



# NAMBUCCA VALLEY COUNCIL UNREASONABLE COMPLAINANT CONDUCT POLICY NO: G10

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## *Our Vision*

Nambucca Valley ~ Living at its best

## *Our Mission Statement*

'The Nambucca Valley will value and protect its natural environment, maintain its assets and infrastructure and develop opportunities for its people.'

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## **Background**

In 2006 the Australasian Parliamentary Ombudsman began a collaborative project on Managing Unreasonable Complainant Conduct ('UCC'). The focus of this project has been to develop clear and practical strategies to help organisations and their staff manage their interactions with complainants whose conduct is identified as unreasonable.

One of the key principles and messages underlying the Ombudsman project has been the idea that to effectively manage UCC organisations need to recognise that dealing with it is a core part of complainant handling work. As such UCC must be treated as a priority and given adequate resources, including being supported by clear policies and procedures.

Accordingly, since the publication of the first edition of the Ombudsman *Managing Unreasonable Complainant Conduct Practice Manual* in 2009 a number of public organisations have taken steps to develop policies and procedures to assist and support their staff in this regard. While this appears to have led to a general improvement in how UCC is managed, Ombudsman offices across Australasia have observed significant variations in the level of detail and contents of these policies, as well as a general lack of formal procedures to support them.

For example, we have found some policies do not adequately define the roles or responsibilities of frontline officers and senior managers to take action in relation to UCC. They do not distinguish between the strategies that frontline officers are authorised to use and those that must be considered and acted on at a senior management level – eg those that seek to change or restrict a complainant's ability to access their services. Other policies do not provide/are not supported by any procedures for recording or reporting UCC incidents and do not provide guidance on the type of criteria that should be considered when restricting a complainant's access to services. They also fail to identify any systems or processes for reviewing such restrictions and do not include strategies on how staff can deal with complainants who do not comply with these types of restrictions.

As a result, as Stage 2 of the UCC project has progressed, the Parliamentary Ombudsman have identified a number of situations where unclear and/or informal policies and procedures have led to a range of administrative problems and inconsistencies in how UCC is managed. See for example: *Commonwealth Ombudsman, Unreasonable customer conduct and 'write only' policy*.<sup>1</sup>

## **Purpose**

The model policy has been developed to clarify the Ombudsman policy recommendations in relation to the management of UCC. It attempts to provide a robust, standardised and consistent model policy and

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<sup>1</sup> Commonwealth Ombudsman 2010, *Department of Human Services, Child Support Agency, Unreasonable customer conduct and 'write only' policy*, Report no 14/2010, Canberra.

procedure that organisations can use to inform and support their policy development processes. We recommend that all organisations – whether they are in the process of developing a UCC policy and procedure or already have an existing one(s) – take time to review this document to ensure their policies and procedures are fair and consistent, and compliant with Ombudsman’s suggested approach.

At the same time it should be noted that this document is only a guide. Each organisation will need to decide how best to implement the information contained in it to suit their own circumstances and existing organisational systems and protocols.

## **Important points and caveats**

### **1. Policy and procedure to be in writing**

To ensure transparency, accountability, fairness and consistency in the management of UCC, it is essential for an organisation to have a written UCC policy and procedure(s) for its staff. A written policy and procedures will ensure that staff are aware of their roles and responsibilities and have clear guidance and authority to deal with UCC on a daily basis. A written policy and procedure will also provide a reference point for all complainants whose conduct is managed in accordance with it, as well as review bodies, courts or tribunals that may subsequently be tasked with reviewing their application.

See the attached Unreasonable Complainant Conduct Model Policy.

### **2. Contents of a UCC policy**

A robust and comprehensive UCC policy should include the following basic features:

- Clear guidance about the authority vested in frontline staff and senior management to respond to and manage UCC, including taking action to restrict a complainant’s access to services.
- An explanation of the types of circumstances where it might be appropriate to change or restrict a complainant’s access to services and the procedures that should be followed when doing so.
- A range of possible service restrictions (not just ‘write only’ restrictions) that staff can use to manage UCC.
- Guidance about the types of factors that should be taken into account when deciding to change or restrict a complainant’s access to services.
- Procedures for communicating with complainants about decisions to change or restrict their access, including the use of template letters.
- A centralised system for recording and reporting details of complainants with service restrictions to assist with ongoing management and review of these cases.
- A standardised process for reviewing decisions to change or restrict access – including fixed time periods and criteria for review, and a presumption that any restriction will be lifted unless there is a clear need for it to continue.

