

# Warrumbungle Shire Council Unreasonable Customer Conduct Procedure

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## **1 Purpose**

The purpose of this procedure is to provide guidance to councillors, Council staff, contractors and volunteers regarding a systematic and consistent approach to managing unreasonable administrative requests, complainant conduct and aggressive and abusive customer behaviour.

Council has a duty to ensure that it provides value for money services for all its residents and local communities. An unreasonable or unreasonably persistent customer can take up a disproportionate amount of time that can hinder the other work of staff. Warrumbungle Shire Council (Council) must therefore ensure that it uses its resources wisely and limits the amount of time spent on queries that it considers unreasonable or unreasonably persistent.

Council is committed to being accessible and responsive to all complainants who approach us for assistance, raising legitimate and important concerns, enquiries or requests. At the same time the success of Council depends on:

- the ability to do Council work and perform Council functions in the most effective and efficient ways possible;
- the health, safety and security of Council staff; and
- Council's ability to allocate resources fairly across all the enquiries, requests and complaints received.

When customers behave unreasonably in their dealings with Council, their conduct can significantly affect our ability to allocate resources fairly across all enquiries, requests and complaints received. As a result, Council will take proactive and decisive action to manage any customer conduct that negatively and unreasonably affects Council and will support Council staff to do the same in accordance with this procedure.

Furthermore, Council has a 'zero tolerance' approach to any threatening comment, gesture or behaviour made towards our officers and may immediately report any such matters to the police for action.

## **2 Scope**

This procedure applies to situations involving unreasonable administrative requests, customer conduct and aggressive or abusive behaviour.

Complaints will be dealt with under Council's Complaint Management Policy. However, where a customer refuses to accept Council's decision on a matter and consistently raises the same issue with the same or different Council officers, or makes unreasonable demands, acts offensively or vilifies, it may be deemed an unreasonable request and dealt with accordingly.

## **3 Legislative Context**

- *Local Government Act 1993* (NSW)
- *Local Government (General) Regulation 2021* (NSW)

## **4 Procedure**

### **4.1 Defining unreasonable customer conduct**

Most people who deal with Council act reasonably and responsibly, even when they are experiencing high levels of distress, frustration and anger. Sometimes, people behave in ways that are inappropriate and unacceptable, despite best efforts to help them. They may be aggressive and abusive towards Council staff. They may threaten harm and violence, bombard Council with unnecessary and excessive phone calls and emails, make inappropriate demands on staff time and resources and refuse to accept Council decisions and recommendations. Council considers such conduct to be unreasonable.

Unreasonable customer conduct is not limited to spoken interactions. It can occur over the internet, in a public location, in an image, or in writing. If the conduct is unacceptable and arises during the

course of, or as a direct result of the provision of Council services, it can legitimately be characterised as unreasonable conduct.

Council follows the NSW Ombudsman's practice manual: [Managing unreasonable conduct by a complainant \(nsw.gov.au\)](https://www.nsw.gov.au/ombudsman/practice-manual) (hereafter referred to as the Practice Manual) for dealing with any behaviour which, because of its nature or frequency, raises substantial health, safety, resource or equity issues for an organisation, its staff and other service users. The definition includes five categories listed below:

1. **Unreasonable persistence**  
Unreasonable persistence is continued, incessant and unrelenting conduct by a person that has a disproportionate and unreasonable impact on Council, staff, services, time and/or resources.
2. **Unreasonable demands**  
Unreasonable demands are any demands (express or implied) that are made by a person that have a disproportionate and unreasonable impact on Council, staff, services, time and/or resources.
3. **Unreasonable lack of cooperation**  
Unreasonable lack of cooperation is an unwillingness and/or inability by a person to cooperate with our organisation, staff, or complaints system and processes that result in a disproportionate and unreasonable use of Council services, time and/or resources.
4. **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 Council, staff, services, time and/or resources.
5. **Unreasonable behaviour**  
Unreasonable behaviour is conduct that is unreasonable in all circumstances – regardless of how stressed, angry or frustrated a person may be – because it unreasonably compromises the health, safety and security of Council staff, other service users or the person him/herself.

#### **4.1.1 Unreasonable persistence**

Unreasonable persistence is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on Council, staff, services, time 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 Council staff/organisation with phone calls, visits, letters, emails (including cc'd correspondence) after repeatedly being asked not to do so.
- Contacting different people within the organisation and/or externally to get a different outcome or more sympathetic response to their complaint – internal and external forum shopping.

