

# Unreasonable Conduct by a Complainant (draft)

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## Contents

<b>1. Purpose</b>	<b>4</b>
<b>2. Policy Statement</b>	<b>4</b>
<b>3. Defining unreasonable conduct by a complainant</b>	<b>5</b>
3.1 Unreasonable complainant conduct	5
<b>4. Roles and Responsibilities</b>	<b>7</b>
4.1 All staff	7
4.2 Directors	7
4.3 Managers	8
<b>5. Responding to and managing UCC</b>	<b>8</b>
5.1 Changing or restricting a complainant’s access to our services	8
5.2 Who: limiting the complainant to a sole contact point	9
5.3 What: restricting the subject matter of communications that we will consider	9
5.4 When and how: limiting when and how a complainant can contact us	9
5.5 Where: limiting face-to-face interviews to secure areas	10
5.6 Completely terminating a complainant’s access to our services	11
<b>6. Alternative dispute resolution</b>	<b>11</b>
6.1 Using alternative dispute resolution strategies to manage conflicts with complainants	11
<b>7. Procedure to be followed when changing or restricting a complainant’s access to our services</b>	<b>12</b>
7.1 Consulting with relevant staff	12
7.2 Criteria to be considered	12
7.3 Providing a warning letter	13
7.4 Providing a notification letter	13
7.5 Notifying relevant staff about access changes/restrictions	14
7.6 Continued monitoring/oversight responsibilities	14
<b>8. Appealing a decision to change or restrict access to our services</b>	<b>14</b>
8.1 Right of appeal	14
<b>9. Non-compliance with a change or restriction on access to our services</b>	<b>15</b>
9.1 Recording and reporting incidents of non-compliance	15

<b>10. Periodic reviews of all cases where this policy is applied .....</b>	<b>15</b>
10.1 Period for review.....	15
10.2 Notifying the complainant of an upcoming review .....	15
10.3 Criteria to be considered during a review.....	15
10.4 Notifying a complainant of the outcome of a review .....	15
10.5 Recording the outcome of a review and notifying relevant staff .....	16
<b>11. Managing staff stress .....</b>	<b>16</b>
11.1 Staff reactions to stressful situations.....	16
11.2 Debriefing.....	16
<b>12. Training and awareness.....</b>	<b>16</b>
<b>13. Policy review.....</b>	<b>17</b>
<b>14. References &amp; Associated Documents .....</b>	<b>17</b>
<b>15. Policy History .....</b>	<b>17</b>
Appendices.....	19

# 1. Purpose

This policy was developed to assist all staff to better manage *unreasonable conduct by complainants* ('UCC'). It aims to help staff:

- Feel confident and supported in taking action to manage UCC
- Act fairly, consistently, honestly and appropriately when responding to UCC
- Understand their roles and responsibilities in relation to the management of UCC, and how this policy will be used
- Understand the types of circumstances when it may be appropriate to manage UCC using one or more of the following mechanisms:
  - the strategies provided in the 'Managing unreasonable conduct by a complainant manual' (3rd edition) including the strategies to change or restrict a complainant's access to our services
  - alternative dispute resolution strategies to deal with conflicts involving complainants and members of our organisation
  - legal instruments such as trespass laws or other legislation to prevent a complainant from coming onto our premises, and orders to protect specific staff members from any actual or apprehended personal violence, intimidation, or stalking
- Understand the criteria we will consider before we decide to change or restrict a complainant's access to our services
- Be aware of the processes that will be followed to record and report UCC incidents, and the procedures for consulting and notifying complainants about any proposed action or decision to change or restrict their access to our services
- Understand the procedures for reviewing decisions made under this policy, including specific timeframes for review.

# 2. Policy Statement

Federation Council is committed to being accessible and responsive to all complainants who approach our office regardless of ethnic identity, national origin, religion, linguistic background, sex, gender expression, sexual orientation, physical ability or other cultural or personal factors. At the same time the success of our office depends on:

- our ability to do our work in the most effective and efficient ways possible
- the health, safety and security of our staff, committee members, volunteers and contractors
- our ability to allocate our resources fairly across all the complaints we receive.

When complainants behave unreasonably in their dealings with us, their conduct can significantly affect the successful conduct of our work. Federation Council will act proactively and decisively to manage any complainant conduct that negatively and unreasonably affects us and will support our staff to do the same in accordance with this policy.

This policy also supports staff, volunteers, Section 355 committee members and contractors of council, who are the subject or target of any behaviours that constitute *unreasonable complainant conduct*.

## 3. Defining unreasonable conduct by a complainant

### 3.1 Unreasonable complainant conduct

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, despite our best efforts to help them, in a very small number of cases complainants display inappropriate and unacceptable behaviour. They can be aggressive and verbally abusive towards our staff, threaten harm and violence or bombard our offices with unnecessary and excessive phone calls and emails. They may make inappropriate demands on our time and resources or refuse to accept our decisions and recommendations in relation to their complaints. When complainants behave in these ways (and where there are no cultural factors that could reasonably explain their behaviour) we consider their conduct to be 'unreasonable'.

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

UCC can be divided into five categories of conduct:

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

#### 3.1.1 Unreasonable persistence

Unreasonable persistence is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on our organisation, staff, 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 does understand the information provided).
- Persistently demanding a review simply because it is available and without arguing or presenting a case for one.
- Pursuing and exhausting all available review options, even after we have explained that a review is not warranted - and refusing to accept that we cannot or will not take further action on their complaint.
- Reframing a complaint in an effort to get it taken up again.
- Multiple and repeated phone calls, visits, letters, emails (including cc'd correspondence) after we have repeatedly asked them not to.
- Contacting different people within or outside our organisation to get a different outcome or a more sympathetic response to their complaint – this is known as internal and external 'forum shopping'.