In addition, national organisations and/or those with multiple offices should standardise their UCC policies to ensure overall consistency in how UCC is dealt with in each office. This is particularly important for managing situations where complainants attempt to forum shop from one office to the next or have legitimate reasons for having contact with more than one office – eg Centrelink.

See Part 2.1 – model policy and procedure.

### **3. Avoiding misuses and overuses of UCC policies**

Organisations also need to take steps to ensure that their UCC policies are applied cautiously and sparingly. The Ombudsman’s approach and UCC policies, in general, should never be seen as a quick solution for dealing with complainants who are angry or frustrated or who are viewed as being annoying or a nuisance. They are intended to be applied in cases where UCC is in fact an issue – that is in cases where a complainant’s conduct raises the types of safety, resource and equity issues identified in the *Managing Unreasonable Conduct by a Complainant Manual 2021* and supporting documents. For most organisations these cases are likely to be very few in number.

Organisations should also take steps to ensure their UCC policies are applied in the least restrictive ways possible. They should never be applied in ways that go beyond what is appropriate and necessary to manage a complainant’s conduct and must always be proportionate to the complainant’s personal

circumstances. The aim when applying such policies should not be to punish the complainant but rather to manage the impacts of their conduct.

For example, it would be inappropriate for an organisation to restrict a complainant's access to 'writing only' if that complainant is not proficient in English, is illiterate or vision impaired. It would be equally inappropriate to impose access restrictions in ways that would limit a complainant's ability to exercise a right that has been provided to them by statute.

To guard against misuses or overuses of UCC policies, we strongly suggest that all organisations should implement effective systems for:

- **Recording and reporting all UCC incidents** – this includes ensuring that their staff are well trained in appropriate and consistent record keeping practices and ensuring they have in place a centralised case management system where UCC incidents can be easily recorded and accessed.

A good case management system – that is capable of delivering timely and accurate information about complainants and their complaints – is essential for the proper management of UCC, particularly if a complainant's ability to interact with the organisation has been modified or restricted as a result of their behaviour. It can facilitate the sharing and dissemination of information among staff and ensure consistency in the approaches taken.

A well implemented case management system is:

- easily accessible and searchable
- capable of being easily updated with contemporaneous information
- contains information and documentation relating to all complaints and complainants
- includes a system of alerts and notifications that promptly alert staff to any access changes or restrictions along with contextual information (in summary form) of the nature and reasons for those restrictions
- includes a tracking system for monitoring incidents of UCC and their progress.

Also, staff need to be clearly advised about whom, within the organisation, they should report UCC incidents to, as well as the proper procedure(s) for doing so.

- **Tracking and monitoring all uses of their policies** – one staff member [*eg a nominated senior manager*] should be responsible for tracking and monitoring all uses of their UCC policy to ensure that it is being applied consistently, appropriately and effectively and that UCC cases are reviewed at appropriate intervals.
- **Reviewing all cases where their policies are used** – all uses of their UCC policies should be reviewed at regular intervals to ensure that they continue to be necessary, appropriate and effective in the circumstances.

See Parts 4, 7.6, 9, and 10 of the attached Model Policy.

#### **4. Handling complaints in ways that will not trigger or exacerbate UCC**

Organisations must acknowledge that sometimes they and their staff get it wrong and can, in fact, trigger or exacerbate UCC. Mistakes can be made, complaints/cases can be mishandled, processes and procedures can be overly complex or unresponsive to the needs of certain complainants, and delays may occur. In these circumstances, and in any circumstance where an organisation contributes to a complainant's unreasonable conduct, they should immediately rectify the problem – including providing the complainant with an apology. For further advice on making apologies, see: *Apologies – A practical guide*, NSW Ombudsman, March 2009).

