

Unreasonable Complainant Conduct 2021

POL054



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| Policy No: | POL054 |
| Policy Title: | Unreasonable Complainant Conduct Policy |
| Section Responsible: | Governance |
| Minute No: | 21/085 |
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1. INTENT

This policy has been developed to assist all staff members to better manage instances of Unreasonable Complainant Conduct ('UCC').

2. SCOPE

Narrandera Shire Council has zero tolerance towards any harm, abuse or threats directed toward elected members, staff, volunteers, or persons providing goods or services on behalf of Council. Conduct of this kind will be dealt with under this policy and in accordance with our duty of care and workplace health and safety responsibilities.

3. OBJECTIVE

The aim of this policy is to ensure that all persons associated with Council:

- Feel confident and supported in taking action to manage UCC
- Act fairly, consistently, honestly, and appropriately when responding to UCC
- Are aware of their roles and responsibilities in relation to the management of UCC and how this policy will be used
- Understand the types of circumstances when it may be appropriate to manage UCC using one or more of the following mechanisms:
 - The strategies provided in the NSW Ombudsman publication Managing Unreasonable Conduct by a Complainant of 1 October 2020 ISBN: 978-1-921884-54-2 including the strategies to change or restrict a complainant's access to our services;
 - Alternative dispute resolution strategies to deal with conflicts involving complainants and members of our organisation;

- Legal instruments such as trespass laws/legislation to prevent a complainant from coming onto our premises and orders to protect specific staff members from any actual or apprehended personal violence, intimidation or stalking.
- Have a clear understanding of the criteria that will be considered before we decide to change or restrict a complainant's access to our services
- Are aware of the processes that will be followed to record and report UCC incidents as well as the procedures for consulting and notifying complainants about any proposed actions or decisions to change or restrict their access to our services
- Are familiar with the procedures for reviewing decisions made under this policy, including specific timeframes for review.

4. POLICY STATEMENT

Narrandera Shire Council recognises that members of the community have a right to express an opinion and is committed to being accessible and responsive to all complainants who approach Council for assistance. It is very important for Council to manage unreasonable complainant conduct for several reasons such as:

- The resources of Council are limited and must be used efficiently in dealing with other requests from customers and the many other functions of Council - all customers are entitled to an equitable share of time and resources
- Council is responsible for ensuring the health, safety and wellbeing of its elected members, staff, volunteers, and others associated with Council
- Often unreasonable conduct can make it harder to resolve an issue and the process is unnecessarily prolonged. Unreasonable conduct can change the focus of the original grievance and damage relationships between the complainant and Council.

Narrandera Shire Council will take proactive and decisive action to manage any complainant conduct that negatively and unreasonably affects us and will support our staff to do the same in accordance with this policy.

5. PROVISIONS

5.1 DEFINING UNREASONABLE COMPLAINANT CONDUCT

5.1.1 Unreasonable Complainant Conduct

Most complainants who engage with Council act reasonably and responsibly in their interactions, even when experiencing high levels of distress, frustration, and anger about an issue. However, in a very small number of cases some complainants behave in ways that are inappropriate and unacceptable – despite the best efforts to assist them. Some complainants become aggressive and are verbally abusive towards our people, they threaten harm and violence, bombard our office with unnecessary and excessive phone calls and emails, make inappropriate demands on our time and our resources and refuse to accept our decisions and recommendations in relation to their complaints. When complainants behave in these ways, we consider their conduct to be 'unreasonable'.

Unreasonable Complainant Conduct ('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 our organisation, our staff, other service users and complainants or the complainant themselves.

UCC can be divided into five categories of conduct:

- Unreasonable persistence
- Unreasonable demands
- Unreasonable lack of co-operation
- Unreasonable arguments
- Unreasonable behaviours.

5.1.2 Unreasonable persistence

Unreasonable persistence is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on our organisation, staff, services, time and/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
- Persistently demanding a review simply because it is available and without arguing or presenting a case for a review
- Pursuing and exhausting all available review options when it is not warranted and refusing to accept further action cannot or will not be taken on their complaints
- Reframing a complaint to get it taken up again
- Bombarding our organisation with phone calls, visits, letters, emails (including cc'd correspondence) after repeatedly being asked not to do so
- Contacting different people within our organisation and/or externally to get a different outcome or more sympathetic response to their complaint.

5.1.3 Unreasonable demands

Unreasonable demands are any demands (express or implied) that are made by a complainant that have a disproportionate and unreasonable impact on our organisation, staff, services, time and/or resources. Some examples of unreasonable demands include:

- Issuing instructions and making demands about how we have/should handle their complaint, the priority it was/should be given, or the outcome that was/should be achieved
- Insisting on talking to a senior manager or the General Manager personally when it is not appropriate or warranted
- Emotional blackmail and manipulation with the intention to guilt trip, intimidate, harass, shame, seduce or portray themselves as being victimised – when this is not the case

- Insisting on outcomes that are not possible or appropriate in the circumstances – for example for someone to be dismissed or prosecuted, an apology and/or compensation when there is no reasonable basis for expecting this
- Demanding services that are of a nature or scale that as an organisation it is not possible to provide and this has been explained to the complainant repeatedly.

