

# WALCHA COUNCIL

## ADMINISTRATION POLICY



### Unreasonable Customer Conduct Policy

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#### Applicability

All Council Staff

#### Publication Requirement

Internal and External

#### Assigned Responsible Officer

General Manager

#### Document Status

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### 1. POLICY OBJECTIVE

This policy is to provide all staff and customers a framework within which Walcha will manage unreasonable complaints and conduct by customers.

### 2. POLICY SCOPE

This policy will apply to full-time, part-time and casual employees and applies to the management of unreasonable conduct by customers as outlined in this policy.

### 3. POLICY STATEMENT

This policy has been developed to assist all staff members to better manage unreasonable customer conduct (UCC).

The aims of the policy are to ensure that all staff:

- feel confident and supported in taking action to manage UCC;
- act fairly, consistently, honestly and appropriately when responding to UCC;
- are aware of 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 (1) or more of the following mechanisms:
  - The strategies provided in the NSW Ombudsman's Managing Unreasonable Complainant Conduct Practice Manual (2<sup>o</sup> edition) ('practice manual') including the strategies to change or restrict a complainant's access to Council services;
    - alternative dispute resolution strategies to deal with conflicts involving complainants and members of the organisation;
    - legal instruments such as trespass laws / legislation to prevent a complainant from coming onto Council premises and orders to protect specific staff members from any actual or apprehended personal violence, intimidation or stalking;
  - Have a clear understanding of the criteria that will be considered before Council decides to change or restrict a complainant's access to Council services;
  - Are aware of the processes that will be followed to record and report UCC incidents as well as the procedures for consulting and notifying complainants about any proposed actions or decisions to change or restrict their access to Council services; and
  - Are familiar with the procedures for reviewing decisions made under this Policy, including specific timeframes for review.

### 4. DEFINING UNREASONABLE CUSTOMER CONDUCT

Most complainants who come to Council act reasonably and responsibly in their interactions with staff, even when they are experiencing high levels of distress, frustration and anger about their complaint.

However, in a very small number of cases some complainants behave in ways that are inappropriate and unacceptable, despite Council's best efforts to help them. They are aggressive and verbally abusive towards staff. They threaten harm and violence, bombard Council offices with unnecessary and excessive phone calls and emails, make inappropriate demands on staff time and resources and refuse to accept Council's decisions and recommendations in relation to their complaints.



When complainants behave in these ways, the General Manager considers their conduct to be unreasonable. Unreasonable complainant conduct (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 the organisation, staff, other service users and complainants or the complainant him / herself.

UCC can be divided into the following five (5) categories of conduct:

1. unreasonable persistence;
2. unreasonable demands;
3. unreasonable lack of cooperation;
4. unreasonable arguments;
5. unreasonable behaviours.

## **5. ROLES AND RESPONSIBILITIES**

### **5.1 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 in 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.

It must be emphasised that any strategies that effectively change or restrict a complainant's access to services must be reviewed and considered by the Public Officer or a senior staff member as provided in this Policy.

Staff are also responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) to the Public Officer within 24 hours of the incident occurring. A grievance is to be lodged on the Customer Request Management System.

### **5.2 The General Manager**

The General Manager, in consultation with relevant staff, has the responsibility and authority to change or restrict a complainant's access to Council services in the circumstances identified in this policy. When doing so, he or she will consider the relevant criteria and will aim to impose any service changes / restrictions in the least restrictive ways possible. The aim, when taking such actions, should not be to punish the complainant but rather to manage the impacts of their conduct.

When applying this policy, the General Manager will also aim to keep at least one (1) open line of communication with a complainant. However, Council recognises that in extreme situations all forms of contact may need to be restricted for some time to ensure the health and safety and security of Council staff and / or third parties.

The General Manager 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 the Policy. They will also manage and keep a file record of all cases where this Policy is applied.

### **5.3 Directors and Managers**

All Directors and/or Managers are responsible for supporting staff to apply the strategies in this Policy.

They are also responsible for ensuring compliance with any procedures identified in this policy and ensuring that all staff members are trained to deal with UCC, including during induction.