#### 3.1.2 Unreasonable demands

Unreasonable demands are any demands expressly made by a complainant that have a disproportionate and unreasonable impact on our organisation, staff, services, time or resources. Some examples of unreasonable demands include:

- 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 director, manager or the General Manager personally when the reasons that this is not appropriate or warranted have been carefully explained to the complainant.
- Emotional blackmail and manipulation resulting in intimidation, harassment, shaming, seduction or portraying themselves as being victimised when this is not the case.
- Insisting on outcomes that are not possible or appropriate in the circumstances, for example asking for someone to be sacked or prosecuted, or for an apology or compensation when there is no reasonable basis for this.
- Demanding services of a nature or scale that we cannot provide, even after we have explained this to them repeatedly.

### **3.1.3 Unreasonable lack of cooperation**

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

- Sending us a 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 around their complaint or providing information in 'dribs and drabs'.
- Refusing to follow or accept our instructions, suggestions, or advice without a clear or justifiable reason for doing so.
- Arguing that a particular solution is the correct one in the face of valid contrary arguments and explanations.
- Unhelpful behaviour such as withholding information, acting dishonestly and misquoting others.

### **3.1.4 Unreasonable arguments**

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

- fail to follow a logical sequence that the complainant is able to explain to staff
- are not supported by any evidence or are based on conspiracy theories
- lead a complainant to reject all other valid and contrary arguments
- are trivial when compared to the amount of time, resources and attention that the complainant demands
- are false, inflammatory or defamatory.

### **3.1.5 Unreasonable behaviour**

Unreasonable behaviour is conduct that is unreasonable in all circumstances (regardless of how stressed, angry or frustrated that a complainant is) because it unreasonably compromises the health, safety and security of our staff, 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 and threatening correspondence.

- Threats of harm to self or third parties, threats with a weapon or threats to damage property including bomb threats.
- Stalking in person or online.
- Emotional manipulation.

All staff should note that *Federation Council* has a zero-tolerance policy towards any harm, abuse or threats directed towards them. 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.

## 4. Roles and Responsibilities

### 4.1 All staff

All staff are responsible for familiarising themselves with this policy as well as the *Individual Rights and Mutual Responsibilities of the Parties to a Complaint* document at Appendix A.

Staff are also encouraged to explain the contents of this document to all complainants, particularly those who engage in UCC or exhibit the early warning signs for UCC.

Staff are also encouraged and authorised to use the strategies and scripts provided at the NSW Ombudsman's website – see Part 2 of the *Managing unreasonable conduct by a complainant Manual (3rd edition)*:

Staff are also encouraged and authorised to use the strategies and scripts provided at the NSW Ombudsman's website – see Part 2 of the *Managing unreasonable conduct by a complainant Manual (3rd edition)*:

- Strategies and scripts for managing unreasonable persistence
- Strategies and scripts for managing unreasonable demands
- Strategies and scripts for managing unreasonable lack of cooperation
- Strategies and scripts for managing unreasonable arguments
- Strategies and scripts for managing unreasonable behaviours

**Any strategies that change or restrict a complainant's access to our services must be considered at the Director level or higher as provided in this policy.**

Staff are also responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) to their Director within 24 hours of the incident occurring, using the Sample UCC incident form in Appendix B. A file note of the incident should also be copied into the Governance Officer ([governance@federationcouncil.nsw.gov.au](mailto:governance@federationcouncil.nsw.gov.au)) for recording in Content Manager.

### 4.2 Directors

The Director, in consultation with relevant staff, has the responsibility and authority to change or restrict a complainant's access to our services in the circumstances identified in this policy. When doing so they will consider the criteria in section 7.2 below (adapted into a checklist in Appendix C) and will aim to impose any service changes or restrictions in the least restrictive ways possible. Their aim when taking such actions will not be to punish the complainant, but rather to manage the impacts of their conduct.

When applying this policy, the Director will also aim to keep at least one open line of communication with a complainant. However, we do recognise that in extreme situations all forms of contact may need to be restricted for some time to ensure the health, safety and security of our staff or third parties.

The Director is also 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.

### 4.3 Managers

All managers are responsible for supporting staff to apply the strategies in this policy, as well as those in the manual. Managers are also responsible for ensuring compliance with the procedures outlined in this policy, and that all staff members are trained to deal with UCC – including on induction.

After a stressful interaction with a complainant, managers should provide affected staff members with the opportunity to debrief either formally or informally. Managers will also ensure that staff are provided with proper support and assistance including medical or police assistance, and if necessary, support through programs like the Employee Assistance Program.

Managers may also be responsible for arranging other forms of support for staff such as appropriate communication or intercultural training .

## 5. Responding to and managing UCC

### 5.1 Changing or restricting a complainant's access to our services

UCC incidents will generally be managed by limiting or adapting the ways that we interact with or deliver services to complainants by restricting:

**Who they have contact with** – limiting a complainant to a sole contact person or staff member in our organisation.

**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 organisation to a particular time, day, or length of time, or curbing the frequency of their contact with us.

**Where they can make contact** – limiting the locations where we will conduct face-to-face interviews to secured facilities or areas of the office.

**How they can make contact** – limiting or modifying the forms of contact that the complainant can have with us. This can include modifying or limiting face-to-face interviews, telephone and written communications, prohibiting access to our premises, contact through a representative only, taking no further action or terminating provision of services altogether.

When using the restrictions provided in this section, we recognise that discretion will need to be used to adapt them to suit a complainant's personal circumstances such as level of competency, literacy skills and cultural background. In this regard, we also recognise that more than one strategy may need to be used in individual cases to ensure their appropriateness and efficacy.



## 5.2 Who: limiting the complainant to a sole contact point

Where a complainant tries to forum-shop within our organisation, changes their issues of complaint repeatedly, constantly reframes their complaint, or raises an excessive number of complaints, it may be appropriate to restrict their access to a single staff member (a sole contact point) who will manage their complaint(s) and interaction with our office. This may help ensure they are dealt with consistently and may minimise the incidence of misunderstandings, contradictions and manipulation.

To avoid staff 'burn out' the sole contact officer's supervisor will provide them with regular support and guidance where needed. The Director will also review the arrangement every six months to ensure that the officer is managing/coping with the arrangement.

