cases where this Policy is applied.

## 3. General Manager

The General Manager is responsible for reviewing and authorising recommendations to restrict a complainant's access to Council. The General Manager will consider this policy, any case notes and recommendations presented in the Public Officer's report, including the impact of the unreasonable complainant conduct on the work health and safety of Council employees, when assessing a restriction recommendation on a complainant's access to Council.

## 4. Directors and Managers

All Directors and/or Managers are responsible for supporting staff to apply the strategies in this Policy. They are also responsible for ensuring compliance with the procedures identified in this policy and ensuring that all staff members are trained to deal with UCC, including during induction.

Following a UCC and/or stressful interaction with a complainant, directors and/or managers are responsible for providing affected staff members with the opportunity to debrief and vent their concerns either formally or informally. They will also ensure that staff are provided with proper support and assistance including medical and / or police assistance and support through programs such as the **Employee Assistance Program (EAP)**, if required.

Depending on the circumstances, directors and/or managers may also be responsible for arranging other forms of support for staff, which are detailed in part 7 of this policy.

## Chapter 2 Responding to and Managing UCC

### Part 1 Changing or restricting a complainants access to Council services

UCC incidents will generally be managed by limiting or adapting the ways that Council interacts with and/or deliver services to complainants by changing or restricting:

- **Who the complainant has contact with** - limiting a complainant to a sole contact person or staff member in Council.
- **What the complainant can raise with Council** - restricting the subject matter of communications that Council will consider and respond to.
- **When the complainant can have contact** - limiting a complainant's contact with Council to a particular time, day, or length of time, or curbing the frequency of their contact.
- **Where the complainant can make contact** - limiting the locations where Council will conduct face-to-face interviews to secured facilities or areas of the office.
- **How the complainant can make contact** - limiting or modifying the forms of contact that the complainant can have with Council. This can include modifying or limiting face-to-face interviews, telephone, and written communications, prohibiting access to Council premises, contact through a representative only, taking no further action or terminating provision of services altogether.

When using these restrictions in this part, Council recognises that discretion will need to be used to adapt any restriction to suit a complainant's personal circumstances, level of competency, literacy skills, etc. In this regard, Council also recognises that more than one strategy may need to be used in individual cases to ensure their appropriateness and efficacy.

#### *1. Who: limiting the complainant to a sole contact point*

Where a complainant tries to forum-shop within Council, changes their issues of complaint repeatedly, constantly reframes their complaint, or raises an excessive number of complaints, it may be appropriate to restrict their access to a single staff member (a sole contact point) who will manage their complaint(s) and interaction with Council. This may help ensure they are dealt with consistently and may minimise the incidence of misunderstandings, contradictions, and manipulation.

To avoid staff 'burnout', the sole contact officer's supervisor will provide them with regular support and guidance as needed. The Public Officer will also review the arrangement every six months to ensure that the officer is managing/coping with the arrangement.

Complainants who are restricted to a sole contact person will, however, be given the contact details of one additional staff member who they can contact if their primary contact is unavailable – for example if they go on leave or are otherwise unavailable for an extended period.

#### *2. What: restricting the subject matter of communications that Council will consider*

Where complainants repeatedly send letters, emails, or online forms that raise trivial or insignificant issues, contain inappropriate or abusive content, or relate to an issue that has already been comprehensively considered or reviewed (at least once) by Council, Council may restrict the issues the complainant can raise.

For example, Council may:

- Refuse to respond to correspondence that raises an issue that has already been dealt with, that raises a trivial issue, or is not supported by evidence. The complainant will be advised that future correspondence of this kind will be read and filed without acknowledgement unless Council decide that it needs to pursue it further – in which case, Council may do so on its ‘own motion’.
- Restrict the complainant to one complaint or issue per month. Any attempts to circumvent this restriction (for example by raising multiple complaints or issues in the one letter) may result in modifications or further restrictions being placed on their access.
- Return the correspondence to the complainant and require them to remove any inappropriate content before Council agrees to consider its contents. Council will also keep a copy of the inappropriate correspondence in its records to help identify repeat UCC incidents.

### ***3. When and how: limiting when and how a complainant can contact Council***

If a complainant’s contact with Council places an unreasonable demand on Council’s time or resources, or affects the health, safety, and security of Council staff because it involves behaviour that is persistently rude, threatening, abusive or aggressive, Council may limit when or how the complainant can interact with Council.

