

Draft Bass Coast Shire Council Complaint Handling Policy 2020

Preamble

Bass Coast Shire Council (Council) is committed to providing friendly, prompt, helpful and professional customer service every time we interact with our customers. Council actively encourages feedback and is committed to using this information to improve our services and systems.

Council's Complaint Policy and associated documents are modelled on the Victorian Ombudsman's guide to Complaint handling for Victorian Public Sector Agencies (September 2016).

Policy objectives

This Policy aims to:

- provide a standardised approach to managing customer complaints;
- provide a framework for the management of complaints and feedback with a view to continually improving services, systems and capabilities;
- increase the level of customer satisfaction by resolving issues in an effective, fair, respectful and professional manner;
- ensure all statutory requirements are satisfied, and escalation options for customers are communicated clearly.

Policy statement

1. General

1.1. Application of Policy

This Policy applies to all Councillors, Council Officers and Contractors carrying out work on behalf of Council. In all instances where a council officer is the subject of a complaint, the complainant will be directed to that officer's manager.

This Policy relates to all complaints made by customers in relation to council operations with the exception of the following complaint areas:

- Complaints relating to a Council resolution;
- Complaints relating to a planning application decision;
- Complaints already reviewed by an external agency;
- Freedom of Information (FOI) requests;
- Complaints relating to a councillor outside their role as a councillor

- Complaints relating to legal issues;
- Work-related grievances from Council employees (i.e. complaints relating to their employment).

This Policy relates solely to the management of complaints made to Council, and does not provide guidance for the management of customer requests for service.

The Policy will be made available on Council's website and is available to be sent to an individual upon request.

1.2. Responsibilities of Officers

General Managers, Managers, Co-ordinators and Team Leaders are to ensure that all Officers and those persons carrying out work on behalf of Council are aware of the following responsibilities when dealing with customers:

- Treat customers fairly, courteously and with respect at all times;
- Provide internal and external avenues of review if customers are dissatisfied;
- Acknowledge and resolve customer feedback quickly and within advised timeframes;
- Keep customers up to date on the progress of matters;
- Act within the requirements of relevant legislation, policy and process.

1.3. How to Make a Complaint

A person can make a complaint in a number of ways including in person, by telephone, by mail, email, fax, or via our website. All contact details are contained in our Customer Service Charter, at www.basscoast.vic.gov.au

1.4. Customer Service Charter

Council's Customer Service Charter outlines Council's commitment to customers in accordance with our values and acts to guide all Council's customer service functions. It articulates the service quality and timeframes that our customers should expect when contacting Council.

Please visit www.basscoast.vic.gov.au to view Council's Customer Service Charter.

2. Customer Engagement

2.1. Customer Contact

The majority of interaction the community has with Council is regarded as customer contact. This includes general enquiries, requests for service, engagement and consultation activities, and events. In many cases the customer contact will be singular, however other contacts will be repeated or cover multiple areas of council.

2.2. Identifying a Complaint

2.2.1. Complaints

A complaint may arise as a result of a customer's dissatisfaction with a service provided by Council, the behaviour of a Council employee or contractor, or it may relate to Council systems, policies or procedures.

For the purpose of this Policy, a complaint is a formal expression of dissatisfaction that must be captured and processed as per the Complaint Handling Policy. In this regard, a complaint can be instigated in one of two ways:

- By a Customer: A customer may express the desire to raise a complaint with Council, verbally or in writing. This could occur at any point in a customer's interaction with Council.
- By a Manager: A Manager may elect to transition an existing matter from customer contact to a complaint. Where this occurs, the customer should be informed in writing of the Manager's decision and provided with information on Council's Complaint Handling Policy.

2.2.2. Unreasonable Complaints

A complaint is considered unreasonable when it:

- is considered to be frivolous or not made in good faith;
- involves a matter where an adequate remedy or right of appeal already exists (whether or not the complainant utilises that remedy or right of appeal);
- relates to a decision of Council;
- relates to a matter before a court or tribunal;
- relates to the appointment or dismissal of an employee or an industrial or disciplinary issue;
- relates to a matter awaiting determination by Council;
- is not possible to process due to insufficient information provided;
- is not appropriate to process due to threats made against Council or Council employees.

3. Types of Complaints

The type of complaint received will determine how the matter is processed. Officers should be careful to take note of the details provided by customers, to ensure that complaints are handled appropriately under this policy. All complaint types can be received through any Council contact stream.

3.1. General Complaints

General complaints are those directed at council operations or the behaviour of a particular person, where the matter does not fall under one of the other complaint categories.

3.2. Statutory Complaints

Complaints that allege a breach of legislation need to be dealt with carefully and should in all cases be requested in writing and directed to the Executive Manager Partnerships, Advocacy and Economy.

3.3. Competitive Neutrality Complaints

An individual or business may make a complaint if they consider that Council has failed to undertake competitive neutrality measures. Such complaints should be submitted in writing to the Executive Manager Partnerships, Advocacy and Economy, who will

acknowledge the complaint in line with Council's Customer Service Charter, investigate and provide a response to the complainant. Council's annual reporting outlines whether any competitive neutrality complaints were made to Council during the relevant financial year.

3.4. Third Party Complaints

A third party complaint refers to a complaint received by Council, which does not relate to council operations. For example: a complaint made by a resident about a neighbourhood disturbance.

Where possible, Council will advise the complainant how they can best resolve/direct their issue.

3.5. Anonymous Complaints

Some customers may wish to raise a complaint without disclosing their personal information. Anonymous complaints will be investigated where sufficient information has been provided to enable an investigation.

Officers are encouraged to advise the complainant that providing information will assist Council in administering the Complaint Handling Policy. Where a complainant is unwilling to disclose their details the investigation process is disadvantaged because:

- anonymity generally reduces Council's ability to properly investigate a matter, and,
- it can be difficult to clarify the nature of the complaint and obtain additional information from the complainant

An anonymous complainant can be disadvantaged because Council is unable to contact or provide the person(s) with reasons for any decision made about their complaint.

3.6. Complaints against Councillors

A complaint against a Councillor that is not a complaint under the Protected Disclosures Act 2012 is to be referred to the Mayor, CEO and Executive Manager Partnerships, Advocacy and Economy for assessment.

A complaint against the Mayor that is not a complaint under the Protected Disclosures Act 2012 is to be referred to the Deputy Mayor, CEO and the Executive Manager Partnerships, Advocacy and Economy for assessment.

If the complaint is not considered frivolous or vexatious, the Executive Manager Partnerships, Advocacy and Economy will investigate the matters raised in the complaint, requesting further information from the complainant if necessary.

Providing the complaint is not a matter required to be reported to an external agency or a complaint required to be considered under the Protected Disclosure Act 2012, the Councillor concerned is to be informed of the complaint and be requested to meet with the Mayor, CEO and Executive Manager Partnerships, Advocacy and Economy to discuss the matters raised in the complaint. The Councillor is to be informed of the actions taken to date and be provided with a copy of the complaint. The name of the complainant may be disclosed to the Councillor unless confidentiality has been requested by the complainant at the time of lodging the complaint.

Reasonable opportunity should be allowed for the Councillor to consider the complaint and respond to the allegations to the Executive Manager Partnerships, Advocacy and

Economy. It is the Councillor's prerogative to determine if they require legal advice at their own expense in relation to that response. The Councillor's response should be received by a date stipulated by the Mayor and Executive Manager Partnerships, Advocacy and Economy who will then consider the response, with the assistance of legal advice if required. Should the Mayor, CEO and/or Executive Manager Partnerships, Advocacy and Economy consider that the complaint is valid, the matter should then be considered in the context provided in the Councillor's Code of Conduct.

Should the nature of the complaint involve improper or corrupt conduct, the matter must then be referred to the Minister for Local Government or Victorian Ombudsman.

The Executive Manager Partnerships, Advocacy and Economy shall forward a written response to the complainant in relation to the outcome of the investigation.

3.7. Sensitive Complaints

Some complaints will extend beyond a customer's general dissatisfaction with council operations and may involve accusations of misconduct or illegality. Where this occurs, the matter will be treated as a sensitive complaint and must be requested in writing and immediately referred to the Executive Manager Partnerships, Advocacy and Economy. Such complaints will have appropriate levels of security applied to the record and complainants will be allocated a singular point of contact in relation to the matter.

3.7.1. Criminal Activity

Complainants claiming criminal activity by an Officer, Councillor or to Council property will be assigned to the Executive Manager Partnerships, Advocacy and Economy for investigation and reported to the Police where necessary. It is encouraged that complainants approach the Police directly where the matter is posing a risk to the community or to their own health and safety.

3.7.2. Improper, Corrupt and Specified Conduct

In recognising the need for transparency and accountability in all Council operations, any disclosures which reveal corrupt, improper conduct or conduct involving a risk to public safety or the environment; may need to be treated as a Protected Disclosure. Please refer to Council's Protected Disclosure Act 2012 – Operating Procedures for further information.

www.basscoast.vic.gov.au/disclosures

3.7.3. Fraud-related Complaints

Council takes complaints and alleged fraudulent activity about procurement seriously and is committed to handling such disclosures confidentially. Members of the public, suppliers and Officers are encouraged to report fraud-related complaints to Council's Executive Manager Partnerships, Advocacy and Economy according to Council's fraud policy.

4. Unreasonable Complainant Behaviours

4.1. Identifying Unreasonable Complainant Behaviours

Unreasonable complainant behaviours are identified by Officers based on the attributes of the matter at hand. Customer behaviour may be identified as unreasonable when it is deemed to be threatening, abusive, unsubstantiated or excessive.

The complainant must have exhausted all of Council's complaint processes before it can be defined as unreasonable.

4.2. Managing Unreasonable Complainant Behaviours

Appropriate officers will be provided with specialist training in dealing with challenging behaviours.

Officers, who have determined a complainant's behaviour to be unreasonable, should refer the matter to the relevant departmental Manager.

The Manager will review the particulars of the matter and determine whether it should be dealt with as an unreasonable complaint. If it is deemed unreasonable, the Manager will work with the Executive Manager Partnerships, Advocacy and Economy to determine whether the complaint will be further investigated and will advise the complainant accordingly. If the complaint is deemed unreasonable limitations may be put in place as to how the complainant deals with Council.

The Executive Manager Partnerships, Advocacy and Economy will only review a decision to limit service or communication on receipt of a request in writing from the person on whom the limits apply. If the customer is dissatisfied with the review, he or she may contact the Victorian Ombudsman at <https://www.ombudsman.vic.gov.au/>.

5. Administration

5.1. Complaint Handling Process

Council's Complaint Handling Policy process is a three-level system that provides for the escalation of complaints from first contact, through to external review. The process is designed to handle complaints effectively and efficiently, utilising the most appropriate resources.

Whilst the majority of complaints should follow the escalation process, it is possible for a complaint to enter the process at any one of the following three levels.

5.2. Complaint Escalation

5.2.1. Level 1 – Frontline Officers

Most complaints can be resolved immediately and Officers are encouraged to resolve complaints at first contact, wherever possible and such complaints do not need to be logged in the Complaints Register. If a complaint relates to a serious matter, or requires further investigation, it must be escalated to Level 2.

5.2.2. Level 2 – Investigation

Complaints not resolved at Level 1 will be escalated to Level 2 for managerial support and/or internal review. Complaints classified as Level 2 will be recorded in the Complaints Register.

The purpose of an internal review is to determine whether actions taken in reaching the original decision were undertaken in accordance with this Policy and the associated procedure.

The relevant department Manager is responsible for managing Level 2 complaints and will liaise with the appropriate officer(s) in an attempt to resolve a matter. Where necessary, the manager will also consult with the Executive Manager Partnerships, Advocacy and Economy to assist with highly complex or sensitive matters.

Managers investigating a Level 2 complaint will aim to resolve the complaint within 28 days. If it takes longer than 28 days to resolve a complaint, the Manager will contact the complainant prior to or at this time and explain why. Complaints that are not resolved within 28 days will be subject to review and escalated, if necessary, to ensure that a resolution is expedited.

A letter detailing the outcome of the investigation, signed by the responsible Manager, will be provided to the complainant at the conclusion of the investigation.

5.2.3. Level 3 – Dispute

Complainants who feel that a matter remains unresolved after Levels 1 and 2 may be advised by Council to refer the complaint externally. Whilst Council cannot recommend or advise a course of external review, Officers should be aware that such a review may take the form of:

- alternative dispute resolution procedures such as mediation or conciliation;
- referring a complaint to an external agency such as the Victorian Ombudsman;
- formal proceedings in a Court or Tribunal.

5.3. Complaints Register

A Complaints Register is used by Council to capture key details of complaints that have progressed to Level 2 and above. These details allow Council to accurately manage and report on feedback, particularly for the purposes of auditing and preparation of reports.

The Complaints Register also provides a critical opportunity to identify problems and trends, which can be used to assist in the improvement of Council operations.

5.4. Complaints and Requests for Compensation

Where a complaint is accompanied by a potential request for compensation, in addition to the department handling the response to the complaint, Coordinator Corporate Planning and Performance must be advised of the potential 'request for compensation' and processed accordingly.

5.5. Timeliness of Response to Complaints

In line with the Customer Service Charter, Council will acknowledge all complaints received within ten working days. At the time of acknowledgement, the Officer is to advise the customer the estimated length of time it may take to address the complaint and a timeframe for when the complainant can expect an update.

5.6. Privacy

Council regards the protection of an individual's privacy as an integral part of its commitment to complete accountability and integrity in all its activities and programs.

Council is committed to fulfilling its obligations under the Information Privacy Act 2000, Health Records Act 2001 and Information Privacy Principles.

All complaints which allege a breach of privacy will be directed to the Executive Manager Partnerships, Advocacy and Economy for case management.

5.7. Reporting

The Executive Manager Partnerships, Advocacy and Economy is responsible for the provision of reports on customer complaints, identifying areas for potential improvement. A report will be delivered:

- bi-annually at Council meetings; and
- annually in Council's Annual Report, detailing any service improvements made as a result of complaints received.

Additional documents

Appendices I: Definitions.

Reference to other documents

- Working Together Policy;
- Code of Conduct Policy;
- Councillor Code of Conduct Policy;
- Information Privacy Policy;
- *Local Government Act 1989*;
- *Victorian Charter of Human Rights and Responsibilities Act 2006*;
- *Protected Disclosure Act 2012*;
- *Privacy and Data Protection Act 2014*;
- *Information Privacy Act 2000*;
- *Freedom of Information Act 1982*.

Review process

This Complaint Handling Policy and associated documents will be reviewed every 24 months.

Accountability process

The Executive Manager Partnerships, Advocacy and Economy is accountable for the proper application of the Policy.

Approval

Adopted by Council at its meeting held on	Date / /2019
Signed by the Mayor, Cr Brett Tessari	
_____	Date / /2019

Appendices I: Definitions

Complaint	A formal expression of dissatisfaction with a specific action or service by Council, including the failure to comply with the Customer Service Charter, policies or applicable legislation.
Complainant	Person or entity affected by the action or inaction of Council.
Council Operations	Refers to all Council services, activities, processes, policies, buildings, employees and contractors.
Customer/s	Any party that contacts Council.
Customer Contact	Refer to section 2.1
Protected Disclosure	A specific class of Complaint (governed by the Protected Disclosure Act 2012) that requires a high level of confidentiality and protection of the Complainant.
Request for Service	Refers to a request by a customer for a particular Council service.
Third Party	Refers to any person, activity or object not connected in any way with Council.
Contact Stream	Published contact streams as per Council Customer Service Charter, including in-person, online, telephone, email, writing, Council councillors and social media.

Complaints: Good Practice Guide for Public Sector Agencies

September 2016

enabling, responding, learning and improving

ombudsman VICTORIAN

If you have any questions about this guide, please contact:

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Level 2, 570 Bourke Street
Melbourne VIC 3000

Phone 03 9613 6222 or 1800 806 314 (Regional)
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Introduction

This guide aims to help you and your agency handle complaints well.

It outlines the guiding principles and practical steps involved in the three key stages of good complaint handling shown below.

You can use the advice in this guide to create or review the complaint handling system at your agency, and to help you respond to individual complaints.

If you are working in the public sector today, you will probably need to deal with complaints at some point.

Members of the public rightly expect high quality, timely services from government and decisions that are transparent and fair.

Handling complaints is part of core business and good service delivery. The challenge for public sector agencies is to do it well.

Well-handled complaints offer real benefits. They can:

- restore trust with members of the public when things have gone wrong
- lead to better services and outcomes for individuals
- identify ways to improve services for the public.

Complaints are free feedback about what people think of your agency's services and decisions. They can highlight the need for changes to your practices, or the need to explain them to members of the public in a different way.

Poorly handled complaints have the opposite effect. They can:

- damage relationships with the public
- damage your agency's reputation
- escalate and draw in managers, ministers or independent complaint bodies, or generate costly legal disputes
- compromise your agency's integrity
- lead to missed opportunities to improve performance.

The Victorian Ombudsman has over 40 years' experience dealing with complaints about state government agencies and local councils. In many cases the people who approach our office are upset, not just about the agency's decision or actions, but with the agency's response to their complaint. Common issues include failure to respond to complaints at all, delays and poor communication.

This guide aims to share that experience to improve complaint handling across the public sector.

It reflects the revised Australian and New Zealand standard for complaint handling, Victoria's public sector values and the *Charter of Human Rights and Responsibilities Act 2006*. You will find references to these and other resources to help you manage complaints on page 23 of this guide.



The terms used in this guide

This guide uses the terms 'complaint', 'complainant' and 'complaint handling system' to describe the work of handling complaints.

The Victorian Ombudsman's preferred definition of a complaint is as follows:

A complaint is an expression of dissatisfaction with:

- *the quality of an action taken, decision made or service provided by an agency or its contractor*
- *a delay or failure in providing a service, taking an action, or making a decision by an agency or its contractor.*

The term 'complainant' is used to refer to a person, organisation or representative who makes a complaint.

The term 'complaint handling system' refers to all policies, procedures, practices, officers and resources an agency deploys to manage complaints.

1. Enabling complaints

Guiding principles – Good complaint handling systems enable complaints by:

- demonstrating a **commitment** to complaint handling
- providing **visible** and **transparent** information about how and where to complain
- being **accessible** and **free** to everyone
- ensuring there is **no detriment** to people who complain.

This section outlines the practical steps that your agency can take to enable complaints.

In our experience, agencies with the best complaint handling practices actively encourage and welcome feedback about their performance.

While none of us like to get negative feedback about our work, these agencies recognise that enabling complaints:

- gives them a chance to resolve problems first, before they are escalated to ministers or other bodies
- generates information they can use to improve their services
- promotes the public sector values of integrity and accountability.

The steps in this section are the minimum standards the Victorian Ombudsman looks for when a person approaches us about the way an agency dealt with their complaint.

1.1. Develop and implement a policy

A complaint handling policy demonstrates that your agency is committed to dealing with complaints.

A policy lays the foundation for good complaint handling by giving your officers information about how to respond to complaints well. It also ensures all officers apply the same standards, regardless of where they work in your agency.

Good complaint handling policies cover:

- how, where and to whom complaints can be made
- how the complaint will be handled and the steps involved
- the mechanisms for review if the complainant is dissatisfied with the outcome
- key performance indicators, such as response times
- external bodies that may provide assistance or review matters if the complainant remains dissatisfied e.g. the Victorian Ombudsman.

You can find an example policy at Appendix 1 on page 24. It can be adapted to suit your agency including:

- statutory or regulatory requirements
- the value you seek to derive from complaints to improve your operations
- your financial, operational and other organisational requirements
- the number and demographics of the people using your services
- the nature and breadth of your interactions with the public
- the number and types of complaints you receive
- input from your officers and other interested parties.

