

Managing Unreasonable Conduct by Complainants policy

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1. Preface

The NSW Ombudsman is committed to being accessible and responsive to all complainants who approach our office. At the same time, the success of our office depends on:

- our ability to work as effectively and efficiently as possible
- the health, safety, and security of our officers
- our ability to allocate our resources fairly across all the complaints we receive.

If a complainant behaves unreasonably, their conduct can significantly affect the successful conduct of our work.

This policy explains how we manage unreasonable conduct by complainants.

1.1 Policy Statement

This policy aims to help officers:

- understand the circumstances where it may be appropriate to manage unreasonable conduct
- feel confident and supported in taking action to manage unreasonable conduct
- act fairly, consistently, honestly, and appropriately when responding to unreasonable conduct
- understand their roles and responsibilities in relation to the management of unreasonable conduct

It is also designed to assist both officers and complainants understand:

- the criteria we will consider before we decide to change or restrict a complainant's access to our services
- the processes that will be followed to record and report incidents of unreasonable conduct by complainants, and the procedures for consulting and notifying complainants about any proposed action or decision to change or restrict their access to our services
- the procedures for reviewing decisions made under this policy, including specific timeframes for review.

1.2 Defining unreasonable conduct by a complainant

1.2.1 Unreasonable conduct by a complainant

Most complainants 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 complainants display inappropriate and unacceptable behaviour. This may include being abusive or aggressive towards officers, threatening harm and violence, or excessively contacting or attempting to contact officers. They may make inappropriate demands on officers' time and resources or refuse to accept decisions or recommendations made in relation to their complaints.

When complainants behave in these ways (and where there are no factors that could reasonably explain their behaviour) we consider their conduct to be 'unreasonable'.

In short, unreasonable conduct by a complainant is any behaviour by a current or former complainant which, because of its nature or frequency raises substantial health, safety, or resource or equity issues for our office, our officers, other service users and complainants or the complainant themselves.

Unreasonable conduct can be divided into 5 categories:

- unreasonable persistence
- unreasonable demands
- unreasonable lack of cooperation
- unreasonable arguments
- unreasonable behaviours.

1.2.1.1 Unreasonable persistence

Unreasonable persistence is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on our office, officers, services, time 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 (even when it is evident the complainant understands what they have been told)
- persistently demanding a review simply because it is available without arguing or presenting a case for one
- refusing to accept that we cannot or will not take further action on their complaint

1.2.1.2 Unreasonable demands

Unreasonable demands are any demands expressly made by a complainant that have a disproportionate and unreasonable impact on our office, officers, services, time, or resources. Examples include complainants:

- issuing instructions and making demands about how to handle their complaint, the priority it should be given or the outcome to be achieved
- insisting on talking to a manager or member of the Executive personally when they have been given reasons why this is not appropriate or warranted
- engaging in emotional blackmail or manipulation resulting in intimidation, harassment, shaming or seduction, or portraying themselves as being victimised when this is not the case

1.2.1.3 Unreasonable lack of cooperation

Unreasonable lack of cooperation is when a complainant is unwilling or unable to cooperate with officers or the complaints process – resulting in disproportionate and unreasonable use of our services, time, or resources. Some examples of unreasonable lack of cooperation include:

- sending a high volume or constant stream of complex or disorganised information without clearly defining the issue at hand or explaining how the material provided relates to their complaint (where the complainant is clearly capable of doing this)
- providing little or no detail about their complaint or providing information in ‘drips and drabs’

- declining to follow or accept our suggestions or advice without a clear or justifiable reason for doing so

1.2.1.4 Unreasonable arguments

Unreasonable arguments include any arguments that are not based on any reason or logic, that are incomprehensible, false, inflammatory or trivial, and that disproportionately and unreasonably impact upon our office, officers, services, time, or resources. Arguments are unreasonable when they:

- fail to follow a logical sequence that the complainant can explain to an officer
- are not supported by any information
- are based on conspiracy theories, or
- lead a complainant to reject all other valid and contrary arguments

1.2.1.5 Unreasonable behaviours

Unreasonable behaviour is conduct that is unreasonable in all circumstances (regardless of how stressed, angry, or frustrated a complainant is) because it unreasonably compromises the health, safety and security of officers, other service users or the complainant themselves. Some examples of unreasonable behaviours include:

- acts of aggression, verbal abuse, derogatory, racist, or grossly defamatory remarks
- harassment, intimidation, or physical violence
- rude, confronting, or threatening correspondence
- threats of harm to third parties, threats with a weapon or threats to damage property, including bomb threats

We have a zero-tolerance policy towards any harm, abuse or threats directed toward officers. Any conduct of this kind will be dealt with under this policy and in accordance with our duty of care and work health and safety responsibilities. Where threats of harm are made (including self-harm), it may be necessary for us to take steps to ensure the safety of anyone against whom harm is threatened.