#### **4.1.2 Unreasonable demands**

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

- Issuing instructions and making demands about how Council have dealt/should deal with their complaint, the priority it was/should be given, or the outcome that was/should be achieved.
- Insisting on talking to a Manager, Director or 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 exists for expecting this.
- Demanding services that are of a nature or scale that Council cannot provide when this has been explained to them repeatedly.

#### **4.1.3 Unreasonable lack of cooperation**

Unreasonable lack of cooperation is an unwillingness and/or inability by a complainant to cooperate with Council, staff, or complaints system and processes that results in a disproportionate and unreasonable use of Council 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 'drips and drabs'.
- Refusing to follow or accept Council's 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.

#### **4.1.4 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 Council, 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.

#### **4.1.5 Unreasonable behaviour**

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

## 4.2 Responding to and Managing Unreasonable Customer Conduct

### Changing or restricting a customer's access to Council's services.

Unreasonable customer conduct incidents will generally be managed by limiting or adapting the ways that Council interact with and/or deliver services to complainants by restricting:

*Who the customer has contact with* – eg limiting a complainant to a sole contact person/staff member.

Where a complainant tries to forum shop internally within Council, 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 Council. This may ensure they are dealt with consistently and may minimise the chances for misunderstandings, contradictions and manipulation.

*What they can raise with Council* – eg restricting the subject matter of communications that Council will consider and respond to.

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 considered and/or reviewed (at least once), Council may restrict the issues/subject matter the complainant can raise that Council will respond to. For example, Council 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 Council decides it needs to be pursued further.
- 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 Council will agree to consider its contents. A copy of the inappropriate correspondence will also be made and kept for Council records to identify repeat/further unreasonable conduct incidents.

*When they can have contact* – eg limiting a complainant's contact with Council to a particular time, day, or length of time, or curbing the frequency of their contact with Council.

If a complainant's telephone, written or face-to-face contact with Council places an unreasonable demand on a Council Officer's time or resources because it is overly lengthy (eg disorganised and voluminous correspondence) or affects the health, safety and security of staff because it involves behaviour that is persistently rude, threatening, abusive or aggressive, Council may limit when and/or how the complainant can interact with Council Officers. 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, eg:
  - 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 11 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 60 minutes.
- Limiting the frequency of their telephone calls, written correspondence or face-to-face interviews. Depending on the nature of the service/s provided Council may limit:
  - Telephone calls to one every two weeks.
  - Written communications to one every two weeks.
  - Face-to-face interviews to one every month.
- For irrelevant, overly lengthy, disorganised or frequent written correspondence Council may also:
  - Require the complainant to clearly identify how the information or supporting materials they have sent to Council relate to the central issues identified in their complaint.
  - Restrict the frequency with which complainants can send emails or other written communications to Council's 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 only through:

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

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

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

*Where they can make contact* – eg limiting the locations where Council will conduct face-to-face interviews to secured facilities or areas of the office.

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

These restrictions may include:

- Restricting access to particular secured premises or areas of the office.
- Restricting their ability to attend Council premises to specified times of the day and/or days of the week only – eg when additional security may be available or to times/days that are less busy.
- Allowing them to attend Council offices 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 Council meetings or premises altogether and allowing some other form of contact – eg 'writing only' or 'telephone only' contact.

*Contact through a representative only* – in cases where Council cannot completely restrict contact with a complainant and their conduct is particularly difficult to manage, contact may be restricted to

contact through a support person or representative only. The support person may be nominated by the complainant but must be approved by the General Manager.

When assessing a representative/support person's suitability, the General Manager should consider factors like the nominated person's competency and literacy skills, demeanour/behaviour, and relationship with the complainant. If the 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 Council may assist them in this regard.

*How they can make contact* – eg limiting or modifying the forms of contact that the complainant can have with Council. This can include modifying or limiting face-to-face interviews, telephone and written communications, prohibiting access to Council premises, contact through a representative only, taking no further action or terminating Council services altogether.

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 Council to completely restrict a complainant's contact/access to Council's 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 Council Officers 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 Council premises.
- Threats with a weapon or common office items that can be used to harm another person or themselves.
- Physically preventing a staff member from moving around freely either within their office or during an off-site visit – 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 4.3 below.
- A complainant's access to Council services and Council's premises may also be restricted (directly or indirectly) using the legal mechanisms such as trespass laws/legislation or legal orders to protect members of Council staff from personal violence, intimidation or stalking by a complainant.

