

Unreasonable Conduct by Complainants Policy

Applicable to:

This Policy applies to all staff in the following Transport agencies; Transport for NSW, Department of Transport, Roads and Maritime Services, Sydney Trains, NSW Trains, State Transit Authority and RailCorp.

- The term 'staff' is used in this Policy to cover all permanent, temporary or casual staff, staff seconded from another organisation, labour hire, professional services contractors and consultants.
- This policy does not apply to:
 - Any matter that, because of its nature, should be referred to an external regulatory body, commission, ombudsman or other agency.
 - Ministerial correspondence
 - Existing appeals process outcomes.

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APPROVED BY THE ACTING SECRETARY

1 Purpose

Transport supports the NSW Ombudsman's guidelines for managing unreasonable conduct by complainants as outlined in the *Managing Unreasonable Complainant Conduct Practice Manual 2012*. Transport is committed to being accessible and responsive to all complainants who provide us with feedback. Our ability to succeed at this goal depends on:

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

When complainants behave in an unreasonable manner their conduct can affect the quality of service provided to other customers. As such, this policy outlines the unacceptable standards of behaviour and the principles for handling unreasonable conduct by complainants.

2 Mandatory Requirements

2.1 Types of unreasonable conduct by complainants

The NSW Ombudsman has defined unreasonable conduct by complainants (UCC) as *“any behaviour by a current or former customer which, because of its nature or frequency raises substantial health, safety, resource or equity issues for our organisation, our staff, other customers or the complainant himself/herself.”*

Transport is committed to providing a workplace free from harassment, foul or abusive language and other forms of unreasonable conduct by complainants.

The types of conduct that may be viewed as unreasonable include but are not limited to:

- Unreasonable persistence – complainants sending excessive amounts of correspondence or persisting with their issues in an incessant manner and refusing to accept final decisions.
- Unreasonable demands – any demands, express or implied, that are made by a complainant insisting on outcomes that move the goal posts, are unattainable, or demand their complaint is dealt with in ways that would result in disproportionate impacts or substantial issues.
- Unreasonable lack of cooperation – an unwillingness to cooperate with our organisation, staff, or complaints system and processes. This may include providing disorganised, excessive or irrelevant information, being unwilling to consider other valid viewpoints or refusing to define their issues of complaint.
- Unreasonable arguments – any arguments that are not based in reason or logic, that are incomprehensible, false, inflammatory, trivial and refuse to accept other more reasonable interpretations.
- Unreasonable behaviour – conduct that is unreasonable in all circumstances – regardless of how stressed, angry or frustrated a complainant is – because it harasses, utilises foul or abusive language, or unreasonably compromises the health, safety and security of our staff, other service users or the complainant himself/herself.

2.2 Criteria for determining unreasonable conduct

Whether a complainant's conduct is unreasonable depends on whether an organisation and its staff are "*justified in taking steps to restrict or terminate contact, or implement alternative service arrangements to manage the impacts of that conduct.*"¹

If the behaviour threatens the immediate safety or welfare of a staff member or another customer, it may be reported to the Police or result in the initiation of legal action without prior warning to the complainant.

Key elements for consideration when deciding if action is justified and conduct is unreasonable should include:

- **The merits of the case** – the complainant may identify a clear issue and potentially sustain a substantial loss due to it
- **The complainant's circumstances** – consideration should be given to any cultural elements that may affect a complainant's interpretation of events; along with any health, intellectual, linguistic, financial or social circumstance that may have contributed to the complainant's stress.
- **Proportionality** – whether the complainant has behaved in a manner proportionate to the loss they have suffered and has made demands reasonable to the scale of their loss.
- **Responsiveness of the complainant** – is there any previous behaviour that should be considered and does the complainant work to resolve issues when identified.
- **Personal experience** – did a staff member feel unusually stressed, threatened or anxious due to events that occurred with the complainant in the course of the complaint.
- **Social acceptability of conduct** – certain behaviours, such as overt aggression, violence, harassment or threats, are not socially acceptable.
- **Legislative requirements** – certain services complainants may have a legislative right to use, this may limit the ability to terminate contact with them and instead force other controls

For further information on identifying unreasonable conduct by complainants, and behaviours that may be a leading indicator, refer to the NSW Ombudsman's *Managing Unreasonable Complainant Conduct Practice Manual – 2nd edition (2012)*.

2.3 Unreasonable conduct handling process

Agencies within the scope of this policy must have documented procedures for managing unreasonable conduct by complainants, including escalations, appeals and debriefing processes and support for staff if required.

The exact actions and steps for handling unreasonable conduct by complainants will be specific to the circumstances but the following steps must be taken where appropriate.

