

## 11.5 Policy Review - Unreasonable Complainant Conduct Policy

REPORT BY THE MANAGER, CUSTOMER SERVICES & GOVERNANCE  
TO 16 NOVEMBER 2022 ORDINARY MEETING  
GOV400098, GOV400047

### RECOMMENDATION

#### That Council:

1. **receive the report by the Manager, Customer Services & Governance on the Policy Review - Unreasonable Complainant Conduct Policy;**
2. **place the Unreasonable Complainant Conduct Policy on exhibition for 28 days to seek feedback from the community; and**
3. **adopt the Unreasonable Complainant Conduct Policy if no submissions are received during the exhibition period.**

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### Executive summary

The Unreasonable Complainant Conduct Policy was last reviewed in August 2019. The policy review was conducted by the Manager of Customer Service and Governance and the Governance Coordinator in line with the NSW Ombudsman's guidelines for the handling of unreasonable complainants.

### Disclosure of Interest

Nil

### Detailed report

The Unreasonable Complainant Conduct Policy (UCC) works in conjunction with Council's Complaints Management Policy and assists staff to determine whether a complainant has conducted themselves 'unreasonably'.

The outcome of an UCC investigation may result in the complainant being classified as either one or more of the following;

- A: Unreasonable Persistence
- B: Unreasonable Demands
- C: Unreasonable Lack of Cooperation
- D: Unreasonable Arguments
- E: Unreasonable Behaviour

Currently the General Manager may place access restrictions on the complainant's ability to communicate with Council.

### Key Changes

The Manager of Customer Services and Governance will determine if a resident should be placed on the UCC Register and have access restrictions imposed on them based on the evidence available:

- The addition of a review date after six months for any resident who has access restrictions imposed on them.
- Introductions of an internal review by a Director or the General Manager which is available to any resident placed on the restriction under this policy.

## Community Plan implications

<b>Theme</b>	<b>Good Government</b>
Goal	Good communications and engagement
Strategy	Improve communications between Council and the community and create awareness of Council's roles and responsibilities

## Strategic implications

### Council Strategies

Not Applicable

### Council Policies

Mid-Western Regional Council Public Interest Disclosure Internal Reporting Policy

Mid-Western Regional Council Access to Information Policy

Mid-Western Regional Council Complaints Management Policy

Mid-Western Regional Council Privacy Management Plan April

Mid-Western Regional Council Records Management Policy

### Legislation

Ombudsmen Act 1974

Community Services (Complaints, Reviews, Monitoring) Act 1993

## Financial implications

Not Applicable

## Associated Risks

Not Applicable

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MANAGER, CUSTOMER SERVICES &  
GOVERNANCE

SIMON JONES  
DIRECTOR COMMUNITY

28 October 2022

*Attachments:* 1. Unreasonable Complainant Conduct Policy Draft.

### APPROVED FOR SUBMISSION:

BRAD CAM  
GENERAL MANAGER



## POLICY

### Unreasonable Complainant Conduct

*A prosperous  
and progressive  
community.*

ADOPTED	VERSION NO
COUNCIL MEETING MIN NO	REVIEW DATE
DATE:	FILE NUMBER <b>GOV400047</b>

## Statement of Support

Mid-Western Regional 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 business depends on:

- Our ability to complete tasks and perform our functions in the most effective and efficient ways possible.
- The health, safety and security of our staff.
- Our ability to allocate our resources fairly and equitably across the complaints we receive.

## Objective

The policy and the supporting procedures have been developed to assist Council to better manage unreasonable complainant conduct (UCC) in conjunction with Council's current Complaints Management policy.

The aim of the UCC Policy is to ensure that staff managing complaints:

- Feel confident and supported in taking action to manage a potential 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 implemented.
- Understand the different circumstances when it may be appropriate to manage UCC using one or more of the following mechanisms:
  - The strategies provided in the *Managing Unreasonable Complainant Conduct Practice Manual (2nd edition)* ('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.

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## Legislative requirements

The development of this policy has been informed by the following legislation:

- Ombudsmen Act 1974
- Community Services (Complaints, Reviews, Monitoring) Act 1993
- Public Interest Disclosures Act 1994

## Related policies, plans guidelines etc.

- Australian and New Zealand Standard Guidelines for complaint handling in organizations AS/ NZS 10002:2014
- NSW Ombudsman Effective Complaint Handling Guidelines, 3rd Edition, February 2017
- Mid-Western Regional Council Public Interest Disclosure Internal Reporting Policy November
- Mid-Western Regional Council Access to Information Policy
- Mid-Western Regional Council Complaints Management Policy
- Mid-Western Regional Council Privacy Management Plan
- Mid-Western Regional Council Records Management Policy

## 1.0 Defining Unreasonable Complainant Conduct

### 1.1 Definition

Most complainants who contact our Council act reasonably and responsibly in their interactions with us, even when they are experiencing high levels of distress, frustration and anger regarding 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 assist them.

In these cases complainants act in an aggressive and verbally abusive manner toward our staff and in rare cases threaten bodily harm, violence and/or make excessive and unnecessary phone calls and emails to our offices putting inappropriate demands on our time and resources.

When complainants behave in the manner described we consider their conduct 'unreasonable'.

Unreasonable Complainant Conduct (UCC) is any behaviour by a current or former complainant which, due to the nature or frequency raises substantial health, safety, resource or equity issues for our organisation, our staff or other service users and complainants.

