

# Unreasonable Complaints Policy and Procedure

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Applicable Legislation	<i>Local Government Act 1999</i> <i>Ombudsman Act 1972</i>

## 1. Purpose

All complaints received by Council Members and Council Administration will be treated seriously and complainants will be treated courteously as set out in Council's Complaints Policy. However, occasionally the conduct of a complainant can be unreasonable. This may take the form of unreasonable persistent, unreasonable demands, lack of cooperation and argumentative or threatening behaviour. Any decision to suspend action on a complaint will be made by the Chief Executive Officer or their delegate and communicated in writing to the complainant.

Where a complainants 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 warned that if the specified behaviour(s) or actions continue, restrictions will be applied.

What can be termed 'unreasonable' will vary depending on several factors and the Council aims to manage these situations fairly and equitably.

## 2. Scope

The policies scope includes the following areas:

### 2.1 Unreasonable Behaviour.

The policy explains what constitutes unreasonable behaviour in the context of filing a complaint with the Alexandrina Council. This includes but is not limited to, excessive and persistent complaints, aggressive or threatening behaviour toward Council staff, unreasonable demands or expectations, and reluctance to disclose information or participate in Council's investigations.

### 2.2. Process for dealing with Unreasonable Behaviour.

The policy will specify what steps will be taken when a complaint is deemed unreasonable. This may include a formal assessment by the Chief Executive Officer.

2.3. **Communication with Complainants**

The policy states how the Council will interact with complainants who are determined to be acting unreasonably. This may include formal notification of the decision to halt action on the complaint, an explanation of the decision's rationale, and information on the complainant's ability to appeal the decision.

2.4. **Staff Support**

The policy recognises the impact that dealing with unreasonable complaints can have on Council employees and gives methods to assist them in coping with these situations. This may include staff training on how to deal with difficult complainants, access to counselling or other support services, and clear guidelines for escalating complaints to senior management.

2.5. **Monitoring and Review**

The policy contains measures for continual monitoring and assessment of the unreasonable complaints policy efficacy. This could include regular reporting on the number and form of unreasonable complaints received, feedback from staff and complainants, and periodic policy reviews to ensure the policy stays relevant and effective.

3. **Definitions**

- 3.1 **Complaint** is an expression of dissatisfaction with a service provided by the Council or its representatives, which does not meet the stated, implied or exceeded standard. This includes complaints about services that have been delivered or should have been delivered. A complaint can also be any behaviour or action carried out by an employee or other person as defined in the procedure.
- 3.2 **Complainant** is a customer who has lodged a complaint with the Council or with external bodies such as the Ombudsman, Minister, Office for Public Integrity or Independent Commission Against Corruption SA.
- 3.3 **Frivolous Complaint** is a request that lacks substance, merit, or is trivial in nature.
- 3.4 **Malicious Complaint** is a request made with improper, vicious or mischievous purposes.
- 3.5 **Unreasonable Complainant Conduct** is any behaviour by a current or former complainant that raises Work Health and Safety issues, resource or equity issues for the parties to a complaint due to its nature or frequency.
- 3.6 **Vexatious Complaint** is a complaint or request made to harass, annoy, delay or cause trouble to the Council or a third party. A complaint may be considered vexatious if it contains false allegation, lacks reasonable grounds, and/or the complainant does not have sufficient interest in the subject matter.
- 3.7 **Request for Service** is an application to have the Council, or its representative, take some form of action to provide a Council Service or improve a Council Service.

- 3.8 **Persistent** is a person who refuses to let go of an issue or is obstinate and continues to raise an issue despite the Council having reasonable communicated its position regarding that issue.
- 3.9 **Trivial** is a complaint of little or no importance, where it is unreasonable to dedicate resources to investigate the matter.
- 3.10 **Reviewer** is the person or entity responsible for reviewing complaints. The reviewer can be external or internal.
- 3.11 **Council** refers to the Alexandrina Council.

#### 4. Procedure

All requests from Council Members and Council staff should be sent to the Chief Executive Officer in writing outlining the circumstances and a recommendation in line with the Unreasonable Complaints Policy.