When using the restrictions provided in this section Council recognises 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, Council also recognises that more than one strategy may need to be used in individual cases to ensure their appropriateness and efficacy.

#### **4.2.1 Alternative Dispute Resolution**

If the nominated manager and the 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 some 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.

### **4.3 Changing or Restricting a Customer's Access to Council Services**

In dealing with unreasonable conduct, the General Manager will undertake the following:

#### **4.3.1 Criteria to be considered**

Following consultation with staff the relevant Manager will search the Council's records for information about the complainant's prior conduct and history with Council. 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 Council services will be effective in managing the complainant's behaviour.
- Whether changing or restricting access to Council services will affect the complainant's ability to meet their obligations, such as reporting obligations.
- Whether changing or restricting access to Council 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 eg 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 are any statutory provisions that would limit the types of restrictions that can be put on the complainant's contact/access to Council services.

Once the General Manager has considered these factors a decision on the appropriate course of action will be taken. The General Manager 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 in this procedure.

See Appendix C – Sample checklist to be considered when deciding to modify or restrict a complainant's access.

#### **4.3.2 Provide a warning letter**

Unless a complainant's conduct poses a substantial threat to the health and safety of councillors or Council officers, the General Manager will provide the complainant with a written warning about their conduct in the first instance.

#### **4.3.3 Provide a notification letter**

If a complainant's conduct continues after they have been given a warning letter or in cases of aggression, violence, assault or other unlawful/unacceptable conduct, the General Manager has the discretion to send a notification letter immediately restricting the complainant's access to Council services or premises. Details of these complainants and the restrictions imposed will be kept in a register.

#### **4.3.4 Notify relevant staff about access changes/restrictions**

Where appropriate, the General Manager will notify the Mayor, councillors and relevant Council Officers about any decisions to change or restrict a complainant's access to Council's services and

premises, in particular reception staff in cases where a complainant is prohibited from entering Council premises.

#### **4.3.5 Continued monitoring**

Once a complainant has been issued with a warning letter or notification letter, the General Manager will review the complainant's record/restriction as required, or following any further incidents of unreasonable conduct that involve the particular complainant to ensure that they are complying with the restrictions and that the arrangement is working.

If the General Manager determines that the restrictions have been ineffective in managing the complainant's conduct or are otherwise inappropriate, the General Manager may decide to review the restrictions, impose further restrictions or terminate the complainant's access to Council services altogether. Conversely, the General Manager may determine that the restrictions be removed and that the complainant can contact the Council using any of its normal servicing options. Each time a review is conducted, the complainant will be notified in writing about the outcome.

#### **4.4 Right of Appeal**

Complainants are entitled to one appeal of a decision to change/restrict their access to Council services. This review will be undertaken by a senior staff member who was not involved in the original decision to change or restrict the complainant's access. This staff member will consider the complainant's arguments along with all relevant records regarding the complainant's past conduct. Council 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 Manager Corporate Services 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 Council have acted fairly, reasonably and consistently and have observed the principles of good administrative practice, including procedure fairness.

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

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 record keeping system (Magiq) and a copy forwarded to their Director who will decide whether any action needs to be taken to modify or further restrict the complainant's access to Council services.

#### **4.6 Periodic Reviews of all Cases where this Procedure is Applied**

This procedure is reviewed internally for applicability, continuing effect and consistency with related documents and other legislative provisions when any of the following occurs:

- the related documents are amended; or
- the related documents are replaced by new documents; or
- amendments that affect the allowable scope and effect of a procedure of this nature are made to legislation or recommended by the NSW Ombudsman; or
- other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this procedure is to be reviewed at least once every two years for relevance and to ensure that its effectiveness is maintained.

#### **4.7 Aggressive and Abusive Customers**

##### **4.7.1 In person or in a Council controlled area**

In situations where customers at Council premises become aggressive or abusive, senior staff should attempt to moderate the situation and if unsuccessful, direct the offending customer to leave the Council premises.

If the person refuses to leave Council premises when requested to, the officer is to call the Police after advising the person that the Police will be contacted.

In situations where a customer becomes aggressive to Council Officers in an area that is not a Council controlled area (eg on the customer's property), the Council Officer shall politely advise the customer that their behaviour is unacceptable and that they will not participate in the situation. The Council Officer shall then leave the area.