Following a UCC and / or stressful interaction with a complainant, directors and / or managers are responsible for providing affected staff members with the opportunity to debrief and express their concerns either formally or informally. They will also ensure that staff are provided with proper support and assistance including medical and / or police assistance and support through programs such as the **Employee Assistance Program (EAP)**, if required.

## 6. RESPONDING TO AND MANAGING UCC

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

1. who the complainant has contact with;
2. what the complainant can raise with Council;
3. when the complainant can have contact;
4. where the complainant can make contact;
5. how the complainant can make contact.

When using these restrictions, Council recognises that discretion will need to be used to adapt them to suit a complainant's personal circumstances, level of competency, literacy skills, etc. In this regard, Council also recognise that more than one (1) strategy may need to be used in individual cases to ensure their appropriateness and efficacy.

### 6.1 Alternative Dispute Resolution

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

Council recognise that ADR may not always 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.

### 6.2 Changing or Restricting a Complainant's Access to Council Services

UCC incidents may result in changing or restricting a complainant's access to Council services. In such circumstances, the General Manager will:

1. consult with relevant staff;
2. consider criteria for changing or restricting a complainant's access to Council services;
3. provide a warning letter;
4. in some cases, provide a notification letter;
5. notify relevant staff about access changes / restrictions;
6. monitor the complainant's records / restrictions.



### 6.3 Non-Compliance with a Change or Restriction on Access to Council Services

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 CRM and a copy forwarded to the General Manager who will decide whether any action needs to be taken to modify or further restrict the complainant's access to Council services.

Should it be found that Council contractors or external service providers have been found to have engaged in UCC, the General Manager will write to them suspending their services to Council for a period no less than 3 months, or longer as determined by the General Manager based on the severity of the UCC and or frequency. Additionally, contractors or external service providers found to have breached this policy will not be invited to tender and or quote for Council work for a period of no less than 3 months, or longer as determined by the General Manager.

All service contracts must make reference to this policy, and all existing contractors or service providers must be formally informed of the provisions of this policy.

### 6.4 Periodic Reviews Of All Cases Where This Policy Is Applied

All UCC cases where this Policy is applied will be reviewed every three (3) months to six (6) months (depending on the nature of the service provided or determined by the General Manager) and not more than 12 months after the service change or restriction was initially imposed or continued/ upheld.

The review process will involve:

1. notifying the complainant of an upcoming review;
2. following the criteria to be considered during a review;
3. consulting with relevant staff;
4. notifying the complainant of the outcome of the review;
5. recording the outcome of a review and notifying relevant staff.

### 6.5 Managing Staff Stress

Dealing with complainants who are demanding, abusive, aggressive or violent can be extremely stressful and at times distressing or even frightening for all staff, both experienced and inexperienced.

As an organisation, Council has a responsibility to support staff members who experience stress as a result of situations arising at work and Council will do its best to provide staff with debriefing and counselling opportunities, when needed.

To do this, Council needs the help of all staff to identify stressful incidents and situations. All staff have a responsibility to notify relevant supervisors / managers of UCC incidents and any stressful incidents that they believe require management's involvement. Council encourages all staff to engage in an appropriate level of debriefing, when necessary.

### 6.6 Training and Awareness

Council is committed to ensuring that all staff are aware of and know how to use this policy. All staff who deal with complainants during their work will also receive appropriate training and information on using this Policy and managing UCC on a regular basis and on induction. Staff will be offered to complete a Handling Difficult Customer or Conflict Resolution Course to assist with their training.



It is the responsibility of all contractors to be aware of this policy when they engage in a service level contract with Walcha Council.

## **7. LEGISLATION AND SUPPORTING DOCUMENTS**

### **Relevant Legislation, Regulations and Industry Standards include:**

- NSW Ombudsman - Managing Unreasonable Complainant Conduct Practice Manual (20 edition) - A manual for frontline staff, supervisors and senior managers.

### **Relevant Council Policies and Procedures including other Operational Policies, Plans and Information include:**

- Complaints Handling Policy;
- Grievance Policy;
- Procedure for Customer requests and Complaints;
- Code of Conduct;
- Work Health and Safety Policy.



