

UNREASONABLE COMPLAINANT CONDUCT POLICY



1. PURPOSE

This policy guides Council's management of Unreasonable Complainant Conduct (UCC) to minimise the risks inherent in such conduct in a manner which is both reasonable and proportionate.

2. CORPORATE COMMITMENT

- 2.1 We recognise that all members of the community have a right to ask questions about Council and the services that we provide, express opinions about Council and Council services and to lodge complaints about Council and Council services.
- 2.2 However, the right to ask questions, express opinions and lodge complaints is not unqualified and Council may, and in some cases is legally obliged to, act when faced with unreasonable complainant conduct (UCC).
- 2.3 All complaints received by Council will be treated seriously and complainants will be treated courteously.
- 2.4 Council's responses to UCC will be reasonable and proportionate, and will, as far as is practicable, allow the individual or group involved in the UCC to continue to communicate with Council, albeit in a controlled manner.
- 2.5 Our responsibility to eliminate or reduce risks to mental and physical health and safety in accordance with our Work, Health and Safety Act obligations are recognised as a fundamental consideration when dealing with UCC.
- 2.6 Our responsibilities to ensure that resources are allocated equitably is also a fundamental consideration when dealing with UCC.

3. SCOPE

This Corporate Policy is applicable to all Mount Barker District Council employees. This policy covers **unreasonable complainant conduct** across the full range of Council services and via all communication channels, including but not limited to face to face, telephone, ail, email, letters to the media and social media.

4. DEFINITIONS

Alternative Dispute Resolution means mediation, conciliation or neutral evaluation as set out in section 271 of the Local Government Act 1999.

Applicant means the person lodging the request for review.

Business Day means a day when the council is normally open for business, i.e. Monday to Friday, excluding public holidays.

CEO means the Chief Executive Officer of the Mount Barker District Council (including their delegate)

Complainant means the person lodging the request for review

Council means the Mount Barker District Council

Council Members means those persons holding the office positions of Mayor and Councillors as certified by the Electoral Commission

Decision means a position adopted by Council or its employees. It will generally be reached after consideration of relevant information.

Decision-maker means the individual or entity responsible for the decision under review.

Employee means a person employed directly by the council in a full time, part time or casual capacity (whether that position is permanent or contractual) and persons providing services to, or on behalf of, the council even though they may be employed by another party. Includes volunteers, work experience persons.

External Reviewer means a person who has been appointed by the Council, CEO or their delegate to undertake a formal review of a complaint or decision

Frivolous means a complaint which:

- cannot be successfully argued because it is based on inaccurate facts, an error in law or outdated practices, or
- has no reasonable prospect of success.

Reviewer means the individual or entity responsible for undertaking the review.

Trivial means a complaint of little or no importance, where the Reviewer considers it unreasonable to dedicate resources to an investigation of the matter.

Vexatious applicant means a Complainant who has consistently, over a period of time, complained about minor matters or the same matter, which have previously been dealt with and no new information has been provided by the applicant and/or is considered by the Reviewer to be mischievous, without sufficient grounds or serving only to cause annoyance or disrepute and/or an applicant that does not present an issue or concern in 'good faith'.

Volunteers and Work Experience Persons are individuals assisting Council in clearly defined, approved activities and who operate under Council supervision and direction.

5. ROLES & RESPONSIBILITIES

Our **Council** is committed to creating an environment where our customers have appropriate avenues in which to bring their grievances for review and determination and where employees, Council Members, volunteers and contractors feel safe to conduct their roles effectively without fear, harassment or intimidation.

Our **Chief Executive Officer and General Managers** will ensure that appropriate systems are in place to aid in the safe working environment for employees and customers and that appropriate policies and procedures are in place to deal with unreasonable complainant conduct.

Any decision to suspend action on a complaint or apply restrictions on contact will be made by the Chief Executive Officer or his delegate (being a General Manager) and communicated in writing to the complainant.

Our **Risk and Governance Officer** will ensure that the systems that are in place to appropriately deal with unreasonable complainant conduct are managed accordingly and provide the necessary information to the CEO for determination.

Our **Employees** will ensure that they report all unreasonable complainant conduct to the CEO or General Manager and make the necessary written notes about any action which may be considered to be UCC and submit these to the records management system.

