

## 5.1. Modifying or restricting access to staff, premises or services

### 5.1.1. Decisions to modify or restrict access

There will be cases when the strategies and approaches in this manual will not be effective or appropriate to manage certain incidents of unreasonable conduct. In these situations, it may be necessary to modify or restrict contact with the people involved to ensure equity and fairness in relation to other users of your organisation's services, improve efficiency, and protect staff health and safety – and the safety of third parties.

Decisions to modify or restrict a person's ability to access your premises, communicate with your staff or use your organisation's services as a result of unreasonable conduct are a management responsibility and should always be approved by your CEO or a senior delegate. These decisions should be the exception rather than the rule – and should only be made after careful consideration of the factors that may be influencing a person's behaviour. For example the person's personal circumstances, including any disability or cultural background, and any role your organisation or your staff may have played in exacerbating or perpetuating the unreasonable conduct. Any decision to modify or restrict access to staff, premises or services should include a time limit, before the end of which a review should be undertaken for a decision to be made as to whether it needs to continue.

Some recent court and tribunal cases in Victoria – including the case study below – have shown what can happen when these factors are not properly considered, or when the decision to modify or restrict access is not tailored to the relevant behaviour.

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### Case study – Not tailoring a response

A Victorian City Council resolved to expel a ratepayer from Council's Access and Equity Committee. It went further, passing a resolution designed to 'uphold public safety and in reliance of its obligations to provide a safe working environment'. It prohibited the man from attending any building that was owned, occupied or managed by the council 'until further notice'.

Under the *Summary Offences Act 1966 (Vic)*, breaching the notice could result in arrest and a penalty of \$2,500 or imprisonment for six months. The ban was maintained from April 2009 until October 2014. The man's request for the ban to be reviewed in 2012 was rejected.

The banned individual had bipolar disorder, post-traumatic stress, compulsive or impulse control disorders, a compulsion to behave in a rude, offensive and insulting manner, and hearing loss. He had made thousands of verbal and written complaints to the council on a range of issues since 1998. In these communications and in his interactions with council staff and councillors, he had used 'threatening, intimidating and aggressive' language and behaviour that they found inappropriate and offensive. The issue for the council was the content of his communications. When the man took the matter to the Victorian Civil and Administrative Tribunal, the tribunal noted that 'no evidence was given to support a finding that he presented any physical harm to anyone'. This included staff, councillors or members of the public using council premises.

The tribunal accepted that the nature and tone of his communications with council were at least one of the reasons for the ban. However, the council was unable to convince the tribunal to apply the exception provided by the *Equal Opportunity Act 2010 (Vic)* for otherwise discriminatory conduct that is reasonably necessary to protect the health and safety of any person.

The tribunal believed the council had not sufficiently considered whether there were non-discriminatory alternatives to the ban from all council places that would give employees and/or members of the public protection from risk. The tribunal noted that there was no evidence that the health or safety of members of the public was directly affected by the man's conduct. He was also banned from places where he had not caused any problems, as well as from places where he had.

The tribunal concluded that the ban was 'blunt, broad and insufficiently tailored' and could not 'remain in place forever'. The tribunal noted that council could have lawfully provided an appropriate measure of protection to its employees and/or the public through 'proportionate and tailored strategies' informed by research and training, which were subject to regular review. On this basis the tribunal held that, as there were less restrictive means reasonably available to achieve council's purposes, the conduct of the council constituted direct discrimination in the area of provision of services on the grounds of disability – in breach of the *Equal Opportunity Act* and the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

The tribunal ordered the council to:

- revoke its declaration
- provide training to councillors and senior staff on the charter
- pay the man \$14,000 compensation.

### ***What this case demonstrates***

If a person's unreasonable conduct might result from a disability, be careful when developing and implementing strategies to address that conduct. Carefully assess the risk the person's conduct poses to the work of your organisation, and to the health and safety of your staff and members of the public using your premises. Any strategies used must not be more restrictive than they need to be to address the detrimental impact on your organisation, your staff and/or members of the public using your premises or services.

Any restriction should have a set time period and be regularly reviewed.