This may include:

- Limiting their telephone calls or face-to-face interviews to a particular time of the day or days of the week.
- Limiting the length or duration of telephone calls, written correspondence, or face-to-face interviews. For example:
  - Telephone calls may be limited to five minutes at a time and will be politely terminated at the end of that time.
  - Lengthy written communications may be restricted to a maximum of 10 typed or written pages, single sided, font size 12 or it will be sent back to the complainant to be organised and summarised. This option is only appropriate in cases where the complainant can summarise the information and refuses to do so.
  - Limiting face-to-face interviews to a maximum of 30 minutes.
- Limiting the frequency of their telephone calls, written correspondence, or face-to-face interviews. Depending on the natures of the service(s) provided Council may limit:
  - Telephone calls to one every month.
  - Written communications to one every month.
  - Face-to-face interviews to one every month.
- For irrelevant, overly lengthy, disorganised or very frequent written correspondence Council may also:
  - Require the complainant to clearly identify how the information or supporting materials they have sent relates to the central issues that Council has identified in their complaint.
  - Restrict the frequency with which complainants can send emails or other written communications.
  - Restrict a complainant to sending emails to a particular email account (e.g., the organisation’s main email account) or block their email access altogether and require that any further correspondence be sent through Australia Post only.

#### **4. 'Writing only' restrictions**

When a complainant is restricted to 'writing only' they may be restricted to written communications through:

- Australia Post only.
- Email only to a specific staff email or Council's general office email account.
- Some other relevant form of written contact, where applicable.

If a complainant's contact is restricted to writing only, the Public Officer will clearly identify the specific means that the complainant can use to contact Council (e.g., Australia Post only, or council email). If it is not appropriate for a complainant to enter Council premises to hand deliver their written communication this must be communicated to them as well.

Any communications received by Council in a manner that contravenes a 'writing only' restriction will either be returned to the complainant or read and filed without acknowledgement.

#### **5. Where: limiting face-to-face interviews to secure areas**

If a complainant is violent or overtly aggressive, unreasonably disruptive, threatening or demanding or makes frequent unannounced visits to Council, we may consider restricting face-to-face contact with them.

These restrictions can include:

- Restricting access to secured premises or areas of the office such as the reception area or a secured room or facility.
- Restricting their ability to attend Council premises to specified times of the day or days of the week only – for example, when additional security is available or to times or days that are less busy.
- Allowing them to attend Council on an 'appointment only' basis, and only with specified staff (for these meetings, staff should enlist the support and assistance of a colleague for added safety and security.)
- Banning the complainant from attending Council premises altogether and allowing some other form of contact, e.g., 'writing only' or 'telephone only' contact.

#### **6. Contact through a representative only**

In cases where Council cannot completely restrict contact with a complainant and their conduct is particularly difficult to manage, Council may require them to contact Council through a support person or representative only. The support person may be someone nominated by the complainant, but they must be approved by the Public Officer.

When assessing a representative or support person's suitability, the Public Officer should consider factors such as their level of competency and literacy skills, demeanour and behaviour, and relationship with the complainant. If the Public Officer determines that the representative or support person may exacerbate the situation with the complainant, the complainant will be asked to nominate another person and Council may assist them in this regard.

## **7. Completely terminating a complainant's access to Council services**

In rare cases, and as a last resort when all other strategies have been considered, the General Manager may decide that it is necessary for Council to completely restrict a complainant's contact or access to Council services.

A decision to have no further contact with a complainant will only be made if it appears that the complainant is unlikely to modify their conduct, or their conduct poses a significant risk for Council staff or other parties because it involves one or more of the following:

- Acts of aggression, verbal or physical abuse, threats of harm, harassment, intimidation, stalking, assault.
- Damage to property while on Council premises.
- Threats with a weapon or common office items that can be used to harm another person or themselves.
- Physically preventing a staff member from moving around freely either within their office or during an off-site visit – e.g., entrapping them in their home.
- Conduct that is otherwise unlawful.

In these cases, the complainant will be sent a letter notifying them that their access has been restricted. A complainant's access to Council services and Council premises may also be restricted (directly or indirectly) using legal mechanisms like trespass laws and other legislation or legal orders to protect members of Council staff from personal violence, intimidation or stalking by a complainant.