Complainants who are restricted to a sole contact person will, however, be given the contact details of one additional staff member 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 of time.

## 5.3 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 (at least once) 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, that raises a trivial issue, or is not supported by evidence. The complainant will be advised that future correspondence of this kind will be read and filed without acknowledgement unless we decide that we need to pursue it further - in which case, we may do so on our '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 correspondence to the complainant and require them to remove any inappropriate content before we agree to consider its contents. We will also keep a copy of the inappropriate correspondence for our records to help identify repeat UCC incidents.

## 5.4 When and how: limiting when and how a complainant can contact us

If a complainant's contact with our organisation places an unreasonable demand on our time or resources or affects the health, safety and security of our staff 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 or face-to-face interviews to a particular time of the day or days of the week.
- Limiting the length or duration of telephone calls, written correspondence or face-to-face interviews. For example:
  - Telephone calls may be limited to [10] minutes at a time and will be politely terminated at the end of that time period.
  - Lengthy written communications may be restricted to a maximum of [15] typed or written pages, single sided, font size 12 or it will be sent back to the complainant to be organised and summarised –

This option is only appropriate in cases where the complainant is capable of summarising the information and refuses to do so.

- Limiting face-to-face interviews to a maximum of [45] minutes.
- Limiting the frequency of their telephone calls, written correspondence or face-to-face interviews. Depending on the natures of the service(s) provided we may limit:
  - Telephone calls to [1] every two weeks/month.
  - Written communications to [1] every two weeks/month.
  - Face-to-face interviews to [1] every two weeks/month.

For irrelevant, overly lengthy, disorganised or very frequent written correspondence we may also:

- Require the complainant to clearly identify how the information or supporting materials they have sent to us relate to the central issues that we have identified in their complaint.
- Restrict the frequency with which complainants can send emails or other written communications to our office.
- Restrict a complainant to sending emails to a particular email account (e.g. the organisation's main email account) or block their email access altogether and require that any further correspondence be sent through Australia Post only.

## 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 staff email or our general office email account
- Fax only to a specific fax number
- Some other relevant form of written contact, where applicable.

If a complainant's contact is restricted to 'writing only', the Director will clearly identify the specific means that the complainant can use to contact our office (e.g. Australia Post only). If it is not suitable for a complainant to enter our premises to hand deliver their written communication, this must be communicated to them as well.

Any communications that are received by our office in a manner that contravenes a 'write only' restriction will either be returned to the complainant or read and filed without acknowledgement.

## 5.5 Where: limiting face-to-face interviews to secure areas

If a complainant is violent or overtly aggressive, unreasonably disruptive, threatening or demanding or makes frequent unannounced visits to our premises, we may consider restricting our face-to-face contact with them.

These restrictions can include:

- Restricting access to particular secured premises or areas of the office such as the reception area or secured room or facility.
- Restricting their ability to attend our premises to specified times of the day or days of the week only – for example, when additional security is available or to times or days that are less busy.
- Allowing them to attend our office on an 'appointment only' basis and only with specified staff (for these meetings, staff should enlist the support and assistance of a colleague for added safety and security).

- Banning the complainant from attending our premises altogether and allowing some other form of contact – e.g. ‘writing only’ or ‘telephone only’ contact.

### **Contact through a representative only**

In cases where we cannot completely restrict our contact with a complainant and their conduct is particularly difficult to manage, we may require them to contact us through a support person or representative only. The support person may be someone nominated by the complainant, but must be approved by the Director.

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

## **5.6 Completely terminating a complainant’s access to our services**

In rare cases, and as a last resort when all other strategies have been considered, the Director *and* General Manager may decide that it is necessary for our organisation to completely restrict a complainant’s contact/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 staff 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, assault.
- Damage to property while on our premises.
- Threats with a weapon or common office items that can be used to harm another person or themselves.
- Physically preventing a staff member from moving around freely either within their office or during an off-site visit – e.g. entrapping them in their home.
- Conduct that is otherwise unlawful.

In these cases, the complainant will be sent a letter notifying them that their access has been restricted as outlined in Part 7.4 below.

A complainant’s access to our services and our premises may also be restricted (directly or indirectly) using legal mechanisms like trespass laws and other legislation or legal orders to protect members of our staff from personal violence, intimidation or stalking by a complainant.

## **6. Alternative dispute resolution**

### **6.1 Using alternative dispute resolution strategies to manage conflicts with complainants**

If the Director and the General Manager determine that we cannot terminate our services to a complainant in a particular case or that we or our staff bear some responsibility for causing or exacerbating their conduct, they may consider using alternative dispute resolution strategies (ADRs) such as mediation and conciliation to resolve the conflict with the complainant and attempt to rebuild our relationship with them. If an ADR is considered to be an appropriate option in a particular case, it will be conducted by an independent third party to ensure transparency and impartiality.

However, we recognise that in UCC situations, ADR may not be an appropriate or effective strategy - particularly if the complainant is uncooperative or resistant to compromise. Therefore, each case will be assessed on its own facts to determine the appropriateness of this approach.

## 7. Procedure to be followed when changing or restricting a complainant's access to our services

### 7.1 Consulting with relevant staff

When the Director receives a UCC incident form from a staff member, they will contact the staff member to discuss the incident. They will discuss:

- The circumstances that gave rise to the UCC incident, including the complainant's situation, personal and cultural background, and perspective.
- The impact of the complainant's conduct on our organisation, relevant staff, our time, resources, etc.
- The complainant's response to the staff member's warnings or requests to stop the unreasonable behaviour.
- What the staff member has done to manage the complainant's conduct (if applicable).
- Any suggestions made by *the People and Culture team* or other relevant staff on ways that the situation could be managed.