1.3 Responding to and managing unreasonable complainant conduct

1.3.1 Changing or restricting a complainant's access to our services

Incidents of unreasonable complainant conduct will be managed by limiting or adapting the ways we interact with or deliver services to the complainant by restricting:

- **who they have contact with** – limiting a complainant to a sole contact point in our office
- **what they can raise with us** – restricting the subject matter of communications that we will consider and respond to
- **when they can have contact** – limiting a complainant's contact with our office to a particular time, day, or length of time, or curbing the frequency of their contact with us
- **how they can make contact** – limiting or modifying the forms of contact that the complainant can use with us. This can include modifying or limiting telephone calls, and written

communications, contact through a representative only, taking no further action or terminating a complainant's contact with our office altogether.

We exercise discretion when applying one or more of the above restrictions to adapt them to the complainant's personal circumstances such as level of competency, literacy skills and cultural background.

A decision to apply any change or restriction to the way in which a complainant interacts with us may be made by the Ombudsman or by any Deputy or Assistant Ombudsman. In most cases, these decisions will be made by the Deputy Ombudsman, Complaints and Resolution.

1.3.2 Who: limiting the complainant to a sole contact point

Where a complainant attempts to 'shop around' and approach different officers with the same complaint, repeatedly changes their issues of complaint, constantly reframes their complaint, or raises an excessive number of complaints, we may restrict their access to a single officer (a sole contact point) who will manage their complaint(s) and interaction with our office.

Complainants who are restricted to a sole contact point will be given the contact details of one additional officer who they can contact if their primary contact is unavailable - for example if they go on leave or are otherwise unavailable for an extended period.

1.3.3 What: restricting the subject matter of communications that we will consider

Where complainants repeatedly send letters, emails, or online forms that raise trivial or insignificant issues, contain inappropriate or abusive content, or relate to an issue that has already been comprehensively considered or reviewed by our office, we may restrict the issues the complainant can raise with us. For example, we may:

- Refuse to respond to correspondence that raises an issue that has already been dealt with, raises a trivial issue, or is not supported by any information. We will advise that future correspondence of this kind will be read and filed without acknowledgment unless we decide that we need to pursue it further – in which case, we may do so on our own initiative ('own motion').
- Restrict the complainant to one complaint or issue per month. Any attempts to circumvent this restriction (for example by raising multiple complaints or issues in the one letter) may result in modifications or further restrictions being placed on their access.
- Return the correspondence to the complainant and require them to remove any inappropriate content before we agree to consider its contents.

1.3.4 When and how: limiting when and how a complainant can contact us

If a complainant's contact with our office places an unreasonable demand on our time or resources, or affects the health, safety, and security of our officers because it involves behaviour that is persistently rude, threatening, abusive or aggressive, we may limit when or how the complainant can interact with us. This may include:

- limiting their telephone calls to a particular time of the day or days of the week, or
- limiting the length or duration of telephone calls or written correspondence, for example by limiting the length of telephone calls or number of pages of a written complaint.

There are other circumstances, unrelated to whether the complainant's conduct may be unreasonable, when our office may read and file written correspondence from a complainant without providing a response. For example, if a complaint has been dealt with and closed, we will generally not respond to further correspondence about the complaint unless it is a request for a review or contains materially new information or issues that require a response.

1.3.4.1 'Writing only' restrictions

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

- Australia Post only
- email only to a specific officer email or our general office email account (which may involve blocking a complainant's emails from being sent to individual officers)
- some other relevant form of written contact, where applicable

If a complainant's contact is restricted to writing, the relevant manager will identify the specific means that the complainant can use to contact our office. Where appropriate, a complainant may also be advised that it is not appropriate for the complainant to enter our premises to hand deliver their written communication.