## **Part 2 Alternative Dispute Resolution**

If the General Manager determines that Council cannot terminate its services to a complainant in a particular case or that Council staff bear some responsibility for causing or exacerbating the conduct, Council may consider using alternative dispute resolution (ADR) strategies such as mediation to manage or resolve the conflict with the complainant and attempt to rebuild a relationship with them. If ADR is an appropriate option, the ADR will be conducted by an independent third party to ensure transparency and impartiality.

Council recognises that ADR may not always be an appropriate or effective strategy particularly if the complainant is uncooperative or resistant to compromise. Therefore, each case will be assessed on its own facts to determine the appropriateness of this approach.

## **Part 3 Procedure to be followed when changing or restricting a complainant's access to Council services**

### **1. Consulting with relevant staff**

When the Public Officer receives a UCC incident form from a staff member, they will contact the staff member to discuss the incident. They will discuss:

- The circumstances that gave rise to the UCC incident, including the complainant's situation, personal and cultural background, and perspective.
- The impact of the complainant's conduct on Council, relevant staff, time, resources etc.
- The complainant's response to the staff member's warnings or requests to stop the unreasonable behaviour.

- What the staff member has done to manage the complainant's conduct (if applicable).
- Any suggestions made by relevant staff on ways that the situation could be managed.

## **2. Criteria to be considered**

Following a consultation with relevant staff, the Public Officer will search ECM for information about the complainant's prior conduct and history with Council.

The Public Officer will also consider the following criteria:

- Whether the conduct in question involved overt anger, aggression, violence, or assault (which is unacceptable in all circumstances).
- Whether the complainant's case has merit.
- The likelihood that the complainant will modify their unreasonable conduct if they are given a formal warning about their conduct.
- Whether changing or restricting access to Council services will be effective in managing the complainant's behaviour.
- Whether changing or restricting access to Council services will affect the complainant's ability to meet their obligations, such as reporting obligations.
- Whether changing or restricting access to our services will have an undue impact on the complainant's welfare, livelihood, or dependents etc.
- Whether the complainant's personal circumstances have contributed to the behaviour – For example, the complainant's cultural background may mean their communication patterns differ from Council's staff or Council's standards, or the complainant is a vulnerable person who is under significant stress because of one or more of the following:
  - homelessness
  - physical disability
  - illiteracy or other language or communication barrier
  - mental or other illness
  - personal crises
  - substance or alcohol abuse.
- Whether the complainant's response or conduct was moderately disproportionate, grossly disproportionate, or not at all disproportionate in the circumstances.
- Whether there are any statutory provisions that would limit the types of limitations that can be applied to the complainant's contact with, or access to Council services.

Once the Public Officer has considered these criteria, they will provide a report and recommendation to the General Manager for his/her decision. The Public Officer may suggest formal or informal options for dealing with the complainant's conduct which may include one or more of the strategies provided in the manual and this policy.

### **3. Providing a warning letter**

Unless a complainant's conduct poses a substantial risk to the health and safety of staff or other third parties, the Public Officer will provide them with a written warning about their conduct in the first instance. If the complainant is unable to read the letter, it will be followed/accompanied by a telephone call, using an interpreter if necessary.

The warning letter will:

- Specify the date, time, and location of the UCC incident(s).
- Explain why the complainant's conduct/UCC incident is problematic.
- List the types of access changes and/or restrictions that may be imposed if the behaviour continues. (Note: not every possible restriction should be listed but only those that are most relevant).
- Provide clear and full reasons for the warning being given.
- Include an attachment of the organisation's ground rules and/or briefly state the standard of behaviour that is expected of the complainant. See Appendix A - Individual rights and mutual responsibilities of parties to a complaint.
- Provide the name and contact details of the staff member who they can contact about the letter.
- Be signed by the Public Officer or the Director / General Manager.

### **4. Providing a notification letter**

If a complainant's conduct continues after they have been given a written warning or in extreme cases of overt aggression, violence, assault, or other unlawful/unacceptable conduct, the Public Office, after discussion and approval from the General Manager, has the discretion to send a notification letter immediately restricting the complainant's access to Council services (without prior or further written warning). If the complainant is unable to read the letter (due to literacy issues, non-English speaking, etc.) the letter will be followed or accompanied by a telephone call, using an interpreter if necessary.