5.1.4 Unreasonable lack of co-operation

Unreasonable lack of cooperation is an unwillingness and/or inability by a complainant to cooperate with members of our organisation, or complaints system and processes that results in a disproportionate and unreasonable use of our services, time and/or resources. Some examples of unreasonable lack of co-operation include:

- Sending a constant stream of comprehensive and/or disorganised information without clearly defining any issues of complaint or explaining how they relate to the core issues being complained about – only where the complainant is clearly capable of doing this
- Providing little or no detail with a complaint or presenting information in ‘dribs and drabs’
- Refusing to follow or accept our instructions, suggestions, or advice without a clear or justifiable reason for doing so
- Arguing frequently and/or with extreme intensity that a particular solution is the correct one in the face of valid contrary arguments and explanations
- Displaying unhelpful behaviour – such as but not limited to withholding information, acting dishonestly and misquoting others.

5.1.5 Unreasonable arguments

Unreasonable arguments include any arguments that are not based in reason or logic, that are incomprehensible, false, or inflammatory, trivial, or delirious and that disproportionately and unreasonably impact upon our organisation, staff availability, service delivery and/or general resources. Arguments are unreasonable when a complainant:

- fails to follow a logical sequence
- makes statements that are not supported by any evidence and/or are based on conspiracy theories
- rejects other valid and contrary arguments
- makes statements that are trivial when compared to the amount of time, resources, and attention that the complainant demands
- make statements that are false, inflammatory, or defamatory.

5.1.6 Unreasonable behaviour

Unreasonable behaviour is conduct that is unreasonable in all circumstances – regardless of how stressed, angry, or frustrated that a complainant presents themselves. Such behaviour unreasonably compromises the health, safety, security and wellbeing of members of our organisation, other customers and indeed the complainant themselves. Some examples of unreasonable behaviours include:

- Acts of aggression, verbal abuse, derogatory, racist, or grossly defamatory remarks
- Actions of harassment, intimidation, or threats of physical violence
- Actions of offensive, confronting and threatening correspondence
- Threats of harm to self or third parties, threats of harm with a weapon or threats to damage property also actions to disrupt normal business activities such as a bomb threat or the spread of anthrax
- Actions of stalking individuals either at work or at home or online
- Emotional manipulation.

5.2 RESPONDING TO AND MANAGING UCC

5.2.1 Changing or restricting a complainant's access to our services

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

- Who they have contact with such as limiting a complainant to a sole contact person/staff member in our organisation
- What they can raise with us such as restricting the subject matter of communications that is considered appropriate that the organisation will consider and respond to
- When they can have contact such as limiting a complainant's contact with our organisation to a particular time, day, or length of time, or curbing the frequency of their contact
- Where they can make contact such as limiting the locations where face-to-face interviews will be allowed such as in a secured facility or areas of the office
- How they can make contact such as limiting or modifying the forms of contact that the complainant can have including 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 our services altogether.

When using the restrictions provided in this section, we recognise that discretion will need to be used to adapt them to suit a complainant's personal circumstances such as levels of comprehension, literacy and numeracy skills and any other factors unique to the circumstance. As an organisation we recognise that more than one strategy may need to be used in individual cases to ensure appropriateness and efficacy.

5.2.2 Who – limiting the complainant to a sole contact point

Where a complainant contact a number of people at various levels within the organisation to have issues addressed, changes their issues of complaint repeatedly or reframes the complaint, or raises an excessive number of complaints it may be appropriate to restrict access to a single staff member (a sole contact point) who will exclusively manage their engagement with Council. This will ensure they are dealt with consistently and may minimise the chances for misunderstandings, contradictions and manipulation.

To avoid excessive stress on individuals the sole contact officer's supervisor will provide them with regular support and guidance as needed. Also, the Governance and Engagement Manager will review the arrangement every six months to ensure that the officer is managing/coping with the arrangement.

Complainants that 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 such as instances of leave or are otherwise unavailable for a period of time.

5.2.3 What – restricting the subject matter of communications that we will consider

Where complainants repeatedly send written communication such as letters, emails, or online forms that raise trivial or insignificant issues, perhaps contain inappropriate or abusive content or relate to a complaint or issue that has already been comprehensively considered and/or reviewed (at least once) by the organisation, we may restrict the issues/subject matter the complainant can raise with us/we will respond to. For example, we may:

- Refuse to respond to correspondence that raises an issue that has already been dealt with comprehensively, that raises a trivial issue, or is not supported by clear or any evidence. The complainant will be advised that future correspondence of this kind will be read and filed without acknowledgement unless we decide that we need to pursue it further in which case it will be reviewed in a reasonable timeframe and manner
- Restrict the complainant to one complaint/issue per month, attempts to circumvent this restriction by raising multiple complaints or issues in the one complaint may result in modifications or further restrictions being placed on access
- Return correspondence to the complainant and require amendments to remove inappropriate content before agreeing to consider its contents. A copy of the inappropriate correspondence will also be made and kept for our records to identify repeat or further UCC incidents.