## 1.2 Categories of Unreasonable Complainant Conduct

- A. **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.
- B. **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.
- C. **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, which results in a disproportionate and unreasonable use of our services, time and/or resources.
- D. **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.
- E. **Unreasonable Behaviour** Unreasonable behaviour is conduct that is unreasonable in all circumstances. Regardless of how stressed, angry or frustrated that complainant is because it unreasonably compromises the health, safety and security of our staff, other service users or the complainant themselves.

Mid-Western Regional Council has a zero tolerance policy towards any harm, abuse or threats (verbal or physical) directed towards our staff. Any conduct of this manner will be dealt with under this policy and in accordance with our duty of care and workplace health and safety responsibilities.

The Manager of Customer Services and Governance will determine when a person will have access restrictions imposed on them. A review date will be set for six months from the date the restrictions are imposed.

A person who has had access restrictions imposed on them has the right to request a review of this decision. An appeal should be made to the General Manager who will ask a Director to review the restrictions and provide a response.

## 1.3 General Managers Reporting Obligation

The General Manager must report to Council all persons who have access restrictions imposed on them. The report will describe the unreasonable conduct, what restrictions have been imposed, the review dates and keep Council informed of review outcomes.

## 1.4 Statement of Individual Rights and Mutual Responsibilities of Parties to a Complaint

In order for Mid-Western Regional Council to ensure that all complaints are dealt with fairly, efficiently, effectively and with consideration of Council's workplace health and safety/duty of care obligations, the following rights and responsibilities must be observed and respected by all of the parties to the complaint process.

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## INDIVIDUAL RIGHTS

Complainants have the right:

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

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.
- To expect honesty, cooperation and reasonable assistance from complainants.
- To expect honesty, cooperation and reasonable assistance from the organisation and people within jurisdiction who are the subject of a complaint.
- To be treated with courtesy and respect.
- To a safe and healthy work environment.
- To modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.

Subjects of a complaint have the right:

- To a fair and impartial assessment, and where appropriate, investigation of the allegations made against them.
- To be treated with courtesy and respect by staff of Mid-Western Regional Council.
- To be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated.
- To be informed about the substance of any proposed adverse comment or decision.

- To be given a reasonable opportunity to rebut the allegations during the course of any investigation and before any final decision is made.
- To be told the outcome of any investigation into allegations about their conduct, including the reasons for any decision or recommendation that may be detrimental to them.
- To be protected from harassment by disgruntled complainants acting unreasonably.

#### MUTUAL RESPONSIBILITIES

Complainants are responsible for:

- Treating staff of the Mid-Western Regional Council with courtesy and respect.
- Clearly identifying to the best of their ability the issues of complaint, or asking for help from our staff to assist them in doing so.
- Providing to the best of their ability all the relevant information available to them at the time of making the complaint.
- Being honest in all communications.
- Informing the Council of any other action they have taken in relation to their complaint.
- Cooperating with staff assigned to assess/investigate/resolve/determine or otherwise deal with their complaint.

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

Mid-Western Regional Council has a zero tolerance policy towards any harm, abuse or threats (verbal or physical) directed towards our staff.

Any conduct of a criminal nature will be reported to the police and in certain cases legal action may be considered if necessary.

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 conduct of the complainant.
- Giving people or organisation the subject of complaint reasonable opportunity to rebut the allegations during the course of any investigation and before any final decision is made.

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- Informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them and the substance of any proposed adverse comment or decision that they may need to address.
- Keeping complainants informed of the actions taken and the outcome of their complaints,
- Giving complainants reasons that are clear and appropriate to their circumstances and adequately explaining the basis of any decision that affects them.
- Treating complainants and any people the subject of a complaint with courtesy and respect at all times and in all circumstances.
- Taking all reasonable and practical steps to ensure that complainants are not subjected to any detrimental action in reprisal for making their complaint.
- Giving adequate warning of the consequences of unacceptable behaviour.

If the Mid-Western Regional Council or its staff fail to comply with these responsibilities, complainants may complain to the Mayor, a Councillor, the General Manager or the Public Officer.

External appeals/complaints can be lodged with the NSW Ombudsmen.

Subjects of a complaint are responsible for:

- Cooperating with the staff of Mid-Western Regional Council who are assigned to handle the complaint, particularly where they are exercising a lawful power in relation to a person or body within the applicable jurisdiction.
- Providing all relevant information in their possession to the Mid-Western Regional Council or its authorised staff when required to do so by a properly authorised direction or notice.
- Being honest in all communication with Mid-Western Regional Council and its staff.
- Treating the staff of Mid-Western Regional Council with courtesy and respect at all times and in all circumstances.
- Refraining from taking any detrimental action against the complainant in reprisal for them making the complaint.

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

Mid-Western Regional Council is responsible for:

- Having an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording and reviewing complaints.
- Decisions about how all complaints will be dealt with.
- Ensuring that all complaints are dealt with professionally, fairly and impartially.
- Ensuring that staff treat all parties to a complaint with courtesy and respect.
- Ensuring that the assessment and any enquiry into the investigation of a complaint is based on sound reasoning, logically probative information and evidence.



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- Finalising complaints on the basis of outcomes that the organisation, or its responsible staff, consider to be satisfactory in the circumstances.
- Implementing reasonable and appropriate policies/procedures/practices to ensure that complainants are not subjected to detrimental action in reprisal for making a complaint, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints.
- 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 Mid-Western Regional Council fails to comply with these responsibilities, complainants may further pursue their complaint with the Office of the NSW Ombudsman.