This notification letter will:

- Specify the date, time, and location of the UCC incident(s).
- Explain why the complainant's conduct is problematic.
- Identify the change and/or restriction that will be imposed and what it means for the complainant.
- Provide clear and full reasons for this restriction.
- Specify the duration of the change or restriction imposed, which will not exceed 12 months.
- Indicate a time for review.
- Provide the name and contact details of the senior officer who they can contact about the letter and/or request a review of the decision.

- Be signed by the Public Officer or the Director/General Manager.

### **5. *Notifying relevant staff about access changes/restrictions***

The Public Officer will notify relevant staff about any decisions to change or restrict a complainant's access to Council services, in particular reception and security staff in cases where a complainant is prohibited from entering Council premises.

The Public Officer will also update the Unreasonable Complainant Register with a record outlining the nature of the restriction imposed and its duration.

### **6. *Continued monitoring/oversight responsibilities***

Once a complainant has been issued with a warning letter or notification letter, the Public Officer will review the complainant's record/restriction within 12 months, on request by a staff member, or following any further incidents of UCC that involve the complainant to ensure that they are complying with the restrictions and the arrangement is working.

If the Public Officer determines that the restrictions have been ineffective in managing the complainant's conduct or are otherwise inappropriate, a report will be provided to the General Manager who may decide to either modify the restrictions, impose further restrictions, or terminate the complainant's access to Council services altogether.

## **Part 4      *Appealing a decision to change or restrict access to our services***

### **1. *Right of appeal***

People who have their access changed or restricted are entitled to one appeal of a decision to change or restrict their access to Council services. This review will be undertaken by a senior staff member who was not involved in the original decision to change or restrict the complainant's access. This staff member will consider the complainant's arguments and personal circumstances, including cultural background, along with all relevant records regarding the complainant's past conduct. They will advise the complainant of the outcome of their appeal by letter, which must be signed off by the General Manager. The staff member will then refer any materials or records relating to the appeal to the Public Officer to be kept in the appropriate file.

If a complainant is still dissatisfied after the appeal process, they may seek an external review from an oversight agency such as the NSW Ombudsman. The Ombudsman may accept the review (in accordance with its administrative jurisdiction) to ensure that Council have acted fairly, reasonably, and consistently and have observed the principles of good administrative practice, including procedural fairness.

## **Part 5      *Non-Compliance with a Change or Restriction on Access to Council Services***

### **1. *Recording and reporting incidents of non-compliance***

All staff members are responsible for recording and reporting incidents of non-compliance by complainants using Reliansys – Incident. The Public Officer will decide whether any action needs to be taken to modify or further restrict the complainant's access to Council services.



## Part 6 Periodic Reviews of All Cases Where This Policy Is Applied

All UCC cases where this Policy is applied will be reviewed within 12 months after the service change or restriction was initially imposed or upheld.

### ***1. Notifying the complainant of an upcoming review***

The Public Officer will ask complainants if they would like to participate in the review process unless they determine that this invitation will provoke a negative response from the complainant (i.e., further UCC). The invitation will be given, and the review will be conducted in accordance with the complainant's access restrictions.

### ***2. Criteria to be considered during a review***

When conducting a review, the Public Officer will consider:

- Whether the complainant has had any contact with Council during the restriction period.
- The complainant's conduct during the restriction period.
- Any information or arguments put forward by the complainant for review.
- Any other information that may be relevant in the circumstances.
- The Public Officer may also consult any staff members who have had contact with the complainant during the restriction period.

Sometimes a complainant may not have a reason to contact Council during their restriction period. As a result, a review decision that is based primarily on the fact that the complainant has not contacted Council during their restriction period may not be an accurate representation of their level of compliance/reformed behaviour. This should be taken into consideration, in relevant situations.

### ***3. Notifying a complainant of the outcome of a review***

The Public Officer will tell the complainant the outcome of their review using an appropriate method of communication, as well as a written letter explaining the outcome. The review letter will:

- Briefly explain the review process.
- Identify the factors that have been considered during the review.
- Explain the decision or outcome of the review and the reasons for it.