If the Chief Executive Officer deems that a complaint is malicious, frivolous, vexatious or unreasonable, the complainant is dismissed and no further action is taken.

When determining whether a complaint is malicious, frivolous, vexatious or unreasonable, the following factors must be considered:

- any previous complaints made by the complainant (i.e. on the same subject);
- the complainant's reaction and outcome to earlier complaints (if any)
- if the complaint has merit and/or may be proved on the basis of the information presented;
- the complainants desired goals; and
- the resources required to address complainants' issue (to ensure that no public resources are being unjustifiably diverted)

A decision to take no further action in response to a malicious, frivolous, vexatious or unreasonable complaint shall be informed to the complainant in writing.

#### 5. Managing Unreasonable Complainant Conduct

Council has the right to expect members of the public who have a complaint to behave in an acceptable manner that demonstrates respect for Council workers. Appendix A shows how Council personnel may respond to abusive complainant behaviour.

In certain cases, the Chief Executive Officer may prohibit communication between the Council Members and staff and the complainant regarding grievances. Such restrictions may be placed on a complaint whose actions:

- constitutes unreasonable complainant behaviour; and/or poses a risk to the safety and/or welfare of Council staff and/or;
- other individuals; and/or may reasonably be deemed an excessive drain on Council resources.

If the Chief Executive Officer imposes limitations on a complainant, the complainant will be notified in writing, including the limitations and the grounds for their imposition.

The possibilities for establishing communication constraints for the purpose of managing unreasonable complainant behaviour are outlined below. When deciding whether to pursue one or more of these alternatives in the case of a complainant, the Chief Executive Officer will consider the following:

- the number of complaints filed by the complainant with the Council and the time period in which they were filed;
- the nature and outcome of any previous complaints submitted to the Council by the complainant;
- the expenditures expended by the Council (if any) in addressing the complainants earlier complaints;
- equity and procedural fairness concepts; and
- any other items that the Council or the Chief Executive Officer thinks appropriate.

Council is aware of the public's legal right to access Council information under the *Freedom of Information Act 1991*. Any restrictions imposed on a complainant under this policy will not interfere with these statutory rights; but, inappropriate customer behaviour may contribute to a request being denied under Section 18(2a) of the *Freedom of Information Act 1991*.

#### 5.1 **Necessitation of Written Communication**

The Chief Executive Officer has authority to;

- require any complaints be submitted in writing; and/or
- any additional communication from the complainant will be ignored unless it is in writing.

#### 5.2 **Not responding to Correspondence**

If, after receiving a written response to a complaint, the Chief Executive Officer receives additional complaints from the same complainant that detail the same or substantially similar issues, the Chief Executive Officer or nominated person (under 6.4) may inform the complainant that it will not provide a substantive response to any subsequent complaints. In these cases, the complainant would be informed of any further options available to them, such as filing a complaint with the Ombudsman.

#### 5.3 **Unreasonable communication via phone**

In some cases, it may be acceptable for a Council Officer to advise a complainant that they would no longer be able to resolve their problems over the phone and to end the call. This will only be done in extraordinary cases where the complainant exhibits the aforementioned unreasonable behaviour. If a complainant persistently calls a Council employee or uses disrespectful, threatening, or abusive language, they will be asked to limit their conversations to writing. This will be communicated in writing to the complainant.

#### 5.4 **Only Contacting Nominated Person**

When a complainant makes the same or substantially similar complaint to multiple Council officers, a Council Member or the Chief Executive Officer, the Chief Officer may appoint a specific council officer to deal with the complainant. The complainant will be notified in writing of the name and contact information of the officer who will

react to their complaints, as well as the fact that no other officer will reply to the complainant's concerns.