If remediation does not work and the organisation's relationship with the complainant breaks down, it may be necessary to organise alternative dispute resolution approaches – such as conciliation – to resolve the issue and rebuild the relationship with the complainant to the extent possible.

See Part 6 of the attached Model Policy.

# 1. INTRODUCTION

## 1.1 Statement of support

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

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

When complainants behave unreasonably in their dealings with us, their conduct can significantly affect our success. As a result, Nambucca Valley 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.

I authorise and expect all Nambucca Valley Council staff to implement the strategies provided in this policy.

**General Manager APPROVAL**

*[Signature]*

## 2. OBJECTIVES

### 2.1 Policy aims

This policy has been developed to assist all staff members to better manage unreasonable complainant conduct ('UCC'). Its aim is to ensure that all staff:

- Feel confident and supported in taking action to manage UCC.
- Act fairly, consistently, honestly and appropriately when responding to UCC.
- 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 *Managing Unreasonable Conduct by a Complainant Manual 2021* ('practice manual') 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.

## 3. DEFINING UNREASONABLE COMPLAINANT CONDUCT

### 3.1 Unreasonable complainant conduct

Most complainants who come to our office 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 in a very small number of cases some complainants behave in ways that are inappropriate and

unacceptable – despite our best efforts to help them. They are aggressive and verbally abusive towards our staff. They threaten harm and violence, bombard our offices 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 himself/herself.

UCC can be divided into five categories of conduct:

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

### **3.2 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 one.
- 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 in an effort to get it taken up again.
- Bombarding our staff/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 – internal and external forum shopping.

For more examples of unreasonable persistence see pages 27 – 31 of the practice manual.

### **3.3 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 – eg for someone to be sacked or prosecuted, an apology and/or compensation when no reasonable basis for expecting this.
- Demanding services that are of a nature or scale that we cannot provide when this has been explained to them repeatedly.

For more examples of unreasonable demands see pages 38 – 45 of the practice manual.

### **3.4 Unreasonable lack of cooperation**

Unreasonable lack of cooperation is an unwillingness and/or inability by a complainant to cooperate with our organisation, staff, or complaints system and processes that result in a disproportionate and

unreasonable use of our services, time and/or resources. Some examples of unreasonable lack of cooperation 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 withholding information, acting dishonestly, misquoting others, and so forth.

For more examples of unreasonable lack of cooperation see pages 49 –51 of the practice manual.

### **3.5 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, services, time, and/or resources. Arguments are unreasonable when they:

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

For more examples of unreasonable arguments see pages 55 –59 of the practice manual.

### **3.6 Unreasonable behaviour**

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 himself/herself. Some examples of unreasonable behaviours include:

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

For more examples of unreasonable behaviour see pages 70 – 72 of the practice manual.

All staff should note that Nambucca Valley 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 occupational health and safety responsibilities.

## **4. ROLES AND RESPONSIBILITIES**

### **4.1 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 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. See pages 16 - 18 of the practice manual.

Staff are also encouraged and authorised to use the strategies and scripts provided in the practice manual to manage UCC.

However, it must be emphasised that any strategies that effectively change or restrict a complainant's access to our services must be considered at the Assistant General Manager level or higher as provided in this policy.

Staff are also responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) to the Assistant General Managers/General Manager within 24 hours of the incident occurring, using the Sample UCC incident form in Appendix B. A file note of the incident should also be copied into Council's electronic records management system.

## **4.2 The Assistant General Managers/General Manager**

The Assistant General Managers/General Manager in consultation with relevant staff, have 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 Part 7.2 below (adapted into a checklist in Appendix C) and will aim to impose any service changes/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 Assistant General Managers/General 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 Assistant General Managers/General 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.

## **4.3 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 and/or stressful 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 (EAPS), 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 12 of this policy.

# **5. RESPONDING TO AND MANAGING UCC**

## **5.1 Changing or restricting a complainant's access to our services**

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

- **Who they have contact with** – eg limiting a complainant to a sole contact person/staff member in our organisation.
- **What they can raise with us** – eg restricting the subject matter of communications that we will consider and respond to.
- **When they can have contact** – eg 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.
- **Where they can make contact** – eg limiting the locations where we will conduct face-to-face interviews to secured facilities or areas of the office.