If the outcome of the review is to maintain or modify the restriction, the review letter will also:

- Indicate the nature of the new or continued restriction.
- State the duration of the new restriction period.
- Provide the name and contact details of the relevant officer who the complainant can contact to discuss the letter.
- Be signed by the Public Officer with the approval of the General Manager.

#### ***4. Recording the outcome of a review and notifying relevant staff***

The Public Officer is responsible for keeping a record of the outcome of the review, updating the Unreasonable Complainants Register and notifying all relevant staff of the outcome of the review including if the restriction has been withdrawn.

### **Part 7 Managing Staff Stress**

#### ***1. Staff reactions to stressful situations***

Dealing with complainants who are demanding, abusive, aggressive or violent can be extremely stressful and at times distressing or even frightening for all staff, both experienced and inexperienced. It is perfectly normal to get upset or experience stress when dealing with difficult situations.

As an organisation, Council has a responsibility to support staff members who experience stress because of situations arising at work and Council will do its best to provide staff with debriefing and counselling opportunities, when needed.

To do this, Council needs the help of all staff to identify stressful incidents and situations. All staff have a responsibility to notify relevant supervisors / managers of UCC incidents and any stressful incidents that they believe require management's involvement. All such incidents should be recorded in Reliansys – Incident module, ensuring the WHS Coordinator is selected under Manager(s) Notification.

#### ***2. Debriefing***

Debriefing means talking things through following a difficult or stressful incident. It is an important way of dealing with stress. Many staff do this naturally with colleagues after a difficult telephone call, but staff can also debrief with a supervisor or senior manager (or as a team) following a significant incident. Council encourages all staff to engage in an appropriate level of debriefing, when necessary.

Staff may also access Council's EAP.

### **Part 8 Training and Awareness**

Council is committed to ensuring that all staff are aware of and know how to use this policy. All staff who deal with complainants during their work will also receive appropriate training and information on using this Policy and managing UCC on a regular basis and on induction.

## Chapter 3 Legislation, Supporting Documents and Review

### Part 1 Relevant Legislation, Regulations and Industry Standards

- *NSW Ombudsman - Managing Unreasonable Complainant Conduct Practice Manual (2<sup>nd</sup> edition)*  
A manual for frontline staff, supervisors and senior managers.
- *Managing unreasonable conduct by complainants – model policy / August 2021*  
The Model Policy appendices (sample documents) will be referred to by the Public Officer when assessing and dealing with UCC incidents.
- *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*
- *Work Health and Safety Act 2011 (NSW)*
- *Inclosed Lands Protection Act 1901 (NSW)*

### Part 2 Relevant Council Policies and Procedures

- *Complaints Management Policy and Procedure*
- *Code of Conduct for Council Staff*
- *Work Health and Safety Policy*
- *Model Guidelines – Managing and Responding to Threats, Aggressive Behaviour and Violence from Members of the Public*

### Part 3 Variation and Review

The Managing Unreasonable Complainant Conduct Policy shall be reviewed every term of Council, or earlier if deemed necessary, to ensure that it meets the requirements of legislation and the needs of Council. The term of this policy does not expire on the review date, but shall continue in force until superseded, rescinded or varied either by legislation or a new resolution of Council.

## Appendix A – Individual rights and mutual responsibilities of the parties to a complaint

For Council to ensure that all complaints are dealt with fairly, efficiently, and effectively and that work health and safety standards and duty of care obligations are adhered to, the following rights and responsibilities must be observed and respected by all the parties to the complaint process.

### Individual Rights<sup>1</sup>

#### *Complainants have the right:*

- to make a complaint and to express their opinions in ways that are reasonable, lawful, and appropriate,<sup>2</sup>
- to a reasonable explanation of Council's Complaints Management Policy and Procedure, including details of the confidentiality, secrecy or privacy rights or obligations that may apply,
- to a fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the case,<sup>3</sup>
- to a fair hearing,<sup>4</sup>
- to a timely response,
- to be informed in at least general terms about the actions taken and outcome of their complaint,<sup>5</sup>
- to have decisions that affect them explained to them,
- to at least one review of the decision on the complaint,<sup>6</sup>
- to be treated with courtesy and respect,
- to communicate valid concerns and views without fear of reprisal or other unreasonable response.<sup>7</sup>

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<sup>1</sup> The word 'rights' is not used here in the sense of legally enforceable rights (although some are), but in the sense of guarantees of certain standards of service and behaviour.