5.1 Privacy and Confidentiality

- 5.1.1 Complainants have a right to expect that their complaint will be investigated in private, to the appropriate extent possible. The identity of UCC will be made known only to those who need to know in the process of investigating and resolving the complaint. The complaint will not be disclosed or made public by the Council, except where required by law.
- 5.1.2 All complaints lodged with Council are subject to the *Freedom of Information Act 1991* and confidentiality cannot be guaranteed under the provisions of that legislation. You will be consulted with if a Freedom of Information application involves documents that are capturing matters of your personal affairs (as defined by the FOI Act).
- 5.1.3 Complaints that have arisen from or are managed via the *Public Interest Disclosure Act*, will be managed in accordance with the privacy and confidentiality provisions of that Act. For further information please see [\[link to PID Procedure\]](#)[\[link to OPI website\]](#).

6. CORPORATE POLICY STATEMENT

6.1 Types of unreasonable complainant conduct

- 6.1.1 Most complainants who have dealings with Council employees or Council Members act reasonably and responsibly in their interactions, even when they may be experiencing high levels of distress, frustration and potentially anger about their complaint.
- 6.1.2 Occasionally, a complainant may not accept the Council employee or Council Member determination or response to their general complaint.

- 6.1.3 In a very small number of cases some complainants behave in ways that are inappropriate and unacceptable despite Council's best efforts to help them. They may be aggressive and verbally abusive towards Council employees and/or Council Members. They may threaten harm and violence, detrimentally affect the office with unnecessary and excessive phone calls and emails, make inappropriate demands on our time and our resources and refuse to accept the decisions and recommendations of Council employees, Council Members and Council in relation to their general complaint.
- 6.1.4 In these instances the conduct of a complainant may be deemed to be unreasonable.
- 6.1.5 UCC is generally recognised as falling into the following categories:
- a. unreasonable persistence,
 - b. unreasonable demands or expectations,
 - c. unreasonable lack of cooperation,
 - d. withholding of necessary or relevant information,
 - e. unreasonable arguments,
 - f. unreasonable behaviour,
 - g. vexatious, frivolous or trivial complaints.
- 6.1.6 Unreasonable complainant conduct is defined as:
- a. Persisting unreasonably with a general complaint by showing an inability to accept the final decision even though it has been comprehensively considered by the Council, and even where all avenues of internal review have been exhausted
 - b. Using unreasonable demands by insisting on outcomes that are unattainable, (e.g. demanding outcomes that are beyond the Council's power to deliver, demanding unreasonable outcomes, wanting to alter past events, or engaging in unreasonable persecution of individuals)
 - c. By demanding an apology and/or compensation when no reasonable basis for expecting such an outcome exists
 - d. Being uncooperative or deliberately obstructive by presenting a large quantity of information which is not organised, sorted, classified or summarised, where the complainant is clearly capable of doing this
 - e. By displaying unhelpful behaviours (e.g. withholding information, dishonesty, misquoting others, inundating Council with documents)
 - f. Using unreasonable arguments by holding irrational beliefs, or by continuing with a general complaint which is unsupported by any evidence. By insisting that a particular solution is the only correct one, without consideration for valid contrary or alternative arguments
 - g. Using unreasonable behaviours by displaying confrontational behaviour, including rudeness, aggression or threats
 - h. Where the general complaint is about something that is beyond the Council's jurisdiction or outside of the Council's control.

- i. Where a complaint has no reasonable prospect of success due to its classification as vexatious, frivolous or trivial and the complainant's lack of acceptance of Council's determination.
- j. What can be termed 'unreasonable' will vary depending on several factors and Council aims to manage these situations in a fair and equitable manner.

6.2 Strategies for dealing with unreasonable complainant conduct (UCC)

- 6.2.1 The appropriate strategy for dealing with UCC will depend on each set of specific circumstances. Managing UCC generally involves placing a reasonable and proportionate limitation on one or more of the following:
 - a. subject matter of communications, such as where the reasonable person would believe that a specific issue has been adequately addressed,
 - b. timing of communications, including time of day, and frequency or duration of contact,
 - c. access, including prohibiting entry to Council premises or restricting direct access to specific employee's
 - d. method of communication, such as all contact to be via a single email address or specified person.
- 6.2.2 In determining the most appropriate strategy of dealing with UCC under a specific set of circumstances, the Council may also consult guidelines on dealing with such conduct which have been published by government integrity agencies such as the NSW Ombudsman's Guidelines for Managing Unreasonable Complainant Conduct.