1.2 Foster a receptive culture

Agencies that are committed to complaint handling also take the time to build a culture that is open and receptive to feedback.

Members of the public want to be listened to and treated with respect when they have a problem. They are unlikely to feel confident about approaching your agency if they get a defensive or unhelpful response when they contact your officers.

Leaders and managers in agencies can set the tone by:

- ensuring the agency has a complaint handling policy
- appointing officers skilled in customer service and complaint handling
- empowering officers to resolve complaints by delegating appropriate authority
- providing adequate resources for officers, such as training and support
- seeking regular reports about how the complaint handling system is working.

Skilled, knowledgeable officers are the most valuable resource in any complaint handling system.

All officers in your agency need at least to be aware of your policy and what to do if someone approaches them with a complaint. Induction and regular training is a good way to achieve this.

Your organisation also needs a range of specialist skills and personal qualities in its complaint handling officers. They include empathy, patience, resilience, problem solving, communication, investigation skills, the ability to remain impartial, knowledge of your agency's people and work, and the ability to work with vulnerable communities.

Complaint handling can be difficult and stressful at times and these officers need support to maintain a healthy, positive attitude. This can take the form of access to debriefing or support networks.

Tip: Training for complaint handlers

Complaint handlers can benefit from training in these areas:

- **case and time management**
- **communication and rapport building**
- **problem solving**
- **investigating complaints**
- **understanding the *Charter of Human Rights and Responsibilities Act 2006***
- **conflict of interest**
- **exercising discretion**
- **managing unreasonable complainant conduct**
- **writing in plain English**
- **stress management.**

Case study: A receptive culture?

In 2015 two Victorian newspapers ran stories about a departmental manager's response to a complaint.

The complainant had reportedly emailed the department criticising some planned action.

The manager's comments, intended for a colleague, reportedly described the email as 'rubbish' and said 'I presume you will not respond back as this is a direct attack on our organisation and our staff. Delete it or file it.'

Instead of sending the comments to his colleague, the manager accidentally sent them to the complainant.

The newspapers quoted a departmental spokesperson as saying that the manager had apologised, and the agency 'values its relationship with the community and considers seriously the feedback it receives'.

Source: *The Age; Herald Sun*

1.3 Publicise how to complain

In order to complain, people need to know how to contact you. This can be achieved by:

- publishing your complaint handling policy online and making it available in hard copy upon request
- providing information about your complaint handling system in any service delivery statements
- ensuring your website search tool retrieves your policy and related information when a person types the words 'complain' or 'complaint'
- including a prominent link on your home page
- including information about your complaint process in welcome packs or induction materials for your clients or customers.

1.4 Make your complaint handling system free and accessible

Not everyone can make a written complaint or call your agency in business hours. We live in a diverse community where people have different communication preferences and needs. Barriers such as language, disability, homelessness or shift work can inhibit access to your agency.

You can make your complaint handling system accessible by:

- accepting complaints by telephone, letter, email, online and in person
- offering free access to a translation and interpreter service
- using the national relay service to communicate with people with hearing or speech impairments
- providing information in accessible formats. You can find information about accessibility in the Victorian Government Accessible Communication Guidelines referenced on page 23 of this guide.
- providing support to members of the public to make a complaint if needed
- accepting complaints from authorised representatives if a person is unable or does not want to complain themselves.

Sophisticated complaint handling systems also recognise that accessibility is about more than means of communication. Some parts of the community may be less likely to complain for cultural or other reasons. You can identify this by comparing the demographics of the people who use your services, and the demographics of those who complain, to see whether some groups are under-represented. Options include engaging with stakeholder and advocacy groups and outreach activities in under-represented communities.

1.5 Ensure there is no detriment for making a complaint

People sometimes tell our officers that they have not complained to an agency direct because they fear reprisal. This can be a particular problem where people depend on the agency for their daily living needs.

You can make it clear in your complaint handling policy and public information that you do not tolerate reprisals against complainants. This can also be reinforced in training for officers.

Any evidence that a person has experienced detriment needs to be dealt with promptly.

Tip: Anonymous complaints

Members of the public sometimes seek to lodge complaints anonymously, or ask you not to disclose their identity.

People can have valid reasons for not wanting to disclose their identity. The Victorian Ombudsman accepts these complaints and deals with them on their merits.

We recognise that in some cases it is not practical to investigate a complaint if you cannot contact the complainant for further information or disclose their identity. You can warn people about this in information about your complaint handling system so members of the public can consider their options.

2. Responding to complaints

Guiding principles – Good complaint handling systems respond to complaints by:

- acknowledging and dealing with complaints in a **timely** way
- providing **transparent** information about how complaints are handled
- protecting the **privacy** of information as far as possible
- treating everyone involved in a way that is **objective, respectful** and **fair**
- considering and respecting **human rights**
- promoting **accountability** for decisions.

The responsibilities of the Victorian public sector are diverse and there is no ‘one size fits all’ response to complaints.

There are some practices, however, that are common to good complaint handling in every organisation. This section outlines these practices and how you can incorporate them in your work.

2.1 Acknowledge complaints quickly

Every year the Victorian Ombudsman receives hundreds of complaints about delays in complaint handling by agencies. It was the fourth most common complaint to our office in 2014-15.

These types of complaints can be avoided if you acknowledge and respond to complaints promptly.

The Victorian Ombudsman expects public sector agencies to respond to all complaints unless:

- the complainant is not seeking a response
- you have previously told the complainant that you may not respond (the section on ‘Managing unreasonable complaint conduct’ on page 18 discusses when this might be appropriate).

It is good practice to acknowledge complaints within 10 business days, unless the complaint is urgent and needs a faster response. You can find an example acknowledgement letter at Appendix 4 on page 34.

2.2 Make an initial assessment

Not all complaints require the same level of investigation or priority. It helps to ‘triage’ complaints at an early stage to determine their priority, and how and who should respond.

Factors to consider include:

- the seriousness of the issues raised
- the complexity of the complaint
- any need for urgent action, for example where there are health or safety concerns for any person
- whether the complaint raises systemic issues, and the impact on the person and broader community
- the potential for the complaint to escalate
- whether the complaint is about an officer/s, and needs to be handled by an independent, impartial person
- whether the complaint involves other agencies
- whether the complaint is subject to special statutory requirements e.g. a protected disclosure under the *Protected Disclosure Act 2012*.

As part of your assessment, you may need to speak to the complainant to clarify the details of the complaint and the outcome they are seeking.

If a complaint falls outside your agency’s responsibilities, it is helpful to inform the complainant as soon as possible and refer them to other agencies that may be able to assist. You will find a list of key complaint handling organisations at Appendix 2 on page 31.

Tip: Is it a protected disclosure?

Most agencies have a Protected Disclosure Coordinator who is nominated to:

- receive potential protected disclosures
- ensure the welfare of disclosers
- work to make sure agency officers are aware of the protected disclosure legislation.

A disclosure can be a report about:

- the improper conduct of a public body or public officer
- detrimental action taken by a public body or public officer against a person in reprisal for them (or another person) making a protected disclosure, or cooperating with the investigation of a protected disclosure.

If you believe the conduct contained in a complaint could be a protected disclosure, you must refer the complainant to your agency's Protected Disclosure Coordinator without delay. If your agency does not have a Coordinator, you can refer the complainant to the Independent Broad-based Anti-corruption Commission (IBAC).

You can find more information about protected disclosures at <www.ibac.vic.gov.au>.

Tip: Disputes about responsibility

In some cases there may be confusion or a dispute about which agency is responsible for a complaint.

The Victorian Ombudsman is sometimes contacted by members of the public who have been referred back and forth between two agencies, both of which claim the other agency is responsible. It is understandably frustrating for complainants to be caught in the middle of these disputes.

It is better practice for the agencies to reach agreement between themselves, rather than leaving it to the complainant to resolve. You may need the complainant's permission to share their personal information with the other agency prior to discussing their complaint.

Case study: Who is responsible?

A local resident complained to his council that surface water was not draining from a reserve behind his property causing damage to his garage. The local council advised the complainant that the matter was the responsibility of another government agency. The other government agency told the complainant it was the responsibility of the council.

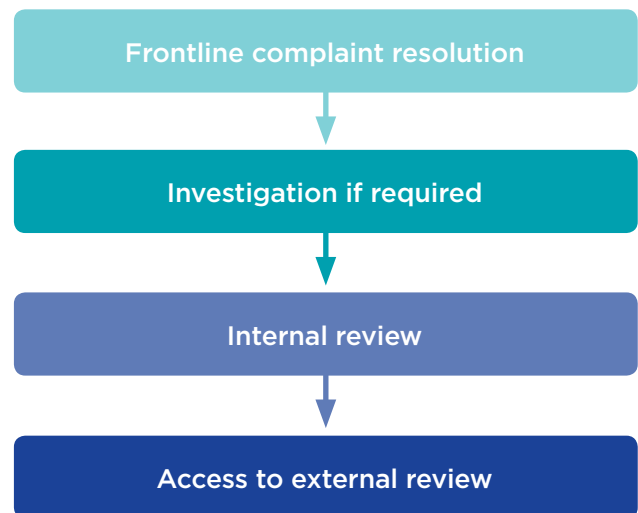
The Victorian Ombudsman investigated the complaint to establish which agency was responsible for maintaining the reserve and the drain located on it. All parties met onsite and agreed to engage an independent surveyor to establish the cause of the damage.

In this case, it would have been preferable for the council and agency to engage with each other to reach an agreement about how the complaint would be handled. Had they done so, the complaint could have been resolved without escalation to the Ombudsman.

Source: *Victorian Ombudsman*

2.3 Adopt a tiered approach

The most effective and efficient complaint handling systems use a tiered approach:



Frontline complaint resolution by the officer or area delivering the service is usually the quickest and most effective way to resolve the majority of complaints.

You can encourage and empower frontline officers to resolve complaints through your agency's complaint handling policy, and by investing in training and resources for officers.

There will be some complaints that need to be escalated for investigation. Your agency's complaint handling policy can spell out when complaints should be escalated. This might include where:

- the complaint cannot be resolved by frontline officers
- the complaint is complex and requires detailed consideration
- the complaint is about an officer and needs to be handled independently.

If the complainant is dissatisfied with the outcome of this process, the matter can be escalated further, either within the agency or to an external body.

The flowchart at Appendix 3 on page 33 shows how this approach can work in practice.

2.4 Explain your process

It is good practice to explain your complaint handling process to complainants at the start so they know:

- who is handling their complaint and how to contact them
- how the complaint will be dealt with
- what issues you are considering
- their likely involvement in the process
- when they can expect a response
- the possible or likely outcomes.

This promotes transparency and ensures the complainant knows what to expect.

In some cases it can help to confirm your advice in writing, for example where the complainant's expectations are unrealistic.

Tip: Managing expectations

Dissatisfaction with complaint handling often stems from differing expectations about how a complaint will be handled or the likely outcome. When you first contact the complainant, it is useful to:

- **ask the complainant what they want to achieve**
- **assess whether their expectations are reasonable and achievable**
- **explain what your agency can and cannot do, or will and will not do**
- **identify any issues over which your agency has limited control, such as statutory requirements or budget constraints**
- **if you cannot meet the complainant's expectations, try to shape realistic ones by explaining what you can do and providing alternative avenues.**

If you are unable to meet your agency's standards for any reason, speak to the complainant and explain the reasons. Complainants are less likely to contact a body like the Victorian Ombudsman if you keep them informed about what is happening with their complaint.

2.5 Address complaints promptly

In our experience, complaints get harder to manage the longer they stay open. Complainants can become frustrated with delays. Their expectations of a significant outcome sometimes increase, or they can start to raise new issues.

The Victorian Ombudsman expects agencies to respond to straightforward complaints within 28 days.

If this is not possible because the complaint is complex or needs more detailed investigation, give the complainant an expected timeframe and update them on progress regularly.

It is advisable to review complaints that are older than 28 days and escalate them if necessary to expedite a resolution.

If the complainant does raise new issues, they need to be assessed on their merits. You may need to treat them as a new complaint to avoid delaying your process.

2.6 Protect privacy

Complaints usually involve personal information about:

- the complainant
- the officers who are the subject of the complaint, if any
- in some cases, third parties.

This information needs to be managed in accordance with relevant privacy laws.

As a general rule, the Victorian Ombudsman would expect agencies to:

- only use information to deal with the complaint, or to address any systemic issues arising from the complaint
- only share personal information with officers on a 'need to know' basis
- if information about complaints is released to the public, de-identify the information before publication.

2.7 Treat everyone fairly and respectfully

For many complainants, being treated fairly during the complaint handling process is just as important as the outcome. This guide has already discussed some of the ways you can demonstrate fairness, including protecting complainants from detriment, being transparent about your processes, and protecting privacy.

You can also promote fairness by:

- giving the complainant sufficient opportunity to present their position. Checking information and asking questions shows that you are listening.
- dealing with any conflicts of interest e.g. if the complaint is about a particular officer, ensuring the complaint is handled by someone independent
- if possible, putting your agency's decision or actions on hold until the complaint is finalised.

Tip: 'Foreshadowing' outcomes

Complainants often appreciate an opportunity to discuss or comment on your preliminary findings before you finalise their complaint.

This promotes fairness by giving them another opportunity to be heard. It can also lead to better outcomes:

- **The complainant may have extra information or evidence that you have not considered previously.**
- **It can be easy to misunderstand or overlook parts of complex complaints, and the complainant may be able to clarify the issues.**
- **The complainant may dispute some of your facts and findings. If you can address areas of disagreement before you finalise the complaint, the complainant may be less likely to escalate the matter.**

Your officers are also entitled to be treated respectfully if someone complains about them. Subject to any legislative restrictions like those in the *Protected Disclosure Act 2012*, officers are entitled to be:

- informed of complaints about them
- given an opportunity to be heard
- kept informed of progress and the final result.

The focus of the complaint handling process should be about resolving the problem, not assigning blame. Any disciplinary processes should be separate from the complaint handling process.

2.8 Consider fairness and human rights

When the Victorian Ombudsman looks at complaints about public sector agencies, we do not just look at whether the agency's processes and decisions comply with its laws and policies. We also consider whether the agency's actions are fair and whether they comply with Victoria's *Charter of Human Rights and Responsibilities Act 2006*.

The Charter is a law that requires public authorities in Victoria (including private companies performing functions on behalf of government) to act compatibly with 20 human rights when delivering services or making decisions.

It is unlawful under the Charter for a public authority to fail to consider relevant human rights when making a decision. Any limitation placed upon a person's human rights has to be in accordance with the law.

You can find more information about the Charter at <www.humanrightscommission.vic.gov.au>.

Your handling of a complaint is more likely to withstand scrutiny if you ask yourself the following questions:

- Does the outcome meet the minimum standards in your laws and policies?
- Have you considered any discretion available to you under laws or policies in arriving at the outcome?
- Is the outcome fair and reasonable?
- Have you and your agency considered and acted compatibly with the Charter?

You may also be asked to demonstrate that you thought about:

- Are any human rights raised by the decision or action?
- Did the decision or action limit these human rights?
- Were the limitations reasonable?

The following case studies illustrate the importance of considering fairness and the Charter.

Case study: Considering fairness

A 22-year-old migrant to Australia required urgent medical treatment and was transported to hospital by ambulance. As he did not have a Centrelink or similar concession, he was charged a fee of \$924 for this trip.

His employment ceased shortly after and he requested that the fee be waived on the basis of financial difficulties. The agency refused to waive the fee on the basis that he was not a concession or health care card holder at the relevant time. He had been granted Centrelink assistance one week after the invoice for the ambulance service was issued.

Although the agency had acted in accordance with its policy for waiving fees, the Victorian Ombudsman considered it had not exercised its discretion in the spirit of the policy to assist those in financial need. Following enquiries, the agency agreed to waive the fee.

Source: *Victorian Ombudsman*

Case study: Considering fairness

A homeless person with a learning disability had driven a friend, who also had a disability, to a conference at a local church. He parked in a designated disabled parking bay, displaying a valid permit.

The driver knew he needed to move the car after two hours, which he did. However, a trailer was blocking the only other disabled parking bay. He had to stay with his friend at the conference, so he parked in a permit zone.

While parked in the permit zone, he received an \$87 parking fine. He asked the agency twice for an internal review of the matter. The agency declined both times because a disabled parking permit did not allow a person to park in a permit zone.

The agency said it was acting within the law.

Normally, this matter would proceed to court, but in this instance, we contacted the agency because it wasn't reasonable to expect this person to take legal proceedings when he was homeless and had a learning disability.

The council in question had acted within its powers: technically, the car was parked illegally.

We asked the council to reconsider its position on the fine in light of the driver's circumstances, and it agreed to do so.

Source: *Victorian Ombudsman*

2.9 Provide clear reasons

Providing clear reasons for decisions displays fairness, transparency and accountability. It helps the complainant understand why you made your decision, whether or not you upheld their complaint.

When we make enquiries with agencies about complaints, we often find they provide us with convincing explanations for their actions. If this information had been communicated to the complainant, they might not have escalated the complaint to us.

As a general rule, the Victorian Ombudsman expects public sector agencies to provide an outcome letter for all complaints where an investigation has been undertaken.

Good outcome letters:

- briefly describe the complaint and identify the issues
- use plain English and avoid bureaucratic language, acronyms and jargon
- explain the steps you took to investigate or resolve the complaint
- set out any relevant laws or policies in simple language
- clearly identify the outcome and, if you have substantiated the complaint, the remedies you are offering
- provide reasons for your decision
- give the name and telephone number of an officer the complainant can contact to discuss the outcome
- advise the complainant of the Victorian Ombudsman and any other relevant review rights
- are translated into a language other than English where appropriate.

You can find an example of a letter that takes this approach at Appendix 5 on page 35.

Tip: Template letters

Public sector agencies often use template letters to respond to common issues. While these letters can save time and resources, they are also the source of many complaints to the Victorian Ombudsman. Template letters that are not customised to the complainant's specific concerns and circumstances:

- may not actually explain the reasons for your decision
- can exacerbate the complainant's sense of grievance by creating the impression that you have not listened to their concerns.

If your agency uses template letters, it is good practice to tailor them to each complaint.

Case study: better communication

A complainant alleged that a government agency failed to investigate his concerns about occupational health and safety in a theatre he had recently performed in.

The Victorian Ombudsman made enquiries with the agency. It provided evidence to show that it had investigated the concerns, including conducting an inspection on the same day it received the complaint. It had formed a view that remedial action was not required.

We advised the complainant that on the basis of this evidence, we were satisfied that the agency had taken appropriate action in response to his complaint.

If the agency had communicated better with the complainant about its investigation and outcomes, he may not have felt the need to escalate his complaint to us.

Source: *Victorian Ombudsman*

2.10 Find a solution

To be accountable, public sector agencies need to be prepared to admit mistakes and correct them.

It is appropriate to offer a remedy if your agency's decision, or the process leading up to the decision, was unfair or could have been communicated better.

Options for redress include:

- acknowledging and apologising for the error
- providing a better explanation for your agency's decision or actions
- explaining why the error occurred and the steps your agency is taking to prevent it happening again
- reversing your agency's decision
- an ex gratia payment or compensation
- disciplinary action against an officer
- other means of redress sought by the complainant.

The remedy should be fair and practical and proportionate to the seriousness of the issue.

Case study: a fair remedy

An agency had deducted a payment plan instalment from a complainant's bank account twice. It acknowledged the mistake but told her it wouldn't process the refund until it had a number of similar requests, so its finance department could process them all at once.

The complainant told the Victorian Ombudsman she was a single mother on a pension and now had only \$14 left in her bank account.

We made enquiries and the agency agreed to issue a cheque that day and speak to its bank to speed up the cheque's clearance.