- **How they can make contact** – eg limiting or modifying the forms of contact that the complainant can have with us. 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.

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.

## **5.2 Who – limiting the complainant to a sole contact point**

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 office. This may ensure they are dealt with consistently and may minimise the chances for misunderstandings, contradictions and manipulation.

To avoid staff 'burn out' the sole contact officer's supervisor will provide them with regular support and guidance – as needed. Also, the Assistant General Managers/General Manager will review the arrangement every six months to ensure that the officer is managing/coping with the arrangement.

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

## **5.3 What – restricting the subject matter of communications that we will consider**

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/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/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, we may do so on our 'own motion'.
- 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 their access.
- Return correspondence to the complainant and require them to remove any inappropriate content before we will 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.

## **5.4 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 (eg disorganised and voluminous correspondence) 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:

- Limiting their telephone calls or face-to-face interviews to a particular time of the day or days of the week.
- Limiting the length or duration of telephone calls, written correspondence or face-to-face interviews. For example:
  - Telephone calls may be limited to [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.
- 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.

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 (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.

### **Writing only restrictions**

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

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

If a complainant's contact is restricted to 'writing only', the Assistant General Managers will clearly identify the specific means that the complainant can use to contact our office (eg Australia Post only). 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 as well.

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.

## **5.5 Where – limiting face-to-face interviews to secure areas**

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

These restrictions may include:

- Restricting access to particular secured premises or areas of the office – such as the reception area or secured room/facility.
- 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.
- 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.
- Banning the complainant from attending our premises altogether and allowing some other form of contact – eg 'writing only' or 'telephone only' contact.

### **Contact through a representative only**

In cases where we cannot completely restrict our contact with a complainant and their conduct is particularly difficult to manage, we may also restrict their contact to contact through a support person or representative only. The support person may be nominated by the complainant but must be approved by the Assistant General Managers/General Manager.

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

## **5.6 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 Assistant General Managers and General Manager may decide that it is necessary for our organisation to completely restrict a complainant's contact/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 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:

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

In these cases the complainant will be sent a letter notifying them that their access has been restricted as outlined in Part 7.4 below.

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/legislation or legal orders to protect members of our staff from personal violence, intimidation or stalking by a complainant. For more information, about the types of circumstances where legal mechanisms may be used to deal with UCC, please see:

- *Unauthorised entry onto agency premises – applying the provisions of the Inclosed Lands Protection Act 1901 (NSW)*
- *Orders to address violence, threats, intimidation and / or stalking by complainants.*

## **6. ALTERNATIVE DISPUTE RESOLUTION**

### **6.1 Using alternative dispute resolution strategies to manage conflicts with complainants**

If the Assistant General Managers and General Manager determine 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.

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.

## **7. PROCEDURE TO BE FOLLOWED WHEN CHANGING OR RESTRICTING A COMPLAINANT'S ACCESS TO OUR SERVICES**

### **7.1 Consulting with relevant staff**

When the Assistant General Managers/General 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, etc.
- 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.

## 7.2 Criteria to be considered

Following a consultation with relevant staff the Assistant General Managers/General Manager will search the Council's electronic records management system 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 etc.
- Whether the complainant's personal circumstances have contributed to the behaviour? For example, the complainant is a vulnerable person who is under significant stress as a result 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/access to our services.

Once the Assistant General Managers/General Manager have considered these factors 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 practice manual and this policy.

See Appendix C – Sample checklist for Assistant General Managers/General Manager to consider when deciding to modify or restrict a complainant's access.

## 7.3 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 Assistant General Managers/General 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/ 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 A.
- Provide the name and contact details of the staff member who they can contact about the letter.
- Be signed by the Assistant General Managers or General Manager.

See Appendix D – Sample warning letter.

## **7.4 Providing a notification letter**

If a complainant's conduct continues after they have been given a written warning or in extreme cases of overt aggression, violence, assault or other unlawful/unacceptable conduct the Assistant General Managers/General 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 Assistant General Managers or General Manager.
- See Appendix E – Sample letter notifying complainants of a decision to change or restrict their access to our services.