6.3 Assessment and notification

- 6.3.1 In determining the appropriate process for notifying the individual or group and managing the UCC, the CEO (or his nominee) will consider all the relevant factors, including:
 - a. the subject matter of the initial complaint
 - b. the communications to date between the parties
 - c. the specific nature of the unreasonable complainant conduct
 - d. the history of Council's dealings with the individual or group involved in the unreasonable conduct
 - e. the immediacy of any risks arising from the unreasonable conduct
 - f. the negative impact of the unreasonable conduct on the equitable allocation and use of Council resources
 - g. the negative impact of the unreasonable conduct on the employees, Council Members, volunteers or contractors of the Council.
 - h. Whether the process and the approach are reasonable and proportionate in the circumstances.
- 6.3.2 The CEO will notify the person who is displaying unreasonable complainant conduct in writing, identifying the behaviour, and outlining the expectations of any continued communication with the Council.

- 6.3.3 If the individual or group involved in the UCC does not modify their behaviour following the first written notification, or if the UCC poses an imminent, ongoing or increasing threat to the health and well-being of another customer, councillor, volunteer, employee – the CEO shall send a letter advising of the limitations which the CEO has determined to be appropriate.

6.4 Is the complaint frivolous, vexatious or trivial?

- 6.4.1 Following a preliminary assessment of a complaint and relevant information, we may determine that a complaint is frivolous, vexatious or trivial.
- 6.4.2 A determination that a complaint is frivolous, vexatious or trivial will consider:
- a. Any previous complaints of a similar nature submitted by the complainant
 - b. The response and outcome to the previous complaints
 - c. Whether this complaint differs to previous complaints on the same matter and to what degree or new evidence has been provided
 - d. The resources required to address the complaint (to ensure that it is not an unreasonable diversion of resources for little to no public benefit)
 - e. The principles of equity and procedural fairness.
- 6.4.3 Where the council determines that a complaint to be frivolous, vexatious or trivial we will respond to the complainant in writing after taking into account the individual circumstances of each complaint.

6.5 Managing the resources of Council efficiently

- 6.5.1 Where a complainant's behaviour consumes an unwarranted amount of Council resources or impedes the investigation of their complaint, a decision may be made to apply restrictions on contact with the person. Before making any decision to restrict contact, the complainant will be advised that, if the specified behaviour(s) or actions continue, restrictions may be applied.
- 6.5.2 Where a complainant is making the same or a substantially similar complaint to numerous council employees or Council Members in person or in writing, it may be appropriate for the CEO to nominate a particular officer to deal with the complaints, collectively as one.
- 6.5.3 In some circumstances, it may be appropriate for a Council employee or Council Member to inform the complainant that they will no longer deal with their complaints over the telephone and may choose to terminate the call. This will only be done in exceptional circumstances. Our employee or Council Member will make a written note of this and will provide it to the CEO for information and capture it within the Council's records management system.
- 6.5.4 Where a complainant repeatedly telephones a Council employee or Council member, or employs threatening, insulting or abusive language, they may be asked to limit their communications to written correspondence only and to a nominated senior officer. This will be communicated to the complainant in

writing. Where limitations are imposed, the Council will inform the complainant in writing, specifying the limits and the reasons for their imposition.

6.5.5 Council may consider placing limits on further communications with the complainant where:

- a. A thorough examination of the initial complaint has occurred and has been appropriately communicated
- b. The complainant remains dissatisfied with the outcome of the complaint and demands further review.

6.5.6 This action will only be taken as a last resort with the decision taken by the Chief Executive Officer after all other avenues have been exhausted and where the complainant continues to make unacceptable demands on the Council's complaint handling resources.

6.5.7 Limits may include:

- a. Declining to respond to any further communications unless they are in writing
- b. Informing the complainant that any further complaints will be filed by the Council and no action will be taken unless it includes significant new information or new issues which in the opinion of the Council warrants action
- c. Informing the complainant that the complaint will be referred to the Ombudsman (or other external agency) for action.