#### 5.5 Limitations following repeat unreasonable complaint conduct

In addition to executing any of the measures listed above, if a complainant engages in unreasonable complaint behaviour on a regular basis, the Chief Executive Officer may:

- inform the complainant that any additional complaints will not be acknowledged unless they contain significant new information or new issues that merit action in the Council's judgement; and/or
- Limit the times and days when a complainant's complaint may be accepted by refusing to reply to any complaint from them received outside of the times and in a way other than that disclosed to the complainant

This step will only be done as a last resort, with the Chief Executive Officer making the decision when all other routes have been exhausted and the complainant is placing unreasonable demands on the Council's complaint processing resources.

In some cases, the Chief Executive Officer may need to obtain legal counsel about the ramifications of a suspected malicious, frivolous, or vexatious complaint, as well as about unreasonable complainant behaviour.

#### 5.6 Notifying complainant before action

Before taking action against a complainant under 5.5, the Chief Executive Officer will write to the complainant to notify them of the action that the Council intends to take and the reasons for doing so and will invite comments from the complainant within a specified period (not less than 21 days) as to why such action should not be taken. Before deciding whether to proceed with the planned action, the complainant's submissions will be considered.

#### 5.7 Review of Action

If a decision is made under item 5.5, the Chief Executive Officer will evaluate the appropriateness of any limits placed on the complainant every 12 months. If, after a review, the Chief Executive Officer determines that the limits imposed on the complainant are no longer necessary in light of the complainant's behaviour in the previous 12 months, the Chief Executive Officer will:

- remove the constraints; and
- notify the complainant in writing of its decision

### 6. Framework for strategies for managing unreasonable complainant conduct

The unreasonable complainant conduct commonly seen by many agencies can, in most cases, be grouped into five (5) categories:

- Unreasonable Persistence
- Unreasonable Demands
- Unreasonable Lack of Cooperation
- Unreasonable Arguments
- Unreasonable Behaviour

Appendix A sets out these conduct categories, the associated trigger conduct and the corresponding strategy for managing that conduct. This framework is a guide – it should be applied flexibly, bearing in mind that more than one category of conduct may need to be managed at one time. The use of these strategies must also be based on the clear understanding that:

- every complainant deserves to be treated with fairness and respect
- in the absence of very good reasons to the contrary, members of the public have a right to access the agency
- no complainant, regardless of how much time and effort is taken up in responding to their complaint, should be unconditionally deprived of having their complaint properly and appropriately considered
- a complainant whose conduct is unreasonable may have a legitimate complaint
- the substance of the complaint dictates the level of resources allocated to it, not the complainant's wishes, demands or behaviour.

## **7. Availability of Policy**

This Policy will be available for inspection on the Council's website [www.alexandrina.sa.gov.au](http://www.alexandrina.sa.gov.au). Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

## Management Strategies (Appendix A)

Conduct Category	Unreasonable Conduct (trigger)	Management Strategies
Unreasonable persistence	<p><b>Unreasonable persistence includes:</b></p> <ul style="list-style-type: none"> <li>persisting with a complaint even though it has been comprehensively considered by an agency, and all avenues of review have been exhausted</li> <li>reframing a complaint in an attempt to get it taken up again</li> <li>showing an inability to accept the final decision</li> <li>insisting that a particular solution is the correct one in the face of valid contrary or alternative arguments</li> <li>persisting in interpreting the law or policy in a way that is not in accordance with generally accepted or expert views on the issue and insisting that action be taken accordingly</li> <li>persisting in wanting to know where to go next, when it has been explained that there is nowhere else to go.</li> <li>demanding a review because it is available, but not arguing a case for a review.</li> <li>making an issue out of anything</li> <li>getting gratification from the process of regular contact with the case officer, possibly including inventing</li> </ul>	<p><b>Strategies for dealing with unreasonable persistence are about saying 'no'. They include:</b></p> <ul style="list-style-type: none"> <li>communicating clearly and transparently – e.g. telling complainants firmly that something is 'not going to happen'</li> <li>to the 'where-do-I-go-to-now' question, telling complainants that not all problems have an institutional solution and they may have reached the end of the line, unless a realistic referral can be made</li> <li>requiring complainants who want a review to provide an argument for one – e.g. to tell the agency how it has erred or provide new information – and, if they don't, their file will remain closed</li> <li>providing one review only</li> <li>maintaining a 'no means no' stance following review</li> <li>adopting, when appropriate, a firm no-further-correspondence or contact stance and requiring any variation from this to be authorised at a high level</li> <li>not allowing complainants to reframe the complaint to re-enter the process, unless they raise new and important issues</li> </ul>