Source: *Victorian Ombudsman*

2.11 Explain options for review

As complaint handlers, we are also accountable for our decisions and should submit ourselves to appropriate scrutiny.

Good complaint handling systems allow complainants to request an internal review of the complaint outcome. Your complaint handling policy can document the process. At the Victorian Ombudsman, we ask complainants to:

- submit the request within 60 days of being informed of the final outcome
- explain why they believe we have made an error, and include any supporting evidence.

Reviews are conducted by senior experienced officers who have not been involved in the matter previously. This ensures the process is as independent as possible.

In appropriate cases, you might also consider using alternative dispute resolution, such as mediation, to try to resolve the complaint.

The Victorian Ombudsman expects agencies to inform complainants of any external avenues of complaint or appeal if they remain dissatisfied with the outcome. These include:

- the Victorian Ombudsman
- specialist complaint bodies e.g. the Victorian Equal Opportunity and Human Rights Commission if the complaint concerns discrimination, or the Health Services Commissioner if the complaint is about a health provider
- statutory rights of appeal such as merits review at the Victorian Civil and Administrative Tribunal.

You can also include information about internal and external avenues for review in information about your complaint handling system.

Tip: Referring complainants to the Victorian Ombudsman

We recommend the following text if you are referring a complainant to the Victorian Ombudsman:

If you are unhappy with the outcome of this process, you may wish to complain to the Victorian Ombudsman by completing the online complaint form at <www.ombudsman.vic.gov.au> or by calling (03) 9613 6222 or 1800 806 314 in regional areas.

2.12 Manage 'unreasonable complainant conduct'

People can be angry and frustrated when they make a complaint, sometimes for good reasons.

One of the skills involved in complaint handling is dealing with these emotions, while also maintaining a reasoned, evidence-based approach to the complaint.

In a small number of cases the complainant's conduct can, because of its nature or frequency, raise health or safety issues for officers, or consume a disproportionate amount of your agency's resources to the detriment of other complainants. Ombudsman offices have published a manual about this type of 'unreasonable complainant conduct' that may assist your officers.

The Victorian Ombudsman does not expect our officers, or officers in other public agencies, to tolerate behaviour that is offensive, abusive, threatening or consumes disproportionate resources.

The manual lists strategies for managing these situations. They aim to manage the impact of the conduct, while recognising that the complainant may still have a valid grievance that needs to be addressed.

We recommend that agencies:

- address how they manage unreasonable complainant conduct in their complaint handling policy
- train officers on how to deal with unreasonable complainant conduct
- support officers where the conduct is affecting their wellbeing.

Tip: How to avoid escalating conflict

Dealing with people who are angry and frustrated can be challenging for complaint handlers. In these situations, it can help to:

- focus on the issue and not the person
- ask questions about the facts to move the complainant from a 'feeling state' to a 'thinking state'
- find something to agree with, without necessarily agreeing with the complainant's point of view e.g. 'I agree that \$2000 is a lot of money to lose'.
- when in doubt, ask questions to clarify your understanding e.g. 'From what you tell me it seems ... is this correct?'
- not defend, deny or argue. Set aside your own personal views and feelings.

Tip: Limiting contact

When other strategies for managing unreasonable complainant conduct have failed, agencies may consider limiting the complainant's contact with the agency.

Options include limiting:

- who the complainant can contact
- what issues you will respond to. For example, you might decline to respond further to a specific complaint unless the complainant raises new issues that warrant investigation.
- when a complainant can contact you
- where a complainant can have contact
- how a complainant can contact you.

Before limiting contact, we would expect agencies to:

- consider the *Charter of Human Rights and Responsibilities Act 2006* and any other legal obligations¹
- ensure the limits are proportionate to the problem. Generally, the decision not to respond to further contact should be specific to a particular matter, not a total ban on all correspondence.
- make any decision to cease responding at a senior level
- inform the complainant and provide reasons
- review any limits on contact at least every 12 months to consider whether it is appropriate to retain the restriction.

2.13 Complaints about contractors

Your agency is ultimately responsible for all complaints about your services, irrespective of whether those services are delivered by you or a third party contractor.

You can set out how you manage complaints about contractors in your complaint handling policy.

Some agencies, particularly in the community services sector, are required by legislation to oversee third party service providers.

In other cases, it is still good practice to monitor the way contractors deal with complaints and have clear oversight of their complaint handling process. This includes:

- reviewing and approving the contractor's complaint handling process. Ideally, it should be consistent with your own policy.
- ensuring you audit the contractor's complaint handling
- requiring the contractor to collect complaint data, which your agency can access, monitor and report on as part of your own complaint handling system
- ensuring any systemic issues regarding the contractor's performance are identified and promptly addressed
- requiring the contractor to inform complainants that your agency can review their complaint if they remain dissatisfied. The contractor should provide information about where and how to complain to your agency.

¹ In *Slattery v Manningham City Council* [2013] VCAT 1869, the Victorian Civil and Administrative Tribunal found that a declaration banning a person from any building owned, occupied or managed by a council discriminated against the person on the grounds of disability and breached his human rights under the Charter.

3. Learning and improving from complaints

Guiding principles – Good complaint handling systems use complaint information to:

- foster **continuous improvement**
- ensure **accountability** in complaint handling performance.

Your agency will get the most value from complaint handling when you use information from complaints to improve services for the community as a whole.

Complaints are a form of feedback about your agency's decisions and services, just like client and community surveys or evaluation reports. By linking your agency's complaint handling system with quality management processes, you can promote accountability and identify where you need to make changes.

This section looks at the practical steps involved.

3.1 Record complaints

Unless you have an effective system for recording complaints, it will be difficult to harness complaint information to improve your services.

A central database is the best way for officers to record and track complaints, regardless of where they work in your agency.

The database can suit your agency's size and resources and the number of complaints you receive. Smaller agencies that receive few complaints might use a spreadsheet. Larger agencies that receive many complaints may need specialised case management software, or to integrate complaint handling into existing customer service systems.

Your officers will need to know when and how to record complaints so there is consistent practice across your agency.

The Victorian Ombudsman encourages agencies to record as many complaints as possible. Our preferred definition of a complaint, which is set out on page 3, covers any expression of dissatisfaction, regardless of how or to whom it is made.

The more complaints you capture, the more representative your data will be, and the more information you will have about what people think about your services.

Tip: What to record

It is good practice to record the following information for every complaint:

- **the complainant's personal details**
- **how the complaint was received**
- **when the complaint was received**
- **a description of the complaint**
- **the complainant's desired outcome**
- **the officer responsible for handling the complaint**
- **any action taken, including contact with the complainant, the outcome of the complaint and any remedies**
- **when the complaint was finalised**
- **any recommendations for improvement arising from the complaint, and who is responsible for implementing the recommendations**
- **relevant demographic information that could help your agency improve its service.**

3.2 Analyse complaints regularly

Analysing complaint information regularly will help you identify areas where your agency's services may need to improve.

It is useful to consider:

- the number of complaints and any trends over time
- the types of issues or services involved
- the outcomes of the complaints
- the demographics of complainants.

It is good practice to provide quarterly reports to senior managers about complaints, along with any recommendations about how to improve services. It is also good practice to report on complaints in your annual report.

Care needs to be taken when interpreting complaint data. An increase in complaint numbers following a change in your agency's complaint handling practices may show that your complaint handling system is working well, not that service levels have dropped.

3.3 Assess your complaint handling performance

Your agency's complaint information can also be used to assess and improve your complaint handling system.

Options for monitoring performance include:

- measuring your complaint data against key performance indicators
- quality auditing
- assessing complainant satisfaction e.g. through surveys.

You can show you are committed to dealing with complaints by publicising your performance against your key performance indicators, and any service improvements you have made as a result of complaints.

Tip: KPIs for complaint handling

This guide shows that a well-handled complaint is made up of many elements. Your key performance indicators could measure:

- **complaint outcomes e.g. decisions upheld, partially upheld or not upheld**
- **time taken to resolve matters**
- **any service changes resulting from complaints**
- **the number of complaint outcomes altered following internal review**
- **customer satisfaction with your complaint handling system**
- **the number of complaints escalated to the head of your agency or your minister**
- **the number of complaints escalated to the Victorian Ombudsman, resulting in changes to your decisions, policies or practices.**

3.4 Review your system

Leaders and managers can demonstrate commitment to good complaint handling by monitoring the performance of their agency's system. They may need to change resources, systems and training from time to time to ensure complaints are handled well.

The Victorian Ombudsman recommends that agencies conduct regular in-depth reviews of their complaint handling system. The review might consider:

- any changes to statutory or regulatory requirements
- changes to your agency's functions, resources or organisational structure
- technological changes
- current good practice
- the views of your officers
- feedback from complainants.

This will ensure that your complaint handling system remains effective and up to date with good practice.

References

The following publications were referred to in developing this guide. They are recommended reading for officers with responsibility for complaint handling.

Australian/New Zealand Standard™, *Guidelines for complaint management in organizations*, (AS/NZS 10002:2014)

Commonwealth Ombudsman, *Better practice guide to complaint handling*, April 2009

Department of Justice, *Charter of Human Rights and Responsibilities – guidelines for legislation and policy officers in Victoria*, July 2008

Independent Broad-based Anti-corruption Commission and Victorian Ombudsman, *Investigations guide: conducting internal investigations into misconduct*, June 2016

New South Wales Ombudsman, *Effective complaint handling guidelines*, 2nd edition, December 2010

New South Wales Ombudsman, *Managing unreasonable complainant conduct practice manual*, 2nd edition, May 2012

New South Wales Ombudsman, *Managing unreasonable complainant conduct – a model policy and procedure*, May 2013

New South Wales Ombudsman, *Complaint management framework and model policy*, June 2015

Ombudsman Western Australia, *Guidelines on complaint handling*, November 2010

Victorian Equal Opportunity and Human Rights Commission, 'Victoria's Charter of Human Rights and Responsibilities' webpage <www.humanrightscommission.vic.gov.au> (accessed May 2016)

Victorian Government, *Victorian Government accessible communication guidelines 2014*, January 2014

Victorian Ombudsman, *Councils and complaints – a good practice guide*, February 2015

Victorian Ombudsman, *Managing unreasonable complainant conduct practice manual*, 2nd edition, May 2012

Victorian Public Sector Commission, 'Public sector values' webpage <www.vpsc.vic.gov.au> (accessed January 2016)

Appendix 1 – model policy template

This model policy is intended for use as a guide only. Agencies are encouraged to tailor it to suit their individual circumstances.

How to use this document

Standard wording is in roman type. It is recommended that this text go into the agency's policy as it is written in this policy template.

Suggested wording is in *italics*. Agencies may need to tailor this text to suit their individual circumstances.

[Tips and instructions for drafting the policy are in blue italics and brackets]

Name of agency	
Title and version number	
Record number	
Effective date	
Responsible officer	
Date of Charter of Human Rights review	
Date of approval	
Review date	<i>[Review complaint handling system regularly, including procedures and key performance indicators]</i>
Relevant legislation	<i>Charter of Human Rights and Responsibilities Act 2006 Freedom of Information Act 1982 Independent Broad-based Anti-corruption Commission Act 2011 Privacy and Data Protection Act 2014 Protected Disclosure Act 2012</i>
Related policies	<i>[Insert all related policies, for example:</i> <ul style="list-style-type: none"> <i>• customer service policy/charter</i> <i>• protected disclosure policy</i> <i>• employee code of conduct</i> <i>• infringements policy</i> <i>• conflict of interest policy, etc.]</i>

Introduction

[In the introduction, agencies can:

- state that members of the public have the right to complain*
- include statements about the agency's commitment to complaint handling and creating a culture that encourages feedback and complaints*
- affirm that the agency will learn from complaints to improve its services*
- note any factors or demographics specific to the agency which are relevant to complaint handling]*

This policy includes... *[summarise what is in this document]*

Objectives

This policy aims to:

- put in place an open and transparent complaint handling system*
- specify the key performance indicators to which we will hold ourselves accountable*
- establish our timeframes for resolving complaints*
- clarify the roles and responsibilities of agency staff*
- ensure staff handle complaints fairly and objectively*
- set out how staff record and analyse complaint data to identify where we can improve our services.*

Guiding principles

This policy is based on seven principles.

1. Commitment

We are committed to resolving complaints and have a culture that recognises an individual's right to complain. We value complaints and recognise them as being part of our business of serving our communities and improving service delivery.

2. Accessibility

People with a range of needs can easily complain and staff actively assist them to navigate the complaints process.

3. Transparency

We make it clear how to complain, where to complain and how the complaint will be handled. The steps taken to respond to a complaint are recorded and will stand up to scrutiny.

4. Objectivity and fairness

Complaints are dealt with courteously, impartially, within established timeframes and are assessed on merit.

5. Privacy

Complaint information is handled according to privacy laws and other relevant legislation. We provide clear information about how we handle personal information. Complaint data is de-identified if reported on more widely.

6. Accountability

We are accountable internally and externally for our decision making and complaint handling performance. We provide explanations and reasons for decisions, and ensure that our decisions are subject to appropriate review processes.

7. Continuous improvement

Acting on, learning from and using complaint data helps us identify problems and improve services.

Scope

This policy applies to all agency staff. It also applies to third party contractors carrying out services on the agency's behalf.

Definitions

Complaint: *an expression of dissatisfaction with the quality of an action taken, decision made, or service provided by an agency or its contractor, or a delay or failure in providing a service, taking an action, or making a decision by an agency or its contractor.*

[Define any other key terms that your agency uses, including those closely related to 'complaint', such as 'service request', 'comments' or 'feedback']

Roles and responsibilities of agency staff and contractors

Frontline staff

Managers and directors

Chief Executive Officer

Third party contractors

[For each party, enter a general description of their role and responsibilities within the complaint handling system]

How to make a complaint

A person can make a complaint in a number of ways.

Mail: *[Insert name of agency and postal address]*

Telephone: *[Insert telephone number]*

Email: *[Insert email address]*

In person: *[Insert locations]*

Fax: *[Insert fax number]*

Internet: *[Insert web address. If you have an online feedback form, include instructions on how to access it from the homepage]*

Accessibility

Anyone who has been affected by a decision or action (including a failure to make a decision or take action) can make a complaint.

[Detail the processes/services the agency has in place to assist people with additional needs to make a complaint]

We accept and respond to anonymous complaints, provided we have received enough information to do so.

Complaint handling procedure

Overview

We take a four-tiered approach to complaint handling, as follows:

1. **frontline resolution:** frontline staff receive the complaint, assess it, and resolve it immediately, if possible
2. **investigation, if required:** if frontline staff cannot resolve the complaint, they will refer it to an officer for investigation
3. **internal review:** if the complainant is aggrieved with the process or outcome of the frontline resolution/investigation, they can request an internal review
4. **access to external review:** if the complainant is aggrieved with the process or outcome of the internal review, we inform them of any available external review options.

Procedures

[Tailor this section to your individual procedures]

Frontline resolution

- We will acknowledge all complaints within 10 days of receipt.
- Frontline staff will receive the complaint.
- Frontline staff will clarify the complaint and the outcome the complainant is seeking.
- Frontline staff will assess the complaint to determine how it should be dealt with. *[Consider including the criteria upon which complaints will be assessed]*
- If the agency is not the right organisation to respond to the complaint, frontline staff will advise the complainant of an organisation that may be able to help.

Investigation

- If frontline staff cannot resolve the complaint, it will be assigned to an officer for investigation.
- The officer handling the complaint will advise the complainant who the contact person is and how long it will take to respond to the complaint.
- Complaint handling staff will aim to resolve all complaints within 28 days.
- If it takes longer than 28 days to resolve a complaint, the contact person will contact the complainant prior to or at this time and explain why.

-
- *Complaints that are not resolved within 28 days may be escalated if necessary to ensure that a resolution is expedited.*
 - *The officer responsible for handling the complaint will write to the complainant to advise them of the outcome. The outcome letter/report will contain reasons for the decision made and the contact information for the responsible officer.*
 - *The officer handling the complaint may contact the complainant to discuss the outcome of their complaint prior to sending the outcome letter.*

Internal review

[Identify the staff member/s who are responsible for internal reviews – an internal review should be escalated to a staff member not involved in the original decision/action/investigation]

[Detail internal review process and timeframes]

An outcome letter signed by the senior officer responsible for the internal review will be provided to the complainant at the conclusion of every internal review.

The outcome letter will advise the complainant of any avenues of external review available in relation to the matter, such as the Victorian Ombudsman.

Complaints about contractors

We recognise that we retain a level of responsibility for services carried out by contractors on our behalf.

[Consider whether you will allow contractors to respond to complaints directly.]

When deciding, consider whether you have (or can put in place) appropriate oversight mechanisms for any complaint handling carried out by contractors.

If contractors handle complaints, provide details of any oversight mechanisms and other requirements the contractor will be subject to]

If a complainant is not satisfied with the outcome of the complaint, he or she can ask the agency to review the decision.

All outcome letters written by contractors in relation to complaints will include the name and contact details of an agency staff member to whom the complainant may escalate their complaint if they are not satisfied with the outcome the contractor has provided.

Complaints about specific matters – alternative procedures

Complaints about allegations of corrupt conduct

Where a complaint involves allegations of corrupt conduct, it will be handled in accordance with the *[insert name of policy for handling protected disclosures]*.

Remedies

Where we have found that we have made an error, we will take steps to redress the situation. Possible remedies include, but are not limited to *[list the remedies and who is authorised to offer them]*

- *an explanation of why the error occurred and the steps taken to prevent it happening again*
- *a reversal of a decision*
- *an ex gratia payment or compensation*
- *disciplinary action taken against a staff member*
- *providing the means of redress requested by the complainant.*

Where we identify an error, we will consider offering a genuine apology to the complainant, in addition to any other remedies offered, irrespective of whether the complainant specifically requests this.

Privacy

When gathering information to respond to a complaint, we will only:

- use it to deal with the complaint or to address systemic issues arising from the complaint
- disclose it in a de-identified format when disclosing data to the public
- share it with staff on a need to know basis.

Recording complaints

All complaints are recorded in our *[complaint database]*.

[Insert process for recording complaints]

We analyse our complaint data and provide *[annual/more frequent]* reports to *[insert details of relevant parties to report to]* on how we can reduce complaints and improve services. Senior management is responsible for acting on the recommendations in these reports.

We record the following information for each complaint:

- *the complainant's details*
- *how the complaint was received*
- *a description of the complaint*
- *the complainant's desired outcome (if known)*
- *the agency officer responsible for handling the complaint*
- *any action taken, including contact with the complainant, response times and the outcome*
- *when the complaint was finalised*
- *relevant demographic information that could help improve services*
- *any recommendations for improvement, and who is responsible for implementing them.*

Any queries regarding the recording of complaints should be directed to *[insert name of responsible officer]*.

Reporting on performance

To measure our performance, we have the following key performance indicators:

[Insert KPIs associated with complaint handling. These KPIs may be related to:

- complaints upheld, partially upheld, not upheld*
- performance against timelines set by the agency i.e. average time to respond*
- number of changes made to services as a result of complaints*
- number of complaint outcomes overturned on internal review*
- customer satisfaction with the complaint handling system*
- complaints escalated to the Victorian Ombudsman's office where the agency's original decision has been overturned and/or proposals for action have been made by the Ombudsman]*

We will report against our complaint handling key performance indicators in our annual report, where we will also detail any service improvements made as a result of complaints received.

Unreasonable complainant conduct

[The New South Wales Ombudsman's Managing unreasonable complainant conduct model policy includes guidance for managing unreasonable complainant conduct, which agencies can tailor to their individual circumstances <www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/state-and-local-government/managing-unreasonable-complainant-conduct-a-model-policy-and-procedure>]

Appendix 2 – complaint handling organisations

Key Victorian complaint and dispute resolution bodies

Accident Compensation Conciliation Service

Provides an independent service to resolve workers compensation disputes in Victoria.