5.2.4 When – limiting when and how a complainant can contact us

If a complainant's telephone, written or face-to-face contact with our organisation places an unreasonable demand on our time or resources because it is overly lengthy such as an item of disorganised or voluminous correspondence or it affects the health, safety and security people within our organisation because it involves behaviour that is persistently rude, threatening, abusive or aggressive, we may limit when and/or how the complainant can interact with us. This may include:

- Limiting 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 such as
 - Telephone calls may be limited to 10 minutes at a time and will be politely terminated at the end of that time period

- Lengthy written communications may be restricted to a maximum of say 15 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 45 minutes duration
- Limiting the frequency of telephone calls, written correspondence, or face-to-face interviews. Depending on the natures of the service(s) provided we may limit:
 - Telephone calls to 1 every two weeks/ month; or
 - Written communications to 1 every two weeks/month; or
 - Face-to-face interviews to 1 every two weeks/month.

For irrelevant, overly lengthy, disorganised or frequent written correspondence we may also:

- Require the complainant to clearly identify how the information or supporting materials they have sent to us relate to the central issues that we have identified in their complaint
- Restrict the frequency with which complainants can send emails or other written communications to our office
- Restrict a complainant to sending emails to a particular email account such as the organisation's main email account or perhaps block their email access altogether and require that any further correspondence be sent through Australia Post only.

5.2.5 Writing only restrictions

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

- Australia Post only; or
- Email only to a specific staff email or our general office email account; or
- Fax only to a specific fax number; or
- Some other relevant form of written contact, where applicable.

If a complainant's contact is restricted to 'writing only', the Governance and Engagement Manager will clearly identify the specific means that the complainant can use to contact our office such as Australia Post. Also, if it is not suitable for a complainant to enter our premises to hand deliver their written communication, this must be communicated to them in writing.

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

5.2.6 Where – limiting face-to-face interviews to secure areas

If a complainant is violent or overtly aggressive, unreasonably disruptive, displays threatening or demanding or makes frequent unannounced visits to our premises as an organisation we may consider restricting our face-to-face contact.

These restrictions may include:

- Restricting access to secured premises or areas of the office such as the reception area or a secured room or facility
- Restricting the ability to attend our premises to specified times of the day and/or days of the week only such as when additional security is available or to times/days that are less busy
- Allowing them to attend our office on an 'appointment only' basis and only with specified staff present. During these meetings staff should always seek support and assistance of a colleague for added safety and security
- Banning the complainant from attending our premises altogether and allowing another form of contact only such as by way of written correspondence, telephone, or online zoom.

5.2.7 Contact through a representative only

In cases where it is not possible to completely restrict contact with a complainant and their conduct is particularly difficult to manage, it may be that contact is to be through a support person or representative only. The support person may be nominated by the complainant but must be approved by the Governance and Engagement Manager.

When assessing the suitability of a representative or support person, Governance and Engagement Manager should consider factors like the nominated representative or /support person's competency in numeracy and literacy skills, demeanor and /behaviour and their relationship with the complainant. If the Governance and Engagement Manager determines that the representative or support person may exacerbate the situation with the complainant, the complainant will be asked to nominate another person or the organisation may be able to assist them in this regard.

5.2.8 Completely terminating a complainant's access to our services

In rare cases and as a last resort when all other strategies have been considered and/or attempted, the Governance and Engagement Manager and the General Manager may decide that it is necessary for our organisation to completely restrict a complainant's contact and access to our 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 behaviour or their conduct poses a significant risk to members of our organisation or other persons associate with the organisation because it involves one or more of the following types of conduct:

- Acts of aggression, verbal and/or physical abuse, threats of harm, harassment, intimidation, stalking, assault

- Damage to property whilst on any premises of the organisation
- 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 such as entrapment
- Conduct that is otherwise unlawful.

In these cases, the complainant will be sent a letter notifying them that their access has been restricted as outlined in Appendix A of Part 4 attached.

A complainant's access to our services and our premises may also be restricted (directly or indirectly) using the legal mechanisms such as trespass laws or legal orders to protect members of our organisation from personal violence, intimidation or stalking by a complainant.

5.3 ALTERNATIVE DISPUTE RESOLUTION

5.3.1 Using alternative dispute resolution strategies to manage conflicts with complainants

If the Governance and Engagement Manager and the General Manager determine that the organisation is not able to terminate services to a complainant in a particular case or that such actions may bear some responsibility for causing or exacerbating their conduct, consideration could be given to use an alternative dispute resolution strategy such as mediation and conciliation in an attempt to resolve the conflict with the complainant and attempt to rebuild the relationship. If an alternate strategy is considered to be an appropriate option in a particular case, the resolution will be conducted by an independent third party to ensure transparency and impartiality.

As an organisation we recognise that in UCC situations, alternate dispute resolution may not be an appropriate or effective, 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 an alternate approach.

5.4 APPEALING A DECISION TO CHANGE OR RESTRICT ACCESS TO OUR SERVICES

5.4.1 Right of appeal

Complainants are entitled to one appeal of a decision to change or restrict their access to our 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 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 Governance and Engagement Manager to be kept in the appropriate file.

If a complainant continues to be 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 as an organisation we have acted fairly, reasonably, and consistently and have observed the principles of good administrative practice including procedural fairness.