Your organisation's policy should refer to the relevant legislation in your jurisdiction, such as equal opportunity/anti-discrimination/charter of human rights legislation.

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### 5.1.2. Making alternative service arrangements

Alternative service arrangements involve modifying or restricting usual service delivery methods. In the unreasonable conduct context, alternative service arrangements can be used to modify or restrict the ways in which you, your staff and your organisation interact with or deliver services to a person to minimise the impacts and risks posed by that conduct. For example, they can be used to restrict:

- **Who** – a person can make contact with in your organisation. For example, a person may be limited to dealing with one staff member within your organisation if they have engaged in persistent and otherwise unmanageable forum shopping, reframed their complaint to get it taken up again, raised minor irrelevant issues, and made regular, frequent and unwarranted contact etc.
- **What** – subject matter your organisation will respond to. This option will usually apply if a person has repeatedly raised the same issue with your organisation, reframed their complaint to get it taken up again, has been persistent in wanting your organisation to pursue trivial issues, has made unreasonable and illogical arguments, has demanded inappropriate or protected information – that is, information that cannot be disclosed etc.
- **When** – a person can make contact with your organisation. This could include restricting the person to a particular time, day or length of time, or curbing the frequency of the person's contact if they have engaged in persistent and/or lengthy contact with staff when this is not warranted, or have been aggressive, threatening or confrontational towards staff.
- **Where** – a person can interact with your staff face-to-face. For example, if a person has engaged in persistent and otherwise unmanageable aggressive, confrontational, threatening or violent conduct, and the person needs to meet with a member of your staff face-to-face, you may need to take steps to ensure that the interview is held in a safe facility or area – on your own premises or at another location like a local police station, library, etc.
- **How** – a person can contact your organisation. For example, restricting contact to writing only, prohibiting access to your premises, only allowing contact through a representative, restricting access to direct staff emails and only allowing access through the organisation's general email portal etc – if the person has engaged in persistent and otherwise unmanageable aggressive, confrontational, threatening or violent conduct, or sends a constant stream of communications, telephones constantly or visits repeatedly.

For more information on possible strategies for modifying or restricting a person's contact/ access to services and procedures see: *Unreasonable Conduct by a Complainant: A Model Policy and Procedure for Organisations* – available at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).

### 5.1.3. Withdrawing access to services

An organisation should only consider withdrawing a person's access to services if the person:

- is consistently abusive, threatens, harasses, stalks or intimidates a member of your organisation and/or their family members
- is physically violent and/or causes property damage while on your premises
- makes threats to staff or other members of the public using the services or at the agency's premises
- produces a weapon or makes bomb threats
- engages in conduct that is otherwise unlawful.

All unlawful behaviour, including physical violence and assault or producing a weapon, should immediately be reported to police. However, if the services provided by your organisation are important or essential to the physical or mental wellbeing of the person concerned, it may be preferable to modify the way you deliver services to the person using the types of alternative service arrangements suggested earlier – rather than withdrawing or withholding it completely. This could include having security guards or police present during face-to-face interactions with the person, holding interviews at your local police station or other secure facility (either on your premises or elsewhere), or using specially trained staff for interviewing such people. You might also consider having relevant materials delivered to the person's home, rather than having them collect them from your organisation.

### 5.1.4. Public interest considerations governing access restrictions

It is important that decisions about limiting access to an organisation are made within the wider framework of public access rights and responsibilities.

These decisions must be based on a clear understanding that:

- In a democracy, people have a right to complain. Criticism and complaints are a legitimate and necessary part of the relationship between government agencies and their customers or communities, and may be dynamic forces for improvement within agencies.
- Nobody, no matter how much time and effort is taken up in responding to their complaints or concerns, should be unconditionally deprived of the right to raise those concerns and have them addressed.
- In the absence of very good reasons to the contrary, members of the public have a right to access government agencies to seek advice, help or the services the agency provides.

Organisations also have an obligation to use resources efficiently and effectively. So, at some point, it may be necessary and reasonable for them to decide to limit the nature or scope of their responses to complainants whose conduct is unreasonable. However, these situations should be the exception rather than the rule.