## Appendix A

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

In order for Walcha Council to ensure that all complaints are dealt with fairly, efficiently and effectively and that occupational 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>

*Customers have the right to:*

- Make a complaint and to express their opinions in ways that are reasonable, lawful and appropriate<sup>2</sup>
- A reasonable explanation of the organisation's complaints procedure, including details of the confidentiality, secrecy and/or privacy rights or obligations that may apply
- A fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the case<sup>3</sup>
- A fair hearing<sup>4</sup>
- A timely response
- Be informed in at least general terms about the actions taken and outcome of their complaint<sup>5</sup>
- Be given reasons that explain decisions affecting them
- At least one right of review of the decision on the complaint<sup>6</sup>
- Be treated with courtesy and respect
- 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
- Finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances<sup>8</sup>
- Expect honesty, cooperation and reasonable assistance from organisations and people within jurisdiction who are the subject of a complaint

<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



- Expect honesty, cooperation and reasonable assistance from customers
- Be treated with courtesy and respect
- A safe and healthy working environment<sup>9</sup>
- Modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a customer<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
- Be treated with courtesy and respect by staff of the Walcha Council
- Be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated<sup>11</sup>
- Be informed about the substance of any proposed adverse comment or decision
- 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>
- 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
- Be protected from harassment by disgruntled customers acting unreasonably.

## Mutual responsibilities

### Customers are responsible for:

- Treating staff of Walcha Council with courtesy and respect
- Clearly identifying to the best of their ability the issues of request or complaint, or asking for help from the staff of Walcha Council to assist them in doing so
- Providing to the best of their ability Walcha Council with all the relevant information available to them at the time of making the complaint
- Being honest in all communications with Walcha Council
- Informing Walcha Council of any other action they have taken in relation to their complaint<sup>13</sup>
- Cooperating with the staff who are assigned to assess/ investigate/resolve/determine or otherwise deal with their complaint.

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

Walcha 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 customer.<sup>14</sup> Any such conduct of a criminal nature will be reported to police and in certain cases legal action may also be considered.

<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.

<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 at foot.

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

**Staff are responsible for:**

- Providing reasonable assistance to customers who need help to make a complaint and, where appropriate, during the complaint process
- Dealing with all complaints, customers and people or organisations the subject of complaint professionally, fairly and impartially
- Giving customers or their advocates a reasonable opportunity to explain their complaint, subject to the circumstances of the case and the conduct of the customer
- 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>
- 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 customers informed of the actions taken and the outcome of their complaints<sup>18</sup>
- Giving customers reasons that are clear and appropriate to their circumstances and adequately explaining the basis of any decisions that affect them
- Treating customers and any people the subject of complaint with courtesy and respect at all times and in all circumstances
- Taking all reasonable and practical steps to ensure that customers<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 Walcha Council or its staff fail to comply with these responsibilities, customers may complain to the NSW Ombudsman.

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

- Cooperating with the staff of Walcha 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 Walcha Council or its authorised staff when required to do so by a properly authorised direction or notice
- Being honest in all communications with Walcha Council and its staff
- Treating the staff of Walcha Council with courtesy and respect at all times and in all circumstances
- Refraining from taking any detrimental action against the customer<sup>22</sup> in reprisal for them making the complaint.<sup>23</sup>

15 See Endnote 11

16 Other than where an allegation is so lacking in merit that it can be dismissed at the outset

17 See Endnote 11.

18 See Endnote 5.

19 'Complainants' include whistle-blowers/people who make internal disclosures.

20 'Complaints' includes disclosures made by whistle-blowers/people who make internal disclosures.

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

22 See Endnote 19.

23 See Endnote 20



If subjects of a complaint fail to comply with these responsibilities, action may be taken under relevant laws and/or the Code of Conduct and other policies.

**Walcha Council is responsible for:**

- Having an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording and reviewing complaints
- 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>
- Implementing reasonable and appropriate policies/procedures/practices to ensure that customers<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
- Giving adequate consideration to any confidentiality, secrecy and/or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.

If Walcha Council fails to comply with these responsibilities, customers may complain to the NSW Ombudsman.

<sup>24</sup> See Endnote 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.

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

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