<sup>2</sup> Differences of opinion are normal: people perceive things differently, feel things differently and want different things. Opinions may be informed or uninformed and whilst the 'right' to an opinion is commonly accepted, discrimination against the relative quality of an opinion may be applied.

<sup>3</sup> While degrees of independence will vary between complaint handlers, all should assess complaints fairly and as impartially as possible, based on a documented process and the merits of the case.

<sup>4</sup> The 'right to be heard' refers to the opportunity to put a case to the complaint handler/decision-maker. This right can be modified, curtailed or lost due to unacceptable behaviour, and is subject to the complaint handler's right to determine how a complaint will be dealt with.

<sup>5</sup> Provided this will not prejudice on-going or reasonably anticipated investigations or disciplinary/criminal proceedings.

<sup>6</sup> Such a right of review can be provided internally to the organisation, for example by a person not connected to the original decision.

<sup>7</sup> Provided the concerns are communicated in the ways set out in relevant legislation, policies and/or procedures established for the making of such complaints/allegations/disclosures/etc.

***Staff have the right:***

- to determine whether, and if so how, a complaint will be dealt with,
- to finalise matters based on outcomes they consider to be satisfactory in the circumstances,<sup>8</sup>
- to expect honesty, cooperation, and reasonable assistance from complainants,
- to expect honesty, cooperation and reasonable assistance from organisations and people within jurisdiction who are the subject of a complaint,
- to be treated with courtesy and respect,
- to a safe and healthy working environment,<sup>9</sup>
- to modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.<sup>10</sup>

***Subjects of a complaint have the right:***

- to a fair and impartial assessment and, where appropriate, investigation of the allegations made against them,
- to be treated with courtesy and respect by staff of Council,
- to be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated,<sup>11</sup>
- to be informed about the substance of any proposed adverse comment or decision,
- to be given a reasonable opportunity to put their case during any investigation and before any final decision is made,<sup>12</sup>
- to be told the outcome of any investigation into allegations about their conduct, including the reasons for any decision or recommendation that may be detrimental to them,
- to be protected from harassment by disgruntled complainants acting unreasonably.

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<sup>8</sup> Some complaints cannot be resolved to the complainant's satisfaction, whether due to unreasonable expectations or the particular facts and circumstances of the complaint [see also footnote 25]

<sup>9</sup> See for example WH&S laws and the common law duty of care on employers.

<sup>10</sup> Unacceptable behaviour includes verbal and physical abuse, intimidation, threats, etc.

<sup>11</sup> Other than where there is an overriding public interest in curtailing the right, for example where to do so could reasonably create a serious risk to personal safety, to significant public funds, or to the integrity of an investigation into a serious issue. Any such notifications or opportunities should be given as required by law or may be timed so as not to prejudice that or any related investigation.

<sup>12</sup> Depending on the circumstances of the case and the seriousness of the possible outcomes for the person concerned, a reasonable opportunity to put their case, or to show cause, might involve a face-to-face discussion, a written submission, a hearing before the investigator or decision maker, or any combination of the above.

## Mutual responsibilities

### *Complainants are responsible for:*

- treating staff of Council with dignity and respect,
- clearly identifying to the best of their ability the issues of complaint, or asking for help from the staff of Council to assist them in doing so,
- providing Council, to the best of their ability, with all the relevant information available to them at the time of making the complaint,
- being honest in all communications with Council,
- informing Council of any other action they have taken in relation to their complaint,<sup>13</sup>
- cooperating to the best of their ability with the staff who are assigned to assess/investigate/resolve/determine or otherwise deal with their complaint.

If complainants do not meet their responsibilities, Council may consider placing limitations or conditions on their ability to communicate with staff or access certain services. Council has a zero-tolerance policy in relation to any harm, abuse or threats directed towards its staff. Any conduct of this kind may result in a refusal to take any further action on a complaint or to have further dealings with the complainant.<sup>14</sup> Any conduct of a criminal nature will be reported to police, and in certain cases legal action may also be considered.