Commissioner for Privacy and Data Protection

The key body regulating the way Victorian government agencies and local councils collect and handle personal information.

Consumer Affairs Victoria

Promotes consumer protection and ethical trading and ensures that consumer protection laws are properly enforced.

Dispute Settlement Centre – Victorian Department of Justice and Regulation

Provides an informal, impartial, accessible, low cost dispute resolution service to the Victorian community.

Disability Services Commissioner

Deals with complaints about disability services in Victoria.

Health Services Commissioner

Deals with complaints about health services providers.

Local Government Investigations and Compliance Inspectorate

Investigates complaints of alleged breaches of the *Local Government Act 1989* by councillors, senior council officers and certain other persons.

Mental Health Complaints Commissioner

Deals with complaints about public mental health services providers.

Public Transport Ombudsman

Deals with complaints about Victorian public transport that members of the community have been unable to resolve directly with the public transport operators.

Victorian Equal Opportunity and Human Rights Commission

Responsible for eliminating discrimination in Victoria. Offers information, education and consultancy services, conducts research and provides legal and policy advice.

Victorian Inspectorate

Key oversight body in Victoria's integrity system. It can take complaints about IBAC, Chief Examiner and Examiners, Victorian Ombudsman and Auditor General.

Victorian Ombudsman

Receives complaints about the administrative actions of Victorian government authorities and local councils.

Industry complaint and dispute resolution bodies

Energy and Water Ombudsman Victoria

Dispute resolution service for Victorian electricity, gas and water consumers.

Financial Ombudsman Service

Dispute resolution scheme for disputes concerning financial services, including banking and finance, home, contents, travel and life insurance, insurance broking, financial planning, managed funds, mortgage and finance broking, pooled superannuation funds, estate planning and management and traditional trustee services.

Private Health Insurance Ombudsman

Assists private health fund members to resolve disputes about health insurance.

Telecommunications Industry Ombudsman

Dispute resolution service for residential and small business customers who have a complaint about their telephone or internet service in Australia.

Tolling Customer Ombudsman

Alternative dispute resolution service for customers of CityLink and EastLink.

Public sector corruption and police misconduct

Independent Broad-based Anti-corruption Commission

Receives complaints and notifications about corruption and misconduct in Victorian government departments and agencies, councils, Victoria Police, the Parliament and the judiciary; assesses potential protected disclosures under the *Protected Disclosure Act 2012*.

Professional Standards Command, Victoria Police

Receives complaints about Victoria Police members.

Courts and tribunals

Victorian Civil and Administrative Tribunal (VCAT)

Magistrates' Court of Victoria

County Court of Victoria

Supreme Court of Victoria

Commonwealth and interstate ombudsman

Commonwealth Ombudsman

NSW Ombudsman

Queensland Ombudsman

Ombudsman South Australia

Ombudsman Western Australia

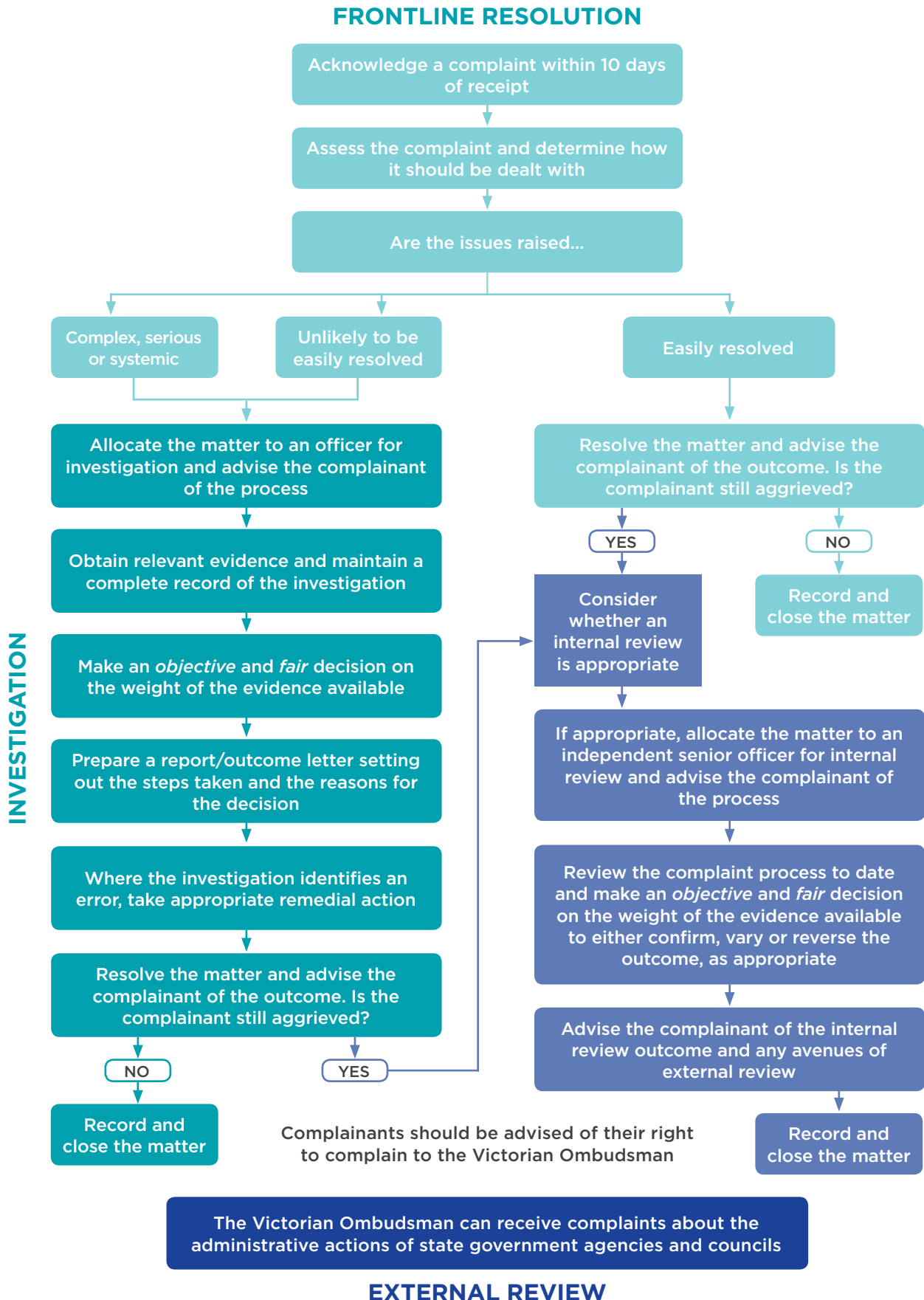
Ombudsman Tasmania

Ombudsman NT

ACT Ombudsman

Appendix 3 – complaint handling flowchart

This flowchart shows how a tiered approach to complaint handling can work in practice.



Appendix 4 – acknowledgment letter example

This is an example of an acknowledgement letter for a complaint.

Dear Mr Citizen

Your complaint about your licence application

Thank you for your email dated 1 January 2016 about the department’s decision not to approve your application for a licence.

I am considering your complaint and will contact you again when more information is available.

If you have any questions, you are welcome to contact me on 9555 5555.

Yours sincerely

Li Adams

Customer Service Officer

Appendix 5 – outcome letter example

This is a fictional letter that incorporates the elements of a good outcome letter set out on page 15, and takes a receptive attitude to feedback. Remember there is no ‘one size fits all’ response to every complaint, and tailor your letters to suit each complaint.

Dear Ms Citizen

Your complaint about your fine

Thank you again for your email dated 1 January 2016 about the service you received from one of our enforcement officers and her refusal to revoke your fine.

You complained that the officer refused to withdraw the fine even though you provided evidence that you did not commit the offence, and that she was rude and unhelpful.

We welcome feedback about our service and I would like to thank you for taking the time to contact us.

After reading your email, I considered the *Infringements Act 2006*, which sets out the law on infringements, and our internal policies. I also spoke to the officer involved.

Unfortunately our enforcement officers are not able to revoke fines once they have been issued. The enforcement officer advised me that she was trying to explain this to you, and did not intend to be rude or unhelpful.

The senior review officers in our Appeals section can review and revoke fines, and I have forwarded your letter to them for consideration. If you have any additional evidence to provide, you can send it to the Appeals section by writing to PO Box 999, Melbourne VIC 3000 or emailing <appeals@agency.vic.gov.au>.

I hope this resolves your concerns about what happened. If you have any questions, you are welcome to contact me on 9555 5555.

If you are not happy with my response, you can seek an internal review by writing to our Chief Executive Officer. Alternatively you may wish to complain to the Victorian Ombudsman by completing the online complaint form at <www.ombudsman.vic.gov.au> or by calling (03) 9613 6222 or 1800 806 314 in regional areas.

Yours sincerely

Li Adams

Customer Service Officer

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Good Practice Guide to Dealing with Challenging Behaviour

May 2018



VICTORIAN
ombudsman

Accessibility

If you would like to receive this publication in an alternative format, please call 9613 6222, using the National Relay Service on 133 677 if required, or email vocomms@ombudsman.vic.gov.au.

The Victorian Ombudsman respectfully acknowledges the Traditional Owners of the lands throughout Victoria and pays respect to them, their culture and their Elders past, present and future.

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Introduction

Key things to remember

This guide will help complaint handlers in the Victorian public sector deal with the challenging behaviour that sometimes accompanies complaints.

The key things to remember are:

- You are not alone. Even experienced complaint handlers are challenged by people's behaviour at times.
- There are ways to prevent and respond to challenging behaviour so you can focus on your job – dealing with the complaint.
- You can draw the line in extreme cases, but there are important steps you need to take first to comply with Victorian human rights and other laws.

People who handle complaints in government often say the hardest part of their job is handling the behaviour of some people who complain.

You will be speaking with people who are angry or frustrated with your organisation's actions, sometimes with good reason. You may be speaking with people who are vulnerable and distressed. You may come across people who will not listen to your advice. Occasionally – hopefully not often – you may meet people who abuse or threaten you.

Although this kind of behaviour is hard to deal with, there can be a legitimate grievance at the heart of these complaints.

So how do you prevent this behaviour getting in the way of you doing your job – dealing with the complaint – and providing a good service? And how do you look after yourself or your staff, and make sure you use your time and resources wisely?

How this guide can help

This guide provides practical, common sense advice about how to deal with challenging behaviour. It includes tips for dealing with common situations and examples of what does and does not work, based on actual cases.

It recommends your organisation follow the four stages shown below. These stages recognise complaint handlers encounter a spectrum of behaviour, from slightly confronting to clearly unreasonable, and our responses need to be graduated too.



This guide also provides advice about looking after yourself, if you are handling complaints, and looking after your staff, if you are a manager or leader.

The strategies in this guide will not work with every person every time. It is often a matter of trying one approach and, if it does not work, trying another approach. You will get better at dealing with challenging behaviour with practice.

How we developed the guide

The information in this guide is based on our experience at the Victorian Ombudsman.

Every year we speak with thousands of people from all walks of life. Almost all of them contact us because they are upset about something a government agency has or has not done. We deal with challenging behaviour from members of the public every day.

You will find examples from our work in the case studies in this guide. Some details have been changed to de-identify the people and organisations involved.

The advice in this guide also:

- takes account of Victoria's human rights laws (see opposite), equal opportunity laws (see page 20) and workplace safety laws
- reflects discussions with organisations whose core business is dealing with vulnerable people – people with mental illness or disability or their families, and people reporting discrimination
- draws on the growing body of literature about dealing with challenging behaviour. You will find references to this literature and other helpful resources on page 48.

Victoria's human rights laws

In 1996 Victoria became the first state in Australia to adopt a charter of human rights in law.

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) sets out 20 rights and freedoms enjoyed by people in Victoria including:

- a right to equality before the law
- a right to privacy and reputation
- freedom of movement
- freedom of expression
- a right to take part in public life.

Public authorities, and some private companies performing functions on behalf of the government, must act compatibly with these rights when delivering services or making decisions. They must also consider relevant human rights when making a decision.

The rights and freedoms in the Charter are not absolute. The Charter states that a human right can be subject under law to such 'reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom' and taking into account factors including:

- the nature of the right
- the importance of the purpose of the limitation
- the nature and extent of the limitation
- the relationship between the limitation and its purpose
- any less restrictive means reasonably available to achieve the purpose.

The guide is intended to be read alongside the *Managing Unreasonable Conduct by Complainants Practice Manual* developed by parliamentary ombudsmen in Australia and New Zealand in 2007¹ – led by the NSW Ombudsman. The manual focuses on the most extreme forms of behaviour that threaten the health, safety, equity or resources of the parties involved in complaints (Stages three and four of this guide). It is written for a national audience and does not reflect Victoria’s human rights and equal opportunity laws. It does, however, contain useful strategies and ideas that have helped public and private sector organisations. This guide will refer you to the manual for information about specific topics.



Tip: Using script suggestions

This guide and the *Managing Unreasonable Conduct by Complainants Practice Manual* contain script ideas for responding to different situations.

Real conversations do not follow scripts of course. If you sound like you are reading from a script, you will seem inauthentic or patronising.

We recommend you practice script ideas and adapt them to suit your style of speaking.

The terms used in this guide

This guide uses certain terms to describe the work of handling complaints and challenging behaviour.

The Victorian Ombudsman’s preferred definition of a ‘complaint’ is:

A complaint is an expression of dissatisfaction with:

- the quality of an action taken, decision made or service provided by an agency or its contractor
- a delay or failure in providing a service, taking an action, or making a decision by an agency or its contractor.

A ‘complaint handler’ is an officer responsible for responding to a complaint. It includes officers who are employed specifically to deal with complaints, and officers who only deal with complaints from time to time.

The term ‘complaint handling system’ refers to all policies, procedures, practices, officers and resources an organisation deploys to manage complaints.

The term ‘complainant’ also appears in this guide. Parliamentary ombudsmen use this term to refer to a person, organisation or representative who makes a complaint. Depending on your organisation’s work, you may use ‘client’, ‘customer’, ‘resident’, ‘student’ or another term instead.

The term ‘challenging behaviour’ is explained in the next section.

¹ New South Wales Ombudsman, *Managing Unreasonable Conduct by Complainants Practice Manual* (3rd edition, forthcoming).

What is challenging behaviour?

Key things to remember

'Challenging behaviour' is any behaviour you find challenging. It varies from person to person.

By reflecting on types of behaviour you find challenging, you will be in a better position to respond effectively.

Some types of behaviour are never acceptable. They include verbal abuse, threats and violence.

The term 'challenging behaviour' is intended to encourage you to consider what sorts of behaviour *you* find challenging and why.

This guide is not suggesting a relativist approach where it is up to every complaint handler to decide what they can and cannot handle. Nor is it suggesting that challenging behaviour only exists in the head of complaint handlers. There are behaviours that are never acceptable.

By reflecting on what you find challenging, you will be in a better position to:

- control your reaction to the behaviour so you can respond more effectively
- choose the best strategy for dealing with the behaviour
- look after yourself.

When people are confronting or unpleasant, we can have a tendency to label them and/or their behaviour. If we do this as complaint handlers, we risk using strategies that make the situation worse. It is confronting when someone starts a telephone call by shouting at you about something that has gone wrong, or challenges one of your decisions. But if you hang up straight away, they are likely to get even angrier and complain about you, and you miss a chance to resolve the problem.

This section will help you consider what behaviour you find challenging and how you should respond.

Consider your expectations

For complaint handlers, people with complaints would ideally:

- be pleasant and respectful
- explain their problem and what they want clearly and succinctly
- try to contain their emotions and focus on the issues
- understand your organisation's role and the limits on what it can achieve
- accept decisions with good grace.

In the real world, people do not always act this way. They want their problem fixed, and fixed quickly. They are often angry or upset. They may not understand your organisation's role or care that you work within legal and/or financial limits. They might not communicate information in the way you need for a whole range of reasons – emotion, culture, disability or language. They may not accept or understand your decision, particularly if it involves bad news.

This behaviour is not of itself unreasonable. To handle complaints well, you need to be prepared to deal with a diverse range of people and behaviours.

You may also have expectations about yourself – that you will be able to solve every problem and make every person happy. This does not always happen in the real world either. The measure of your success is not whether the person is happy (although it is nice when it happens), but whether you have handled the complaint well and treated the person with respect and dignity.

Know your ‘triggers’

At the Victorian Ombudsman, our officers find different situations challenging. Some officers find it hard when people shout or get angry. Others find it hard when they hear or see people in tears.

Some are challenged when people ignore their advice and raise the same issues over and over. Others might feel confronted when people question their competence by asking about their age or qualifications, or insist on speaking to a manager.

Think about types of behaviour you found particularly frustrating in the past, or behaviour that left you upset long after the conversation ended.

Remember that your threshold for coping with behaviour changes over time. People who raise their voice might not upset you ordinarily. If you have had a series of people shouting at you over the course of a morning, you may find it difficult when the next person does the same thing. Or there may be other things happening in your life that make you less resilient than usual.

Don’t make assumptions about motives

People can engage in behaviour you find challenging for different reasons.

Some studies look at the psychological aspects of ‘querulent’ or ‘high conflict’ behaviour.²

Challenging behaviour can also arise from:

- The person’s frustration, anxiety or distress about their complaint.
- Previous bad experiences dealing with your organisation or government.
- Resentment about having to deal with your organisation in the first place, if this is not the person’s choice. This might be an issue, for example, if your organisation is involved in enforcing the law, or collecting fees and taxes.
- Stressful personal situations such as significant caring responsibilities or chronic pain.
- Drug or alcohol use.
- Cultural differences. Different cultures can have different ways of communicating problems or showing honesty and respect. You can find information to help you understand some of these differences in the *Managing Unreasonable Conduct by Complainants Practice Manual*.
- Some types of disability or mental illness. This guide discusses these issues on pages 19-29.

² See, eg, Paul E Mullen and Grant Lester, ‘Vexatious litigants and unusually persistent complaints: From querulous paranoia to querulous behaviour’ (2006) 24 *Behavioural Sciences and the Law* 33; Bill Eddy, *Managing High Conflict People in Court* (High Conflict Institute, 2008).

In most cases, you will never know why the person is acting the way they are. Your job as the complaint handler is to deal with the complaint, not diagnose or stereotype the person.

Good complaint handlers observe people for signs of behaviour that need to be addressed, but recognise challenging behaviour is not usually personal. They keep an open mind about the person and their complaint.

Distinguish between different types of behaviour

Different types of challenging behaviour warrant a different level of response.

You can deal with most challenging behaviour using good complaint handling and defusing strategies (Stages one and two of this guide).

It is only when behaviour is or becomes truly unreasonable that you need to think about management strategies or limiting access to your services (Stages three and four).

So how do you tell when the behaviour has reached this point?

This guide, and the *Managing Unreasonable Conduct by Complainants Practice Manual*, state that behaviour becomes unreasonable when, because of its nature or frequency, it raises health, safety, resource or equity issues for the parties to the complaint.

The parties to the complaint can include you, the complainant, your organisation, the subject of the complaint and the other people who use your services.

Some types of behaviour clearly meet this test, such as verbal abuse, threats to harm you or other people, and violence. This behaviour is never acceptable.

Unreasonable behaviour can also be subtle. For example, the person might start reframing a complaint that has already been dealt with so it looks like they have new issues. Or they might say things to manipulate your emotions such as 'You're not helping me. If I lose my house, it will be your fault.'

If you are unsure whether conduct is unreasonable and how to respond, consult a manager or another experienced colleague. Sometimes an outside perspective can help you see the situation more clearly.