Communications received by our office in a manner that contravenes a 'writing only' restriction will either be returned to the complainant or read and filed without acknowledgment.

1.3.4.2 Contact through a representative only

We may sometimes require a complainant to contact us through a support person or a representative, such as a support person. That person may be someone nominated by the complainant, but they must be approved by the relevant manager.

When assessing a representative's suitability, the manager should consider factors such as their level of competency and literacy skills, demeanour and behaviour, and relationship with the complainant. If the manager determines that the representative may exacerbate the situation with the complainant, the complainant will be asked to nominate another person and we may assist them in this regard.

1.3.5 Terminating a complainant's access to our services

In rare cases, and only as a last resort when all other strategies have been considered, the Ombudsman may decide that it is necessary for us to completely restrict a complainant's contact or access to our services.

A decision to have no further contact with a complainant will only be made if it appears that the complainant is unlikely to modify their conduct, or their conduct poses a significant risk for our officers or other parties because it involves one or more of the following:

- acts of aggression, verbal or physical abuse, threats of harm, harassment, intimidation, stalking, or assault
- threats with a weapon
- conduct that is otherwise unlawful.

In these cases, the complainant will be sent a letter notifying them that their access has been restricted.

A complainant's access to our services may also be restricted (directly or indirectly) using legal mechanisms such as legal orders to protect officers from personal violence, intimidation or stalking by a complainant.

A decision to terminate a complainant's access to our services may only be made by or with the approval of the Ombudsman.

1.4 Procedure to be followed when changing or restricting a complaint's access to our services

1.4.1 Consulting with relevant officer

When the manager receives an incident form that reports unreasonable complainant conduct from an officer, the manager will discuss with the officer:

- the circumstances that gave rise to the incident, including the complainant's situation, personal and cultural background, and perspective
- the impact of the complainant's conduct on the officer, the office, our time and resources
- the complainant's response to the officer's warnings or requests to stop the unreasonable behaviour.

1.4.2 Criteria to be considered by manager

Following a consultation with the officer the manager will search the case management system for information about the complainant's prior conduct and history with our office. 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 the complainant's personal circumstances have contributed to the behaviour – for example, the complainant is a person who is or may be under significant stress because of one or more of the following:
 - homelessness or the risk of homelessness
 - physical or cognitive disability
 - illiteracy or other language or communication barrier
 - mental or other illness
 - personal crises
 - substance or alcohol abuse

Once the manager has considered these criteria, they will recommend to the Deputy Ombudsman, Complaints and Resolution (or other relevant statutory officer) an appropriate course of action. The manager may suggest formal or informal options for dealing with the complainant's conduct which may include one or more of the strategies outlined in this policy.

1.4.3 Providing a warning letter

Unless a complainant's conduct poses a substantial risk to the health and safety of officers or other third parties that requires an immediate response, the manager will provide the complainant with a written warning about their conduct. If the complainant is unable to read the letter, it will be followed/accompanied by a telephone call, using an interpreter if necessary.

The warning letter will:

- specify the date, time, and location of any incidents
- explain why the complainant's conduct is problematic
- set out the types of access changes and/or restrictions that may be imposed if the behaviour continues

1.4.4 Providing a notification letter

Where an immediate response is required to the complainant's conduct, or the complainant's conduct continues after they have been given a written warning, the manager has the discretion to recommend an immediate restriction of the complainant's access to our services (without prior or further written warning). If the complainant is unable to read the letter (due to literacy issues, non-English speaking etc) the letter will be followed or accompanied by a telephone call, using an interpreter if necessary.

The notification letter will:

- specify the date, time, and location of the incident(s)
- explain why the complainant's conduct is problematic
- identify the change and/or restriction that will be imposed and what it means for the complainant
- specify the duration of the change or restriction imposed, which will not exceed 12 months
- be signed by the relevant statutory officer

1.4.5 Notifying relevant officer(s) about access changes/restrictions

The manager will notify the relevant officer(s) about any decisions to change or restrict a complainant's access to our services. The manager will also update the case management system with a record outlining the nature of the restriction imposed and its duration.