### *Staff are responsible for:*

- providing reasonable assistance, including cultural and linguistic assistance, to complainants who need help to make a complaint and, where appropriate, during the complaint process,
- dealing with all complaints, complainants and people or organisations the subject of complaint professionally, fairly, and impartially,
- giving complainants or their advocates a reasonable opportunity to explain their complaint, subject to the circumstances of the case and the conduct of the complainant,
- giving people or organisations the subject of complaint a reasonable opportunity to put their case during any investigation and before any final decision is made,<sup>15</sup>
- informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them,<sup>16</sup> and the substance of any proposed adverse comment or decision that they may need to answer or address,<sup>17</sup>
- keeping complainants informed of the actions taken and the outcome of their complaints,<sup>18</sup>

<sup>13</sup> For example, whether they have made a similar complaint to another relevant person or body or have relevant legal proceedings on foot.

<sup>14</sup> Other than in circumstances where the organisation is obliged to have an ongoing relationship with the complainant.

<sup>15</sup> See footnote 11.

<sup>16</sup> Other than where an allegation is so lacking in merit that it can be dismissed at the outset.

<sup>17</sup> See footnote 11.

<sup>18</sup> See footnote 5.

- giving complainants explanations that are clear and appropriate to their circumstances, and adequately explaining the basis of any decisions that affect them,
- treating complainants (and people who are the subject of complaints), with courtesy and respect always and in all circumstances,
- taking all reasonable and practical steps to ensure that complainants<sup>19</sup> are not subjected to any detrimental action in reprisal for making their complaint,<sup>20</sup>
- giving adequate warning of the consequences of unacceptable behaviour.

If Council staff fail to comply with these responsibilities, complainants may complain to the Public Officer at Council ([council@gisc.nsw.gov.au](mailto:council@gisc.nsw.gov.au)) or to the NSW Ombudsman ([www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)).

***Subjects of a complaint are responsible for:***

- cooperating with the staff of Council who are assigned to handle the complaint, particularly where they are exercising a lawful power in relation to a person or body within their jurisdiction.<sup>21</sup>
- providing all relevant information in their possession to Council or its authorised staff when required to do so by a properly authorised direction or notice,
- being honest in all communications with Council and its staff.
- always treating the staff of the Council with courtesy and respect.
- refraining from taking any detrimental action against the complainant<sup>22</sup> in reprisal for them making the complaint.<sup>23</sup>

If subjects of a complaint fail to comply with these responsibilities, action may be taken under relevant laws or codes of conduct.

***Council is responsible for:***

- maintaining an appropriate and effective complaint handling system for receiving, assessing, handling, recording, and reviewing complaints.
- making decisions about how all complaints will be dealt with.
- ensuring that all complaints are dealt with professionally, fairly, and impartially.<sup>24</sup>
- ensuring that staff treat all parties to a complaint with courtesy and respect.
- ensuring that the assessment and any inquiry into the investigation of a complaint is based on sound reasoning and logically probative information and evidence.

<sup>19</sup> 'Complainants' include whistleblowers/people who make internal disclosures.

<sup>20</sup> 'Complaints' includes disclosures made by whistleblowers/people who make internal disclosures.

<sup>21</sup> This does not include any obligation to incriminate themselves in relation to criminal or disciplinary proceedings, unless otherwise provided by statute

<sup>22</sup> See footnote 19.

<sup>23</sup> See footnote 20.

<sup>24</sup> See footnote 3.

- finalising complaints based on outcomes that Council, or its responsible staff, consider to be satisfactory in the circumstances.<sup>25</sup>
- implementing reasonable and appropriate policies, procedures, and practices to ensure that complainants are not subjected to any detrimental action in reprisal for making a complaint, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints.
- adequately considering any confidentiality, secrecy or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.

If Council fails to comply with these responsibilities, complainants may complain to the Public Officer at Council ([council@gisc.nsw.gov.au](mailto:council@gisc.nsw.gov.au)) or to the NSW Ombudsman ([www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)).

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<sup>25</sup> Once made, complaints are effectively 'owned' by the complaint handler who is entitled to decide (subject to any statutory provisions that may apply) whether, and if so how, each complaint will be dealt with, who will be the case officer/investigator/decision-maker/etc., the resources and priority given to actioning the matter, the powers that will be exercised, the methodology used, the outcome of the matter, etc. Outcomes arising out of a complaint may be considered by the complaint handler to be satisfactory whether the complainants, any subjects of complaint or the organisation concerned agrees with or is satisfied with that outcome.