Stage one: Prevent

Key things to remember

You and your organisation can help prevent challenging behaviour by practising good complaint handling techniques.

Your complaint handling system should be accessible and easy to use.

The way you deal with complaints should be fair, respectful and prompt, and clear about what you can and cannot do.

This section looks at ways to prevent challenging behaviour by practising good complaint handling techniques.

A person's first contact with your organisation sets the tone for the rest of their contact with you. If they had to speak to three different parts of your organisation to find out how to complain, they are likely to be frustrated by the time they speak with you. If they do not get an accurate understanding of your organisation's role and how you handle complaints in those first conversations, they will be even angrier if you tell them you cannot help in three months' time.

The case study on the next page is an example of how an organisation's systems for delivering services can affect people's behaviour. Your organisation can avoid fuelling challenging behaviour by building a strong foundation of good service delivery and complaint handling.

The Victorian Ombudsman has published guides to good complaint handling for local councils and the Victorian public sector.³

This guide highlights the key steps to help prevent challenging behaviour.

Welcome complaints

Our complaint handling guides stress the importance of building an organisational culture that is receptive to complaints.

Unhelpful, defensive responses undermine confidence in your organisation and make people less likely to respond positively to you.

All officers in your organisation need to be aware of your complaint handling system and what to do if someone approaches them with a complaint.

Leaders and managers need to appoint officers that are skilled in customer service and complaint handling, empower them to resolve complaints, and offer training and support.

Our guides also recommend that you publish information about how to complain. You can do this on your website and in brochures and 'welcome packs' for your customers.

Be accessible

Good organisations also make it easy for people to complain.

Not everyone in the community can contact you during business hours or make a written complaint. We live in a diverse community where people have different communication preferences and needs. Traditional bureaucratic practices can be obstacles for people who have a disability or illness, are elderly, speak little English, struggle with literacy, are homeless or shift workers, or identify as a gender other than that assigned at birth.

The harder you make it to complain, the more frustrated people will become, and the more likely they are to take it out on you or your staff.

³ Victorian Ombudsman, *Councils and complaints: A good practice guide* (2015); Victorian Ombudsman, *Complaints: Good Practice Guide for Public Sector Agencies* (2016).

Your organisation can remove some of the barriers to complaints by:

- accepting complaints by telephone, email, letter, online and in person
- offering free access to a translator and/or interpreter service
- using the National Relay Service, communication boards and other aids to communicate with people with hearing or speech disabilities
- providing information in accessible formats

- providing support to members of the public to make complaints, if needed
- accepting complaints from authorised representatives if a person is unable to complain themselves.

It is good practice to consult with different communities about how to meet their needs. You will find more information about communicating with people with a disability or a mental illness on pages 19-29.



Case study: How service delivery can affect behaviour

In 2016 and 2017 Centrelink rolled out a partially automated system that matched income declared by welfare recipients with certain data held by the tax office. This led to some welfare recipients being asked to repay money.

Customers complained about incorrect debt notices and waiting hours to speak with Centrelink officers.

The Commonwealth Ombudsman investigated and identified service delivery problems including:

- failure to include the dedicated telephone number for compliance matters on letters, resulting in some people calling Centrelink's general line
- Centrelink staff not having sufficient knowledge about the system
- problems getting assistance on the telephone, in person and online.⁴

Media reports noted that, at the same time, the government was tendering for 'Advanced Customer Aggression Training' for Centrelink staff. One report quoted union sources as saying that 'plummeting customer service standards are driving high levels of verbal and physical aggression towards frontline Centrelink staff'.⁵

One of the people described in the Commonwealth Ombudsman's report said she had cried and screamed when speaking with Centrelink officers and had stopped engaging with the agency due to stress and anxiety.

The Commonwealth Ombudsman made recommendations to improve communication, while recognising Centrelink had already made changes.

Centrelink advised that it continues to 'focus on user testing enhancements and working with both customers and third party organisations to improve the design of online services'.

⁴ Commonwealth Ombudsman, *Centrelink's automated debt raising and recovery system* (2017).

⁵ Noel Towell, 'Centrelink cooking the books on violence against public servants, union says', *Canberra Times* (online), 23 January 2017 <<https://www.canberratimes.com.au/public-service/centrelink-cooking-the-books-on-violence-against-public-servants-union-says-20170120-gtvdme.html>>.

Respond promptly

In our experience, delays and failure to communicate are among the main reasons people become upset with organisations.

People can interpret lack of contact in ways you did not intend. They may assume your organisation does not care and is doing nothing.

Alternatively, if you take a long time to investigate their concerns without explanation, they may assume you are finding serious problems which will lead to a significant outcome for them.

At the Victorian Ombudsman, we respond to all complaints directed to us unless the person says they do not want a response, or we have previously told them that we may not respond to further contact (see pages 37-42).

It is good practice to acknowledge all complaints within 10 business days at most. You should respond sooner if the matter is urgent.

We recommend organisations resolve straightforward complaints within 28 days. If the complaint is likely to take longer because it is complex or needs investigation, give the person a timeframe and update them regularly.

Treat people with respect

When people complain, they want someone to listen and take them seriously. For many people, being treated respectfully during the complaint handling process is as important as the outcome of the complaint.

You can demonstrate respect by:

- giving the person a fair opportunity to present their position
- using active listening skills to show you are listening and taking their concerns seriously (see next page)
- giving the person an opportunity to discuss or comment on your preliminary findings before you close the complaint
- taking the time to explain your decision, how you reached it, and your reasons.

Talk like a human being

People who work in the public sector get used to official language and jargon. We sometimes use that language when we speak with members of the public.

People usually respond better if you come across as a real person rather than a 'faceless bureaucrat'.

You can do this by:

- taking time to introduce yourself and offering your name and contact details if the person has questions
- speaking or meeting with the person in person
- showing empathy (you will find more about this on page 15)
- explaining legal or bureaucratic terms in plain English
- giving common sense rather than bureaucratic explanations eg 'We ask people to do X because it helps Y' instead of 'It's our policy'.

The best communicators in our office listen to the way people speak and adapt their own language accordingly. The way they speak with a lawyer might be very different to the way they speak with someone with limited English.

Remember to stay professional – your role is to handle the person's complaint, not become their friend.

Whatever techniques you use, the more people see you as another human being, the more likely they are to treat you well.

Manage expectations

It is also good practice to explain your organisation's role and your complaint handling process at the outset. People do not always understand what government agencies do and how they work. They may believe your organisation has unlimited resources or powers to fix their problem. They may expect an instant response or a more private sector-style 'the customer is always right' approach. They may have unrealistic views about the remedies you can provide, such as compensation or getting someone fired.

When you fail to meet these expectations, their reaction may be disappointment and anger.



Tip: Active listening

'Active listening' is a technique used in dispute resolution and counselling. It involves concentrating on what someone is telling you and showing that you are listening.

Active listening techniques include:

- verbal affirmations eg 'uh huh' or 'yes'
- non-verbal affirmations such as eye contact and nodding
- asking questions eg 'You say you want justice. What would that look like?'
- paraphrasing what the person has been telling you in your own words eg 'It sounds like you're saying ...' Remember to keep your reflections tentative.
- checking your understanding eg 'I want to make sure I'm clear about this. Do you mean ...?'

The Victorian Ombudsman recommends you speak with people early to gauge their expectations and explain what you can and cannot do.

At a minimum, it is good practice to communicate:

- your organisation's role
- how you will be dealing with their complaint
- what issues you will and will not be considering
- their likely involvement in the process
- the expected timeframe for a response
- the possible or likely outcomes of the complaint.

You will find script ideas for testing and managing expectations in the *Managing Unreasonable Conduct by Complainants Practice Manual*.

If the person demonstrates challenging behaviour during these early discussions, this is your opportunity to set ground rules. At the Victorian Ombudsman, our Service Delivery Charter tells people 'As we expect our staff to be courteous and respectful when dealing with you, we expect you to afford our staff the same in return'.

Bear in mind that people are less likely to process and retain information when they are upset. Or they may not admit that they do not understand what you are saying.

If you think a person may not have understood you, or is resistant to your advice, confirm it in writing. It may be helpful to refer to this information in subsequent discussions, particularly if it is taking some time to resolve the complaint.

The case study on the next page illustrates the impact of expectations on behaviour.



Case study: Managing expectations

A couple contacted the Victorian Ombudsman because an agency was about to start building a public facility next to their home. They believed the agency failed to consult them properly. They wanted the agency to move the facility or compensate them.

The couple's son had a significant health problem and they were concerned about the impact on his health.

Our office explained to the father on the telephone that we could not stop the construction or award compensation, but would look at the agency's consultation process.

This took a few months. Based on the evidence, we concluded the agency had consulted and acted lawfully.

When we spoke to the couple about our conclusions, they were very angry. The mother said the agency and this office were ruining their lives and began chanting 'F*** you' over the telephone. This was followed by calls and letters in which the couple repeated that they wanted the facility moved or compensation, and said we had 'strung them along'.

Our office had tried to manage the couple's expectations when we first spoke with the father. In hindsight, it might have been helpful to confirm this in writing so both he and his wife had a written record. This might have led to further discussions with the couple about what they expected from our office, and we could have considered whether to continue our involvement.

Don't avoid difficult conversations

Some of the time your job will involve giving people bad news. You may not be able to resolve a problem as quickly as the person would like. Your organisation may not be able to provide the outcome they want because of the law or government policy or your budget.

No one likes to be the bearer of bad news. People work in the public sector to help people, not to disappoint them. It is natural to feel anxious about giving bad news, particularly where a person is already distressed and vulnerable.

Avoiding these conversations only makes the situation worse. By not telling the person, you are giving them false hope. They are likely to be even more upset when the time eventually comes to tell them that you cannot help.

In their book *Difficult Conversations*, members of Harvard University Law School's Negotiation Project say: 'Choosing not to deliver a difficult message is like hanging on to a hand grenade once you've pulled the pin.'⁶

If it is clear you cannot help, explain this as soon as possible. You need to be respectful, and you can acknowledge the person's feelings and disappointment, but ultimately you need to be honest.

⁶ Douglas Stone, Bruce Patton and Sheila Heen, *Difficult Conversations: How to Discuss What Matters Most* (Penguin Books, 10th anniversary edition, 2010) xxx.



Tip: Delivering bad news

Contacting someone to explain you cannot give them what they want is not easy, even when you have done what you can to manage their expectations.

The following strategies can make it easier:

- Prepare. If you cannot provide a common sense explanation for your decision, the person is unlikely to accept it. Think about what they are likely to say or do and how you will respond.
- Consider what you know about the person. Are they likely to react badly as soon as you tell them your decision? Would it be better to explain what you did and your reasons first?
- Be respectful. If the issue is sensitive, they may appreciate you speaking with them in person before you write.
- Explain what you did to investigate the complaint and why you made your decision. This shows you took the matter seriously, even if the outcome is not what they wanted.
- Express empathy. The complaint might not have merit from your perspective, but this does not mean the person has no right to be upset. You can acknowledge the way they feel while disagreeing with what they say eg 'I know this is not what you were hoping for ...'. Be careful about your language and tone. You do not want to look like you are taking sides, or being patronising.
- Offer an opportunity to ask questions.
- Listen to the person. If they raise valid points, agree to consider them. If not, acknowledge that they do not agree with you and explain why you reached a different view. Use 'and' rather than 'but' eg 'I can see your point, and I can also see evidence that ...'
- List opportunities for review or other avenues for challenging the decision. Only suggest avenues that are realistic though. Otherwise you are wasting the person's time.
- If the person cannot accept the decision, do not argue. Politely explain that you have done all you can, there is no further advice you can provide, and end the discussion.

Reflect and learn

At the Victorian Ombudsman, officers make time to listen to recordings of challenging phone calls. Sometimes they conclude there is nothing they could have done to prevent the person's behaviour. Other times they find things they could do differently in future.

You might not feel like revisiting a difficult conversation straight after a phone call or meeting, but it is worth making this a regular practice.

Managers should review reports of challenging behaviour for patterns and trends too. You can use this information to improve your organisation's complaint handling system and prevent problems in future.

The more you learn from your experiences in complaint handling, the better you will become.

Stage two: Respond

Defusing emotion

Key things to remember

If someone is very emotional about their complaint, you need to deal with that behaviour before you can talk about the issues. This involves:

- taking control of your own emotions and the situation
- acknowledging how the person feels and giving them a chance to 'let off steam'
- re-focusing the conversation onto the issues in the complaint.

If the behaviour involves or turns into unreasonable behaviour, consider the strategies on page 34.

This section looks at strategies for defusing challenging emotional behaviour.

This includes angry behaviour – yelling, ranting, swearing, insults, thumping the table and so on. It can also include situations where a person is highly distressed.

Some emotion is to be expected when people complain. But if a person is so upset that they cannot talk to you properly about the issues, it becomes a problem. You need to deal with their emotions first, before you can speak rationally with them about their complaint.

This guide uses the CARP method developed by Canadian psychologist and workplace consultant Robert Bacal.⁷ CARP stands for:

Control – taking control of your response and the situation and not getting drawn into arguments

Acknowledge – allowing the person to speak and acknowledging their feelings

Refocus – shifting the focus from the way the person feels to the issues

Problem solve – moving on to discussing and addressing the issues.

The CARP model is designed to deal with angry and hostile behaviour, but it can be useful for addressing other types of emotional behaviour too.

Control yourself first

If angry or distressed behaviour is one of the 'triggers' you identified earlier, your reaction to this behaviour is likely to be emotional too. You might feel your heart thumping, notice your thoughts racing or hear your voice change pitch.

You need to control your emotional response so you can think clearly and respond to the person, instead of just reacting to the situation.

You know how best to control your emotions based on your life experience.

Common techniques people use are:

- breathing deeply
- counting to 10
- positive self-talk eg telling yourself the person is upset about the situation and not you, that you can handle the situation etc.

If you are having trouble collecting yourself, find a reason to take a break. Put the caller on hold to get some information or leave the room to get some water.

If you cannot continue productively and the matter is not urgent, it might be better to arrange to speak with the person again at another time.

Stay professional

People who are upset sometimes do or say things that draw you into their emotional state. An angry person, for example, might try to provoke an argument by insulting you.

It is important to remain neutral and in control. If you respond in a way that sounds defensive or argumentative, the situation is likely to escalate. The other person is controlling the conversation and you have lost your chance to steer it towards the issues.

⁷ Robert Bacal, *Defusing Hostile Customers Workbook: A Self-Instructional Workbook for Public Sector Employees* (3rd edition, 2010).

Your tone and body language are just as important as the words you use. You need to look and sound calm, confident and professional.

You also need to stay respectful. This can be hard if the person is being disrespectful to you. Remember your goal at this point is defusing the situation, not winning a contest.

Listen to the person

Give people a reasonable amount of time to talk about the way they feel before you turn to the issues. Some people need to 'let off steam' before they can talk about their complaint.



Tip: When you cannot get a word in

Sometimes people are so angry or upset that it is hard to get a word in and move the conversation forward. The following strategies can help in these situations:

- Silence. If you say nothing, the person may eventually stop to check you are still there.
- Use the person's name to get their attention.
- Draw the person's attention to how long they have been talking eg 'I've been listening to you for 20 minutes and it sounds like a lot has happened. I need to ask some questions now so I can work out if I can help you.'
- Repeat a simple, helpful message until the person hears you eg 'OK, let me explain what we can do.'
- Make another time to talk eg 'I can hear you're upset at the moment. I can make a time to call you tomorrow to talk more about your complaint. What time would suit you?'
- Use a firmer voice. Your tone needs to be firm, not aggressive.

If someone cries and is unable to speak, be patient. Silence is not a problem. The person might be crying with relief because someone is finally listening to them. They might be dealing with personal hardship, or worried for someone close to them. You can tell them you are happy to wait while they get a tissue or have something to drink, and then ask if they are able to continue.

Exercise your judgement though. If the person is working themselves into an even more emotional state, it is time to intervene.

Acknowledge and empathise

Page 10 of this guide talks about people wanting to be listened to and taken seriously when they complain. If someone is expressing strong feelings, you need to acknowledge this before you can move on to discussing the issues.

Empathising with someone is not the same as agreeing with them. Acknowledging and empathising means reflecting what the person has told you, and showing you understand why they are upset.

Choose your words carefully. People may not react well if you tell them how they feel, or that you know how they feel. It is better to reflect what the person has told you.

If someone is angry about the time your organisation has taken to do something, you might say 'I see, that does sound frustrating' or 'OK, I've heard what you're saying'. If they are not happy with the outcome, you could say 'I know you said you wanted X, and this isn't what you were expecting'.

Sometimes people will ask you to agree with them by saying things like 'Don't you think that's unfair?' Again, you do not have to agree. You could respond by saying 'My job is to look into that. This is what I'm going to do next ...'

You will find other ideas about what to say, and not say, in the *Managing Unreasonable Conduct by Complainants Practice Manual*.

Refocus the discussion

Once the person's feelings are under control enough for you to discuss the complaint effectively, start to refocus. You can do this by explaining that you need to ask some questions so you can assess your role and how you can help.

If the person becomes upset again, go through the CARP process again. If a person keeps repeating a point over and over, it may be a sign they do not think you have understood them. You need to acknowledge what they are saying before you can move on.



Case study: Dealing with anger

A student complained to the Victorian Ombudsman about the way her university investigated allegations against her lecturer.

She said the lecturer's behaviour impacted on her health and she wanted her marks changed. We found some problems with the university's actions, but they had not affected the student's marks.

When the case officer called to explain, the student began arguing and asked for written information about how to appeal. The case officer listened and explained the reasons for the decision. She agreed to email the student the information she requested and ended the discussion.

The student contacted us the next day and apologised for becoming heated.



Case study: Dealing with distress

A mother contacted the Victorian Ombudsman about an agency's response to her complaints about its treatment of her daughter, who has a disability.

At the time, she was caring for her daughter with little support. The mother sometimes became upset and cried during her calls with the case officer.

The case officer started emailing her before the calls to ask what time suited her. He set aside time to listen to the mother during the calls, and waited if she cried.

The mother was not happy with the outcome of her complaint, but thanked the case officer for the way he treated her.

Start problem solving

Once you have defused the situation and the person is ready to talk about the issues, go back to your complaint handling practices and start responding to the complaint.

Check your language and tone

Throughout the process, the way you deliver your message is as important as the message itself. Your language, body language and tone need to be consistent with what you are trying to achieve.

If you want to defuse the situation, it is often better to use softer, cooperative language, an open and relaxed posture, and a gentler tone.

If you want to make it clear that certain behaviour, such as racist or sexist insults, is not acceptable, you may need to vary your tone or use more direct language.

Review and adjust if needed

At the start of this guide, we noted that not every strategy will work with every person every time. Observe the person's responses and adjust your strategy until you find something that works.

Robert Bacal's advice is 'try out techniques, and watch what happens. If it works, keep doing it. If it doesn't, try something different.'⁸



Tip: Cooperative language⁹

Cooperative language is words or phrases that show you want to work with the other person, rather than control or argue with them.

Examples are:

- Showing you are open to considering other points of view eg 'We don't usually do X because ... Is there any reason we should do that here?'
- Replacing some statements with questions eg 'Were you aware that you needed to do X to qualify?' instead of 'You didn't do X so you don't qualify', or 'I wonder if you've thought about ...?' instead of 'You're wrong.'
- Offering choices, even if they are small ones eg 'What time would it be best to call you back?'

Avoid tone, words and phrases that:

- Imply blame eg 'You didn't complete the form properly.'
- Judge the person eg 'You're rude' or 'This complaint is vexatious.'
- Suggest you are not interested eg 'I don't want to hear about ...'
- Suggest helplessness eg 'There's nothing I can do' (if there really is nothing you can do, explain why).
- Threaten the person eg 'If you don't stop talking to me like that, I will have you removed from this office.'
- Bait the person eg 'Go ahead and complain about me.'
- Are absolute eg 'We never do Y' (unless the restrictions are imposed by law).