5.5 NON-COMPLIANCE WITH A CHANGE OR RESTRICTION ON ACCESS TO OUR SERVICES

5.5.1 Recording and reporting incidents of non-compliance

All staff members are responsible for recording and reporting incidents of non-compliance by complainants. This should be recorded in a file note in councils electronic document management system and a copy forwarded to the Governance and Engagement Manager who will decide whether any action needs to be taken to modify or further restrict the complainant's access to our services.

5.6 PERIODIC REVIEWS OF ALL CASES WHERE THIS POLICY IS APPLIED

5.6.1 Period for review

All UCC cases where this policy is applied will be reviewed every three months or six months (depending on the nature of the service provided) and not more than 12 months after the service change or restriction was initially imposed or continued or upheld.

5.6.2 Notifying the complainant of an upcoming review

The Governance and Engagement Manager will invite all complainants to participate in the review process unless they determine that this invitation will provoke a negative response from the complainant such as resulting in additional unwarranted behaviour. The invitation will be given and the review will be conducted in accordance with the complainant's access restrictions.

See Appendix G – Sample letter notifying a complainant of an upcoming review.

5.6.3 Criteria to be considered during a review

When conducting a review, the Governance and Engagement Manager will consider:

- Whether the complainant has had any contact with the organisation 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 Governance and Engagement Manager may also consult any staff members who have had contact with the complainant during the restriction period.

NOTE – Sometimes a complainant may not have a reason to contact our office during their restriction period. As a result, a review decision that is based primarily on the fact that the complainant has not contacted our organisation during their restriction period (apparent

compliance with our restriction) may not be an accurate representation of their level of compliance or reformed behaviour. This should be taken into consideration, in relevant situations.

See Appendix H – Sample checklist for reviewing an access change/restriction.

5.6.4 Notifying a complainant of the outcome of a review

The Governance and Engagement Manager will notify the complainant of the outcome of their review using the 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 decisions and 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 Governance and Engagement Manager or relevant officer who the complainant can contact to discuss the letter
- Be signed by the Governance and Engagement Manager or preferably the General Manager.

See Appendix I – Sample letter advising the complainant of the outcome of a review.

5.6.5 Recording the outcome of a review and notifying relevant staff

Like all other decisions made under this policy, the Governance and Engagement Manager is responsible for keeping a record of the outcome of the review, updating the electronic document management system and notifying all relevant staff of the outcome of the review including if the restriction has been withdrawn.

5.7 MANAGING STAFF STRESS

5.7.1 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 people within our organisation - both experienced and inexperienced persons can succumb to the stress and anxiety. As an organisation we understand that it is normal to get upset or experience stress and anxiety when dealing with difficult situations.

As an organisation we have a responsibility to support persons who experience stress and anxiety because of situations arising at work and we will do our best to provide staff with debriefing and counselling opportunities also peer review of the matter. However, to do this we also need help of other persons within the organisation such as colleagues to identify stressful incidents and situations. Persons have a responsibility to notify relevant

supervisors or senior managers of UCC incidents and indeed any other stressful incidents that they believe require management involvement.

In circumstances where the matter becomes personal against individuals within the organisation the matter should be considered for referral to an external third party to manage.

5.7.2 Debriefing

Debriefing means talking things through following a difficult or stressful incident. It is an important way of reducing stress and anxiety. Many people naturally do this with colleagues after a difficult telephone call, but debriefing can also be done with a supervisor or senior manager or as a team following a significant incident. We encourage all staff to engage in an appropriate level of debriefing, when necessary.

As an organisation we encourage people to access an external professional service if it is felt that professional intervention is required. The Employee Assistance Program is widely advertised within the organisation and is a free, confidential counselling service paid by Council for limited sessions. Further information about this service is available through the Human Resources team.

5.8 OTHER REMEDIES

If other measures are necessary, the organisation will consider providing all reasonable support to ensure the safety and wellbeing of the person.

5.9 TRAINING AND AWARENESS

Narrandera Shire Council is committed to ensuring that all staff are aware of and know how to use this policy. All staff who deal with complainants in the course of their work will also receive appropriate training and information on using this policy and on managing UCC on a regular basis through either face-to-face training, information provided in the Council communique and in particular on induction.

5.10 OMBUDSMAN MAY REQUEST COPIES OF OUR RECORDS

Narrandera Shire Council will keep records of all cases where this policy is applied, including a record of the total number of cases where it is used every year. This data may be requested by the Ombudsman to conduct an overall audit and review in accordance with its administrative functions and/or to inform its work on UCC.

6. DEFINITIONS

- **UCC:** Unreasonable Complainant Conduct

7. ROLES AND RESPONSIBILITIES

7.1 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 in Appendix B. Staff are also 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.

Staff are also encouraged and authorised to use the strategies and scripts provided in Appendix A of the practice manual to manage UCC:

Strategies that effectively change or restrict a complainant's access to our services must be considered by the Governance and Engagement Manager or above as provided in this document.

Staff are also responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) to the Governance and Engagement Manager or above within 24 hours of the incident occurring, using the sample UCC incident form in Appendix C. A file note of the incident should also be copied into the electronic document management system.

7.2 The Governance & Engagement Manager

The Governance and Engagement Manager in consultation with the General Manager has the responsibility and authority to change or restrict a complainant's access to our services in the circumstances identified in this policy. When doing so they will consider the criteria in Appendix A Part 2 attached (adapted into a checklist) and will aim to impose any service changes or restrictions in the least restrictive ways possible. Their aim, when taking such actions will not be to punish the complainant, but rather to manage the impacts of their conduct.

