

<b>Title of Policy</b>	<b>SMRC Managing Unreasonable Complainant Conduct</b>		
<b>Responsible Department</b>	Governance	<b>Document Register ID</b>	250.2018.467.2
<b>Policy Owner</b>	Group Manager Governance	<b>Review Date</b>	21 June 2021
<b>Date of Council Meeting</b>	21 June 2018	<b>Resolution Number</b>	245/18
<b>Legislation, Australian Standards, Code of Practice</b>	<p>Local Government Act 1993 (NSW)</p> <p>Public Interest Disclosures Act 1994 (NSW)</p> <p>Government Information (Public Access) Act 2009 (NSW)</p> <p>Privacy and Personal Information Protection Act 1998 (NSW)</p> <p>AS/NZS 10002:2014 – Guidelines for complaint handling in organisations</p> <p>Office of Local Government Practice Note 9 Complaints Management in Councils, July 2009</p> <p>NSW Ombudsman – Effective complaint handling guidelines, 3rd Edition, February 2017</p> <p>NSW Ombudsman – Complaint management framework and model policy, 2015</p> <p>NSW Ombudsman – Investigating complaints – A manual for investigators, June 2004</p> <p>NSW Ombudsman – Good conduct and administrative practice – Guidelines for state and local government, 3<sup>rd</sup> Edition, April 2017</p> <p>NSW Ombudsman – Managing Unreasonable Complainant Conduct – a Model Policy and Procedure, May 2013</p> <p>NSW Ombudsman – Managing unreasonable complainant conduct manual, June 2017</p>		
<b>Aim</b>	This policy is to ensure that we handle complaints fairly, efficiently and effectively.		

## 1 Introduction

Snowy Monaro Regional Council is committed to being accessible and responsive to all complainants who approach our offices for assistance and/or with a complaint. At the same time the success of our offices depend 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, 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.

## 2 Objectives

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 Guidelines and Practice Manuals issued by the NSW Ombudsman 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

Most complainants who come to our offices 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 the following five categories of conduct:

### 3.1 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.

### **3.2 Unreasonable demands**

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

### **3.3 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.

### **3.4 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 our organisation, staff, services, time, and/or resources.

### **3.5 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.

Council has a zero tolerance policy towards any harm, abuse or threats directed towards its staff. Any conduct of this kind will be dealt with under this policy and in accordance with our duty of care and workplace health and safety responsibilities.

## **4 Roles and Responsibilities**

### **4.1 General Manager**

The General Manager, in consultation with relevant staff, has the responsibility and authority to change or restrict a complainant's access to our services in the circumstances identified in this policy. When doing so they will take into account the 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.

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 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 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.

## 4.2 Directors and Managers

All Directors and Managers are responsible for supporting staff to apply the strategies in this Policy and associated Procedures. 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 (EAP), if necessary.

### 4.3 All Staff

All staff are responsible for familiarising themselves with this Policy together with the associated supporting Procedures. Staff are also encouraged to explain the contents of this document to all complainants particularly those who engage in UCC or exhibit the early warning signs for UCC.

Staff are also encouraged and authorised to use the strategies and scripts developed by the NSW Ombudsman to manage UCC.

However, it must be emphasised that any strategies that effectively change or restrict a complainant's access to our services may only be implemented by the General Manager.

Staff are also responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) to the Group Manager Governance within 24 hours of the incident occurring.

## 5 Responding to and Managing UCC

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

Alternatively, the General Manager 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.

## 6 Related Documents

250.2018.446.2 SMRC Complaint Handling Policy  
250.2019.558.1 SMRC Complaint Handling Procedure  
250.2019.554.1 SMRC Managing Unreasonable Complainant Conduct Procedure  
250.2016.1.1 SMRC Code of Conduct Policy  
250.2016.67.1 SMRC Grievance Policy  
250.2017.338.1 SMRC Public Interest Disclosure Policy  
250.2016.195.1 SMRC Customer Service Charter