8 Robert Bacal, above n 7, 30.

9 Robert Bacal, above n 7, 64.



Tip: Disarming attacks

Most complaint handlers have been told at some point that they are useless or that the caller's taxes pay their salary. If you cannot defend or argue, what can you do?

The following techniques can be useful to get a person to stop so you can move the conversation on:

- Provide a neutral response eg 'That's interesting. Some people do think public servants are lazy'. Robert Bacal calls this 'going to computer mode'.
 - Find something (non-controversial) to agree with and redirect the discussion eg 'That is a long time to wait. Let me check what the problem is.'
 - If your organisation has said or done something wrong, like leaving the person waiting for a long time, admit it, apologise and move on.
 - Draw the person's attention to the behaviour and offer them a choice eg 'Mr Potter, I'm trying to help you and you're yelling at me. We can talk about your complaint or leave it here. Which would you prefer?'
 - Agree to revisit the issues at another time eg 'Mrs Popov, I don't think we can take this any further today. I'm going to end the call now. I'll write to you/call you again tomorrow'.
-



Tip: Face to face meetings

If you are meeting someone in person who starts to demonstrate challenging behaviours, your body language is as important as what you say. Consider the following techniques:

- If the person is standing over you, move to their side rather than backwards. Standing side by side can be less confrontational.
- If the person is glaring, try to break their eye contact by directing their attention to something else, like a document.
- If you need a break to collect yourself, or the other person needs one, suspend the discussion so you can consult a colleague or get some water.
- If you need to end the meeting, pack up your papers or stand up slowly to show you are ready to go.
- If you feel threatened in any way, excuse yourself and leave the room. Always sit closest to the exit. Your safety comes first. Trust your instincts.

If you are a manager and are concerned about something happening in a meeting, politely interrupt and ask to speak to the staff member. Sometimes colleagues join in to try to help. Involving more people can create drama instead of defusing it.

Always meet members of the public in a safe place. At a minimum you need:

- a clear path to the exit that cannot be blocked by the other person
- a way for the other person to leave if they want to
- access to a duress alarm, or other people around who can see and hear you. At the Victorian Ombudsman, officers always meet people in pairs.

You may never need to use these measures, but it is sensible to be prepared. If you have grounds for concern about your safety or the safety of your staff before a meeting, consider alternative ways to communicate with the person.

Behaviour associated with disability or mental illness

Key things to remember

Some types of disability or mental illness are associated with behaviours that can be challenging for complaint handlers.

Your organisation has legal obligations to eliminate discrimination on the basis of behaviours that are a symptom or manifestation of a disability, and to make reasonable adjustments to your services.

The best approach is to ask the person what they need.

This section looks at what to do when challenging behaviour is associated with a disability, including mental illness.¹⁰

Almost one in five Australians identify as having a disability.¹¹ If you have not experienced a disability firsthand, you will probably know someone who has experienced one.

This guide has already talked about making your complaint handling system accessible for all members of the community (see pages 8-9).

Victoria's Equal Opportunity Act 2010 (Vic) (see next page) creates additional rights and obligations where challenging behaviours are related to a disability.

This section provides information about how to comply with these laws when handling complaints.

It also includes information about types of disability that *sometimes* manifest in behaviour that can be challenging for complaint handlers. The emphasis on the word 'sometimes' is important. Just because one person with a particular disability acts in a certain way, it does not mean everyone with the disability acts the same way.

It is always best to take a 'person-first' approach and avoid assumptions about disability and what it involves.

Educate yourself

There are many government and community resources that can help you understand different types of disability and the way they affect people's communication and behaviour.

This guide provides information about some types of disability on pages 25-29. You will find references to other government and community websites on page 48.

Use these resources to build your awareness and communicate better. You could also consider attending or organising disability awareness training for your organisation.

Do not discriminate

It is unlawful for you or your organisation to discriminate against a person on the basis of behaviour that is 'a symptom or manifestation of a disability' by refusing to provide complaint handling services, or on the terms and conditions on which you provide services.¹²

For example, a person with autism who has difficulties with the social aspects of language may appear to you as blunt or rude. If you refuse the person service because of their manners, this may be discrimination on the basis of their disability.

¹⁰ References to 'disability' in this section include mental illness. People experiencing mental illness do not always see themselves as having a disability. *Victoria's Equal Opportunity Act 2010* (Vic) defines 'disability' to include mental or psychological disorders. This section takes the same approach.

¹¹ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings*, 2015 (2016).

¹² *Equal Opportunity Act 2010* (Vic) s 44.

Victoria's equal opportunity laws

Victoria's Equal Opportunity Act 2010 (Vic) protects people with a disability from discrimination in areas of public life such as employment, education, housing and the provision of services.

This includes services provided by government departments, public authorities and local councils (such as complaint handling services).¹³

It is unlawful for organisations to discriminate against a person on the basis of their disability by refusing to provide services to the person, or on the terms and conditions on which they provide services.¹⁴

Organisations must also make 'reasonable adjustments' to their services if it is necessary so that a person with a disability can access the services, or derive a substantial benefit from them.¹⁵

The Act defines 'disability' not just in terms of physical or mental functioning, diseases and disorders. It also defines disability to include behaviour that is 'a symptom or manifestation of a disability'.¹⁶

If the person's behaviour is a risk to safety, the law recognises that the interests of other people also need to be protected. The Equal Opportunity Act contains an exception where discrimination is reasonably necessary to protect health, safety or property.¹⁷

The words 'reasonably necessary' in this exception are important. You need to explore whether there are ways to protect your staff and other people without limiting your services. The rest of this section provides advice about how to do this.

If you conclude that limiting services is the only option, you will find information about what to do on pages 37-42.

Make reasonable adjustments

Where people with disabilities face challenges with communication, you can often make simple adjustments to service delivery. These might be:

- agreeing to meet the person at or near their home
- adapting your communication style eg using simpler language
- giving the person more time to explain their complaint or respond to questions
- agreeing to contact the person at a certain time of day
- allocating one officer to deal with the complaint (dealing with a new officer each time makes complaining difficult for some people).

Where the person's behaviour involves aggression or disruption, you will need to give more thought to what is reasonable in the circumstances.

Your organisation can consider all relevant facts and circumstances including:

- the person's circumstances eg the nature of the disability
- the nature of the adjustment required to accommodate the disability
- the financial and other effects of the adjustment on your organisation
- the consequences of making the adjustment for your organisation
- the consequences of not making the adjustment for the person.

The case studies on the next two pages are examples of decisions made by the Victorian Ombudsman.

You will find other suggestions for 'reasonable adjustments' on pages 25-29.

¹³ *Equal Opportunity Act 2010* (Vic) s 4 (definition of 'services')

¹⁴ *Equal Opportunity Act 2010* (Vic) s 44.

¹⁵ *Equal Opportunity Act 2010* (Vic) s 45.

¹⁶ *Equal Opportunity Act 2010* (Vic) s 4 (definition of 'disability').

¹⁷ *Equal Opportunity Act 2010* (Vic) s 86.



Case study: A man who needed flexible communication

A man complained to the Victorian Ombudsman about the way an agency dealt with his complaint.

He explained he had disabilities that meant he was unable to write. He had explained his complaint to the agency over the telephone. He said it examined his complaint, but it failed to address all of his concerns. He was concerned it had not accurately recorded or investigated his complaint.

The man became angry when his case officer called one morning to discuss the issues.

He said he had difficulty sleeping so was only available to speak in the afternoon at certain times. He also wanted a copy of his file.

The case officer:

- agreed to call the man in the afternoons
- wrote to the man outlining her questions about his complaint, so he could consider them before they spoke
- sent him summaries of her telephone conversations with him.



Case study: A man who needed more time

The family of a man with disabilities wanted to speak to our office about an investigation. The man's disabilities affected the way he communicated and his behaviour.

We spoke with the man's family and treating practitioners about how best to communicate with him. They advised us how to build trust before we asked any questions.

They also told us the man sometimes shouted or asked very personal questions, and 'rushed at people' if he got upset. They advised us what to do if this happened.

Our officers:

- provided photographs of themselves so the man could become familiar with their faces before they met
- visited the man's home to be introduced to him and talk about everyday things, like television, so he could get to know them
- visited the man a second time to talk about the issues in the investigation
- met the man with one of his parents, who understood his behaviour and could respond
- sat near the door, so they could leave quickly if the man got upset.

The process took more time than our usual meetings but the officers obtained valuable information.



Case study: An adjustment that was not reasonable – a woman who wanted priority

A woman wrote to the Ombudsman about an agency's decision and explained that she had a mental illness. She called many times in the following days to find out what was happening.

The woman got upset when one of our officers explained that her complaint was waiting to be allocated to a case officer. She said she needed 'immediate help' and could 'jump over everyone else'.

We had conducted a preliminary assessment of her complaint when it arrived. The complaint was about a longstanding problem and did not need immediate attention.

The officer who took the call explained to the woman that we deal with complaints from many people and talked about how we prioritise them.

Ask, don't assume

The person living with a disability is the best person to tell you what adjustments they need to use your services (or their family or guardian if the person lacks legal capacity).

While it is important to educate yourself about the impact of disability, and how to deal with communication and behavioural challenges, remember that people with a disability have widely different skills and needs. If you make assumptions about what the person needs, you risk taking steps that are inappropriate. Some disabilities are also transient or variable – a person may be able to communicate easily some days but not others.

You can find out sensitively by asking 'How do you prefer to communicate?', 'Is there anything we can do that would help you speak with us about your complaint?' or 'What has worked for you in situations like this before?' You can also ask if the person has someone they would like to support them with the complaint.

Deal with the complaint on its merits

As always, you need to deal with the person's complaint on its merits, regardless of their behaviour.

The fact that a person presents with some disordered thoughts, or difficulty articulating their concerns, does not mean they are not credible or do not have a legitimate complaint.

The case study on the next page illustrates the injustice caused when organisations treat people with a disability dismissively.

Listen to the person's concerns, identify and assess the evidence, and reach a reasoned decision.



Case study: Experiences of people with a disability reporting crime

In 2014 the Victorian Equal Opportunity and Human Rights Commission released a report on the experiences of people with a disability reporting crime.¹⁸

The report identified that the attitudes of some police officers were a barrier to reporting crime for people with a disability. The Commission heard about police refusing to take reports, or treating people with disabilities as childlike, time wasters or deserving of suspicion.

One person said:

They ask you if you are on any medication and then they treat you differently when you say yes, you become a risk in their eyes.

Another said:

They asked if I could describe the person who did it and I said 'No, I'm blind.' The police officer said, 'Well don't bother calling us then.' He didn't seem to understand I could give him information from the sounds I had heard, or that there might be other witnesses.

The then Chief Commissioner of Victoria Police launched the report and Victoria Police accepted all of the Commission's recommendations.

If unsure, get advice

This guide has already noted that there are many government and community resources that have useful information and advice about responding to people with different disabilities.

If you are unsure what to do, there are likely to be organisations, websites and resources that can help.

¹⁸ Victorian Equal Opportunity and Human Rights Commission, *Beyond doubt: The experiences of people with disabilities reporting crime - Summary report* (2014).



Tip: Respectful communication

Treat people with a disability with the same respect as every other person.

While you might need to use shorter sentences and simpler language, use the same tone you use when speaking to other adults. Do not raise your voice unless the person asks you to.

If the person is speaking with you through or with the assistance of a carer, look at and address yourself to them, not the carer.

Your language should:

- only mention the person's disability if it is relevant to the complaint
 - use person-first terms ie person with a disability, not disabled person
 - avoid negative terms eg 'X suffers from autism', 'Y is wheelchair bound', 'Z is a victim of stroke'. Better terms are 'X is on the autism spectrum', 'Y uses a wheelchair' or 'Z had a stroke.'
 - not patronise the person.
-

Question: What if the person does not tell you about their disability?

Some people will tell you upfront they have a disability, how it affects them and what they need. Other people are reluctant to disclose their disability because they have experienced or fear discrimination. Others may not know they have a disability because they have never been diagnosed. Or they may simply not think about their lives in these terms.

In some cases, you may suspect that a person has a disability, but they have not disclosed anything to you. They might be subject to a guardianship or administration order, living in supported accommodation or receiving home and community care services. Perhaps you find it hard to understand them, or notice they have trouble understanding you.

We do not recommend that you ask people if they have a disability or attempt to diagnose them. What if you are wrong?

Simply ask 'Is there anything that would help you communicate with us about your complaint?'

This is good service delivery, regardless of your obligations under the Equal Opportunity Act.

Acquired Brain Injury

What is it?

An acquired brain injury (ABI) is any damage to the brain that occurs after birth. It can be caused by:

- trauma eg car accidents, falls or assaults
- stroke or vascular disease
- drug and alcohol use
- brain infection eg meningitis
- disease eg dementia, tumours
- lack of oxygen eg near drowning.

How common is it?

The Australian Institute of Health and Welfare estimates that 1 in 45 Australians have an ABI.¹⁹

How does it affect people?

The effects of ABI vary from person to person and range from mild to severe.

Effects can include fatigue, memory problems, problems processing information, shorter attention span, irritability and anger, and impulsive or disinhibited behaviour.

Tips for communication

If you are speaking with a person with an ABI that affects their communication and comprehension, the following may help:

- Use short and clear sentences and questions.
- If the person has memory problems, write down important information or repeat it regularly.

- Check that the person has understood you eg ask them to summarise what you said in their own words.
- If the person has not understood, try again using different words.
- Be patient. Give the person time to process information and respond. Do not finish their sentences for them.

Tips for challenging behaviours

The following may help you if a person with an ABI exhibits challenging behaviour:

- Stay calm and keep an even tone.
- Use non-threatening hand gestures.
- Give clear, simple and immediate feedback eg 'I would rather you don't talk about ...' or 'I hear you're frustrated but I don't like it when you shout at me.'
- Recognise when to disengage. It may be better to end the discussion and try again another time.

Useful information

Brain Injury Australia
www.braininjuryaustralia.org.au

BrainLink
www.brainlink.org.au

Synapse Australia
www.synapse.org.au

¹⁹ Australian Institute of Health and Welfare, *Disability in Australia: acquired brain injury* (2007).

Autism spectrum disorder

What is it?

Autism is a lifelong neurodevelopmental condition that affects the way people relate to other people and their environment. Its cause is unknown.

How common is it?

The Australian Bureau of Statistics estimated that there were 164,000 Australians with autism in 2015.²⁰

How does it affect people?

Autism presents differently in different people, hence the use of the word 'spectrum'. Some people with autism live independently and have families and jobs. Others have no or limited language and need lifelong support.

Autism often presents through social communication and patterns of behaviour such as:

- Difficulty interpreting verbal and non-verbal communication, such as tone of voice, metaphors or jokes. People may take what you say literally.
- Difficulty with social skills. People with autism may appear to be insensitive, or act in ways that are socially inappropriate.
- Preferences for certain routines.
- Repetitive or unusual behaviour.
- Sensitivity to certain environments eg noises, light.

Tips for communication

If you are speaking with a person with autism, the following may help:

- Use the person's name to attract their attention.
- Use short and clear sentences and questions.
- Do not overload the person with information or questions.
- Ask specific rather than open questions eg 'Did you write to X about your car? On what date?' rather than 'How have you tried to resolve this with X?'
- Avoid metaphors, sarcasm and irony.
- Consider using visual information to support what you are saying.
- Give the person time to process what you have said and respond.
- If the person does not respond, rephrase the question.

Tips for challenging behaviour

The following may help you if a person with autism exhibits challenging behaviour:

- Stay calm and keep an even tone.
- Remove the source of discomfort, if that is the cause eg reduce noise or light.
- Tell the person what to do, rather than naming the behaviour eg 'Put your hands down'.

Useful information

Amaze
www.amaze.org.au

UK National Autistic Society
www.autism.org.uk

²⁰ Australian Bureau of Statistics, above n 11.

Intellectual disability

What is it?

Intellectual disability is characterised by impairment in intellectual functioning and adaptive behaviours.

It can be caused by genetic conditions such as Down syndrome, problems during pregnancy or birth, or health problems during childhood.

How common is it?

The Australian Institute of Health and Welfare estimates that three per cent of the population has an intellectual disability.²¹

How does it affect people?

Intellectual disability can range from mild to severe.

It can affect the person's:

- communication eg they may take longer to understand information, have difficulty with abstract concepts or instructions, or have a shorter attention span
- social skills
- self-care and ability to live independently.

Tips for communication

If you are speaking with a person with an intellectual disability, the following may help:

- Use the person's name to attract their attention
- Use short and clear sentences and questions
- Raise one idea or question at a time.
- Avoid abstract concepts, acronyms and metaphors
- Use body language or visual information to help you communicate
- Consider communication aids, Easy English or other accessible communication strategies
- Check the person's understanding eg ask them to repeat what you have said in their own words
- Give the person time to process information and respond
- Allow the person to take a break if needed.

Useful information

Communication Rights Australia
www.communicationrights.org.au

Scope Australia
www.scope.vic.gov.au

Australian Federation of Disability Organisations, 'Communication with people with disabilities' website,
www.afdo.org.au

²¹ Australian Institute of Health and Welfare, *Disability in Australia: intellectual disability* (2008).

Mental illness

What is it?

Mental illness describes a group of conditions that significantly interfere with a person's thinking, emotions and/or behaviour. They include:

- anxiety disorders such as social anxiety or post-traumatic stress disorder
- mood disorders such as bipolar disorder or depression
- psychotic disorders such as schizophrenia.

People will not always use the term 'mental illness' to describe their condition. Some people might prefer terms like mental distress, mental health issues or mental ill-health.

How common is it?

Very. The Australian Bureau of Statistics estimates that 45 per cent of adult Australians experience a mental illness in their lifetime.²²

How does it affect people?

It depends on the condition.

A person with depression may feel sad or flat, have trouble with sleep and appetite and impaired thinking or concentration. A person with schizophrenia may experience psychosis (eg delusions or hallucinations). A person with post-traumatic stress disorder may have intrusive memories or be anxious or irritable.

Mental illness affects people in different ways. Some people experience it once and recover. For others it is recurring and episodic.

Tips for communication

Start by asking the person open questions about how you can help them explain their complaint. The effect of mental illness differs from person to person so it is best to ask the person what they need.

The person may need more time to collect their thoughts and explain their complaint. They may need more than one phone call or meeting to give you all the information. Or they may need help to put together a chronology of events.

Tips for challenging behaviours

It is not true that people with mental illness are more violent than other people. However, mental illness is sometimes associated with behaviours that are challenging for complaint handlers.

If you are speaking with someone who says things that seem implausible eg that people are listening to their thoughts, it is important to:

- Be respectful.
- Do not argue or tell the person they are wrong or need help.
- Acknowledge and empathise. Regardless of whether what the person is telling you is true or not, they are experiencing it as true and their distress is genuine.
- Explain that you need evidence to be able to take any action.
- Remember that the person may still have a legitimate complaint.

You will find other suggestions in the *Managing Unreasonable Conduct by Complainants Practice Manual*.

²² Australian Bureau of Statistics, *National Survey of Mental Health and Wellbeing: Summary of Results, 2007 (2008)*.

If you are speaking with someone who talks about suicide, you will find advice about how to respond on the next few pages of this guide.

If you have other concerns about the person's behaviour:

- Talk to the person calmly but firmly.
- Give clear directions eg 'I hear you're frustrated but please stop shouting so I can work out how I might be able to help.'
- If the person does not stop, give the person time to calm down somewhere they feel safe.
- If you are concerned for the person's safety or the safety of other people, contact the crisis assessment team at the nearest hospital (contact details should be available on the hospital's website) or Victoria Police on 000.