## **7.5 Notifying relevant staff about access changes/restrictions**

The Assistant General Managers/General 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 Assistant General Managers/General Manager will also update the Council's electronic records management system with a record outlining the nature of the restrictions imposed and their duration.

## **7.6 Continued monitoring/oversight responsibilities**

Once a complainant has been issued with a warning letter or notification letter Assistant General Manager/General 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.

If the Assistant General Managers/General 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.

# **8. APPEALING A DECISION TO CHANGE OR RESTRICT ACCESS TO OUR SERVICES**

## **8.1 Right of appeal**

Complainants are entitled to one appeal of a decision to change/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/records relating to the appeal to the Assistant General Managers/General 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 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.

## **9. NON-COMPLIANCE WITH A CHANGE OR RESTRICTION ON ACCESS TO OUR SERVICES**

### **9.1 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 Council's electronic records management system and a copy forwarded to the Assistant General Managers/General Manager who will decide whether any action needs to be taken to modify or further restrict the complainant's access to our services.

## **10. PERIODIC REVIEWS OF ALL CASES WHERE THIS POLICY IS APPLIED**

### **10.1 Period for review**

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.

### **10.2 Notifying the complainant of an upcoming review**

The Assistant General Managers/General 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 (ie further UCC). The invitation will be given and the review will be conducted in accordance with the complainant's access restrictions (eg if contact has been restricted to writing only then the invitation to participate will be done in writing).

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

### **10.3 Criteria to be considered during a review**

When conducting a review the Assistant General Managers/General 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/arguments put forward by the complainant for review.
- Any other information that may be relevant in the circumstances.

The Assistant General Managers/General 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/reformed behaviour. This should be taken into consideration, in relevant situations.

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

### **10.4 Notifying a complainant of the outcome of a review**

The Assistant General Managers/General 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.

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

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

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

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

Like all other decisions made under this policy, the Assistant General Managers/General Manager is responsible for keeping a record of the outcome of the review, updating Council's electronic records management system and notifying all relevant staff of the outcome of the review including if the restriction has been withdrawn.

See Parts 4.2 and 7.5 above.

## **11 MANAGING STAFF STRESS**

### **11.1 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 our staff – both experienced and inexperienced. It is perfectly normal to get upset or experience stress when dealing with difficult situations.

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 Nambucca Valley Council staff to identify stressful incidents and situations. As a result, all staff have a responsibility to notify relevant supervisors/senior managers of UCC incidents and any stressful incidents that they believe require management involvement.

### **11.2 Debriefing**

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.

Staff may also access an external professional service on a needs basis. All staff can access the Employee Assistance Program – a free, confidential counselling service. To make an appointment, call, or for traumatic incident or crisis counselling, call 1300 010 690. Brochures about this service are available from Human Resources.

## **12 OTHER REMEDIES**

### **12.1 Compensation for injury**

Any staff member who suffers injury as a result of aggressive behaviour from complainants is entitled to make a workers' compensation claim. Human Resources will assist wherever possible in processing claims. If you are the victim of an assault, they may also be able to apply to the Victim's Compensation Tribunal for compensation.

### **12.2 Compensation for damage to clothing or personal effects**

Where damage is suffered to clothing or personal effects as a result of aggression by a complainant, compensation may be sought.

## **12.3 Legal assistance**

If a staff member is physically attacked, or is a victim of employment generated harassment and the police do not lay charges, the General Manager will consider providing reasonable legal assistance if the staff members wishes to take civil action.

## **12.4 Threats outside the office or outside working hours**

Where threats are directed at a particular staff member and it appears those threats may be carried out outside normal working hours or outside the office, the staff member will receive the support of the office. Requests for such assistance should be made to the Assistant General Managers/General Manager.

## **12.5 Escorts home**

When a staff member fears for their safety following a threat from a complainant, another staff member may accompany them home or the office can meet the cost of the staff member going home in a taxi. Ask the Assistant General Managers/General Manager for more information.

## **12.6 Telephone threats on home numbers**

If a staff member or their family have been harassed by telephone at their home and they believe it is connected with their employment they may apply to have the office meet the cost of having their telephone number changed and/or made silent. The staff member should also contact their telephone carrier, as they may provide an interception/monitoring service.