### 7.2 Criteria to be considered

Following a consultation with relevant staff the Director will search Content Manager and Authority for information about the complainant's prior conduct and history with our organisation. 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 changing or restricting access to our services will be effective in managing the complainant's behaviour.
- Whether changing or restricting access to our services will affect the complainant's ability to meet their obligations, such as reporting obligations.
- Whether changing or restricting access to our services will have an undue impact on the complainant's welfare, livelihood or dependents etc.
- Whether the complainant's personal circumstances have contributed to the behaviour - For example, the complainant's cultural background may mean their communication patterns differ from those of our staff or our organisation's standards, or the complainant is a vulnerable person who is under significant stress as a result of one or more of the following:
  - homelessness
  - physical disability
  - illiteracy or other language or communication barrier

- mental or other illness
- personal crises
- substance or alcohol abuse.
- Whether the complainant's response or conduct was moderately disproportionate, grossly disproportionate or not at all disproportionate in the circumstances.
- Whether there any statutory provisions that would limit the types of limitations that can be applied to the complainant's contact with or access to our services.

Once the Director has considered these criteria, they will decide on the appropriate course of action. They may suggest formal or informal options for dealing with the complainant's conduct which may include one or more of the strategies provided in the manual and this policy.

[See Appendix C – Sample checklist for Director to consider when deciding to modify or restrict a complainant's access.](#)

### 7.3 Providing a warning letter

Unless a complainant's conduct poses a substantial risk to the health and safety of staff or other third parties, the Director will provide them with a written warning about their conduct in the first instance. 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 the UCC incident (s).
- Explain why the complainant's conduct/ UCC incident is problematic.
- List the types of access changes and/or restrictions that may be imposed if the behaviour continues. (Note: not every possible restriction should be listed only those that are most relevant).
- Provide clear and full reasons for the warning being given
- Include an attachment of the organisation's ground rules and / or briefly state the standard of behaviour that is expected of the complainant. See [Appendix A - Individual Rights and Mutual Responsibilities of the Parties to a Complaint](#)
- Provide the name and contact details of the staff member who they can contact about the letter.
- Be signed by the Director *or* General Manager.

[See Appendix D – Sample warning letter.](#)

### 7.4 Providing a notification letter

If a complainant's conduct continues after they have been given a written warning or in extreme cases of overt aggression, violence, assault or other unlawful/unacceptable conduct the Director has the discretion to send a notification letter immediately restricting the complainant's access to our services (without prior 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.

This notification letter will:

- Specify the date, time and location of the UCC incident(s).
- Explain why the complainant's conduct/UCC incident(s) is problematic.
- Identify the change and/or restriction that will be imposed and what it means for the complainant.

- Provide clear and full reasons for this restriction.
- Specify the duration of the change or restriction imposed, which will not exceed 12 months.
- Indicate a time period for review.
- Provide the name and contact details of the senior officer who they can contact about the letter and/or request a review of the decision.
- Be signed by the Director *or* General Manager.

[See Appendix E – Sample letter notifying complainants of a decision to change or restrict their access to our services.](#)

## 7.5 Notifying relevant staff about access changes/restrictions

The Director will notify relevant staff about any decisions to change or restrict a complainant’s access to our services, in particular reception and security staff in cases where a complainant is prohibited from entering our premises.

The Director will also update the customer request / *records management system* with a record outlining the nature of the restriction imposed and its duration.

## 7.6 Continued monitoring/oversight responsibilities

Once a complainant has been issued with a warning letter or notification letter the Director will review the complainant’s record/restriction every *3 months*, on request by a staff member, or following any further incidents of UCC that involve the particular complainant to ensure that they are complying with the restrictions/the arrangement is working.

If the Director 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.

# 8. Appealing a decision to change or restrict access to our services

## 8.1 Right of appeal

People who have their access changed or restricted are entitled to one appeal of a decision to change or restrict their access to our services. This review will be undertaken by a senior staff member who was not involved in the original decision to change or restrict the complainant’s access. This staff member will consider the complainant’s arguments and personal circumstances, including cultural background, along with all relevant records regarding the complainant’s past conduct. They will advise the complainant of the outcome of their appeal by letter, which must be signed off by the General Manager. The staff member will then refer any materials or records relating to the appeal to the Director to be kept in the appropriate file.

If a complainant is still dissatisfied after the appeal process, they may seek an external review from an oversight agency such as the Ombudsman. The Ombudsman may accept the review (in accordance with its administrative jurisdiction) to ensure that we have acted fairly, reasonably and consistently and have observed the principles of good administrative practice including, procedural fairness.

## 9. Non-compliance with a change or restriction on access to our services

### 9.1 Recording and reporting incidents of non-compliance

All staff members are responsible for recording and reporting incidents of non-compliance by complainants. This should be recorded in a file note in our records management system and a copy forwarded to the Director who will decide whether any action needs to be taken to modify or further restrict the complainant's access to our services.

## 10. Periodic reviews of all cases where this policy is applied

### 10.1 Period for review

All cases where this policy is used will be reviewed every 3 months or 6 months (depending on the nature of the service provided) and not more than 12 months after the service change or restriction was initially imposed or upheld.

### 10.2 Notifying the complainant of an upcoming review

The Director will ask complainants if they would like to participate in the review process unless they determine that this invitation will provoke a negative response from the complainant (i.e., further UCC). The invitation will be given and the review will be conducted in accordance with the complainant's access restrictions [See Appendix F – Sample letter notifying a complainant of an upcoming review.](#)

### 10.3 Criteria to be considered during a review

When conducting a review the Director will consider:

- Whether the complainant has had any contact with the organisation during the restriction period.
- The complainant's conduct during the restriction period.
- Any information or arguments put forward by the complainant for review.
- Any other information that may be relevant in the circumstances.

The Director may also consult any staff members who have had contact with the complainant during the restriction period.

Sometimes a complainant may not have a reason to contact our office during their restriction period. As a result, a review decision that is based primarily on the fact that the complainant has not contacted our organisation during their restriction period may not be an accurate representation of their level of compliance/reformed behaviour. This should be taken into consideration, in relevant situations.

[See Appendix G – Sample checklist for reviewing an access change/restriction.](#)

### 10.4 Notifying a complainant of the outcome of a review

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

- Briefly explain the review process.