Useful information

Sane Australia
www.sane.org

Victorian Equal Opportunity and Human Rights Commission, *Guideline: Mental Illness: Complying with the Equal Opportunity Act 2010* (2014)

Victorian Mental Illness Awareness Council (VMIAAC)
www.vmiac.org.au

Threats of suicide

Key things to remember

Follow your organisation's policy for responding to people who talk about suicide. If your organisation does not have a policy:

- Check if the person is serious.
- Show you are concerned.
- Consult a manager about what to do.
- Link the person with people or services that can help.

Talking about suicide will not make the person more likely to act.

This section provides advice about how to respond if a person talks about harming themselves.

Sometimes people talk about suicide overtly. Sometimes they make covert statements like 'I can't take this anymore. I'm scared about what I might do if this isn't fixed' or 'I can't see any way out of this' or 'I'd be better off dead.'

It is natural to be upset when a person starts talking this way, and to worry about saying or doing something to make it worse.

Asking the person about their feelings will not make them more likely to act. You can show you are concerned, check if the threat is serious, and arrange help.

You do not need to counsel the person or 'talk them out of it'. Complaint handlers are not employed, or usually trained, to provide counselling.

Your role is to try to connect the person with people or services that can help.

Follow your organisation's policy (if it has one)

If your organisation has a policy or guidelines on responding to suicide threats, follow its advice.

The Victorian Ombudsman encourages organisations to provide clear guidance to their staff about what to do if a person talks about suicide, and to train and support staff dealing with these situations. You do not want your staff to be trying to work out what to say or how to get help while the person is waiting on the phone.

If your organisation does not have a policy or guidelines, we recommend the following steps.

Check if the person is serious

You can start by asking the person if they are serious. You can say something like 'I'm concerned about what you're saying ... Are you thinking of suicide?'

Asking this question can feel confronting, but it is important to be clear so there is no room for doubt.

Sometimes people will tell you they are not intending to hurt themselves.

If the person is serious, some professionals recommend asking the person if they have a plan and a timeframe, and making plans to keep the person safe until they can get more help. There are groups such as LivingWorks Australia and Mental Health First Aid that train people how to have these conversations. If your employer does not offer this training, it is OK to just ask the person if they are serious.

Explain your concern

It is important to give the person some context for why you are asking this question. You can tell them you are concerned about them and want to make sure they are safe.

Consult a manager

Alert a manager to what is happening (if there is no manager nearby, you might have to pass a note to a colleague or mute your telephone while you call for one). They should decide what action to take and, if necessary, arrange help.

Depending on the situation, the manager might decide to:

- Ask you to keep speaking with the person, if you are comfortable with this, or talk to the person themselves.
- Encourage the person to speak with someone they trust.
- Advise the person how to contact Lifeline or another suicide counselling service (see next page). If the person does not take the details straight away, you can write them down or follow up with an email or official text message.
- Advise the person your organisation will arrange help if they do not want to do this themselves. This requires judgement. You do not want to get into an argument. You can explain that you take statements about suicide seriously, you are not able to provide clinical support, and you want to make sure they are safe.
- Contact Victoria Police if the person's safety is at risk or they need immediate help.

Most complaint handlers and managers are not clinically trained to assess suicide risk. If you have any doubts, it is best to err on the side of caution and get help.

If the person's safety is at risk, arrange help

If you believe the person is at high risk of suicide or you are concerned for their safety, your organisation should ask where they are, call 000 and ask for Victoria Police.

It will help if you can tell the police:

- the person's name and contact details
- the person's current location
- what the person said or did to make you concerned
- any relevant background information eg history of mental illness
- your name, role and contact details, if requested.

Victorian privacy laws allow your organisation to disclose personal information where it believes it is reasonably necessary to prevent a serious threat to an individual's life, health, safety or welfare.²³ You do not need the person's consent, although it is usually good practice to tell the person you are planning to call the police.

If your organisation has additional secrecy obligations, you need to consider those before acting. This is one of the reasons why policies and guidelines help, so you do not have to address these questions on the spot.

²³ *Privacy and Data Protection Act 2014* (Vic) sch 1 cl 2.1(d); *Health Records Act 2001* (Vic) sch 1 cl 2.2(h).



Tip: Where to get help

If a person needs immediate assistance or you are concerned for their safety, call 000 and ask for Victoria Police.

The following services provide 24-hour assistance to people thinking about suicide:

- Lifeline 13 11 14
- Suicide Call Back Service 1300 659 467
- SuicideLine Victoria 1300 651 251
- Kids Helpline 1800 55 1800

Look after yourself

Dealing with someone who is talking about suicide can be upsetting. You will find advice about getting support and looking after yourself on page 43. Managers can find advice about looking after their staff on page 45.

Stage three: Manage

Key things to remember

You can take steps to manage a person's behaviour if it raises substantial health, safety, resource or equity issues for any of the parties to the complaint, including you.

The strategy you use will depend on the type of behaviour.

Sometimes a person's behaviour is or becomes unreasonable. Page 7 discusses how to tell when behaviour has reached this point.

The Victorian Ombudsman does not expect our officers, or officers in other organisations, to tolerate behaviour that is offensive, abusive, threatening or consumes disproportionate resources.

While your organisation has obligations to provide accessible services to members of the public, it also has obligations to:

- provide a working environment that is safe and without risks to health²⁴
- manage public resources soundly.

The *Managing Unreasonable Conduct by Complainants Practice Manual* lists five categories of what it calls 'unreasonable conduct by complainants':

- unreasonable persistence
- unreasonable demands
- unreasonable lack of cooperation
- unreasonable arguments
- unreasonable behaviours.

This section outlines the steps to follow to manage this behaviour.

Adopt an appropriate strategy

Different types of unreasonable conduct require different strategies.

You will find a list of the categories of 'unreasonable conduct by complainants', and strategies for responding, on the next page. The *Managing Unreasonable Conduct by Complainants Practice Manual* contains more detailed lists of the conduct you might encounter and ideas and scripts for responding.

Be respectful

Good complaint handlers identify and deal with behaviour without labelling or demonising people.

It is important to stay respectful to the person throughout the process.

Your approach, tone and language will depend on the situation.

In some cases, you may be able to use cooperative language (see page 17), positive suggestions and choices. An example might be, 'Ms Smith, I need to be able to speak to help you and you're talking over the top of me. We can continue talking or end the call. It's up to you'. The case study on page 35 is an example of how we managed one case without the need for confrontation.

In other cases, you might want to provide a very firm, formal warning. You will find an example of a formal warning letter on page 49.

²⁴ Occupational Health and Safety Act 2004 (Vic) pt 3.



Tips: Some strategies for managing 'unreasonable conduct by complainants'

Behaviour

Unreasonable persistence

- bombarding you with calls, visits or information when not warranted
- contacting different officers seeking a different answer
- reframing an old complaint so it looks like there are new issues
- refusing to accept the decision after you have investigated the complaint, explained the outcome and answered questions
- questioning the skills or competence of the complaint handler

Unreasonable demands

- insisting on an immediate response or priority that is not warranted
- insisting you respond to every point, no matter how minor
- demanding information they are not entitled to eg staff contact details
- insisting that the head of your organisation, or a manager, handle the complaint when that is not warranted
- instructing you how to investigate the complaint

Unreasonable lack of cooperation

- sending voluminous amounts of information
- providing little or no information about the complaint
- presenting information in 'drips and drabs'
- refusing to comply with reasonable requests for information

Unreasonable arguments

- insisting on the importance of minor issues
- making unsubstantiated allegations eg bias or corruption
- insisting on 'cause and effect' without evidence

Unreasonable behaviour

- verbal abuse
- aggressive behaviour
- harassment
- making threats (see page 36)

Strategy

Say no

- ask the person to stop calling or visiting
- set time limits for telephone calls and visits
- transfer the person back to the original complaint handler or the complaint handler's manager
- refuse to consider new issues that are not supported by substantial information and evidence

Set limits

- explain how you will be dealing with the complaint
- tell the person that you will not meet the demand and why
- reality check ie explain that your organisation deals with many complaints and you need to decide when and how they are handled

Set conditions to motivate action

- ask the person to take action eg to summarise their complaint as a precondition for you to consider the complaint further

Decline or discontinue involvement

- do not investigate issues where there is no practical outcome
- require evidence before taking the complaint further

Set limits and conditions

- name the behaviour and ask the person to stop
- provide a warning. Offer a choice if possible



Case study: Managing multiple calls

The Ombudsman was contacted by a woman who had been living in social housing. She returned after an extended absence to find she had lost her place and her belongings were gone.

We were aware the woman had health problems and limited social support.

The woman called our office every couple of days and became upset if her case officer was not available. She often refused to tell staff her name and the calls sometimes ended with the woman telling officers to 'go to hell'.

Her calls with the case officer were also challenging. We transferred the case to a very experienced officer. The officer offered to call the woman at a certain time each week to discuss her case, and she kept that promise. During the calls, she set aside time to discuss the woman's concerns.

The woman stopped making multiple calls to our office, and we proceeded with our enquiries into her complaint.

Consider the complaint on its merits

Unreasonable behaviour does not preclude there being a valid issue. Regardless of the person's behaviour, you still need to assess their complaint and deal with it on its merits.

The case study below is an example of a complaint which could easily have been overlooked because of the person's behaviour, but proved to be true.



Case study: Keeping an open mind

The Ombudsman received a complaint from a man about officers at the agency where he once worked.

The man's written complaint contained many of what the *Managing Unreasonable Conduct by Complainants Practice Manual* calls 'early warning signs' of unreasonable conduct. It was many pages long, contained text in UPPERCASE, **bold** and different fonts, and repeated information multiple times.

The agency told us that the man had been the subject of misconduct proceedings and was no longer working there.

The man's complaint was serious, so the Ombudsman began looking into it.

This led to a further investigation that substantiated the man's complaint and resulted in recommendations to improve the agency's policies and practices.



Tip: Ending calls and meetings

You may be tempted to deal with unreasonable conduct by hanging up or walking away. However, this might worsen the situation and may also result in a complaint about you.

Unless your safety is at risk, give the person a warning and an opportunity to change:

- Name the behaviour and explain why it is a problem. Be as specific as possible. If you simply tell the person they are being unreasonable, how will they know what the problem is? A good example is 'Mr Jones, you've been calling me every day about your complaint. I know you want this fixed, but I can't find out what happened if I spend all my time with you on the phone.'
- Give the person a chance to stop.
- Explain the consequences if the person does not stop. 'Mr Jones, you're yelling at me. I can't speak to you like this. Please lower your voice or I will need to end this call.'
- If there is no change, back up your words with action. Empty threats undermine your credibility and achieve nothing.

Remember to stay respectful. Consider words like 'Mr Jones, I'm going to end this call now. You might like to contact me again when you're feeling calmer and we can talk with each other in a productive way.'



Tip: Responding to threats to harm you or other people

We recommend you always take threats seriously.

If your organisation does not have a policy on responding to threats:

- Make the threat overt eg 'You said that ...'
- Check if the person is serious eg 'You've said that you're planning to come in and sort the officer out. Are you saying that you're going to hurt the officer if they don't change their mind?'
- If the person is serious, try to get more information. Ask about what the person plans to do, how and when. Try to get the person's name (if you don't have it) and their location.
- Explain the consequences eg 'We take those sorts of comments seriously. I'll need to report this to my manager, and we may have to inform the police.'

Alert a manager to the threat as soon as possible, so your organisation can decide whether to call the police or take other action.

If you call police, it is helpful to have as much information as possible:

- Make a verbatim record of what the person said.
 - If you are on the telephone and the call needs to be traced, mute your phone instead of hanging up.
-

Stage four: Limit – a last resort

Key things to remember

There may be times when nothing you try works and your organisation needs to limit a person's access to your services to protect staff and resources.

Make sure that:

- any limits are proportionate to the risk posed by the behaviour
- you comply with your legal obligations, including the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*
- the decision is made at a senior level
- you inform the person about the limits and provide options for review
- your organisation reviews the decision at least once every 12 months.

Most people who work in complaint handling have come across people whose sense of grievance is so deep, or whose behaviour is so entrenched, that nothing makes a difference.

If your management strategies have not worked and the person continues to behave unreasonably, your organisation can consider limiting their access.

Limiting access to services is always a last resort. This section lists the issues you should consider and good processes to follow.

Assess the risk

Before limiting access to your organisation's services, consider all the risks and interests involved. They include:

- The history of the person's conduct.
- The nature of the conduct. Limiting access should only ever be used where conduct is a risk to health, safety, equity or resources of the parties. It should not be used to deal with behaviour that is only difficult or annoying.

- The person's personal circumstances, such as health, disability or homelessness.
- The impact of limiting access on the welfare of the person and their dependants.
- What alternative strategies have been tried or considered to reduce the impact of the behaviour.
- Your organisation's legal obligations (see pages 38-39).

Make sure you have sound evidence to support your decision. It is good practice to document the person's behaviour and its impact so you can defend your decision if necessary.

Ensure the limits are proportionate

You will find a list of options for limiting access on the next page.

Your proposed limits should be targeted and proportionate to the risks posed by the behaviour.

Although your organisation might be tempted to tell the person you are simply not going to deal with them anymore, people in Victoria are entitled to access public services and make complaints.



Tip: Options for limiting access

Depending on the behaviour, your organisation can consider limiting:

- Who the person can contact. Your organisation might restrict the person's contact to one staff member who knows the history of their complaints. This can be particularly effective where a person continues to raise issues that you have already considered and dealt with.
- What issues your organisation will respond to. This is also helpful where a person continues to raise issues that have already been dealt with by your organisation. You still need to assess each new contact on its merits, but you do not have to use resources responding to the same issues over and over again.
- Where the person can contact your officers. This strategy is useful if the person behaves aggressively. You may wish to limit face to face contact to locations where there are adequate security measures, such as duress alarms, for your officers.
- When the person can contact your organisation.
- How the person can contact your organisation. If the person is abusive or threatening, you might consider advising them that you will only communicate in writing, or through a representative.

We are aware of cases where organisations have also taken legal measures to protect their staff eg intervention orders.

In 2013, the Victorian and Civil Administrative Tribunal (VCAT) found that a local council's decision to limit a resident's access was unlawful (see page 40). VCAT's decision appears to have been influenced by the disproportionate nature of the council's response. The council had banned the resident from all premises owned, occupied and managed by the council, including places where he had never caused anyone concern.

Conduct a human rights assessment

In the 2013 VCAT case, the tribunal found the council failed to act compatibly with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (see page 40).

Before you limit a person's access, consider whether your proposed limits will affect any of the person's rights under the Charter.

If they do, consider whether:

- The proposed limits are reasonable and demonstrably justified. If you have documented evidence of the behaviour and its impact, and how you assessed the risk, you should be able to satisfy these criteria.
- The proposed limits are properly targeted to manage the impact of the person's behaviour. You should be able to satisfy these criteria if your limits are proportionate to the risk.
- There are no less restrictive options available to achieve your intended result.

If the behaviour is associated with a disability – consider equal opportunity laws

In the 2013 case, VCAT also found that the council breached the *Equal Opportunity Act 2010* (Vic).

Pages 19-20 explain that the Equal Opportunity Act prohibits you and your organisation from discriminating against a person by refusing to provide services, or on the terms and conditions on which the services are provided, on the basis of disability.²⁵ This includes discrimination on the basis of ‘behaviour that is a symptom or manifestation of a disability’.²⁶

The Equal Opportunity Act does allow you to discriminate, however, ‘where it is reasonably necessary ... to protect the health or safety of any person ... or the public generally’ or ‘to protect the property of any person ... or any public property’.²⁷

If you wish to limit a person’s access in these circumstances, we recommend you seek legal advice about your obligations under the Equal Opportunity Act and whether the health and safety exception applies.

Consider other legal obligations

You also need to consider other legal obligations that regulate your organisation’s services. Some organisations are legally obliged to provide services and may breach their obligations if they limit a person’s access.

Again, we recommend you seek legal advice if you are unsure of your obligations.

If your organisation is not able to limit access, the *Managing Unreasonable Conduct by Complainants Practice Manual* suggests considering alternative dispute resolution to resolve the problem and improve your organisation’s relationship with the person.

You will find more information about the pros and cons of this approach in the manual.

Make the decision at a senior level

Deciding to limit someone’s access to public services is a serious matter.

The Victorian Ombudsman expects decisions to limit access to be approved at a senior level, either by the head of your organisation (ie the Secretary or CEO) or a senior delegate.

Document your assessment and decision

People sometimes challenge limits by complaining to the Ombudsman or the Victorian Equal Opportunity and Human Rights Commission, or by taking legal action.

It is good practice to document the reasons for your decision and your supporting evidence. Your organisation is more likely to be able to justify its actions if you:

- have documented evidence of the person’s behaviour and its impact on your staff and resources
- can demonstrate you have considered alternative options and your legal obligations, and have reached a decision based on evidence.

²⁵ *Equal Opportunity Act 2010* (Vic) s 44.

²⁶ *Equal Opportunity Act 2010* (Vic) s 4 (definition of ‘disability’).

²⁷ *Equal Opportunity Act 2010* (Vic) s 86.



Case study: The 2013 VCAT case

In 2013 VCAT found limits imposed by a local council on contact by a resident breached Victoria's Equal Opportunity Act and the Charter of Human Rights and Responsibilities Act.²⁸

The council had banned the resident from all buildings owned, occupied or managed by the council. Some years later the resident asked the council to review the arrangements. It refused.

The resident had been diagnosed with bipolar disorder, attention deficit hyperactivity disorder, a post-traumatic stress disorder and an acquired brain injury.

He had made many thousands of complaints to the council. VCAT noted that many of the complaints contained comments 'critical of and insulting about' councillors and officers and there had been several 'highly charged' interactions with officers.

VCAT found that the resident's behaviours were a manifestation of his disabilities and the council's ban was discriminatory.

VCAT described the council's arrangements as 'blunt, broad and insufficiently tailored'. It noted the council had banned the resident from places where he had not caused anyone concern. It noted the ban was indefinite, with no transparent process for review.

VCAT stated there was no evidence that staff were trained or supported or instructed about how to respond to the resident's behaviour, and there were non-discriminatory alternatives.

VCAT also rejected the council's arguments that the arrangements were necessary to protect the health and safety of staff. It agreed the councillors and council staff were entitled to a safe workplace but said there was no evidence to show they had suffered harm or were afraid. It said the ban did not constitute 'an appropriate and commensurate measure of protection from a level of identified risk'.

VCAT also found the council had breached the resident's rights under the Charter:

- the right to participate in the conduct of public affairs (section 18)
- freedom of expression (section 15)
- the right to enjoy human rights without discrimination (section 8).

because there were less restrictive means for the council to achieve its purposes.

VCAT ordered the council to revoke the ban, provide human rights training to councillors, its CEO and directors and pay \$14,000 compensation to the resident.

²⁸ *Slattery v Manningham City Council* [2013] VCAT 1869 and *Slattery v Manningham City Council* [2014] VCAT 1442.



Case study: Reasonable and proportionate limits

A man complained to the Ombudsman that an agency was not addressing his complaints about fire risks near his home. The man told us he was a bushfire survivor and had other health problems. He said the agency had banned him from its office and he was not allowed to speak with its staff.

We contacted the agency. The agency told us it had been dealing with the man for many years and tried to deal sensitively with him. It said he could visit its office, but it had taken out intervention orders to protect some staff in the past when the man had been abusive.

The agency offered to respond to the man's complaint to our office. It sent us a copy of the response, which explained what it was doing to address the fire risks and which staff would speak with him when he visited its office.

Although the man was not happy with the response, we were satisfied the agency's actions were reasonable. The agency had only limited his access to the extent necessary to protect its staff and it was continuing to respond to his concerns.

