

# *Council Policy*

## Unreasonable Complainant Conduct



# COUNCIL POLICY

 Adelaide Hills COUNCIL	<b>UNREASONABLE COMPLAINANT CONDUCT</b>
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<b>Policy Number:</b>	GOV-08
<b>Responsible Department(s):</b>	Community Capacity
<b>Other Relevant Policies:</b>	<i>Request for Services Policy Complaint Handling Policy Internal Review of Council Decisions</i>
<b>Relevant Procedure(s):</b>	<i>WHS Procedures Complaint Handling Procedure Request for Service Procedure</i>
<b>Relevant Legislation:</b>	<i>Local Government Act 1999 Work Health Safety Act 2012</i>
<b>Policies and Procedures Superseded by this policy on its Adoption:</b>	None
<b>Adoption Authority:</b>	Council
<b>Date of Adoption:</b>	26 November 2019
<b>Effective From:</b>	9 December 2019
<b>Minute Reference for Adoption:</b>	Item 12.4, 281/19
<b>Next Review:</b>	No later than November 2023 or as required by legislation or changed circumstances

## 1. INTRODUCTION

Adelaide Hills Council is committed to being accessible and responsive to all complainants, including those with a complaint or feedback. However, Council's ability to deliver for the community depends on:

- the ability to perform Council functions in the most effective and efficient ways possible
- the health, safety and security of Council employees, and
- the ability to allocate resources fairly across all complaints

When complainants behave unreasonably in their dealings with Council, their conduct can significantly affect the success of the organisation. As a result, Adelaide Hills Council will take proactive and decisive action to manage any complainant conduct that negatively and unreasonably affects the Council and will support employees to do the same in accordance with this policy.

It should be noted that this policy focuses on complainant conduct deemed 'unreasonable'. Requests and complaints which are not unreasonable as per this policy will be managed as outlined in Council's Request for Service and Complaint Handling policies.

This policy has been modelled, with permission, on the South Australian Ombudsman's Unreasonable Complainant Conduct Policy.

## 2. OBJECTIVES

This policy has been developed to assist all employees to better manage unreasonable complainant conduct. Its aim is to ensure all employees:

- Feel confident and supported in taking action to manage unreasonable complainant conduct
- Act fairly, consistently, honestly and appropriately when responding to unreasonable complainant conduct
- Understand the types of circumstances when it may be appropriate to manage unreasonable complainant conduct using the strategies and processes in this policy

## 3. DEFINITIONS

**"Unreasonable complainant conduct"** is any behaviour by a current or former customer which, because of its nature or frequency raises health, safety, resource or equity issues for the Council, employees, other service users and customers or the customer himself/herself.

Unreasonable complainant conduct can be divided into five categories:

- Unreasonable persistence
- Unreasonable demands
- Unreasonable lack of cooperation
- Unreasonable arguments
- Unreasonable behaviours

#### 4. POLICY STATEMENT

##### 4.1. Managing Unreasonable Complainant Conduct

Unreasonable complainant conduct should be managed with reference to the following table.