- Identify the factors that have been taken into account during the review.
- Explain the decision or 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 relevant officer who the complainant can contact to discuss the letter.
- Be signed by the Director or General Manager.

[See Appendix H – Sample letter advising the complainant of the outcome of a review.](#)

## 10.5 Recording the outcome of a review and notifying relevant staff

The Director is responsible for keeping a record of the outcome of the review, updating this in the records management system and notifying all relevant staff of the outcome of the review including if the restriction has been withdrawn.

See Section 5.2 and 7.5 above.

# 11. Managing staff stress

## 11.1 Staff reactions to stressful situations

Dealing with demanding, abusive, aggressive or violent complainants can be extremely stressful, distressing or even frightening for our staff. It is perfectly normal to get upset or stressed when dealing with difficult situations.

As an organisation, we have a responsibility to support staff members who experience stress as a result of situations arising at work and we will do our best to provide staff with debriefing and counselling opportunities, when needed. However, to do this we also need help of all Federation Council staff to identify stressful incidents and situations. All staff have a responsibility to tell relevant supervisors and managers about UCC incidents and any other stressful incidents that they believe require management to be involved.

## 11.2 Debriefing

Debriefing means talking things through following a difficult or stressful incident. It is an important way of dealing with stress. Many staff members naturally do this with colleagues after a difficult telephone call, but staff can also debrief with a supervisor or senior manager or as a team following a significant incident. We encourage all staff to engage in an appropriate level of debriefing, when necessary.

Staff may also access an external professional service on a needs basis. All staff can access the Employee Assistance Program (EAP) – a free, confidential counselling service. Contact details for the EAP service are available on staff noticeboards, on the staff intranet and from the Human Resources team.

# 12. Training and awareness

Federation Council is committed to ensuring that all staff are aware of and know how to use this policy. All staff who deal with complainants in the course of their work will also receive appropriate training and information on using this policy and on managing UCC on a regular basis and, in particular, on induction. This should include training to support culturally appropriate communication.



## 13. Policy review

All staff are responsible for forwarding any suggestions they have in relation to this policy to the Deputy General Manager, who along with relevant senior managers will review it biennially (every 2 years).

## 14. References & Associated Documents

20/28474 NSW Ombudsman Model Unreasonable Complainant Policy and Procedure

20/17913 NSW Ombudsman Unreasonable Complainant Practice Manual

18/15492 Federation Council Work Health and Safety Policy

16/21900 Federation Council Code of Conduct

16/21939 Federation Council Complaints Policy

18/42790 Federation Council Business Ethics Policy

## 15. Policy History

Version	Date	Changes / Amendments
1.0	1/9/2020	Sections including Appendices (sample forms and letters) removed from Procedures and added to policy to remain uniform with Model Policy. Review period changed to biennial (every 2 years) from every 3 years to meet model policy. Adopted by Council 318/20FC
2.0	10/04/2024	Policy reviewed and updated per revised Model policy from the NSW Ombudsman dated July 2022. Primary change relates to consideration of cultural factors when considering complainant conduct.

**NOTE: This is a controlled document. If you are reading a printed copy please check that you have the latest version by checking it on Councils Electronic Document system. Printed or downloaded versions of this document are uncontrolled.**

## Appendix A - Individual Rights and Mutual Responsibilities of the Parties to a Complaint

In order for *Federation Council* to ensure that all complaints are dealt with fairly, efficiently and effectively and that work health and safety standards and duty of care obligations are adhered to, the following rights and responsibilities must be observed and respected by all of the parties to the complaint process.

### INDIVIDUAL RIGHTS<sup>1</sup>

#### ***Complainants have the right:***

- to make a complaint and to express their opinions in ways that are reasonable, lawful, and appropriate, regardless of cultural background, national origin, sex, sexual orientation, gender expression, disability or other cultural or personal characteristics<sup>2</sup>
- to a reasonable explanation in a wide range of languages of the organisation's complaints procedure, including details of the confidentiality, secrecy or privacy rights or obligations that may apply
- to a fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the case<sup>3</sup>
- to a fair hearing<sup>4</sup>
- to a timely response
- to be informed in at least general terms about the actions taken and outcome of their complaint<sup>5</sup>
- to have decisions that affect them explained to them
- to at least 1 review of the decision on the complaint<sup>6</sup>
- to be treated with courtesy and respect
- to communicate valid concerns and views without fear of reprisal or other unreasonable response.<sup>7</sup>

#### ***Staff have the right:***

- to determine whether, and if so how, a complaint will be dealt with
- to finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances<sup>8</sup>
- to expect honesty, cooperation, and reasonable assistance from complainants
- to expect honesty, cooperation and reasonable assistance from organisations and people within jurisdiction who are the subject of a complaint
- to be treated with courtesy and respect
- to a safe and healthy working environment<sup>9</sup>
- to modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.<sup>10</sup>

#### ***Subjects of a complaint have the right:***

- to a fair and impartial assessment and, where appropriate, investigation of the allegations made against them

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<sup>1</sup> The word 'rights' is not used here in the sense of legally enforceable rights (although some are), but in the sense of guarantees of certain standards of service and behaviour that a complaint handling system should be designed to provide to each of the parties to a complaint.

<sup>2</sup> Differences of opinion are normal: people perceive things differently, feel things differently and want different things. People have a right to their own opinions, provided those opinions are expressed in acceptable terms and in appropriate forums.

<sup>3</sup> While degrees of independence will vary between complaint handlers, all should assess complaints fairly and as impartially as possible, based on a documented process and the merits of the case.

<sup>4</sup> The 'right to be heard' refers to the opportunity to put a case to the complaint handler/decision-maker. This right can be modified, curtailed or lost due to unacceptable behaviour, and is subject to the complaint handler's right to determine how a complaint will be dealt with.

<sup>5</sup> Provided this will not prejudice on-going or reasonably anticipated investigations or disciplinary/criminal proceedings.

