

FILE NO: PSC2010-00008

TITLE: **MANAGING UNREASONABLE COMPLAINANT CONDUCT POLICY**

OWNER: **GOVERNANCE SECTION MANAGER**

1. PURPOSE:

1.1 This policy is to assist all staff members to better manage unreasonable complainant conduct ('UCC').

1.2 Its aim is to ensure that all staff:

- a) Feel confident and supported in taking action to manage UCC.
- b) Act fairly, consistently, honestly and appropriately when responding to UCC.
- c) Understand their roles and responsibilities in relation to the management of UCC and how this policy will be used.
- d) Understand the types of circumstances when it may be appropriate to manage UCC using one or more of the following mechanisms:
 - i. The strategies provided in the Managing Unreasonable Complainant Conduct Manual (3rd edition) ('practice manual') including the strategies to change or restrict a complainant's access to our services.
 - ii. Alternative dispute resolution strategies to deal with conflicts involving complainants and members of our organisation.
 - iii. 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.
- e) 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.
- f) 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.
- g) Understand the procedures for reviewing decisions made under this policy, including specific timeframes for review.

2. CONTEXT/BACKGROUND:

2.1 This policy is based on the NSW Ombudsman's Unreasonable Complainant Conduct Model Policy.

2.2 The policy provides an open and transparent process for the management of UCC at Council.

2.3 Council has developed this policy to support the Complaint Handling Policy.

3. SCOPE:

3.1 Defining unreasonable conduct by a complainant

3.1.1 Unreasonable conduct by a complainant

3.1.2 Most complainants act reasonably and responsibly in their interactions with us, even when they are experiencing high levels of distress, frustration, and anger about their complaint. However, despite our best efforts to help them, in a very small number of cases complainants display inappropriate and unacceptable behaviour. They can be aggressive and verbally abusive towards our staff, threaten harm and violence or bombard our offices with unnecessary and excessive phone calls and emails. They may make inappropriate demands on our time and resources or refuse to accept our decisions and recommendations in relation to their complaints. When complainants behave in these ways (and where there are no cultural factors that could reasonably explain their behaviour) we consider their conduct to be 'unreasonable'.

3.1.3 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.

3.1.4 UCC can be divided into five categories of conduct:

- a) Unreasonable persistence
- b) Unreasonable demands
- c) Unreasonable lack of cooperation
- d) Unreasonable arguments
- e) Unreasonable behaviours

3.1.5 Unreasonable persistence

3.1.6 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:

- a) 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).

- b) Persistently demanding a review simply because it is available and without arguing or presenting a case for one.
- c) Pursuing and exhausting all available review options, even after we have explained that a review is not warranted and refusing to accept further action cannot or will not be taken further action on their complaints.
- d) Reframing a complaint in an effort to get it taken up again.
- e) Multiple and repeated phone calls, visits, letters, and emails (including cc'd correspondence) after repeatedly being asked not to.
- f) Contacting different people within or outside our organisation to get a different outcome or more sympathetic response to their complaint – this is known as internal and external 'forum shopping'.

3.1.7 Unreasonable demands

3.1.8 Unreasonable demands are any demands expressly 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:

- a) Issuing instructions and making demands about how to handle their complaint, the priority it should be given, or the outcome to be achieved.
- b) Insisting on talking to a senior manager or the General Manager personally when the reasons that this it is not appropriate or warranted have been carefully explained to the complainant.
- c) Emotional blackmail and manipulation resulting in intimidation, harassment, shaming, seduction or portraying themselves as being victimised – when this is not the case.
- d) 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 no reasonable basis for this.
- e) Demanding services of a nature or scale that we cannot provide, even after we have explained this to them repeatedly.

3.1.9 Unreasonable lack of cooperation

3.1.10 Unreasonable lack of cooperation is when the complainant is unwilling or unable to cooperate with our organisation, staff, or complaints process - resulting in a disproportionate and unreasonable use of our services, time or resources. Some examples of unreasonable lack of cooperation include:

- a) Sending a constant stream of complex or disorganised information without clearly defining any issues at hand or explaining how the material provided relates to the complaint – where the complainant is clearly capable of doing this.
- b) Providing little or no detail with a complaint or providing information in 'drips and drabs'.
- c) Refusing to follow or accept our instructions, suggestions, or advice without a clear or justifiable reason for doing so.