If assistance is approved, the office will meet the cost incurred for a period up to 12 months. Once approval is given, the staff member is responsible for making the necessary arrangements and will be reimbursed after producing a paid account.

Applications for reimbursement must be approved by the Assistant General Managers/General Manager.

## **12.7 Other security measures**

If other security measures are necessary, the office will give consideration to providing all reasonable support to ensure the safety and welfare of the staff member.

## **13. TRAINING AND AWARENESS**

Nambucca Valley 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.

## **14. OMBUDSMAN MAY REQUEST COPIES OF OUR RECORDS**

Nambucca Valley 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.

## **15. POLICY REVIEW**

All staff are responsible for forwarding any suggestions they have in relation to this policy to the Assistant General Managers/General Manager who along with relevant senior managers will review it biennially (every 2 years).

## **16. SUPPORTING DOCUMENTS AND POLICIES**

### **16.1 Statement of compliance**

This policy is compliant with and supported by the following documents:

- Nambucca Valley Council Work Health and Safety Policies
- Nambucca Valley Council Requests and Complaints Policy

- NSW Ombudsman’s Managing unreasonable Conduct by a Complainant Practice Manual 2021
- Unauthorised entry onto agency premises – applying the provisions of the Enclosed Lands Protection Act 1901 (NSW)
- Orders to address violence, threats, intimidation and / or stalking by complainants

## History

<b>Department:</b>	General Manager	<b>Last Reviewed</b>	<b>Resolution Number</b>
<b>Policy Category</b>	Council	12 Dec 2018	By AGMCS
<b>Endorsed By:</b>	General Manager	11 Oct 2022	By AGMCS
<b>Approval Authority</b>	Council		
<b>Policy Owner</b>	Corporate Services		
<b>Contact Officer</b>	AGMCS		
<b>Document No.</b>	33349/2014		
<b>First Adopted</b>	27 Nov 2014		
<b>Resolution No:</b>	591/14		
<b>Review Date:</b>	October 2024		

## Appendix A

### Individual Rights and Mutual Responsibilities of the Parties to a Complaint

*[Note – The information in appendix may need to be altered to suit your organisation's individual circumstances, including changing certain terminology. Also, the term 'rights' is used to demonstrate a guarantee of the standard of service and behaviour that all parties should meet if a complaints process is to be effective. It is not used to depict a legally enforceable entitlement – although some are.]*

In order for Nambucca Valley Council to ensure that all complaints are dealt with fairly, efficiently and effectively and that occupational 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.

#### Individual rights<sup>1</sup>

##### **Complainants have the right:**

- to make a complaint and to express their opinions in ways that are reasonable, lawful and appropriate<sup>2</sup>
- to a reasonable explanation of 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<sup>3</sup>
- to a fair hearing<sup>4</sup>
- to a timely response
- to be informed in at least general terms about the actions taken and outcome of their complaint<sup>5</sup>
- to be given reasons that explain decisions affecting them
- to at least one right of review of the decision on the complaint<sup>6</sup>
- to be treated with courtesy and respect
- to communicate valid concerns and views without fear of reprisal or other unreasonable response.<sup>7</sup>

##### **Staff have the right:**

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

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

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

## Mutual responsibilities

### Complainants are responsible for:

- treating staff of the Nambucca Valley 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 Nambucca Valley Council to assist them in doing so
- providing to the best of their ability the Nambucca Valley Council with all the relevant information available to them at the time of making the complaint
- being honest in all communications with the Nambucca Valley Council
- informing the Nambucca Valley Council of any other action they have taken in relation to their complaint<sup>13</sup>
- 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, Nambucca Valley Council may consider placing limitations or conditions on their ability to communicate with staff or access certain services.

Nambucca Valley Council has a zero tolerance policy in relation to any harm, abuse or threats directed towards its staff. Any conduct of this kind may result in a refusal to take any further action on a complaint or to have further dealings with the complainant.<sup>14</sup> Any 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 the course of any investigation and before any final decision is made<sup>15</sup>
- informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them<sup>16</sup> and the substance of any proposed adverse comment or decision that they may need to answer or address<sup>17</sup>
- keeping complainants informed of the actions taken and the outcome of their complaints<sup>18</sup>
- giving complainants reasons that are clear and appropriate to their circumstances and adequately explaining the basis of any decisions that affect them
- treating complainants and any people the subject of complaint with courtesy and respect at all times and in all circumstances
- taking all reasonable and practical steps to ensure that complainants<sup>19</sup> are not subjected to any detrimental action in reprisal for making their complaint<sup>20</sup>
- giving adequate warning of the consequences of unacceptable behaviour.