<sup>6</sup> Such a right of review can be provided internally to the organisation, for example by a person not connected to the original decision.

<sup>7</sup> Provided the concerns are communicated in the ways set out in relevant legislation, policies and/or procedures established for the making of such complaints/allegations/disclosures/etc.

<sup>8</sup> Some complaints cannot be resolved to the complainant's satisfaction, whether due to unreasonable expectations or the particular facts and circumstances of the complaint [see also footnote 25].

<sup>9</sup> See for example WH&S laws and the common law duty of care on employers.

<sup>10</sup> Unacceptable behaviour includes verbal and physical abuse, intimidation, threats, etc.

- to be treated with courtesy and respect by staff of Federation Council
- to be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated<sup>11</sup>
- to be informed about the substance of any proposed adverse comment or decision
- to be given a reasonable opportunity to put their case during the course of any investigation and before any final decision is made<sup>12</sup>
- to be told the outcome of any investigation into allegations about their conduct, including the reasons for any decision or recommendation that may be detrimental to them
- to be protected from harassment by disgruntled complainants acting unreasonably.

## **MUTUAL RESPONSIBILITIES**

### ***Complainants are responsible for:***

- treating staff of Federation Council with dignity and respect
- clearly identifying to the best of their ability the issues of complaint, or asking for help from the staff of Federation Council to assist them in doing so
- providing Federation Council, to the best of their ability, with all the relevant information available to them at the time of making the complaint
- being honest in all communications with Federation Council
- informing Federation Council of any other action they have taken in relation to their complaint<sup>13</sup>
- cooperating to the best of their ability with the staff who are assigned to assess/investigate/resolve/determine or otherwise deal with their complaint.

If complainants do not meet their responsibilities, Federation Council may consider placing limitations or conditions on their ability to communicate with staff or access certain services.

Federation Council has a zero-tolerance policy in relation to any harm, abuse or threats directed towards its staff. Any conduct of this kind may result in a refusal to take any further action on a complaint or to have further dealings with the complainant.<sup>13F14</sup> Any conduct of a criminal nature will be reported to police, and in certain cases legal action may also be considered.

### ***Staff are responsible for:***

- providing reasonable assistance, including cultural and linguistic assistance, to complainants who need help to make a complaint and, where appropriate, during the complaint process
- dealing with all complaints, complainants and people or organisations the subject of complaint professionally, fairly, and impartially
- giving complainants or their advocates a reasonable opportunity to explain their complaint, subject to the circumstances of the case and the conduct of the complainant
- giving people or organisations the subject of complaint a reasonable opportunity to put their case during the course of any investigation and before any final decision is made<sup>15</sup>

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<sup>11</sup> Other than where there is an overriding public interest in curtailing the right, for example where to do so could reasonably create a serious risk to personal safety, to significant public funds, or to the integrity of an investigation into a serious issue. Any such notifications or opportunities should be given as required by law or may be timed so as not to prejudice that or any related investigation.

<sup>12</sup> Depending on the circumstances of the case and the seriousness of the possible outcomes for the person concerned, a reasonable opportunity to put their case, or to show cause, might involve a face to face discussion, a written submission, a hearing before the investigator or decision maker, or any combination of the above.

<sup>13</sup> For example, whether they have made a similar complaint to another relevant person or body or have relevant legal proceedings on foot.

<sup>14</sup> Other than in circumstances where the organisation is obliged to have an ongoing relationship with the complainant.

<sup>15</sup> See footnote 11.

- informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them<sup>16</sup> and the substance of any proposed adverse comment or decision that they may need to answer or address<sup>17</sup>
- keeping complainants informed of the actions taken and the outcome of their complaints<sup>17F18</sup>
- giving complainants explanations that are clear and appropriate to their circumstances, and adequately explaining the basis of any decisions that affect them
- treating complainants (and people who are the subject of complaints) with courtesy and respect at all times and in all circumstances
- taking all reasonable and practical steps to ensure that complainants<sup>19</sup> are not subjected to any detrimental action in reprisal for making their complaint<sup>20</sup>
- giving adequate warning of the consequences of unacceptable behaviour.

If Federation Council or its staff fail to comply with these responsibilities, complainants may complain to the [NSW Ombudsman](#).

***Subjects of a complaint are responsible for:***

- cooperating with the staff of Federation Council who are assigned to handle the complaint, particularly where they are exercising a lawful power in relation to a person or body within their jurisdiction<sup>21</sup>
- providing all relevant information in their possession to Federation Council or its authorised staff when required to do so by a properly authorised direction or notice
- being honest in all communications with Federation Council and its staff
- treating the staff of the Federation Council with courtesy and respect at all times and in all circumstances
- refraining from taking any detrimental action against the complainant<sup>22</sup> in reprisal for them making the complaint.<sup>23</sup>

If subjects of a complaint fail to comply with these responsibilities, action may be taken under relevant laws or codes of conduct.

***Federation Council is responsible for:***

- maintaining an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording, and reviewing complaints
- making decisions about how all complaints will be dealt with
- ensuring that all complaints are dealt with professionally, fairly, and impartially<sup>24</sup>
- ensuring that staff treat all parties to a complaint with courtesy and respect
- ensuring that the assessment and any inquiry into the investigation of a complaint is based on sound reasoning and logically probative information and evidence
- finalising complaints on the basis of outcomes that the organisation, or its responsible staff, consider to be satisfactory in the circumstances<sup>25</sup>

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<sup>16</sup> Other than where an allegation is so lacking in merit that it can be dismissed at the outset.

<sup>17</sup> See footnote 11.

<sup>18</sup> See footnote 5.

<sup>19</sup> 'Complainants' include whistleblowers/people who make internal disclosures.

<sup>20</sup> 'Complaints' includes disclosures made by whistleblowers/people who make internal disclosures.

<sup>21</sup> This does not include any obligation to incriminate themselves in relation to criminal or disciplinary proceedings, unless otherwise provided by statute.

<sup>22</sup> See footnote 19.

<sup>23</sup> See footnote 20.