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- d) Arguing that a particular solution is the correct one in the face of valid contrary arguments and explanations.
- e) Unhelpful behaviour – such as withholding information, acting dishonestly, and misquoting others.

3.1.11 Unreasonable arguments

3.1.12 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, services, time, and/or resources. Arguments are unreasonable when they:

- a) fail to follow a logical sequence that the complainant is able to explain to staff
- b) are not supported by any evidence and/or are based on conspiracy theories
- c) lead a complainant to reject all other valid and contrary arguments
- d) are trivial when compared to the amount of time, resources and attention that the complainant demands
- e) are false, inflammatory or defamatory.

3.1.13 Unreasonable behaviour

3.1.14 Unreasonable behaviour is conduct that is unreasonable in all circumstances – regardless of how stressed, angry or frustrated that a complainant is – because it unreasonably compromises the health, safety and security of our staff, other service users or the complainant themselves. Some examples of unreasonable behaviours include:

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

3.1.15 All staff should note that Port Stephens 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 and in accordance with our duty of care and work, health and safety responsibilities.

3.2 Roles and responsibilities

3.2.1 All staff

3.2.2 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 A. 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.

3.2.3 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):

- a) Strategies and script ideas for managing unreasonable persistence.
- b) Strategies and script ideas for managing unreasonable demands.
- c) Strategies and script ideas for managing unreasonable lack of cooperation.
- d) Strategies and script ideas for managing unreasonable arguments.
- e) Strategies and script ideas for managing unreasonable behaviours.

3.2.4 Any strategies that change or restrict a complainant's access to our services must be considered at the senior management level or higher as provided in this policy.

3.2.5 Staff are also responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) to the Governance Section Manager within 24 hours of the incident occurring, using the UCC incident form. A file note of the incident should also be recorded in Council's records management system.

3.2.6 The Governance Section Manager

3.2.7 The Governance Section Manager, in consultation with relevant staff, 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 take into account the criteria in Section 3.5.4 below 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 behaviour.

3.2.8 When applying this policy the Governance Section 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, safety and security of our staff or third parties.

3.2.9 The Governance Section 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.

3.2.10 Senior Managers

- 3.2.11 All senior managers are responsible for supporting staff to apply the strategies in this policy, as well as those in the manual. Senior managers are also responsible for ensuring compliance with the procedures identified in this policy and that all staff members are trained to deal with UCC – including on induction.
- 3.2.12 After a stressful interaction with a complainant, senior managers should provide affected staff members with the opportunity to debrief their concerns either formally or informally. Senior managers will also ensure that staff are provided with proper support and assistance including medical or police assistance and support through programs such as Employee Assistance Program (EAP), if necessary.
- 3.2.13 Senior managers may also be responsible for arranging other forms of support for staff, such as appropriate communication or intercultural training.
- 3.3 Responding to and managing unreasonable complainant conduct (UCC)**
- 3.3.1 Changing or restricting a complainant's access to our services**
- 3.3.2 UCC incidents will generally be managed by limiting or adapting the ways that we interact with and/or deliver services to complainants by restricting:
- a) **Who they have contact with** – limiting a complainant to a sole contact person/staff member in our organisation.
 - b) **What they can raise with us** – restricting the subject matter of communications that we will consider and respond to.
 - c) **When they can have contact** – limiting a complainant's contact with our organisation to a particular time, day, or length of time, or curbing the frequency of their contact with us.
 - d) **Where they can make contact** – limiting the locations where we will conduct face-to-face interviews to secured facilities or areas of the office.
 - e) **How they can make contact** – limiting or modifying the forms of contact that the complainant can have with our organisation. This can include modifying or limiting face-to-face interviews, telephone and written communications, prohibiting access to our premises, contact through a representative only, taking no further action or terminating our services altogether.
- 3.3.3 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, level of competency, literacy skills, etc. In this regard, we also recognise that more than one strategy may need to be used in individual cases to ensure their appropriateness and efficacy.