When applying this policy, the Governance and Engagement Manager will also aim to keep at least one open line of communication with a complainant. However, we do recognise 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 our staff and/or third parties.

The Governance and Engagement Manager 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 this policy. They will also manage and keep a file record of all cases where this policy is applied.

7.3 Senior managers

All senior managers are responsible for supporting staff to apply the strategies in this policy, as well as those in the practice manual. Senior managers 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 on induction.

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

Depending on the circumstances senior managers may also be responsible for arranging other forms of support for staff which are detailed in Part 11 of this policy.

8. RELATED LEGISLATION

- *Local Government Act 1993*
- *Government Information (Public Access) Act 2009*
- *Privacy and Personal Information Protection Act 1998*
- *Workplace Health and Safety Act 2011*

9. RELATED POLICIES AND DOCUMENTS

- Policy numbered POL003 – Customer Service Charter
- Policy numbered POL060 – Complaints Management Policy
- NSW Ombudsman publication titled - Managing unreasonable conduct by a complainant – workbook 2020 which contains:
 - o Approach and framework
 - o Strategies for persons dealing with the unreasonable conduct
 - o Communication
 - o Management responsibilities and providing support
 - o Restricting and controlling access
- Australian & New Zealand Standard AS/NZ 10002:2014 - Guidelines for complaint management in organizations

10. VARIATION

Council reserves the right to review, vary or revoke this policy in accordance with legislation, regulation, and award changes, where applicable. Council may also make changes to this policy and the relevant procedures from time-to-time to improve the effectiveness of its operation.

All staff are responsible for forwarding any suggestions they have in relation to this policy to the GEM who along with relevant senior managers will review it biennially (every two years).

11. PREVIOUS VERSIONS

Reference to a superseded policy number and/or name is also considered a reference to the new policy number. This policy was previously named:

- ES320 Unreasonable Complainant Conduct Policy.

POLICY HISTORY

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| Responsible Officer | Governance & Engagement Manager | | |
| Approved by | General Manager | | |
| Approval Date | 21 June 2021 | | |
| GM Signature <i>(Authorised staff to insert signature)</i> |  | | |
| Next Review | 01 February 2024 | | |
| Version Number | Endorsed by ELT | Endorsed by Council | Date signed by GM |
| 1 Adopted | 21/09/2015 | 17/11/2015 | 17/11/2015 |
| 2 Reviewed | 8/03/2016 | 15/03/2016 | 16/03/2016 |
| 3 Reviewed | 1/08/2016 | 27/09/2016 | 8/02/2017 |
| 4 Reviewed | 23/02/2021 | 20/04/2021 | 21/06/2021 |

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Appendix A

PROCEDURE TO BE FOLLOWED WHEN CHANGING OR RESTRICTING A COMPLAINANT'S ACCESS TO OUR SERVICES

1 Consulting with relevant staff

When the Governance and Engagement Manager 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.
- The impact of the complainant's conduct on our organisation, relevant staff, our time, resources.
- The complainant's responsiveness to the staff member's warnings/requests to stop the behaviour.
- The actions the staff member has taken to manage the complainant's conduct, if any.
- The 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 Governance and Engagement Manager will search the records of Council for information about the complainant's prior conduct and history with our organisation. They 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 our services will be effective in managing the complainant's behaviour.
- Whether changing or restricting access to our 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.
- Whether the complainant's personal circumstances have contributed to the behaviour? For example, 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/ conduct in the circumstances was moderately disproportionate, grossly disproportionate, or not at all disproportionate.
- Whether there any statutory provisions that would limit the types of limitations that can be put on the complainant's contact or access to our services.

Once these factors have been considered the Governance and Engagement Manager will decide on the appropriate course of action. They 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 practice manual and this policy.

See Appendix D – Sample checklist for the Governance and Engagement Manager to consider when deciding to modify or restrict a complainant's access.

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 Governance and Engagement Manager will provide them with a written warning about their conduct in the first instance.

The warning letter will:

- Specify the date, time, and location of the UCC incident.
- Explain why the complainant's conduct and the 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 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 B.
- Provide the name and contact details of the staff member who they can contact about the letter.
- Be signed by the Governance and Engagement Manager or preferably the General Manager.

See Appendix E – Sample warning letter.

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 and unacceptable conduct the Governance and Engagement Manager has the discretion to send a notification letter immediately restricting the complainant's access to our services (without prior written warning).

This notification letter will:

- Specify the date, time, and location of the UCC incident(s).
- Explain why the complainant's conduct/UCC incident(s) 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 period 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 Governance and Engagement Manager or preferably the General Manager.

See Appendix F – Sample letter notifying complainants of a decision to change or restrict their access to our services.

5 Notifying relevant staff about access changes/restrictions

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

The Governance and Engagement Manager will also update the electronic document management system with a record outlining the nature of the restrictions imposed and their duration.

6 Continued monitoring/oversight responsibilities

Once a complainant has been issued with a warning letter or notification letter the Governance and Engagement Manager will review the complainant's record/restriction every 3 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/the arrangement is working.