<sup>24</sup> See footnote 3.

<sup>25</sup> Once made, complaints are effectively 'owned' by the complaint handler who is entitled to decide (subject to any statutory provisions that may apply) whether, and if so how, each complaint will be dealt with, who will be the case officer/investigator/decision-maker/etc, the resources and priority given to actioning the matter, the powers that will be exercised, the methodology used, the outcome of the matter, etc. Outcomes arising out of a complaint may be considered by the complaint handler to be satisfactory whether or not the complainants, any subjects of complaint or the organisation concerned agrees with or is satisfied with that outcome.

- implementing reasonable and appropriate policies, procedures, and practices to ensure that complainants<sup>26</sup> are not subjected to any detrimental action in reprisal for making a complaint<sup>27</sup>, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints
- adequately considering any confidentiality, secrecy or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.

If Federation Council fails to comply with these responsibilities, complainants may complain to the [NSW Ombudsman](#).

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<sup>26</sup> See footnote 19.

<sup>27</sup> See footnote 20.

**Appendix B**  
**Sample UCC incident form**

This form should only be completed if you encounter unreasonable conduct by a complainant and consider that steps may need to be taken to change or restrict a complainant’s access to services.

Complete this form and send it electronically or by hand to your Manager and Director within 24 hours of a UCC incident. They will decide on the necessary and appropriate course of action for responding to and managing the complainant’s conduct.

Date: \_\_\_\_\_ Case officer’s name: \_\_\_\_\_

Name of complainant: \_\_\_\_\_ Complainant’s case file number: \_\_\_\_\_

Details of the complainant’s conduct/incident including whether emergency services were contacted:

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Why do you consider this conduct to be unreasonable?

For example – has it occurred before/repeatedly, caused significant disruptions to our organisation, has or could raise significant health and safety issues for our staff or other persons.

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What action, if any, have you taken to deal with/manage the complainant’s conduct?

For example – warning the complainant ‘verbally’ about their conduct, other/previous attempts to manage the behaviour etc.

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What do you think should be done to effectively manage the complainant’s conduct?

Note – the final decision on the appropriate course of action will be made by the Director.

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Is there any other information that might be relevant to this case? If necessary, attach any supporting documentation.

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## Appendix C

### Checklist - modify or restrict a complainant's access

- I have received a signed and completed incident form from the case officer(s) involved (attach copy).
- I have spoken with relevant case officer(s) to obtain further information, as needed.
- I have reviewed the complainant's record and all the relevant information in it.
- I have referred to and considered [Part 7.2 Criteria](#) to be considered, which includes an assessment of the following:
  - The merits of the complainants case  
\_\_\_\_\_  
\_\_\_\_\_
  - The complainant's circumstances  
\_\_\_\_\_  
\_\_\_\_\_
  - Jurisdictional issues  
\_\_\_\_\_  
\_\_\_\_\_
  - Proportionality  
\_\_\_\_\_  
\_\_\_\_\_
  - Organisational or Council Officers responsibility  
\_\_\_\_\_  
\_\_\_\_\_
  - Responsiveness, including previous conduct  
\_\_\_\_\_  
\_\_\_\_\_
  - Council Officer's personal boundaries  
\_\_\_\_\_  
\_\_\_\_\_
  - Conduct that is unreasonable in all circumstances (assault, threats of harm etc.)  
\_\_\_\_\_  
\_\_\_\_\_
- Along with the Council officer concerned, I have considered all reasonable options for managing the complainant's conduct, including those that do not involve restricting their access to our services.  
\_\_\_\_\_  
\_\_\_\_\_
- The complainant has been warned about their conduct in writing, and the letter has been signed by the General Manager if applicable.

- The complainant has been advised in writing, and by other culturally, linguistically, or personally appropriate means, of our decision to restrict their access to our organisation, and the letter has been signed by the General Manager if applicable.
- I have made a record of my assessment and decision about the complainant's conduct and all relevant staff members have been notified of my decision.
- An electronic alert has been created in our records management system that notifies any staff dealing with this complainant of the nature of the conduct that caused us to be concerned, the nature of the restriction that has been placed on their access, its duration, how they are to deal with the complainant (including who they should direct any communications from the complainant to).

Date: \_\_\_\_\_

Signature: \_\_\_\_\_



## Appendix D

### Sample warning letter

*[To be signed by the General Manager or Director]*

Our reference:     *[reference]*  
Contact:            *[Director/General Manager]*  
Telephone:            *[number]*

*[Date]*

*[Name of complainant]*  
*[Address of complainant]*

Dear *[Name of complainant]*

#### **Your contact with Federation Council**

You recently had *[state the form of contact – e.g. telephone, written or face-to-face]* with staff at *[location eg, depot, landfill, library, Service NSW]* on *[date]*. *[During/In that telephone call/appointment/letter,]* I understand that you *[explain the nature of the conduct that has caused the organisation to be concerned]*.

We consider this type of behaviour to be inappropriate and it must stop. If you continue to behave in this way or in any other way that my staff consider to be unreasonable, we will impose restrictions on your contact with our office. This may involve restricting your contact to *[apply the relevant option(s)]*:

- ‘Writing only’ – this means that we will only accept communications from you in writing, delivered by Australia Post *[if online or other written communications are preferred then explain]*.
- ‘Telephone contact only’ – this means that you will only be able to contact us by telephone on a specified time and day of the week.
- ‘Face-to-face contact only’ – this means that your contact will be limited to scheduled face-to-face meetings with a specified member of our staff.

Or any other restriction that we consider to be appropriate in the circumstances.

I have attached a copy of a document called *[Individual rights and mutual responsibilities of the parties to a complaint]* for your reference. We expect everyone who complains to this office to act in the ways described in this document.

If you have any questions about this letter, contact *[provide name and phone number of the Director/General Manager]*.