#### **4.7.2 On the phone**

Where customer behaviour is insulting, vilifying, demeaning or offensive to Council Officers:

- Council Officers are to issue two warnings to the customer that if language/behaviour continues the call will be terminated (as per example scripting below).
- If the nature of the call was such that, in the opinion of the Council Officer, the call was extremely offensive, the call should be terminated. The definition of what constitutes offensive language is at the discretion of the Council Officer. A written or audio record of the incident including time, date, details of call and the name of the caller, if known, should be made as soon as possible after a call has been terminated and forwarded to the Supervisor or Manager.

Prior to terminating a call, a Council Officer must advise the customer that termination will occur:

##### First warning

"I need to let you know that if you continue to speak like that, I will have to terminate this call."

##### Second warning

"If this language continues, I will be terminating this call and Council will no longer accept telephone calls from you. All future requests must be made in writing."

##### Termination advice

"I am terminating this call now."

#### **4.7.3 Ongoing calls**

If a customer persistently calls to discuss a complaint or to make further complaints, and this is proving time consuming and disruptive, it is reasonable for the Council Officer concerned to ask the customer to put their concerns in writing and to terminate the conversation.

In either case the Council Officer should remain polite and wherever possible provide the customer with the opportunity to modify their behaviour, by informing the customer that unless they do so, the call will be terminated.

The Council Officer will also warn the customer that, if the call is terminated, Council may no longer accept telephone calls from that customer and in future may only deal with that customer in writing.

If a call needs to be terminated as a result of the customer's conduct, the employee should do so politely and generally in accordance with the above scripting and advise their Supervisor.

Council will confirm with the customer in writing that Warrumbungle Shire Council will no longer accept telephone calls from them and will only deal with the customer in writing except in a genuine emergency situation.

#### **4.7.4 Out of office hours**

Where a customer approaches a Council Officer when not on duty, the Officer should politely advise the Customer that this is not the time or place to discuss Council business and that, if necessary, an appointment can be made to discuss the problem with the appropriate Officer at a more appropriate time. Where necessary it may be acceptable to:

- walk away to avoid confrontation; or
- if the officer feels threatened by the language or behaviour of the customer, call the Police.

Council Officers should record any instances of unreasonable customer contact by making an applicable file note in Magiq.

All staff should note that Council has zero tolerance towards any harm, abuse or threats directed towards them. Any conduct of this kind will be dealt with under this procedure and in accordance with our duty of care and work health and safety responsibilities.

## 5 Definitions

Term	Meaning
Affected person	A person who is apparently directly affected by an administrative action of a local government.
Aggressive and abusive conduct	Includes, but is not limited to the making of rude or vulgar noises, expressions or gestures; verbal abuse of a personal or general nature; threatening or offensive behaviour and statements; and physical violence against a person or property.
Complaint	A generic term referring to the expression of dissatisfaction, orally or in writing, about the action of Council or its staff.
Complaints management process	The policy, processes, personnel and technology used by Council in receiving, recording, responding to and reporting about complaints.
Customer	In the context of this procedure, a customer is a person expressing dissatisfaction with Council policy, procedure, action or quality of service. The person can be a ratepayer, resident, visitor or business.
Genuine emergency	A situation that poses an immediate risk to health, life, property or environment.
Request for service	Where a person wants Council to take action. Examples include a barking dog; a pothole; an overflowing waste bin; or another issue requiring Council service.
Senior staff	Where the relevant Manager is not present the most senior staff member on duty at the time.
Third party review body	A statutory entity that has responsibility to review administrative decisions, grievances, misconduct etc and includes the Ombudsman, NSW Civil and Administrative Tribunal (NCAT), and the Independent Commission Against Corruption (ICAC).
Unreasonable administrative requests	Ongoing regular repetitious enquiries, or requests for information which substantially and unreasonably direct resources away from other functions.
Unreasonable customer conduct	Conduct going beyond the usual situational conduct commonly experienced by customers when they bring a grievance to Council.

## 6 Related documents

- Complaints Handling Policy
- Code of Conduct

## 7 References

- NSW Ombudsman *Managing unreasonable conduct by a complainant*
- Warrumbungle Shire Council *Customer Service Charter*

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

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.