If the Governance and Engagement Manager determines that the restrictions have been ineffective in managing the complainant's conduct or are otherwise inappropriate they may decide to either modify the restrictions, impose further restrictions, or terminate the complainant's access to our services altogether.

Appendix B

INDIVIDUAL RIGHTS AND MUTUAL RESPONSIBILITIES OF THE PARTIES TO A COMPLAINT

For Narrandera Shire Council to ensure that all complaints are dealt with fairly, efficiently, and effectively and that workplace 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

Complainants have the right:

- to make a complaint and to express their opinions in ways that are reasonable, lawful, and appropriate
- to a reasonable explanation of the organisation's complaints procedure, including details of the confidentiality, secrecy and/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
- to a fair hearing
- to a timely response
- to be informed in at least general terms about the actions taken and outcome of their complaint
- to be given reasons that explain decisions affecting them
- to at least one right of review of the decision on the complaint
- to be treated with courtesy and respect
- to communicate valid concerns and views without fear of reprisal or other unreasonable response.

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
- 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
- to modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.

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 persons of Narrandera Shire Council
- to be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated
- 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
- 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.

Mutual responsibilities

Complainants are responsible for:

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

If complainants do not meet their responsibilities, Narrandera Shire Council may consider placing limitations or conditions on their ability to communicate with staff or access certain services.

Narrandera Shire Council has a zero-tolerance policy in relation to any harm, abuse or threats directed towards persons associated with the organisation. 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. Any such 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 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
- informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them and the substance of any proposed adverse comment or decision that they may need to answer or address
- keeping complainants informed of the actions taken and the outcome of their complaints
- giving complainants reasons that are clear and appropriate to their circumstances and adequately explaining the basis of any decisions that affect them
- always treating complainants and any people the subject of complaint with courtesy and respect and in all circumstances
- taking all reasonable and practical steps to ensure that complainants are not subjected to any detrimental action in reprisal for making their complaint
- giving adequate warning of the consequences of unacceptable behaviour.

Subjects of a complaint are responsible for:

- cooperating with persons of Narrandera Shire 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
- providing all relevant information in their possession to the Narrandera Shire Council or its authorised staff when required to do so by a properly authorised direction or notice
- being honest in all communications with Narrandera Shire Council and its staff
- always treating the staff of the Narrandera Shire Council with courtesy and respect and in all circumstances
- refraining from taking any detrimental action against the complainant in reprisal for them making the complaint.

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

Narrandera Shire Council is responsible for:

- having an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording, and reviewing complaints
- decisions about how all complaints will be dealt with
- ensuring that all complaints are dealt with professionally, fairly, and impartially
- 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
- finalising complaints based on outcomes that the organisation, or its responsible staff, consider to be satisfactory in the circumstances
- implementing reasonable and appropriate policies/procedures/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
- considering any confidentiality, secrecy and/or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.

Appendix C

Sample UCC incident form

This form should only be completed if you encounter unreasonable complainant conduct and consider that steps may need to be taken to change or restrict a complainant's access to services provide by our organisation.

You must complete this form and send it electronically or by hand to the Governance and Engagement Manager or above within 24 hours of a UCC incident. They will decide on the necessary and appropriate course of action for responding to and managing the complainant's conduct.

Date: _____

Case officer's name: _____

Name of complainant: _____

Complainant's case file number: _____

Details of the complainant's conduct/incident including whether emergency services were contacted:

Why do you consider this conduct to be unreasonable?

For example – has it occurred before/repeatedly, caused significant disruptions to our organisation, has, or could raise significant health and safety issues for our staff or other persons.

What action, if any, have you taken to deal with/manage the complainant's conduct?

For example – warning the complainant 'verbally' about their conduct, other/previous attempts to manage the behaviour etc.

What do you think should be done to effectively manage the complainant's conduct?

Note – the final decision on the appropriate course of action will be made by the Governance and Engagement Manager

Is there any other information that might be relevant to this matter? If necessary, attach any supporting documentation.

Appendix D

Sample checklist for the Governance & Engagement Manager to consider when deciding to modify or restrict a complainant's access

- I have received a signed and completed incident form from the case officer(s) involved (attach copy).
- I have spoken with relevant case officer(s) to obtain further information, as needed.
- I have reviewed the complainant's record and all the relevant information in it.
- I have referred to and considered Appendix A .2 Criteria to be considered which includes an assessment of the following:
 - The merits of the complainants case

 - The complainant's circumstances

 - Jurisdictional issues

 - Proportionality

 - Organisational or case officer responsibility

 - Responsiveness, including previous conduct

 - Case officer's personal boundaries

 - Conduct that is unreasonable in all circumstances (assault, threats of harm etc.)

- Along with the case officer concerned and I have considered all reasonable options for managing the complainant's conduct, including those that do not involve restricting their access to our services.

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- The complainant has been warned about their conduct in writing, and the letter has been signed by the General Manager if applicable.
 - The complainant has been advised in writing of our decision to restrict their access to our organisation, and the letter has been signed by the General Manager if applicable.
 - I have made a record of my assessment and decision about the complainant's conduct and all relevant staff members have been notified of my decision.
 - An electronic alert has been created in the electronic document management system that notifies any staff dealing with this complainant of the nature of the conduct that caused us to be concerned, the nature of the restriction that has been placed on their access, its duration, how they are to deal with the complainant (including who they should direct any communications from the complainant to).