Conduct Category	Unreasonable Conduct (trigger)	Management Strategies
	unnecessary reasons for having such contact.	<ul style="list-style-type: none"> <li>ending telephone calls that are unproductive</li> <li>asserting the agency's position – e.g. 'I acknowledge that your view is ..., we see it differently', or 'I acknowledge that your view differs from ours, however, our job is to make a decision about ... and this is what we have decided'</li> <li>making it clear that our decision is final and, for better or worse, we have made our decision.</li> </ul> <p><b>Managing unreasonable persistence also includes:</b></p> <ul style="list-style-type: none"> <li>managing expectations from the beginning, including ensuring initial expectations are realistic</li> <li>adopting a firm and authoritative communication style both in writing and verbally</li> <li>defining key issues and keeping the focus on them.</li> </ul>
<b>Unreasonable demands</b>	<p><b>Unreasonable demands include:</b></p> <ul style="list-style-type: none"> <li>insisting on outcomes that are unattainable</li> <li>insisting on a 'moral' outcome e.g. justice in the</li> </ul>	<p><b>Strategies for dealing with unreasonable demands are about setting limits. They include:</b></p> <ul style="list-style-type: none"> <li>letting complainants know in advance how the agency</li> </ul>



Conduct Category	Unreasonable Conduct (trigger)	Management Strategies
	<p>community interest, when really a personal interest is at stake</p> <ul style="list-style-type: none"> <li>• demanding an apology or compensation when no reasonable basis for expecting such outcomes</li> <li>• wanting revenge, retribution</li> <li>• wanting what is not possible or appropriate – e.g. copies of sensitive documents, names and contact details of staff, other complainants or whistle-blowers</li> <li>• issuing instructions and making demands about how a complaint should be handled</li> <li>• providing supporting details that are extraordinarily detailed when such detail is not relevant to the complaint</li> <li>• making unreasonable resource demands, out of proportion to the seriousness of the issue</li> <li>• wanting regular and lengthy phone contact where this is not warranted</li> <li>• showing reactions or demand for action that are out of proportion to the significance of the issue</li> <li>• moving the goal posts – changing the desired outcome</li> <li>• shopping for a sympathetic ear in the agency – demanding to talk to a</li> </ul>	<p>intends to deal with the complaint – having a plan and sticking to it</p> <ul style="list-style-type: none"> <li>• making sure the complainant is clear that the agency decide how the complaint should be handled</li> <li>• clarifying the limitations of the particular complaint handling system</li> <li>• avoiding being drawn into hypothesising, catastrophising, conspiracy theories, unproductive argument and personal attacks more generally</li> <li>• restricting contact to defined times and staff members where necessary responding only to emails and mail addressed to the agency directly – not responding to mail where the agency is copied in</li> <li>• ending telephone calls that are unproductive</li> <li>• limiting contact to writing only</li> <li>• not doing for unreasonably demanding complainants something the agency would not normally do for any other complainant, just to appease them</li> <li>• as a last resort, informing the complainant that the agency finds their interactions unreasonably demanding and setting</li> </ul>