3.3.4 Who – limiting the complainant to a sole contact point

3.3.5 Where a complainant tries to forum shop internally within our organisation, changes their issues of complaint repeatedly, 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 exclusively manage their complaint(s) and interactions with our organisation. This may help ensure they are dealt with consistently and may minimise the incidences for misunderstandings, contradictions and manipulation.

3.3.6 To avoid staff ‘burn out’ the sole contact officer’s supervisor will provide them with regular support and guidance – as needed. Also, the Governance Section Manager will review the arrangement every 6 months to ensure that the officer is managing/coping with the arrangement.

3.3.7 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 – eg. they go on leave or are otherwise unavailable for an extended period of time.

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

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

- a) 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 we decide that we need to pursue it further in which case, we may do so on our ‘own motion’.
- b) Restrict the complainant to one complaint/issue per month. Any attempts to circumvent this restriction, for example by raising multiple complaints/issues in the one complaint letter may result in modifications or further restrictions being placed on the complainant's access.
- c) Return correspondence to the complainant and require them to remove any inappropriate content before we agree to consider its contents. A copy of the inappropriate correspondence will also be made and kept for our records to identify repeat/further UCC incidents.

3.3.10 When and how – limiting when and how a complainant can contact our organisation

3.3.11 If a complainant's contact with our organisation places an unreasonable demand on our time or resources or affects the health, safety and security of our staff 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:

- a) Limiting their telephone calls or face-to-face interviews to a particular time of the day or days of the week.
- b) Limiting the length or duration of telephone calls, written correspondence or face-to-face interviews. For example:
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 [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 is capable of summarising the information and refuses to do so.
Limiting face-to-face interviews to a maximum of [45] minutes.
- c) Limiting the frequency of their 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.
Written communications to [1] every two weeks/month.
Face-to-face interviews to [1] every two weeks/month.

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

- a) 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.
- b) Restrict the frequency with which complainants can send emails or other written communications to our organisation.
- c) Restrict a complainant to sending emails to a particular email account (eg. the organisation's main email account) or block their email access altogether and require that any further correspondence be sent through Australia Post only.

3.3.14 Writing only restrictions

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

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

3.3.16 If a complainant's contact is restricted to 'writing only', the Governance Section Manager will clearly identify the specific means that the complainant can use to contact our office (eg. Australia Post only). If it is not appropriate for a complainant to enter our premises to hand deliver their written communication; this must be communicated to them as well.

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

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

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

3.3.20 These restrictions may include:

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

3.3.21 Contact through a representative only

3.3.22 In cases where we cannot completely restrict our contact with a complainant and their conduct is particularly difficult to manage, we may require them to contact us through a support person or representative only. The support person may be nominated by the complainant but must be approved by the Governance Section Manager.

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

3.3.24 Completely terminating a complainant's access to our services

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

3.3.26 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 and/or their conduct poses a significant risk for our staff or other parties because it involves one or more of the following types of conduct:

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

3.3.27 In these cases the complainant will be sent a letter notifying them that their access has been restricted as outlined in Section 3.5.9 below.

3.3.28 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 and other legislation or legal orders to protect members of our staff from personal violence, intimidation or stalking by a complainant.

3.4 Alternative dispute resolution

3.4.1 Using alternative dispute resolution strategies to manage conflicts with complainants

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

3.4.3 However, we recognise that in UCC situations, ADR may not 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.

3.4.4 Council has an existing Alternative Dispute Resolution policy in these circumstances.

3.5 Procedure to be followed when changing or restricting a complainant's access to our services

3.5.1 Consulting with relevant staff

3.5.2 When the Governance Section Manager receives a UCC incident form from a staff member they will contact the staff member to discuss the incident. They will discuss:

- a) The circumstances that gave rise to the UCC/incident, including the complainant's situation, personal and cultural background, and perspective.
- b) The impact of the complainant's conduct on our organisation, relevant staff, our time, resources, etc.
- c) The complainant's responsiveness to the staff member's warnings/ or requests to stop the behaviour.
- d) What the staff member has done to manage the complainant's conduct, if applicable.
- e) The suggestions made by relevant staff on ways that the situation could be managed.