Date: _____ Signature: _____

Appendix E

Sample warning letter

[To be signed by the Governance and Engagement Manager or General Manager]

Our reference: *[reference]*
Contact: *[case officer]*
Telephone: *[number]*

[Date]

[Name of complainant]
[Address of complainant]

Dear *[name of complainant]*

RE: Your contact with Narrandera Shire Council

You recently had *[state the form of contact – e.g. telephone, written or face-to-face]* with staff at my office on *[date]*. *[During/In that telephone call/appointment/letter,]* I understand that you *[explain the nature of the conduct that has caused the organisation to be concerned]*.

We consider this type of behaviour to be inappropriate and it must stop. If you continue to behave in this way or in any other way that my staff consider to be unreasonable, we will impose restrictions on your contact with our office. This may involve restricting your contact to *[apply the relevant option(s)]*:

- ‘Writing only’ – this means that we will only accept communications from you in writing, delivered by Australia Post *[if online or other written communications are preferred then explain]*.
- ‘Telephone contact only’ – this means that you will only be able to contact us by telephone on a specified time and day of the week.
- ‘Face-to-face contact only’ – this means that your contact will be limited to scheduled face-to-face meetings with a specified member of our staff.

Or any other restriction that we consider to be appropriate in the circumstances.

I have attached a copy of a document called *[Individual rights and mutual responsibilities of the parties to a complaint]* for your reference. We expect everyone who complains to this office to act in the ways described in this document.

If you have any questions about this letter, contact *[provide name and phone number of the nominated senior manager]*.

Yours sincerely,
[Governance and Engagement Manager or General Manager]

Appendix F

Sample letter notifying a complainant of a decision to change or restrict their access to our services

[To be signed by the Governance and Engagement Manager or General Manager]

Our reference: *[reference]*

Contact: *[case officer]*

Telephone: *[number]*

[Date]

[Name of complainant]

[Address of complainant]

Dear *[name of complainant]*

RE: Decision to restrict your contact with Narrandera Shire Council

It has come to my attention that you *[describe the nature of the unreasonable conduct and its impact – e.g. if the complainant has been sending emails to several members of my staff daily...]*

I understand that my staff have previously told you that we consider this conduct to be unreasonable and unwarranted.

I also wrote to you on *[date]* and asked you to stop this behaviour. In that letter I advised you that if your behaviour continued, we would restrict your contact with my organisation. At the time I also attached a copy of our *[Individual rights and mutual responsibilities of the parties to a complaint]* which outlines your responsibilities as a complainant.

Because your behaviour has continued, I now consider it necessary to impose certain restrictions on your future contact with my organisation. I therefore give you notice that from *[date]*, and with the exception(s) detailed below, my organisation will only accept communication from you *[identify permissible form of contact, if any]*.

What this means

This means that you are only to contact our organisation using *[describe the restriction in further details]*. Any communications that do not comply with this restriction will be *[describe what will happen – e.g. phone calls will be terminated immediately, or emails/written communications will be read and filed without acknowledgment, emails will be blocked or deleted, no interviews will be granted, etc]*.

[Note: the complainant should be clearly informed how they can contact the organisation and how the organisation will contact them].

Your existing complaint (if applicable)

This organisation currently has one file open in your name. This relates to *[state the subject of complaint and describe complaint]*. This file is being handled by *[name of officer and position title]*. While you can contact *[name of officer]* *[state nature of contact – e.g. by email]* about this specific matter, all other contact with my organisation, including any future complaints, must be *[state restriction – e.g. in writing through Australia Post]* *[provide contact details – e.g. address of organisation where post can be sent]*.

Review of this decision

My decision to restrict your contact with this organisation is effective immediately and will last for [3 months/6 months/12 months]. At that time, we will review your restriction and decide if it should be maintained, amended, or withdrawn.

I take these steps with the greatest reluctance, but [*state reason for restriction – e.g. the equity and safety of other complainants and my staff*], leaves me no alternative.

Internal review of the decision is available by request to the CEO.

External review can be request through the New South Wales Ombudsman at www.ombo.nsw.gov.au

If you have any questions about this letter, you can contact [*provide name and phone number of the nominated senior manager*].

Yours sincerely,

[Governance and Engagement Manager or General Manager]

Appendix G

Sample letter notifying a complainant of an upcoming review

[To be signed by the Governance and Engagement Manager or General Manager]

Our reference: *[reference]*

Contact: *[case officer]*

Telephone: *[number]*

[Date]

[Name of complainant]

[Address of complainant]

Dear *[name of complainant]*

RE: Upcoming review of the decision to restrict your contact with Narrandera Shire Council

It has now been *[3 months/6 months/12 months]* since restrictions were *[imposed/upheld]* on your contact with our office. As advised in our letter dated *[date]*, we are now reviewing our decision to ascertain whether the restrictions should be maintained, amended, or withdrawn.