Types of Conduct	Examples of complainant conduct	Strategies for dealing with conduct
Unreasonable persistence	<ul style="list-style-type: none"> <li>• refusing to accept that a complaint is closed</li> <li>• continuing to phone or contact after a matter is closed</li> <li>• re-framing an old complaint</li> <li>• being unable to accept the final decision</li> <li>• persisting in interpreting the policy or the law in a way that is not in accordance with the accepted views on the subject</li> </ul>	<ul style="list-style-type: none"> <li>• be prepared to say 'no'</li> <li>• it may be appropriate to advise the complainant that the issue will not be investigated further</li> <li>• clearly communicate if an unproductive telephone call is to be ended</li> <li>• provide one internal review only</li> <li>• adopt, when appropriate, a firm position of no further contact or correspondence</li> <li>• do not allow the complainant to re-frame the complaint to keep the matter alive unless there are significant new issues</li> <li>• make it clear that the decision of Council is final or in the case of a decision subject to external statutory review or appeal advise the complainant of their review or appeal rights</li> </ul>
Unreasonable demands	<ul style="list-style-type: none"> <li>• insisting on outcomes that are unattainable or not possible</li> <li>• demanding assistance with issues that are out of the Council's jurisdiction</li> <li>• demanding a remedy that is impractical, disproportionate or unavailable</li> <li>• insisting that more time be taken on the matter than is justifiable</li> <li>• wanting revenge</li> <li>• making unreasonable demands on the resources of Council</li> <li>• wanting unreasonable regular and lengthy contact with Council employees</li> <li>• showing reactions or demanding action that is out of proportion with the significance of the issue</li> </ul>	<ul style="list-style-type: none"> <li>• set limits on what will be done ie what issues will be investigated, by whom, how communication will happen etc</li> <li>• be clear with complainant in advance what Council will do, and the limits</li> <li>• end telephone calls that are unproductive, with a warning</li> <li>• may need to limit contact to in writing only</li> </ul>
Unreasonable lack of cooperation	<ul style="list-style-type: none"> <li>• poor or confused definition of the complaint</li> <li>• providing a large quantity of unnecessary material / information</li> </ul>	<ul style="list-style-type: none"> <li>• employees need to set limits before proceeding with the matter</li> <li>• require complainants to clarify and summarise information they</li> </ul>

	<ul style="list-style-type: none"> <li>• unhelpful behaviour</li> <li>• failing to provide requested information or documents within the given timeframe</li> <li>• dishonestly presenting the facts</li> <li>• constantly re-defining a complaint</li> <li>• focusing on principles rather than substantive issues</li> </ul>	<p>have provided before proceeding with the matter</p> <ul style="list-style-type: none"> <li>• require complainants to clearly define what their issues are before the complaint will be looked at</li> <li>• refuse to deal with the matter if it is found that the complainant has been wilfully misleading or untruthful in a significant way</li> </ul>
Unreasonable arguments	<ul style="list-style-type: none"> <li>• exaggerating issues</li> <li>• holding irrational beliefs</li> <li>• refusing to consider the other side</li> <li>• being obsessed with irrelevant or trivial points</li> <li>• having a conspiracy theory that is not supported by any evidence</li> </ul>	<ul style="list-style-type: none"> <li>• decline or discontinue the matter</li> <li>• if unreasonable issues are mixed with reasonable issues, ensure that they are clearly identified and separated and only deal with the reasonable ones</li> </ul>
Unreasonable behaviour	<ul style="list-style-type: none"> <li>• displaying confronting behaviour</li> <li>• being rude</li> <li>• being aggressive</li> <li>• making threats of self-harm</li> <li>• making threats of harm / violence to others</li> </ul>	<ul style="list-style-type: none"> <li>• set clear expectations that employees will not tolerate unreasonable behaviour</li> <li>• communicate that threats are unacceptable and may be reported to police or otherwise the subject of legal action</li> <li>• in the case of rude correspondence, ask complainants to reframe their complaint in more moderate terms</li> <li>• In the case of unreasonable behaviour in phone conversations, warn complainants that their conduct is unacceptable and that if the behaviour persists the call will be ended</li> <li>• end phone calls if the complainant continues to behave unreasonably after being warned. The relevant Manager is to be advised of this action.</li> <li>• Refer also to 4.2.6 regarding threats of self-harm</li> </ul>

Reference may also be made to documents of a similar nature, including *Managing Unreasonable Complainant Conduct Practice Manual – 2<sup>nd</sup> Edition, NSW Ombudsman 2012*.

## **4.2. Limiting or withdrawing a complainant's access to Council**

If a complainant's unreasonable conduct persists or becomes extreme, Council may limit or withdraw a complainant's access to Council using the following steps.