### 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>
- a reasonable explanation of the organisation's complaints procedure, including details of the confidentiality, privacy rights or obligations that may apply;
- a fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the case;<sup>3</sup>
- a fair hearing;<sup>4</sup>
- a timely response;
- be informed in at least general terms about the actions taken and outcome of their complaint;<sup>5</sup>
- be given reasons that explain decisions affecting them;
- at least one right of review of the decision on the complaint;<sup>6</sup>
- be treated with courtesy and respect;
- 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;
- finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances;<sup>8</sup>
- expect honesty, cooperation and reasonable assistance from complainants;
- expect honesty, cooperation and reasonable assistance from other organisations and people who are the subject of a complaint;
- be treated with courtesy and respect;
- a safe and healthy working environment;<sup>9</sup>
- modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.<sup>10</sup>

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

<sup>6</sup> Such a right of review can be provided internally to the organisation, eg 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 Footnote 25).

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

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

*Subjects of a complaint have the right to:*

- a fair and impartial assessment and, where appropriate, investigation of the allegations made against them;
- be treated with courtesy and respect by Council staff;
- be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated;<sup>11</sup>
- be informed about the substance of any proposed adverse comment or decision;
- 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>
- 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;
- be protected from harassment by disgruntled complainants acting unreasonably.

*Complainants are responsible for:*

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

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

Council has zero tolerance 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 a 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 a complaint a reasonable opportunity to put their case during the course of any investigation and before any final decision is made;<sup>15</sup>

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

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

<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 Footnote 11.

- informing people or organisations the subject of investigation 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;
- taking all reasonable and practical steps to ensure that complainants<sup>19</sup> are not subjected to any detrimental action in reprisal for making their complaint;<sup>20</sup>
- giving adequate warning of the consequences of unacceptable behaviour.

If Council or its staff fail to comply with these responsibilities, complainants may complain to the General Manager.

*Subjects of a complaint are responsible for:*

- cooperating with the Council staff who are assigned to handle the complaint, particularly where they are exercising a lawful power in relation to a person or body within their jurisdiction;<sup>21</sup>
- providing all relevant information in their possession to Council or its authorised staff when required to do so by a properly authorised direction or notice;
- being honest in all communications with Council and its staff;
- treating Council staff 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.

*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>

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

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

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

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

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

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

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

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

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

<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.

- 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>
- 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 Council fails to comply with these responsibilities, complainants may complain to the General Manager.

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

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

**Appendix B: Unreasonable Customer Conduct incident form**

This form should only be completed if you encounter unreasonable complainant conduct (UCC) and consider that steps may need to be taken to change or restrict a complainant's access to services provided by Warrumbungle Shire Council.

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

Date: \_\_\_\_\_ Officer's name: \_\_\_\_\_

Name of complainant: \_\_\_\_\_ File number: \_\_\_\_\_

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

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Why do you consider this conduct to be unreasonable? *Eg, has it occurred before/ repeatedly, caused significant disruptions to the organisation, has or could raise significant health and safety issues for staff or other persons.*

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What action, if any have you taken to deal with/manage the complainant's conduct? *Eg, 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 General Manager.*

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Is any other relevant information attached? Y/N

**Appendix C: Checklist for the relevant Manager to consider when deciding to modify or restrict a complainant's access**

- I have received a signed and completed incident form from the Council Officer/s involved (attach copy).
- I have spoken with relevant Council 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 Section 4.3.1 criteria to be considered which includes an assessment of the following:

The merits of the complainant's case:

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The complainant's circumstances:

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Jurisdictional issues:

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Proportionality:

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Organisational or case officer responsibility:

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Responsiveness, including previous conduct:

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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 Council Officer concerned and their Director, 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.
- The complainant has been advised in writing of our decision to restrict access to Warrumbungle Shire Council, and the letter has been signed by the General Manager.
- 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.

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

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## Appendix D: Template warning letter

[Officer name]  
[Doc ID]

[Date]

[Name of complainant]  
[Address of complainant]

Dear [name of complainant]

### Your contact with Warrumbungle Shire Council

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

Council considers 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 Council Officers consider to be unreasonable, restrictions will be imposed on your contact with Council. 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 Council 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 Council considers to be appropriate in the circumstances.

I have attached a document called 'Individual rights and mutual responsibilities of the parts to a complaint' (Appendix A to Council's *Unreasonable Customer Conduct Procedure*) for your reference. Council 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 [name and phone number of relevant senior staff member].