6.6 Reviewing UCC arrangements

6.6.1 The CEO (or their delegate) shall review the limitations placed on the individual or group involved in the UCC as required but at least once in every 12 months. In reviewing the limitations, the CEO (or their delegate) shall have regard to:

- a. The level of compliance with the limitation arrangements that are in place,
- b. Evidence of the willingness to modify conduct
- c. Factors relevant to:
 - i. The need to ensure that resources are equitably distributed across Council's customers, as opposed to being disproportionately allocated to dealing with UCC, and
 - ii. Council's work, health and safety obligations.
- d. Whether continuing with strategies or limitations to manage UCC are reasonable and proportionate in the circumstances.

6.7 Appeal provisions

A person who is dissatisfied with the Council's approach to UCC may refer their complaint to the South Australian Ombudsman www.ombudsman.sa.gov.au

6.6 Privacy and document controls

- 6.6.1 Further to 5.1, all documents including Requests for Service lodged with Council are subject to the *Freedom of Information Act 1991* and confidentiality cannot be guaranteed under the provisions of that legislation. You will be consulted with if a Freedom of Information application involves documents that are capturing matters of your personal affairs (as defined by the FOI Act).

7. TRAINING / EDUCATION

Employees will be trained to manage complaints efficiently and effectively. Refresher training will be informed by the nature and frequency of complaints..

8. REVIEW

This Corporate Policy will be reviewed in 6 months and then every three years; or earlier in the event of changes to legislation or related Policies and Procedures; or if deemed necessary by the Risk and Governance Officer, or the Chief Executive Officer or their delegate.

9. ACCESS TO THE CORPORATE POLICY

The Corporate Policy is available to staff via the Policies section of the Intranet, and on Council's website under Policies and By-Laws.

10. FURTHER INFORMATION

For further information on this corporate Policy, please contact:

Title: Risk & Governance Officer
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South Australia, SA, 5251
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REFERENCE NUMBER	DOC/21/103920
PREVIOUS DOCUMENT NUMBER:	NA
RESPONSIBLE OFFICER/ DEPARTMENT:	Risk and Governance Officer Deputy Chief Executive Officer
APPLICABLE LEGISLATION:	Local Government Act 1999 (SA) Local Government (General Regulations) 2013– Schedule 2A Fair Work Act 1994 (SA) Work Health and Safety Act 2012 (SA) and Regulations Ombudsman Act 1972 (SA) Independent Commissioner Against Corruption Act 2012 Water Industry Act 2012 Public Interest Disclosure Act Freedom of Information Act

MOUNT BARKER 2035 – DISTRICT STRATEGIC PLAN:	Leadership and Good Governance Delivery Guideline 1 LGG Strategy 1.5 Demonstrate accountability through clear, relevant and easily accessible policies, corporate reporting and legislative compliance.
RELATED POLICIES / CORPORATE POLICIES:	<ul style="list-style-type: none"> • Request for Service Policy • Unreasonable Complainants Policy • Internal Review of a Council Decision Policy/Procedure • Fraud, Corruption, Misconduct and Maladministration Prevention Policy • Code of Conduct for Council Members • Employee Code of Conduct
SUPPORTING PROCEDURES:	<ul style="list-style-type: none"> • Compliments and Complaints Handling Procedure • Request for Service Procedure • Employee Conduct Complaint Resolution Procedure (external complaints only) • Licensed Water Retail Operations Enquiry, Complaint and Dispute Resolution Procedure • Public Interest Disclosure Act 2018 Procedure • Protocol – Ombudsman Enquiry Procedure • NSW Ombudsman – Managing unreasonable conduct by a complainant Guidelines 2021
PREVIOUS CORPORATE POLICY DATE:	This is a new policy.
ENDORSED BY CORPORATE GOVERNANCE GROUP	25 August 2021
APPROVED BY CEO:	
NEXT REVIEW DATE:	25 February 2022

DOCUMENT HISTORY:			
DOCUMENT VERSION	DATE	AUTHOR (PERSON TO WHOM CHANGES ARE TO BE RECOMMENDED)	NATURE OF CHANGE
VERSION 1.0	25 August 2021	Risk & Governance Officer	Complete Review
DOCUMENT LOCATION:	Council website 27 August 2021 Available for inspection, downloading or printing from our website www.mountbarker.sa.gov.au		