### **4.2.1. Issue the complainant with a final warning outlining expectations and repercussions**

- This is to be in writing and is to inform the complainant that their access to Council may be limited or withdrawn if their behaviour continues.
- Warning letters need to be signed off by the Director Community Capacity (or another Director appointed by the CEO to handle the matter)

### **4.2.2. Place limitations on the complainant's access to Council**

- The contact may be limited in terms of:
  - the number of times and/or the time of day a complainant may make contact
  - the employees and Council Members the complainant may have contact with
  - the subject matter that Council will consider and respond to
  - the form in which the contact may take place i.e. the complainant may be directed that he or she can only make contact in writing and not via telephone or in person.
- A decision to limit a complainant's access to Council must be approved by the Director Community Capacity (or another Director appointed by the CEO to handle the matter)
- A complainant will be notified by letter which will specify the limitations being imposed, the duration of the limitations and a time period for review
- Any limitations on a complainant's right to approach Council must take into account that person's individual circumstances. For example, a person who is illiterate should not be required to communicate in writing

### **4.2.3. Withdraw a complainant's access to Council**

- It may be appropriate to refuse access to Council by a complainant. The circumstances in which this would be done include where the complainant:
  - is consistently abusive
  - makes threats to employees
  - causes damage to Council property
  - intimidates or threatens physical harm to employees or third parties
  - is physically violent
  - produces a weapon.
- A decision to refuse access to a complainant must be approved by the Director Community Capacity (or another Director appointed by the CEO to handle the matter)
- A complainant will be notified by letter which will provide clear information about the decision and why it has been made. This should include a description of the complainant's behaviour, the consequences of that behaviour, duration of the withdrawal of access and a time period for review
- The access that is being withdrawn will depend on the nature of the unreasonable conduct and all of the relevant circumstances and will be described in the notification letter

- If a person is refused access to Council, alternative contact arrangements may be considered. For example, contact may be possible via an advocate or nominee for the complainant. The Director Community Capacity will determine when it would be appropriate to consider such arrangements.
- Employee safety will always be the first consideration and nothing in this section prevents Council or employees from seeking a legal remedy (i.e. calling the police) in the first instance in cases of serious threatening, aggressive or abusive behaviour.
- A person's access to Council must not be withdrawn without giving the complainant written notice in their language.
- The written notice is to be approved and signed by the Director Community Capacity
- As appropriate, the Director Community Capacity may recommend the issuing of formal orders or directions under the Local Government Act 1999 or council's by-laws, or the seeking of an intervention order under the Intervention Orders (Prevention of Abuse) Act 2009.

#### 4.2.4. Review of decision

Complainants may request a review of the decision to limit or terminate their access to Council according to the procedure set out in the *Internal Review of Council Decisions Policy*. If a complainant continues to be dissatisfied after the internal review process, they may seek an external review from the South Australian Ombudsman.

#### 4.2.5. Non-compliance with access limits or refusal

Employees will record and report incidents of non-compliance by complainants. This should be recorded in the appropriate system and forwarded to the Director Community Capacity who will decide whether any action needs to be taken to modify or further limit the complainant's access to Council services or to otherwise escalate the action taken under this Policy.

#### 4.2.6. Threats of self harm

Where a complainant expresses thoughts of suicide or other self harm the matter should be reported to the Mental Health Triage Service/Assessment and Crisis Intervention Service by telephoning 13 14 65. If there is any doubt about reporting the matter, the employee should consult the Director of Community Capacity or another member of the Executive Leadership Team.

## 5. **DELEGATION**

### 5.1 The Chief Executive Officer has the delegation to:

- Approve, amend and review any procedures that shall be consistent with this Policy; and
- Make any formatting, nomenclature or other minor changes to the Policy during the period of its currency.
- Determine and amend from time to time, the senior officer(s) nominated for particular roles within this policy.

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**6. AVAILABILITY OF THE POLICY**

- 6.1 This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website [www.ahc.sa.gov.au](http://www.ahc.sa.gov.au). Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.