- Provide notice of the unreasonable conduct – the complainant must be informed as to why their behaviour is considered unreasonable, the action, or actions, that will be taken as a result and given an opportunity to amend the behaviour.
- Record unreasonable conduct – all instances where a complainant is provided with notice of unreasonable conduct must be recorded. This should include:
 - the details of the complaint

¹ Chris Wheeler, NSW Deputy Ombudsman

- the complainant's conduct
- any events that gave rise to the unreasonable conduct
- any actions taken and the complainant's responsiveness
- Escalate to the next tier – If action is required to be taken, the case must be reviewed by a more senior or specialist staff member first. Actions can include decisions to restrict or terminate contact were justified, and/or whether or not to implement alternative service arrangements to manage the impacts of that complainant's conduct on an ongoing basis.
- Review, report and analyse – All unreasonable conduct by complainants must be reviewed, reported and analysed for process improvement opportunities.

Should the complainant's conduct be serious or repeated on an ongoing basis it may be necessary to formalise restricted service arrangements. In order to implement any ongoing termination or restriction of service the steps that should be taken include:

1. Formally advise complainant – Notify complainant of concerns and actions to be taken and, where reasonable, provide an opportunity to amend their conduct.
2. Implement and record action plan and restrictions to service – The action plan must be implemented to handle further interactions. The action plan should be recorded and include steps to notify other staff of any restrictions.
3. Monitor and report on compliance – Instances of non-compliance to defined action plans should be recorded and reported to the responsible authority for consideration.
4. Periodically review action plan – At least once every 12 months, or more frequently if appropriate, any restrictions should be reviewed. The goal of such reviews should always be to remove or reduce restrictions on the complainant, as long as there can be a reasonable belief that the conduct will not reoccur.

2.4 Potential responses and controls for use in action plans

When implementing any action consideration should be given to any specifics related to the complainant's circumstances. Staff should aim to keep at least one open line of communication with a complainant unless the conduct jeopardises the health, safety or security of staff, the complainant or a third party. One strategy may not fit all circumstances so discretion should be used to suit the case and complainant.

2.4.1 Who – Limiting contact to a single point

Where a complainant tries to forum shop, changes their issues of complaint repeatedly, reframes their complaint, or raises an excessive number of complaints it may be appropriate to restrict their access to a single staff member who will exclusively manage their complaint(s) and interactions with an Agency. This will ensure they are dealt with consistently and may minimise the chances for misunderstandings, contradictions and manipulation.

To avoid staff 'burn out', the sole contact officer's supervisor will provide them with regular guidance and regularly review the arrangement to ensure that the officer is supported.

Complainants who are restricted to a sole contact person must be given the contact details of one additional staff member who they can contact if their primary contact is unavailable for an extended period – e.g. they go on leave or are otherwise unavailable for an extended period of time.

2.4.2 What – Restricting the subject matter that will be considered

This should be considered where complainants repeatedly raise complaints that raise trivial or insignificant issues, contain inappropriate or abusive content or relate to a complaint that has been comprehensively considered and reviewed, once or more. In these circumstances, it may be appropriate to restrict the subject matter the complainant can raise that will be considered. Potential approaches may be to:

- Advise the complainant 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 at our own discretion.
- Return correspondence to the complainant and require them to remove any inappropriate content before we will agree to consider its contents. A copy of the inappropriate correspondence will also be made and kept to identify repeat incidents.

2.4.3 When or where – Limiting when a complainant may contact us

It may be appropriate to limit contact if a complainant's contact places an unreasonable demand on our time or resources because it is overly lengthy (e.g. disorganised and voluminous correspondence) or affects the health safety and security of our staff because it involves behaviour that is persistently rude, threatening, or overtly abusive or aggressive. Limitations may include:

- Restrict the complainant to one complaint per month. Any attempts to circumvent this restriction, for example by raising multiple issues in the one complaint letter may result in modifications or further restrictions being placed on their access.
- Restrict the complainant to certain channels, for example to a certain email account or telephone number. Should the complainant be restricted to "writing-only", whether by e-mail, letter or fax, the specific means of contact must be clearly identified along with any means of contact that are not permitted, for example attending certain premises.
- Limit communications to a certain length or timeframe. If complainants continue to be overly lengthy in their feedback it may be appropriate to require the complainant to clearly set out and identify their issues.
- Restrict the complainant to certain locations and times for face to face complaints to ensure adequate security is available, or accept complaints by appointment only.