3.5.3 Criteria to be considered

3.5.4 Following a consultation with relevant staff the Governance Section Manager will search the case management system for information about the complainant's prior conduct and history with our organisation. They will also consider the following criteria:

- a) Whether the conduct in question involved overt anger, aggression, violence or assault (which is unacceptable in all circumstances).
- b) Whether the complainant's case has merit.
- c) The likelihood that the complainant will modify their unreasonable conduct if they are given a formal warning about their conduct.
- d) Whether changing or restricting access to our services will be effective in managing the complainant's behaviour.
- e) Whether changing or restricting access to our services will affect the complainant's ability to meet their obligations, such as reporting obligations.
- f) Whether changing or restricting access to our services will have an undue impact on the complainant's welfare, livelihood or dependents etc.
- g) Whether the complainant's personal circumstances have contributed to the behaviour - For example, the complainant's cultural background may mean this communication patterns differ from those of our staff or organisation standards, or the complainant is a vulnerable person who is under significant stress as a result of one or more of the following:
- h) Homelessness.

- i) physical disability.
- j) illiteracy or other language or communication barrier.
- k) mental or other illness.
- l) personal crises.
- m) substance or alcohol abuse.
- n) Whether the complainant's response or conduct in the circumstances was moderately disproportionate, grossly disproportionate or not at all disproportionate.
- o) Whether there any statutory provisions that would limit the types of limitations that can be put on the complainant's contact with, or access to our services.

3.5.5 Once the Governance Section Manager has considered these criteria, they 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 manual and this policy.

3.5.6 Providing a warning letter

3.5.7 Unless a complainant's conduct poses a substantial risk to the health and safety of staff or other third parties, the Governance Section Manager 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.

3.5.8 The warning letter will:

- a) Specify the date, time and location of the UCC incident(s).
- b) Explain why the complainant's conduct/ UCC incident is problematic.
- c) 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).
- d) Provide clear and full reasons for the warning being given
- e) 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.
- f) Provide the name and contact details of the staff member who they can contact about the letter.
- g) Be signed by the Governance Section Manager.

3.5.9 Providing a notification letter

3.5.10 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 Governance Section Manager has the discretion to send a notification letter immediately restricting the complainant's access to our services (without prior 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.

3.5.11 This notification letter will:

- a) Specify the date, time and location of the UCC incident(s).
- b) Explain why the complainant's conduct/UCC incident(s) is problematic.
- c) Identify the change and/or restriction that will be imposed and what it means for the complainant.
- d) Provide clear and full reasons for this restriction.
- e) Specify the duration of the change or restriction imposed, which will not exceed 12 months, without a review of the circumstances.
- f) Indicate a time period for review.
- g) 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.
- h) Be signed by the General Manager.

3.5.12 Notifying relevant staff about access changes/restrictions

3.5.13 The Governance Section 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.

3.5.14 The Governance Section Manager will also update the case management system with a record outlining the nature of the restrictions imposed and their duration.

3.5.15 Continued monitoring/oversight responsibilities

3.5.16 Once a complainant has been issued with a warning letter or notification letter the Governance Section 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 particular complainant to ensure that they are complying with the restrictions/the arrangement is working.

3.5.17 If the Governance Section 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.

3.6 Appealing a decision to change or restrict access to our services

3.6.1 Right of appeal

3.6.2 People who have their access changed or restricted 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 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/records relating to the appeal to the Governance Section Manager to be kept in the appropriate file.

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

3.7 Non-compliance with a change or restriction on access to our services

3.7.1 Recording and reporting incidents of non-compliance

- 3.7.2 All staff members are responsible for recording and reporting incidents of non-compliance by complainants. This should be recorded in a file note and filed in Council's Records Management System, and a copy forwarded to the Governance Section Manager who will decide whether any action needs to be taken to modify or further restrict the complainant's access to our services.

3.8 Periodic reviews of all cases where this policy is applied

3.8.1 Period for review

- 3.8.2 All UCC cases where this policy is applied will be reviewed every 3 months or 6 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/upheld.

3.8.3 Notifying the complainant of an upcoming review

- 3.8.4 The Governance Section Manager 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 (ie. further UCC). The invitation will be given and the review will be conducted in accordance with the complainant's access restrictions.

3.8.5 Criteria to be considered during a review

- 3.8.6 When conducting a review the Governance Section 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.