Conduct Category	Unreasonable Conduct (trigger)	Management Strategies
	<p>supervisor or the manager personally</p> <ul style="list-style-type: none"> <li>placing the agency on an extensive email copy list and expecting responses to these emails</li> <li>consistently creating complexity where there is none</li> <li>presenting as overly needy or dependent – e.g. wanting to transfer responsibility for their wellbeing to the complaint handler or agency.</li> </ul>	<p>defined limits for further contact.</p> <p><b>Managing unreasonable demands also includes:</b></p> <ul style="list-style-type: none"> <li>managing expectations from the beginning including ensuring initial expectations are realistic</li> <li>adopting a firm and authoritative communication style both in writing and verbally</li> <li>defining key issues and keeping the focus on them.</li> </ul>
<b>Unreasonable lack of cooperation</b>	<p><b>Unreasonable lack of cooperation includes:</b></p> <ul style="list-style-type: none"> <li>presenting a large quantity of information which is not organised, sorted, classified, summarised, where the complainant is clearly capable of doing this</li> <li>presenting information in dribs and drabs – refusing to present all information at the outset</li> <li>refusing to define issues of complaint – ‘the attached (usually a large amount of information) speaks for itself’ – where the complainant is clearly capable of doing this</li> <li>focusing on principles rather than substantive issues</li> <li>changing the complaint and raising new issues while the complaint is in the process of being considered</li> </ul>	<p><b>Strategies for dealing with unreasonable lack of cooperation are about setting conditions. They include:</b></p> <ul style="list-style-type: none"> <li>requiring complainants to organise or summarise the information they have provided before the agency will look at the complaint (where they are capable of doing this)</li> <li>requiring complainants to define what their issues are or to pursue further inquiries before the agency will look at the complaint</li> <li>telling complainants that the agency will not look at their complaint until all the information has been presented</li> <li>ending the agency’s involvement in the complaint if it is discovered that the complainant has been wilfully</li> </ul>

Conduct Category	Unreasonable Conduct (trigger)	Management Strategies
	<ul style="list-style-type: none"> <li>displaying unhelpful behaviour – eg withholding information, being dishonest, misquoting others, swamping the agency with documents.</li> </ul>	<p>misleading or untruthful in a significant way</p> <p><b>Managing unreasonable lack of cooperation also includes:</b></p> <ul style="list-style-type: none"> <li>managing expectations from the beginning, including ensuring initial expectations are realistic</li> <li>adopting a firm and authoritative communication style both in writing and verbally</li> <li>defining key issues and keeping the focus on them.</li> </ul>
<b>Unreasonable Arguments</b>	<p><b>Unreasonable arguments include:</b></p> <ul style="list-style-type: none"> <li>holding irrational beliefs – e.g. seeing cause and effect links where there are clearly none</li> <li>holding what is clearly a conspiracy theory unsupported by any evidence</li> <li>interpreting facts in a clearly irrational/unreasonable way and insisting this interpretation is the correct one</li> <li>arguing the clearly bizarre</li> <li>insisting on the importance of an issue that is clearly trivial</li> </ul>	<p><b>The strategy for dealing with unreasonable arguments</b> in complaints is primarily about declining or discontinuing the agency's involvement. These complaints need to be declined at the beginning, or discontinued as soon as it becomes clear that the complaint is groundless. Alternatively, if unreasonable arguments are mixed with reasonable arguments, the strategy should be to refuse to deal with the unreasonable portion. This category of conduct is often associated with mental illness</p>
<b>Unreasonable Behaviour</b>	<p><b>Unreasonable behaviour includes:</b></p> <ul style="list-style-type: none"> <li>displaying confronting behaviour e.g. rudeness,</li> </ul>	<p><b>The strategies for dealing with unreasonable behaviour</b> are primarily about 'saying no' to unacceptable behaviours, and setting limits and conditions for future</p>

Conduct Category	Unreasonable Conduct (trigger)	Management Strategies
	<p>aggression, threats or harassment</p> <ul style="list-style-type: none"> <li>• sending rude, confronting or threatening letters</li> <li>• making threats of self-harm</li> <li>• making threats of harm to others</li> <li>• displaying manipulative behaviour – overly ingratiating, tears or veiled threats</li> </ul>	<p>interactions. Overt anger, aggression and threats in person, on the phone or in writing are never acceptable. Dealing with these includes having risk management protocols in place.</p> <p>Also:</p> <ul style="list-style-type: none"> <li>• Return letters framed in rude and intemperate language and request that the complainant reframe their concerns in more moderate language.</li> <li>• Point out that more moderate language is clearer and therefore more likely to achieve better outcomes.</li> <li>• End telephone calls and interviews if the complainant becomes abusive and confronting</li> </ul>