2.4.4 Alternative dispute resolution

If it is determined that services to a complainant cannot be restricted or terminated, or that we bear some responsibility for causing or exacerbating the complainant's conduct, alternative dispute resolution strategies should be considered.

This may include processes such as mediation and conciliation to resolve the conflict with the complainant and attempt to rebuild our relationship with them. If alternative dispute resolution is considered to be an appropriate option in a particular case, the process will be conducted by an independent third party to ensure transparency and impartiality.

However, in certain situations, alternative dispute resolution may not be an appropriate or effective strategy, particularly if the complainant is uncooperative or resistant to compromise. Therefore, each case should be assessed on its own facts to determine the appropriateness of this approach.

2.4.5 Complete termination of complaint consideration services

In rare cases, and as a last resort following the attempt or consideration of all reasonable alternate strategies, an executive may decide it is necessary to completely restrict a complainant's access to our services.

A decision to have no further contact may only be made when it is clear the complainant is unlikely to modify their conduct or their conduct is a significant risk to the health, safety or security of our staff, other service users or the complainant himself/herself. Examples of such behaviour would include:

- Acts of aggression, including verbal or physical abuse, threats of harm, harassment, intimidation, stalking or assault.
- Damage to property
- Physically impeding a staff member or customer to move freely
- Conduct that may be unlawful in some other manner

In such cases the complainant will be formally notified that their access has been restricted.

Complainants may also be restricted through the use of legal mechanisms such as trespass laws or legal orders.

2.5 Complainant appeals process

All agencies must provide a method for a single appeal of any restrictions to services, the outcome of which must be signed off by an agency executive with responsibility for complaints and feedback management who was not involved in the process.

The executive will advise the complainant of their appeal which must be signed off by a direct report to the Secretary of Transport for NSW or relevant agency Chief Executive.

If the complainant continues to be dissatisfied they may seek an external review from an oversight agency to ensure the fairness of the process.

2.6 Minimising unreasonable conduct by complainants

A key objective for the management of unreasonable conduct by complainants should be to minimise the opportunities for, and the detrimental impact of, such conduct as much as is reasonably practicable. To this end each business shall:

- Track and report on when actions are taken in response to unreasonable conduct by complainants.
- Analyse data associated with unreasonable conduct for trends and options for continuous improvement
- Review training processes based on cases where the policy is used to drive continuous improvement
- Train staff members in handling unreasonable conduct by complainants, including methods to defuse difficult situations that are likely to arise.

3 Accountabilities

The Deputy Director General, Customer Experience TfNSW is accountable for this Policy. This accountability includes developing the Policy, monitoring its effectiveness and performing formal reviews annually.

Direct reports to the Secretary of TfNSW and to the Chief Executives of the Operating Agencies are accountable for ensuring the requirements of this Policy are implemented within their area of authority.

3.1 All staff

All staff must familiarise themselves with this policy as well as relevant agency procedures.

Where suitable, staff should use the strategies and scripts provided in the NSW Ombudsman's Managing Unreasonable Complainant Conduct Practice Manual – 2nd edition (2012).

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

Staff must, where appropriate, record and report all incidents of unreasonable conduct by complainants they experience or witness to their manager as soon as reasonably practicable (from mid 2015 Transport for NSW will be implementing a new cluster-wide Complaints and Feedback Management IT System to support this process).

3.2 Managers

All managers, workers and contractors are accountable for ensuring compliance with the Policy within their area of accountability or responsibility.

Managers must ensure compliance with all supporting procedures and that where relevant, staff are trained to deal with unreasonable conduct by complainants.

Following unreasonable conduct by complainants, managers should provide affected staff with the opportunity to debrief and raise any concerns.

Managers must ensure that staff are provided with proper support and assistance through employee assistance programs, medical and/or police assistance or other reasonable support processes if necessary.

3.3 Executive or authorised delegate (Executive)

The executive or authorised delegate (Executive), 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 taking into account the criteria for unreasonable conduct.

They should aim to impose any service changes or restrictions in the least restrictive ways possible. Their goal, when taking such actions, must not be to punish the complainant but to manage the impacts of their conduct.

When applying this policy, the Executive should keep at least one open line of communication with a complainant. However, in extreme situations all forms of contact may need to be restricted for some time to ensure the health and safety and security of our staff and/or third parties.

The executive 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 also manage and keep a file record of all cases where this policy is applied.

4 Breaches of This Policy

A Transport Agency may commence applicable disciplinary action if a person to whom this Policy applies breaches this Policy (or any of its related Procedures), including and up to termination of employment.

5 Document History

Date & Corporate Policy No	Approved by	Amendment Notes
10/03/15 CP14039	Acting Secretary	Approved