3.8.7 The Governance Section Manager may also consult any staff members who have had contact with the complainant during the restriction period.

3.8.8 Sometimes a complainant may not have a reason to contact our organisation 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/reformed behaviour. This should be taken into consideration, in relevant situations.

3.8.10 Notifying a complainant of the outcome of a review

3.8.11 The Governance Section Manager will notify the complainant of the outcome of their review using the appropriate/relevant method of communication as well as a written letter explaining the outcome, as applicable. The review letter will:

- Briefly explain the review process.
- Identify the factors that have been taken into account during the review.
- Explain the decision/outcome of the review and the reasons for it.

3.8.12 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 Section Manager who the complainant can contact to discuss the letter.
- Be signed by the Governance Section Manager.

3.8.13 Recording the outcome of a review and notifying relevant staff

3.8.14 The Governance Section Manager is responsible for keeping a record of the outcome of the review, updating case management system and notifying all relevant staff of the outcome of the review including if the restriction has been withdrawn.

3.8.15 See Sections 3.2.6-3.2.9 and 3.5.12-3.5.14.

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3.9 Managing staff stress

3.9.1 Staff reactions to stressful situations

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

3.9.3 As an organisation, we have a responsibility to support staff members who experience stress as a result of situations arising at work and we will do our best to provide staff with debriefing and counselling opportunities, when needed. However, to do this we also need help of all Port Stephens Council staff to identify stressful incidents and situations. All staff have a responsibility to notify relevant supervisors/senior managers of UCC incidents and any stressful incidents that they believe require management involvement.

3.9.4 Debriefing

3.9.5 Debriefing means talking things through following a difficult or stressful incident. It is an important way of 'off-loading' or dealing with stress. Many staff members 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.

3.9.6 Staff may also access an external professional service on a needs basis. All staff can access the Employee Assistance Program with AccessEAP – a free, confidential counselling service. To make an appointment call: 1800 81 87 28 or (02) 8247 9191

3.10 Training and awareness

3.10.1 Port Stephens 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 in particular, on induction. This should include training to support culturally appropriate communication.

4. DEFINITIONS:

4.1 An outline of the key definitions of terms included in the policy.

Complaint

Expression of dissatisfaction made to or about us, our services, staff or the handling of a complaint where a

response or resolution is explicitly or implicitly expected or legally required.

A complaint covered by this Policy can be distinguished from:

- staff grievances [see our grievance procedure]
- public interest disclosures made by our staff [see our internal reporting policy]
- code of conduct complaints [see our code of conduct]
- responses to requests for feedback about the standard of our service provision [see the definition of 'feedback' below]
- reports of problems or wrongdoing merely intended to bring a problem to our notice with no expectation of a response [see definition of 'feedback']
- service requests [see definition of 'service request' below], and
- requests for information [see our access to information policy].

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| Complaint management system | All policies, procedures, practices, staff, hardware and software used by Council the management of complaints. |
| Complainant | Person/s who makes a complaint. |
| Dispute | An unresolved complaint escalated either within or outside of the organisation. |
| Feedback | Opinions, comments and expressions of interest or concern, made directly or indirectly, explicitly or implicitly, to or about us, about our services or complaint handling where a response is not explicitly or implicitly expected or legally required. |
| Grievance | A clear, formal written statement by an individual staff member about another staff member or a work related problem. |
| Organisation | Port Stephens Council |
| Policy | An endorsed statement or instruction that sets out how we should fulfil our vision, mission and goals. |
| Manual | The NSW Ombudsman's Managing Unreasonable Complainant Conduct Manual (3 rd edition) |
| Premises | Any property or land owned by Port Stephens Council. |
| Procedure | A statement or instruction that sets out how our policies will be implemented and by whom. |
| Senior Manager | Group Managers and Section Managers of Port Stephens Council. |

Service request

Service request includes:

- requests for approval
- requests for action
- routine inquiries about the organisation's business
- requests for the provision of services and assistance
- reports of failure to comply with laws regulated by the organisation
- requests for explanation of policies, procedures and decisions.

Unreasonable complainant conduct (UCC)

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 himself/herself.