If the *[name of organisation]* or its staff fail to comply with these responsibilities, complainants may complain to the *[name and contact details of relevant person, position or body]*.

### Subjects of a complaint are responsible for:

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

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

**Nambucca Valley 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<sup>24</sup>
- ensuring that staff treat all parties to a complaint with courtesy and respect
- ensuring that the assessment and any inquiry into the investigation of a complaint is based on sound reasoning and logically probative information and evidence
- finalising complaints on the basis of outcomes that the organisation, or its responsible staff, consider to be satisfactory in the circumstances<sup>25</sup>
- implementing reasonable and appropriate policies/procedures/practices to ensure that complainants<sup>26</sup> are not subjected to any detrimental action in reprisal for making a complaint<sup>27</sup>, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints
- 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.

If the Nambucca Valley Council fails to comply with these responsibilities, complainants may complain to the [name and contact details of the relevant person, position or body].

## ENDNOTES

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<sup>1</sup> The word 'rights' is not used here in the sense of legally enforceable rights (although some are), but in the sense of guarantees of certain standards of service and behaviour that a complaint handling system should be designed to provide to each of the parties to a complaint.

<sup>2</sup> 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>25</sup> Once made, complaints are effectively 'owned' by the complaint handler who is entitled to decide (subject to any statutory provisions that may apply) whether, and if so how, each complaint will be dealt with, who will be the case officer/investigator/decision-maker/etc, the resources and priority given to actioning the matter, the powers that will be exercised, the methodology used, the outcome of the matter, etc. Outcomes arising out of a complaint may be considered by the complaint handler to be satisfactory whether or not the complainants, any subjects of complaint or the organisation concerned agrees with or is satisfied with that outcome.

<sup>26</sup> See Endnote 19.

<sup>27</sup> See Endnote 20.

# Appendix

## Sample UCC incident form

**B**

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 Assistant General Managers or General Manager 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:

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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.

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\_\_\_\_\_ 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.

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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 Assistant General Managers or General Manager

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

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**Sample checklist for the nominated senior 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 Part 7.2 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  
\_\_\_\_\_  
\_\_\_\_\_

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

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- Along with the case officer concerned and *[any other nominated senior officers]*, 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 Council's electronic records 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

### Sample warning letter

D

*[To be signed by the General Manager or Assistant General Manager]*

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

*[Date]*

*[Name of complainant]*  
*[Address of complainant]*

Dear *[name of complainant]*

#### **Your contact with *[name of organisation]***

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,

*[Assistant General Managers / General Manager]*

## Appendix

E

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

*[To be signed by the General Manager or Assistant General Managers]*

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

*[Date]*

*[Name of complainant]*  
*[Address of complainant]*

Dear *[name of complainant]*

#### **Decision to restrict your contact with *[name of organisation]***

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 on a daily basis...]*

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 are able to 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.

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

Yours sincerely *[Assistant General Managers / General Manager]*

**Sample letter notifying a complainant of an upcoming review**

*[To be signed by the General Manager or Assistant General Managers]*

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

*[Date]*

*[Name of complainant]*  
*[Address of complainant]*

Dear *[name of complainant]*

**Upcoming review of the decision to restrict your contact with *[name of organisation]***

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,

*[Assistant                      General                      Managers                      /                      General                      Manager]*

## Appendix

G

### 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)  

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

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- 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.*  

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- 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).  

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- 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.*

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- 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 (CEO).
- The [*case management system*] has been updated to reflect my decision.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## Appendix

H

### Sample letter advising the complainant of the outcome of a review

*[To be signed by the Assistant General Managers / 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 *[name of organisation]***

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 was 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.

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

Yours sincerely

*[Assistant General Managers / General Manager]*