1.4.6 Continued monitoring/oversight responsibilities

Once a complaint has been issued with warning or notification letter the manager will review the complainant's record/restriction every 3 months, on request by an officer, or following any further incidents that involve the complainant to ensure that they are complying with the restrictions/the arrangement is working.

If the manager determines that the restrictions have been ineffective in managing the complainant's conduct or are otherwise inappropriate, they may decide to either modify the restrictions, impose further restrictions, or terminate the complainant's access to our services altogether.

1.5 Periodic reviews of all cases where this policy is applied

1.5.1 Period for review

All cases where this policy is used will be reviewed every 3 months and not more than 12 months after the service change or restriction was initially imposed.

1.5.2 Notifying the complainant of an upcoming review

The manager will ask a complainant who has had their access to our office restricted if they would like to participate in the review process unless the manager determines that this invitation will provoke a negative response from the complainant. The invitation will be given, and the review will be conducted in accordance with the complainant's access restrictions.

1.5.3 Criteria to be considered during a review

When conducting a review, the manager will consider:

- whether the complainant has had any contact with our office during the restriction period
- the complainant's conduct during the restriction period
- any information or arguments put forward by the complainant for review

The manager may also consult any officers who have had contact with the complainant during the restriction period.

1.5.4 Notifying a complainant of the outcome of a review

The manager will tell the complainant the outcome of their review using an appropriate method of communication, as well as a written letter explaining the outcome. The letter will:

- briefly explain the review process
- identify the factors that have been considered during the review
- explain the outcome of the review and the reasons for it

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

- indicate the nature of the new or continued restriction
- state the duration of the new restriction period
- Provide the name and contact details of the manager who the complainant can contact to discuss the letter
- be signed by the relevant statutory officer

2. Roles and responsibilities

2.1 All Ombudsman officers having dealings with complainants

All officers who have dealings with complainants are responsible for familiarising themselves with this policy as well as the *Individual Rights and Mutual Responsibilities of the Parties to a Complaint* document. Officers are also encouraged to explain the contents of this document to all complainants, particularly those who engage in unreasonable conduct or exhibit the early warning signs of unreasonable conduct.

Officers are also responsible for recording and reporting all incidents they experience or witness (as appropriate) to their manager within 24 hours of the incident occurring. A file note of the incident should be copied into the case management system.

These officers are also responsible for recording and reporting incidents of non-compliance by complainants who have had restrictions placed on them. Non-compliance should be recorded in a file note against the complainant's profile in the case management system. A copy will be forwarded to the relevant manager who will decide whether any action needs to be taken to modify or further restrict the complainant's access to our services.

2.2 Deputy Ombudsman, Complaints and Resolution

Any strategies that change, modify or restrict a complainant's access to our services must be considered and approved by the Deputy Ombudsman, Complaints and Resolution or other relevant statutory officer.

2.3 Ombudsman

Any decision to terminate a complainant's access to our services must be considered and approved by the Ombudsman.

2.4 Executive members

Members of the Executive are responsible for supporting officers to apply this policy, and ensuring that officers have appropriate training in communication and cross-cultural awareness.

They must also ensure that relevant officers are provided with proper support and assistance including medical or police assistance, and if necessary, support through programs like the Employee Assistance Program.

2.5 Managers

After a difficult or stressful interaction with a complainant, managers should provide affected officers with the opportunity to debrief their concerns either formally or informally.


Managers, in consultation with relevant officers, have the responsibility and authority to recommend to the Deputy Ombudsman, Complaints and Resolution or other relevant statutory officer that a complainant's access to our services will be changed or restricted. When doing so they will aim to recommend any service changes or restrictions in the least restrictive ways possible. Their aim when making recommendations will not be to punish the complainant, but rather to manage the impacts of their conduct.

When applying this policy, the managers will also aim to keep at least one open line of communication with a complainant. In extreme situations all forms of contact may need to be restricted for some time to ensure the health, safety, and security of our officers or third parties.

Managers are 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 manage and keep a file record of all cases where this policy is applied.

Managers are responsible for keeping a record of the outcome of any reviews of restrictions, updating the case management system and notifying all relevant officers of the outcome the reviews including if the restriction has been withdrawn.

3. Ombudsman approval

A handwritten signature in black ink, appearing to read 'Paul Miller', with a stylized, cursive script.

Paul Miller
NSW Ombudsman