Yours sincerely,  
*[Director/General Manager]*

## Appendix E

### Sample letter notifying a complainant of a decision to change or restrict their access to our services

*[To be signed by the General Manager or Director]*

Our reference: *[reference]*  
Contact: *[Director/General Manager]*  
Telephone: *[number]*

*[Date]*

*[Name of complainant]*  
*[Address of complainant]*

Dear *[name of complainant]*

#### **Decision to restrict your contact with Federation Council**

It has come to my attention that you *[describe the nature of the unreasonable conduct and its impact – e.g. if the complainant has been sending emails to several Council officers staff on a daily basis...]*

I understand that my staff have previously told you that we consider this conduct to be unreasonable and unwarranted.

I also wrote to you on *[date]* and asked you to stop this behaviour. In that letter I advised you that if your behaviour continued, we would restrict your contact with Federation Council. At the time I also attached a copy of our *[Individual rights and mutual responsibilities of the parties to a complaint]* which outlines your responsibilities as a complainant.

Because your behaviour has continued, I now consider it necessary to impose certain restrictions on your future contact with Federation Council. I therefore give you notice that from *[date]*, and with the exception(s) detailed below, Federation Council will only accept communication from you *[identify permissible form of contact, if any]*.

#### **What this means**

This means that you are only to contact Federation Council using *[describe the restriction in further details]*. Any communications that do not comply with this restriction will be *[describe what will occur – e.g. phone calls will be terminated immediately or emails/written communications will be read and filed without acknowledgment, emails will be blocked or deleted, no interviews will be granted, etc]*.

#### **Your existing complaint (if applicable)**

Federation Council currently has one file open in your name. This relates to *[state the subject of complaint and describe complaint]*. This file is being handled by *[name of Officer and position title]*. While you are able to contact *[name of officer]* *[state nature of contact – e.g. by email]* about this specific matter, all other contact with Federation Council, including any future complaints, must be *[state restriction – e.g. in writing through Australia Post]* *[provide contact details – e.g. address of organisation where post can be sent]*.

#### **Review of this decision**

My decision to restrict your contact with this organisation is effective immediately and will last for *[ 3 months/6 months/12 months]*. At that time we will review your restriction and decide if it should be maintained, amended or withdrawn.

I take these steps with the greatest reluctance, but *[state reason for restriction – e.g. the equity and safety of other complainants and my staff]*, leaves me no alternative.

If you have any questions about this letter, you can contact *[provide name and phone number of the Director/General Manager]*.

Yours sincerely,

*[Director/General Manager]*

## Appendix F

### Sample letter notifying a complainant of an upcoming review

*[To be signed by the Director or the General Manager]*

Our reference: *[reference]*  
Contact: *[case officer]*  
Telephone: *[number]*

*[Date]*

*[Name of complainant]*  
*[Address of complainant]*

Dear *[name of complainant]*

#### **Upcoming review of the decision to restrict your contact with *Federation Council***

It has now been *[3 months/6 months/12 months]* since restrictions were *[imposed/upheld]* on your contact with our office. As advised in our letter dated *[date]*, we are now reviewing our decision to ascertain whether the restrictions should be maintained, amended or withdrawn.

We consider it important to give you an opportunity to participate in the review process, so we are therefore inviting you to *[apply the relevant option(s)]*:

- make submissions in writing through Australia Post *[include contact person's name and address]*
- schedule a face-to-face interview with *[include name of staff member and provide instructions on how they should go about scheduling the appointment – e.g. calling though the reception line on xxx-xxx-xxxx]*
- schedule a telephone interview with *[include name of staff member and provide instructions on how they should go about scheduling the appointment – e.g. calling though the reception line on xxx-xxx-xxxx]*

In your letter, you should include information that would be relevant to our review. This includes information about *[.....]*/During the interview which will not last more than 30 minutes, we will discuss whether:

- you have complied with the current contact restrictions
- the current contact restrictions should be removed
- the current contact restrictions should be amended to better suit your personal circumstances
- the current contact restrictions should be maintained
- any other information that is relevant to our decision.

We must receive your letter by *[time and date]*/you should confirm your interview with *[name of Council officer]* by *[time and date]*. If we do not receive it/hear from you by this date, we will assume that you do not wish to participate in this review and will undertake the review based on the information that we have available to us.

Once the review is completed, we will contact you again by letter notifying you of our decision.

If you have any questions about this letter, you can contact *[provide name and phone number of the Director or General Manager]*.

Yours sincerely,

*[Director/General Manager]*

## Appendix G

### Checklist for reviewing a decision regarding an access change/restriction

- The complainant has been sent a letter, or if necessary has been contacted by a more culturally and linguistically appropriate means, notifying them of the review.
- The complainant will/will not participate in the review.
- the complainant has/has not scheduled a face-to-face interview
  - the complainant has/has not made written submissions
  - the complainant has/has not scheduled a telephone interview
- I have reviewed all the information in Council's records management system from the last 12 months [*or relevant period of the restriction*] about the complainant's:
- contact with the office (explain form of contact)
- 
- conduct during that contact (explain if conduct reasonable or unreasonable)
- 
- I have spoken with the Council officers who have had contact with the complainant during the last 12 months about the complainant's conduct during that period.
- I have considered the arguments/statements made by the complainant, including the impact of the restrictions on them (explain complainant's position, including if their circumstances have changed etc.)  
*Note: if the complainant is arguing that their circumstances have changed, they should be required to submit evidence to support this claim.*
- 
- I have considered whether there are other more reasonable/suitable options for managing the complainant's conduct, including those that do not involve restricting their access to our services (list all that apply).
- 
- I consider that the restriction should be (explain):
- maintained – *e.g. because the conduct has continued or is likely to continue, is disproportionate etc.*
  - removed – *e.g. because the complainant has complied with the restrictions etc.*
  - amended – *e.g. because the complainant's circumstances have changed and the current restriction is no longer appropriate.*
- 
- I have discussed my decision with [*other Directors/General Manager*]
- The complainant has been advised in writing of my decision to maintain/remove/ amend the restriction and this letter has been signed by the (*General Manager*).
- The Records Management System has been updated to reflect my decision.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_