UCC can be divided into five categories of conduct:

- Unreasonable arguments
- Unreasonable behaviour
- Unreasonable demands
- Unreasonable lack of cooperation
- Unreasonable persistence

5. STATEMENT:

5.1 Port Stephens Council is committed to being accessible and responsive to all complainants who approach our organisation regardless of ethnic identity, national origin, religion, linguistic background, sex, gender expression, sexual orientation, physical ability or other cultural or personal factors. At the same time, the success of our office depends on:

- a) our ability to do our work and perform our functions in the most effective and efficient ways possible
- b) the health, safety and security of our staff, and
- c) our ability to allocate our resources fairly across all the complaints we receive.

5.2 When complainants behave unreasonably, their conduct can significantly affect the successful conduct of our work. Port Stephens Council will act proactively and decisively 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.

6. RESPONSIBILITIES:

6.1 All staff are responsible for implementing and complying with this policy, in their respective roles outlined in the policy.

6.2 The Governance Section Manager is responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy.

7. RELATED DOCUMENTS:

- 7.1 Local Government Act 1993
- 7.2 Public Interest Disclosure Act 1994
- 7.3 Ombudsman Act 1974
- 7.4 Independent Commission Against Corruption 1988
- 7.4 Government Information (Public Access) Act 2009
- 7.5 Code of Conduct
- 7.6 This policy is compliant with and supported by the following documents:
 - a) Work, Health and Safety Management Directive
 - b) Complaint Handling Policy
 - c) Alternative Dispute Resolution Policy
 - d) NSW Ombudsman - Managing Unreasonable Complainant Conduct Manual.

Appendix A

1. Individual Rights and Mutual Responsibilities of the Parties to a Complaint

1.1 In order for Port Stephens 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 of the parties to the complaint process.

2. Individual rightsⁱⁱ

2.1 Complainants have the right:

- a) to make a complaint and to express their opinions in ways that are reasonable, lawful and appropriate, regardless of cultural background, national origin, sex, sexual orientation, gender expression, disability or other cultural or personal characteristicsⁱⁱⁱ
- b) 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
- c) to a fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the case^{iv}
- d) to a fair hearing^v
- e) to a timely response
- f) to be informed in at least general terms about the actions taken and outcome of their complaint^{vi}
- g) to be given reasons that explain decisions affecting them
- h) to at least 1 right of review of the decision on the complaint^{vii}
- i) to be treated with courtesy and respect
- j) to communicate valid concerns and views without fear of reprisal or other unreasonable response^{viii}

2.2 Staff have the right:

- a) to determine whether, and if so how, a complaint will be dealt with
- b) to finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances^{ix}
- c) to expect honesty, cooperation and reasonable assistance from complainants
- d) to expect honesty, cooperation and reasonable assistance from organisations and people within jurisdiction who are the subject of a complaint

- e) to be treated with courtesy and respect
- f) to a safe and healthy working environment^x
- g) to modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.^{xi}

2.3 Subjects of a complaint have the right:

- a) to a fair and impartial assessment and, where appropriate, investigation of the allegations made against them
- b) to be treated with courtesy and respect by staff of Port Stephens Council to be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated^{xii}
- c) to be informed about the substance of any proposed adverse comment or decision
- d) to be given a reasonable opportunity to put their case during the course of any investigation and before any final decision is made^{xiii}
- e) 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
- f) to be protected from harassment by disgruntled complainants acting unreasonably.

2.4 Mutual responsibilities

2.4.1 Complainants are responsible for:

- a) treating staff of Port Stephens Council with courtesy and respect
- b) clearly identifying to the best of their ability the issues of complaint, or asking for help from the staff of Port Stephens Council to assist them in doing so
- c) providing to the best of their ability Port Stephens Council with all the relevant information available to them at the time of making the complaint
- d) being honest in all communications with Port Stephens Council
- e) informing Port Stephens Council of any other action they have taken in relation to their complaint^{xiv}
- f) cooperating with the staff who are assigned to assess/ investigate/resolve/determine or otherwise deal with their complaint.

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

2.4.3 Port Stephens 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.^{xv} Any such conduct of a criminal nature will be reported to police and in certain cases legal action may also be considered.