We consider it important to give you an opportunity to participate in the review process, so we are therefore inviting you to *[apply the relevant option(s)]*:

- make submissions in writing through Australia Post *[include contact person's name and address]*
- schedule a face-to-face interview with *[include name of staff member and provide instructions on how they should go about scheduling the appointment – e.g. calling though the reception line on xxx-xxx-xxxx]*
- schedule a telephone interview with *[include name of staff member and provide instructions on how they should go about scheduling the appointment – e.g. calling though the reception line on xxx-xxx-xxxx]*

In your letter, you should include information that would be relevant to our review. This includes information about *[.....]*/During the interview which will not last more than 30 minutes, we will discuss whether:

- you have complied with the current contact restrictions
- the current contact restrictions should be removed
- the current contact restrictions should be amended to better suit your personal circumstances
- the current contact restrictions should be maintained
- any other information that is relevant to our decision.

We must receive your letter by *[time and date]*/you should confirm your interview with *[name of case officer]* by *[time and date]*. If we do not receive it/hear from you by this date, we will assume that you do not wish to participate in this review and will undertake the review based on the information that we have available to us.

Once the review is completed, we will contact you again by letter notifying you of our decision.

If you have any questions about this letter, you can contact *[provide name and phone number of the nominated senior manager]*.

Yours sincerely,

[Governance and Engagement Manager or General Manager]

Appendix H

Sample checklist for reviewing a decision regarding an access change/restriction

- The complainant has been sent a letter notifying them of the review.
- The complainant will/will not participate in the review.
 - the complainant has/has not scheduled a face-to-face interview
 - the complainant has/has not made written submissions
 - the complainant has/has not scheduled a telephone interview
- I have reviewed all the information in the *[case management system]* from the last 12 months *[or relevant period of the restriction]* about the complainant's:
 - contact with the office (explain form of contact)

 - conduct during that contact (explain if conduct reasonable or unreasonable)

- I have spoken with the case officers who have had contact with the complainant during the last 12 months about the complainant's conduct during that period.
- I have considered the arguments/statements made by the complainant, including the impact of the restrictions on them (explain complainant's position, including if their circumstances have changed etc.) *Note: if the complainant is arguing that their circumstances have changed, they should be required to submit evidence to support this claim.*

- I have considered whether there are other more reasonable/suitable options for managing the complainant's conduct, including those that do not involve restricting their access to our services (list all that apply).

- I consider that the restriction should be (explain):
 - maintained –*e.g. because the conduct has continued or is likely to continue, is disproportionate etc.*
 - removed – *e.g. because the complainant has complied with the restrictions etc.*
 - amended – *e.g. because the complainant's circumstances have changed, and the current restriction is no longer appropriate.*

- I have discussed my decision with *[other nominated senior officers]*
- The complainant has been advised in writing of my decision to maintain/remove/ amend the restriction and this letter has been signed by the General Manager.
- The electronic document management system has been updated to reflect my decision.

Date: _____

Signature: _____

Appendix I

Sample letter advising the complainant of the outcome of a review

[To be signed by the Governance and Engagement Manager or General Manager]

Our reference: *[reference]*

Contact: *[case officer]*

Telephone: *[number]*

[Date]

[Name of complainant]

[Address of complainant]

Dear *[name of complainant]*

Review of your contact with Narrandera Shire Council

I am writing about a review that was undertaken by my organisation on *[date]* concerning your contact with this office. I understand that you *[participated/did not participate]* in that review.

Process of review

During the review you were given an opportunity to *[explain in general terms how the review what undertaken]*.

Considerations

After your *[interview/reading your submissions]*, we considered the concerns and suggestions raised in your *[interview/letter, etc.]*, particularly your concerns about *[include information that would be relevant – e.g. the complainant said their circumstances had changed]*. We also reviewed our records of your conduct and contact with our office over the last 12 months. Our records showed that *[provide summary of relevant information – e.g. Our records show that you have continued to send emails to our office, sometimes up to four times a day, throughout the period of your restriction]*.

[apply if relevant]: These communications were in direct violation of your restriction which limited your contact with our office to *[state nature restriction]* *[explain what the purpose of the restriction was, if appropriate, and the impact of their conduct]*.

[apply if relevant]: Our records show that you have complied with the restrictions that were imposed on your contact with our organisation.

Decision

[apply if relevant]: Due to *[explain reasoning for the decision – e.g. the number of emails that you have sent to our organisation in the last 12 months and]* I consider it necessary to maintain the restrictions on your contact with our office for a further 12 months, effective immediately.

[apply if relevant]: Due to *[explain reasoning for the decision]* I consider it necessary to amend the restrictions on your access to better suit your personal circumstances *[explain, including providing clear instructions on how the complainant is to contact us and how we will contact them]*. The new restrictions will be effective immediately and will last for 12 months. If your circumstances change again during this period, you may *[explain how the complainant can notify of the change]*.

[apply if relevant]: Due to *[explain reasoning for the decision]* I consider it appropriate to remove the restrictions that have been placed on your access with our organisation, effective immediately. You may contact our organisation using any of our normal servicing options.

[apply if relevant]:

Internal review of the decision is available by request to the CEO.

External review can be request through the New South Wales Ombudsman at www.ombo.nsw.gov.au

If you have any questions about this letter, you can contact *[provide name and phone number of the nominated senior manager]*.

Yours sincerely

[Governance and Engagement Manager or General Manager]