Yours sincerely

**NAME**  
**GENERAL MANAGER**

## Appendix E: Template letter notifying a complainant of a decision to change or restrict their access to Council services

[Officer name]  
[Doc ID]

[Date]

[Name of complainant]  
[Address of complainant]

Dear [name of complainant]

### Decision to restrict your contact with Warrumbungle Shire Council

It has come to Council's attention that you [describe the nature of the unreasonable conduct and its impact, eg the complainant has been sending emails to several members of my staff on a daily basis].

It is understood that Council Officers have previously explained to you that Council consider this conduct to be unreasonable and unwarranted.

Council also wrote to you on [date] and asked you to stop this behaviour. In that letter you were advised that if your behaviour continued, your contact with Council would be restricted. Attached to that letter was a copy of our document 'Individual rights and mutual responsibilities of the parties to a complaint' which outlines your responsibilities as a complainant.

Because your behaviour has continued, Council now considers it necessary to impose certain restrictions on your future contact with Warrumbungle Shire Council. You are therefore given notice that from [date], and with the exception/s detailed below, Council will only accept communication from you [identify permissible form of contact, if any].

#### What this means

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

If it is necessary for you to contact Council you may do so by [identify permissible form of contact, and how Council will contact the complainant].

#### Your existing complaint [if applicable]

Council currently has [insert number, eg one] file open in your name. This relates to [state the subject of complaint and describe complaint]. This file is being handled by [name and position of relevant officer]. While you are able to contact [name of officer] [state nature of contact, eg by email] about this specific matter, all other contact with Council, including any future complaints, must be [state restriction, eg in writing/email only] [provide contact details or address].

#### Review of this decision

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

Council takes these steps with the greatest reluctance, but *[state reason for restriction, eg the equity and safety of other customers and my staff]* leaves 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

**NAME**  
**GENERAL MANAGER**

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## Appendix F: Template letter notifying a complainant of an upcoming review

[Officer name]  
[Doc ID]

[Date]

[Name of complainant]  
[Address of complainant]

Dear [name of complainant]

### Upcoming review of the decision to restrict your contact with Warrumbungle Shire Council

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

Council considers it important to give you an opportunity to participate in the review process, so is therefore inviting you to [apply the relevant option/s]:

- make submissions in writing through email or 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].
- schedule a telephone interview with [include name of staff member and provide instructions on how they should go about scheduling the appointment].

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

- you have complied with the current 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 Council's decision.

Council must receive your letter by [time and date] OR You should confirm your interview with [name of case officer] by [time and date]. If Council does not receive it/hear from you by this date, it will be assumed that you do not wish to participate in this review and Council will undertake the review based on the information available.

Once the review is completed, Council 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

**NAME**  
**GENERAL MANAGER**

**Appendix G: 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 on file in Magiq 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 Council services (list all that apply).

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I consider that the restriction should be (explain):  
maintained – *eg because the conduct has continued or is likely to continue, is disproportionate etc.*  
removed – *eg because the complainant has complied with the restrictions etc.*  
amended – *eg 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 General Manager.
- The file in Magiq has been updated to reflect my decision.

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

## Appendix H: Template letter advising the complainant of the outcome of a review

[Officer name]  
[Doc ID]

[Date]

[Name of complainant]  
[Address of complainant]

Dear [name of complainant]

### Review of your contact with Warrumbungle Shire Council

I am writing about a review that was undertaken by Council 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 submission/s], Council considered the concerns and suggestions raised in your [interview/letter], particularly your concerns about [include relevant information, eg the complainant said their circumstances had changed]. Council also reviewed the records of your conduct and contact with our office over the last [3 months/6 months/12 months]. Council records showed that [provide summary of relevant information, eg you have continued to send emails to Council officers/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 Council's office to [state nature of restriction] [explain the purpose of the restriction, if appropriate, and the impact of their conduct].

[Apply if relevant] Council records show that you have complied with the restrictions that were imposed on your contact with Council.

#### Decision

[Apply if relevant] Due to [explain reasoning for the decision, eg the number of emails that you have sent to Council in the last 12 months and ...] Council considers it necessary to maintain the restrictions on your contact for a further [3 months/6 months/12 months], effective immediately.

[Apply if relevant] Due to [explain reasoning for the decision] Council considers 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 Council and how Council will contact them]. The new restrictions will be effective immediately and will last for [3 months/6 months/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] Council considers it appropriate to remove the restrictions that have been placed on your access, effective immediately. You may contact Council using any of the normal servicing options.

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

Your sincerely

**NAME**  
**GENERAL MANAGER**

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