2.4.4 Staff are responsible for:

- a) providing reasonable assistance, including cultural background and linguistic assistance, to complainants who need help to make a complaint and, where appropriate, during the complaint process
- b) dealing with all complaints, complainants and people or organisations the subject of complaint professionally, fairly and impartially
- c) 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
- d) giving people or organisations the subject of complaint a reasonable opportunity to put their case during the course of any investigation and before any final decision is made^{xvi}
- e) informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them^{xvii} and the substance of any proposed adverse comment or decision that they may need to answer or address^{xviii}
- f) keeping complainants informed of the actions taken and the outcome of their complaints^{xix}
- g) giving complainants reasons that are clear and appropriate to their circumstances and adequately explaining the basis of any decisions that affect them
- h) treating complainants and any people the subject of complaint with courtesy and respect at all times and in all circumstances
- i) taking all reasonable and practical steps to ensure that complainants^{xx} are not subjected to any detrimental action in reprisal for making their complaint^{xxi}
- j) giving adequate warning of the consequences of unacceptable behaviour.

2.4.5 If Port Stephens Council or its staff fail to comply with these responsibilities, complainants may complain to the NSW Ombudsman.

2.4.6 Subjects of a complaint are responsible for:

- a) cooperating with the staff of Port Stephens 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^{xxii}

Policy

- b) providing all relevant information in their possession to Port Stephens Council or its authorised staff when required to do so by a properly authorised direction or notice
- c) being honest in all communications with Port Stephens Council and its staff
- d) treating the staff of Port Stephens Council with courtesy and respect at all times and in all circumstances
- e) refraining from taking any detrimental action against the complainant^{xxiii} in reprisal for them making the complaint.^{xxiv}

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

2.4.8 Port Stephens Council is responsible for:

- a) having an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording and reviewing complaints
- b) making decisions about how all complaints will be dealt with
- c) ensuring that all complaints are dealt with professionally, fairly and impartially^{xxv}
- d) ensuring that staff treat all parties to a complaint with courtesy and respect
- e) ensuring that the assessment and any inquiry into the investigation of a complaint is based on sound reasoning and logically probative information and evidence
- f) finalising complaints on the basis of outcomes that the organisation, or its responsible staff, consider to be satisfactory in the circumstances^{xxvi}
- g) implementing reasonable and appropriate policies/procedures/practices to ensure that complainants^{xxvii} are not subjected to any detrimental action in reprisal for making a complaint^{xxviii}, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints
- h) giving adequate consideration to any confidentiality, secrecy and/or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.

2.4.9 If Port Stephens Council fails to comply with these responsibilities, complainants may complain to the NSW Ombudsman:

In person or mail: Level 24, 580 George Street, Sydney NSW 2000
 Telephone: 1800 451 524
 Email: nswombo@ombo.nsw.gov.au
 Website: www.ombo.nsw.gov.au

- ii 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 that a complaint handling system should be designed to provide to each of the parties to a complaint.
- iii Differences of opinion are normal: people perceive things differently, feel things differently and want different things. People have a right to their own opinions, provided those opinions are expressed in acceptable terms and in appropriate forums.
- iv 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.
- v 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.
- vi Provided this will not prejudice on-going or reasonably anticipated investigations or disciplinary/criminal proceedings.
- vii Such a right of review can be provided internally to the organisation, for example by a person not connected to the original decision.
- viii 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.
- ix 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 Endnote xxvi].
- x See for example WH&S laws and the common law duty of care on employers.
- xi Unacceptable behaviour includes verbal and physical abuse, intimidation, threats, etc.
- xii 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.
- xiii 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.
- xiv For example whether they have made a similar complaint to another relevant person or body or have relevant legal proceedings at foot.
- xv Other than in circumstances where the organisation is obliged to have an ongoing relationship with the complainant.
- xvi See Endnote- xii.
- xvii Other than where an allegation is so lacking in merit that it can be dismissed at the outset.
- xviii See Endnote xii.
- xix See Endnote 5 vi.
- xx 'Complainants' include whistleblowers/people who make internal disclosures.
- xxi 'Complaints' includes disclosures made by whistleblowers/people who make internal disclosures.
- xxii This does not include any obligation to incriminate themselves in relation to criminal or disciplinary proceedings, unless otherwise provided by statute.
- xxiii See Endnote xx.
- xxiv See Endnote xxi.
- xxv See Endnote iv.
- xxvi 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 or not the complainants, any subjects of complaint or the organisation concerned agrees with or is satisfied with that outcome.
- xxvii See Endnote xx.
- xxviii See Endnote xxi.

CONTROLLED DOCUMENT INFORMATION:

| | | | |
|---|---|-------------------------|----------------|
| This is a controlled document. Hardcopies of this document may not be the latest version. Before using this document, check it is the latest version; refer to Council's website www.portstephens.nsw.gov.au | | | |
| EDRMS container No | PSC2010-00008 | EDRMS record No | 22/261918 |
| Audience | Port Stephens community and Council employees | | |
| Process owner | Governance Section Manager | | |
| Author | Governance Section Manager | | |
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| Adoption date | 12 July 2016 | | |

VERSION HISTORY:

| Version | Date | Author | Details | Minute No. |
|---------|------------|--------------------|--|------------|
| 1.0 | 12/07/2016 | Governance Manager | Drafted new policy based on the model policy of the NSW Ombudsman. | 208 |

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|-----|----------------|--------------------|---|-----|
| 1.1 | 14 August 2018 | Governance Manager | <p>Reviewed the policy, included numbering to each paragraph and updated version control.</p> <p>3.2.5 – delete reference to RM8.</p> <p>3.2.7 – replace Part 5.2 with Section 3.5.4.</p> <p>3.2.13 – replace Part 10 with Section 3.10.</p> <p>3.3.27 – replace Part 5.4 with Section 3.5.9.</p> <p>3.7.2 – delete reference to RM8 and replace with Records Management System.</p> <p>3.8.15 – replace Parts 2.2. and 5.5 with Sections 3.2.6-3.2.9 & 3.5.12-3.5.14.</p> <p>7.6 – delete reference to 2nd edition.</p> <p>2.3. of Appendix A – insert Port Stephens Council.</p> | 249 |
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| 1.2 | 11 August 2020 | Governance Section Manager | <p>Reviewed the policy, included numbering to each paragraph and updated version control.</p> <p>Updated policy owner title.</p> <p>3.2.6 to 3.2.9, 3.3.22, 3.3.23, 3.5.2, 3.5.4, 3.5.5, 3.5.7, 3.5.8, 3.5.13 to 3.6.2, 3.7.2, 3.8.4, 3.8.6, 3.8.7, 3.8.11, 3.8.12, 3.8.14, 3.10.8, 3.10.10, 3.10.14,</p> <p>6.2– insert ‘section’ into manager’s title.</p> <p>3.10.2 – replace ‘Organisation Development with Governance’.</p> <p>4 – insert the word ‘endorsed’ under the policy definition.</p> | 145 |
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| 1.3 | 23 August 2022 | Governance Section Manager | <p>Reviewed the policy following the release of a new model policy from the NSW Ombudsman, grammatical corrections and updated version control.</p> <p>1.2, 3.1, 3.1.2, 3.1.3, 3.1.6a), c), d), e), f), 3.1.8, 3.1.8a), b), c), d), 3.1.10, 3.1.10a), b), e), 3.1.12a), 3.1.14, 3.2.3, 3.2.4, 3.2.5, 3.2.12, 3.2.13, 3.3, 3.3.5, 3.3.6, 3.3.9, 3.3.9a), c), 3.3.10, 3.3.11, 3.3.16, 3.3.22, 3.3.23, 3.3.28, 3.4.4, 3.5.2a), c), d), 3.5.4g), m), o), 3.5.5, 3.5.7, 3.5.8a), 3.5.10, 3.6.2, 3.8.4, 3.8.6c), 3.8.9, 3.8.12c), 3.8.14, 3.9.2, 3.9.3, 3.9.5, 3.11.1, 5.1, 5.2, 6.1 – updated the language to align with the model policy.</p> <p>1.2d) – updated reference to the manual.</p> <p>2 – renumbered section 2.</p> <p>3.10 to 3.10.16, 3.12, 13.12.1 – deleted.</p> <p>4 – updated definitions.</p> <p>Appendix A – updated.</p> | 225 |
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