Inform the person

It is good practice to inform the person of any limits on their access.

The Victorian Ombudsman sometimes deals with complaints where an organisation has limited a person's access but failed to tell the person. It is not surprising that the person becomes more and more frustrated with the organisation and escalates the matter to our office. In these cases, we ask the organisation to write to the person to explain the decision and their reasons.

You can find an example of the type of letters we use on page 50.

Explain the options for review

It is good practice to explain the person's options for review if they are dissatisfied with your decision.

If the decision was made by a delegate, give the person an opportunity to seek internal review from a more senior officer.

You should also inform the person they are able to complain to the Victorian Equal Opportunity and Human Rights Commission if they believe the decision is discriminatory, or to the Victorian Ombudsman.

Deal with complaints on their merits

You still need to assess complaints from the person, even after you have limited their access to your services.

Organisations are sometimes surprised when we tell them this.

However, as page 2 of this guide explains, there can be a legitimate grievance at the heart of these complaints. If you ignore the person completely, you risk overlooking valid issues.

For example, your organisation may have told a person you will not respond to further complaints about X unless they raise new issues that warrant investigation. Unless you continue to read the person's correspondence, you will never know if they are writing about X or something else. You do not have to waste your resources responding to correspondence about X, but you do need to assess the correspondence.

Review your strategy regularly

Finally, it is sound practice to review any limits on access to your services regularly to make sure they are still effective and warranted. This should happen at least once every 12 months.

Consider subsequent contact from the person, whether the limits reduced the impact of the behaviour on your staff and resources, and whether the limits are still justified.

Document your review and decision. If you decide to change or add to the limits, seek approval at a senior level again and inform the person of your decision.

The following case study is an example of a situation where, on reflection, an agency decided to remove the limits on a person's access with good results.



Case study: Reviewing the limits

A man contacted the Ombudsman to complain that he had been stopped from telephoning an agency that provided support services for him.

The agency told us the man had been calling 20 to 30 times a day so it had limited his contact to one call on Tuesdays and one call on Fridays.

The agency decided to review the arrangements. It concluded the restrictions had made the problem worse and the man was still calling multiple times a day. It decided to lift the restrictions so the man could telephone his case officer at any time. It said this appeared to have helped and the man was now calling less often.

Looking after yourself – advice for complaint handlers

Key things to remember

Dealing with challenging behaviour is emotionally demanding. Take time to look after yourself by:

- monitoring how you feel
- drawing on support networks
- expressing your feelings
- managing stress in healthy ways.

If you feel upset after dealing with someone who is distressed or aggressive, it is not a sign of weakness. It is important to be aware of and deal with these feelings so they do not become a long-term problem.

This guide has already talked about some strategies to help you look after yourself:

- having realistic expectations of yourself and what you can achieve (see page 5)
- knowing your triggers, and times when you are more vulnerable (see page 6)
- disengaging with people if the matter is not urgent and it is not productive to continue (see page 14)
- seeking advice or help to deal with challenging behaviour (see pages 7, 23, 31)
- taking decisive action to deal with behaviour that is or becomes unreasonable (see page 33).

This section looks at other ways to look after your health and wellbeing while dealing with challenging behaviour.

Monitor yourself

Be mindful of how you feel following incidents that are upsetting or stressful.

Common signs stress is affecting your health can be:

- difficulty sleeping
- irritability
- anxiety
- feeling tearful or depressed
- feeling overwhelmed or powerless
- feeling cynical about your work and the people you are dealing with
- increased use of alcohol or drugs
- physical signs like headaches, nausea, clenching your jaw or grinding your teeth
- more frequent illnesses
- difficulty concentrating
- loss of self-confidence.

Some people react immediately to significant events. Others have a delayed reaction and may not feel the effects until after the event, sometimes hours or days later.

The impact of stress can also be cumulative and build over time in response to a series of more minor incidents.

You and the people who know you well are the best judges of when you need support. The better you understand yourself and your triggers, the easier it will be for you to recognise if you have reached this point.

Draw on support

Wherever you work in the public sector, there should be people around you who can provide support and talk over challenging behaviour with you.

They might be:

- your colleagues, if you work in a team
- a manager
- an employee assistance program that offers free, confidential counselling services, if your workplace provides one.

Talk about it

Many people find it helpful to talk about how they feel after challenging interactions.

Debriefing is one option. It is a structured, usually voluntary process which aims to provide clarity about incidents and help people recover. It is usually carried out soon after the incident and explores what happened, your experience and reactions, and ways to manage your emotional responses.

Some people debrief naturally after difficult incidents without realising it – it can be as simple as turning to the person sitting next to you and talking about what happened.

Consider formal debriefing if this is offered in your workplace.

Manage stress

There are many things you can do to manage stress and boost your wellbeing in a healthy way. They include:

- Taking time out from your telephone or desk after challenging conversations. Getting a glass of water or going for a walk can clear your head so you are ready to keep working.
- Taking regular breaks during the day.
- Avoiding excessive hours at work or taking work home.
- Looking after your physical health. Maintain a good diet, get regular exercise and avoid using alcohol or drugs to manage your feelings.
- Sticking to a routine for meal times and bed times to make sure you eat well and get enough sleep.
- Using positive self-talk. Remind yourself the person is upset with the situation and not you personally, and that you can handle these situations.
- Practising relaxation. Some people use relaxation techniques like meditation and yoga, but you can choose any activity you find relaxing or uplifting.
- Spending time with people you love.
- Doing something you enjoy every day. This can be as simple as having coffee with friends, going for a walk, or reading a good book.

You will find references to useful information about managing stress on page 48.

Looking after your staff – advice for managers

Key things to remember

You have a legal obligation to provide a working environment that is safe and without risk to health.

Challenging behaviour from members of the public is one health and safety risk that needs to be managed.

We recommend you:

- set clear guidance for staff about dealing with challenging behaviour
- train and support your complaint handling staff
- take decisive action to deal with unreasonable behaviour.

This section looks at how leaders and managers can support staff dealing with challenging behaviour.

Challenging behaviour is a risk to your employees' health and safety if it is not managed properly. In 2017, WorkSafe reported that work-related mental injury accounts for 11 per cent of workers compensation claims in Victoria, and work-related stress is a leading cause.²⁹

As a leader or manager, you need to balance:

- public sector values of responsiveness, accountability, and respect for human rights³⁰
- the right of your employees to a workplace that is safe and without risk to health.³¹

Provide clear guidance

Provide clear guidance to staff so they know how your organisation expects them to deal with challenging behaviour.

We recommend you adopt a policy or guidelines that explains:

- the standard of behaviour you expect of your staff and the people who use your services
- the processes staff should follow when dealing with challenging behaviour, using the staged approach recommended by this guide
- when staff are expected to escalate issues to managers
- how staff should respond to statements about suicide
- how staff should respond to threats of harm to themselves or others
- security arrangements for meeting people face to face
- processes for recording and responding to behaviour that is or becomes unreasonable.

The policy or guidelines should include definitions of 'challenging behaviour' and 'unreasonable behaviour'. Although different people have different thresholds for dealing with unreasonable behaviour, you need a consistent approach across your organisation. If one of your staff lets a person verbally abuse them because they can handle it, it sends a message that your organisation accepts this behaviour. The person will think they can treat everyone else in your organisation this way.

29 WorkSafe Victoria, *Work-related stress* <https://www.worksafe.vic.gov.au/pages/safety-and-prevention/health-and-safety-topics/work-related-stress>.

30 *Public Administration Act 2004 (Vic)* s 7.

31 *Occupational Health and Safety Act 2004 (Vic)* pt 3.

Train and support your staff

There are many training programs and resources about challenging behaviour. At the Victorian Ombudsman, we provide:

- Training on dealing with challenging behaviour during our induction program for new complaint handlers.
- Annual refresher training on 'difficult conversations' and self-care.
- On-the-job coaching and mentoring by experienced complaint handlers.

We also offer training workshops for state and local government organisations.

You can also support your staff in other ways by:

- Adopting good complaint handling and service delivery practices to help prevent challenging behaviour (see pages 8-13).
- Providing resources so complaint handlers can take regular breaks.
- Giving complaint handlers authority to respond to challenging behaviour eg to end conversations that are unproductive.
- Taking decisive action to deal with unreasonable behaviour when it arises.
- Supporting complaint handlers to take time out following challenging behaviour.
- Meeting regularly with complaint handlers to check their welfare.
- Encouraging staff to talk about the impact of their work.
- Recognising staff who deal with challenging behaviour well.
- Providing feedback to staff on ways to improve if needed.

- Offering debriefing after incidents of challenging behaviour. Remember debriefing is about helping the person recover emotionally, not about supervision or feedback. You can provide feedback another time if you need to.
- Offering other support, such as employee assistance programs.

The better you know your staff, the better you will be able to support them. Some people like to talk straight after an incident and get immediate feedback. Others need time to reflect before they are ready to talk about what happened.

Model good behaviour

The best managers model the behaviour they want their staff to follow.

Your staff are more likely to feel comfortable talking about how their work affects them if you do too. You might reflect on an example of challenging behaviour from your own past and how you managed it.

This shows staff it is OK to admit when they find behaviour challenging, and that they can talk with you about how to deal with it.

Only change decisions with good reason

People sometimes ask to speak to a manager when they are unhappy with the advice provided by officers.

This is often an effective short-term way to deal with challenging behaviour. It can short-circuit interactions that have become upsetting for everyone. The person may start acting more respectfully because they see you as a person with higher status. Providing people with options for review is also good practice.

Be careful, however, not to undermine your staff by allowing people to escalate matters automatically, or by changing decisions just to keep people happy. If you do this without good reason, you give people an incentive to keep acting this way. You also undermine the confidence and authority of your staff.

At the Victorian Ombudsman, we employ skilled and capable staff and we do not expect them to escalate matters just because a person asks to speak with a manager. Complaint handlers and managers discuss requests and decide whether the manager should become involved on a case by case basis. We also publish criteria for when people can request an internal review of our decisions.

If you decide to change a decision made by one of your staff, explain why you made the decision to both the staff member and the person complaining.

If you need to provide feedback, this should happen in private, not in front of members of the public.

Further reading

We referred to the following publications when developing this guide:

Australia/New Zealand Standard™, *Guidelines for complaint management in organizations* (AS/NZS 120002:2014)

Australian Federation of Disability Organisations, '*Communication with people with disabilities*' website, <http://www.afdo.org.au>

Robert Bacal, *Defusing Hostile Customers Workbook: A Self-Instructional Workbook for Public Sector Employees* (3rd edition, 2010)

Bill Eddy, *Managing High Conflict People in Court* (High Conflict Institute, 2008)

Douglas Stone, Bruce Patton and Sheila Heen, *Difficult Conversations: How to Discuss What Matters Most*, Penguin Books (Penguin Books, 10th anniversary edition, 2010)

Human Rights Unit of the Department of Justice and Regulation, Victorian Equal Opportunity and Human Rights Commission, Independent Broad-based Anti-corruption Commission and Victorian Ombudsman, *Good Practice Guide: Managing Complaints involving Human Rights* (2017)

Judicial College of Victoria, *Disability Access Bench Book*, <http://www.judicialcollege.vic.edu.au> (This resource is intended for judicial officers dealing with litigants and witnesses with disabilities, but contains useful advice that can be applied in other contexts).

Paul E Mullen and Grant Lester, 'Vexatious litigants and unusually persistent complaints: From querulous paranoia to querulous behaviour' (2006) 24 *Behavioural Sciences and the Law* 33

New South Wales Ombudsman, *Managing Unreasonable Conduct by Complainants Practice Manual* (3rd edition, forthcoming)

Queensland Government, '*Better communication*' website, <http://www.qld.gov.au/disability/community/communicating>

Victorian Government Better Health Channel, '*Stressbusters*' website <http://www.betterhealth.vic.gov.au>

Victorian Ombudsman, *Complaints: Good Practice Guide for Public Sector Agencies* (2016)

Victorian Ombudsman, *Councils and complaints - A good practice guide* (2015)

WorkSafe Victoria, *Work-related stress* <https://www.worksafe.vic.gov.au/pages/safety-and-prevention/health-and-safety-topics/work-related-stress>

Appendix one – Example of a warning letter

This is a fictional example of a warning to a person about unreasonable conduct.

Dear Mr Sullivan

Your complaint about Pacific City Council

I am writing about your complaint regarding your council's process for collecting unpaid rates.

I have listened to the recordings of the telephone calls you made to this office on 20 and 24 March 2018.

On the recordings, you can be heard making abusive and insulting comments to the officer who took your calls, despite being asked on a number of occasions to stop.

We expect our officers to treat you with courtesy and respect. We expect this courtesy to be returned.

I can hear on the recordings that you are frustrated with the council's actions and the time our office needs to consider your complaint. However, if you continue to speak to our officers in this way, we may have to limit your contact with us to writing in future.

I have spoken with the officer handling your case. She is currently making enquiries with the council about your complaint and will contact you when she has more information.

Yours sincerely

Anna Cattermole
Assistant Ombudsman

Appendix two – Example of a letter limiting access

This is a fictional example of a letter to a person explaining a decision to limit access.

Dear Mr Sullivan

Your complaint about Pacific City Council

We received your letter dated 16 July 2018 about your council's process for collecting unpaid rates.

In your letter, you repeat your concerns that the council's process is unlawful and that it should compensate you for the distress and embarrassment you experienced.

As you know, this office made enquiries about your concerns earlier this year. The investigation officer wrote to you on 4 April 2018 outlining her views. She advised you that she reviewed the laws and policies that apply to the council and inspected officers' records of their conversations with you. This evidence showed that the council had followed its laws and policies, and that you and the officers had different interpretations of your conversations. She explained that she was unable to find that the council had acted in a way that was contrary to law, unreasonable or wrong in these circumstances.

You wrote to the investigation officer expressing disagreement with her findings and restating your request for compensation. The investigation officer spoke to you on the telephone and wrote to you again on 26 April 2018. She answered your questions and suggested you seek legal advice if you want to pursue compensation.

You wrote to the investigation officer again stating that you should be compensated by the council. She responded on 20 June 2018 and noted that there was no new information or evidence that would change her decision.

I can see from your letter that you continue to disagree with this office's decision regarding your complaint. For the reasons the investigation officer previously explained, we are unable to assist you further.

As there is no further role for this office in relation to your complaint, any further correspondence regarding the council's process for collecting unpaid rates will be considered and kept on file, and we may not respond unless it raises new issues which we consider warrant attention.

If you want an internal review of the decision not to respond to further contact about these issues, you can write to the Deputy Ombudsman within 60 days with an explanation and any evidence about why this decision is wrong.

Yours sincerely

Anna Cattermole

Assistant Ombudsman

Appendix three – Model policy/procedure

This is an example of a policy/procedure that follows the advice in this guide. Your organisation can tailor it to suit your role and circumstances. You might add it to your existing complaint handling or service delivery policy, or adopt it as a stand-alone policy.

Introduction

[Organisation name] is committed to providing an accessible, responsive service to all Victorians. We recognise that people using our service have diverse backgrounds and needs. We also recognise they will sometimes be angry, frustrated or distressed or act in other ways we find challenging. We employ skilled officers who can communicate well and deal with complex issues.

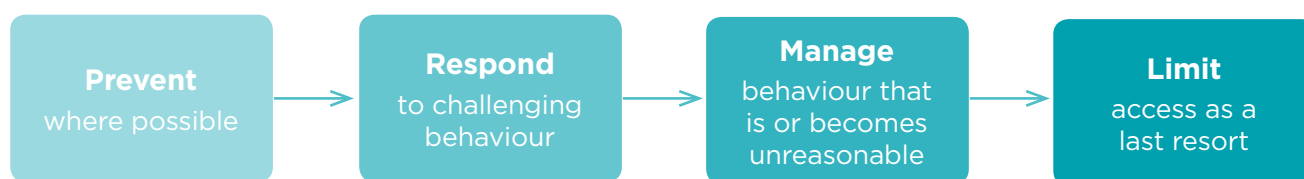
At the same time, we are committed to providing a safe and healthy workplace and using our resources efficiently and fairly. We expect our officers to treat people with courtesy and respect. We expect this courtesy to be returned. We do not tolerate behaviour that is offensive, abusive or threatening or consumes disproportionate resources.

This document sets out how we deal with challenging behaviour in a way that is fair and balances the interest of [complainants, or another term used in your organisation], our officers, our organisation and the public.

We recognise that people who demonstrate challenging behaviour often have a legitimate grievance. Our officers will continue to deal with complaints on their merits.

Dealing with challenging behaviour

[Organisation name] encounters a spectrum of challenging behaviour, from slightly confronting to clearly unreasonable, and our responses will be graduated as follows.



‘Challenging behaviour’ is any behaviour officers find challenging. Officers can deal with most types of behaviour using prevention and responding strategies (see Stage one and Stage two on the following pages).

Behaviour becomes ‘unreasonable’ when, because of its nature or frequency, it raises health, safety, resource or equity issues for [organisation name], our officers and other people who use our services. Officers can deal with this behaviour using management strategies (see Stage three) or recommending limits on the person’s access to our services (see Stage four).

Unreasonable behaviour includes verbal abuse, threats to harm officers or other people, and violence. This behaviour is never acceptable.

If officers are unsure about whether a person’s behaviour has moved from challenging to unreasonable, they should consult a manager or another experienced colleague.

Stage one: Prevent

[Organisation name] aims to prevent challenging behaviour where possible by practising good complaint handling. Our [name your organisation's complaint handling or service delivery policy] explains how we respond to complaints.

Stage two: Respond

Defusing emotional behaviour

Officers will respond to angry or emotional behaviour in the first instance by attempting to defuse the situation. This involves the following sequence of actions:

- Taking control of their own response. At times officers may need to take a break so they can collect themselves. If this is not possible and the matter is not urgent, officers can arrange to speak with the person again at another time.
- Giving the person reasonable time to express themselves and acknowledging what they are saying and how they feel.
- When the person's feelings are under control enough to speak about the complaint, refocusing the discussion on to the complaint.
- Problem solving using good complaint handling techniques.

Behaviour associated with a disability

Where challenging behaviour may be a symptom or manifestation of a disability, officers need to consider [organisation name's] obligations under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the *Equal Opportunity Act 2010* (Vic). [Name your organisation's equal opportunity policy or accessibility action plan] provides advice about avoiding discrimination and making reasonable adjustments so people can access our services.

Officers can consult [name an appropriate officer in your organisation eg your organisation's equal opportunity representative or legal counsel] where:

- they are unsure about whether or how to make reasonable adjustments
- they believe discrimination may be justified because the person's behaviour is a risk to health, safety or property.

Responding to threats of suicide

[Organisation name] does not expect officers to provide crisis support or counselling to people who talk about suicide. Our role is to check if the person is serious and connect them with people or services that can help.

If a person makes statements about harming themselves, officers will:

1. Ask the person clearly and directly if they are thinking about suicide.
2. Explain that they are concerned and want to make sure the person is safe.
3. Alert a manager, who will decide what action to take.

If the person's safety is at risk or they need immediate help, the manager will contact Victoria Police on 000. [If your organisation has specific secrecy or privacy obligations that limit your ability to provide information to the police, explain how these should be handled]

In other cases, the manager will consider whether to:

- encourage the person to speak with someone they trust, or
- offer information about contacting Lifeline (13 11 14), the Suicide Call Back Service (1300 659 467), SuicideLine Victoria (1300 651 251) or Kids Helpline (1800 55 1800).

Managers will check on the welfare of affected officers following a threat of suicide and ensure support is available.

Stage three: Manage

If a person's behaviour becomes unreasonable, officers must apply appropriate and proportionate strategies for managing the behaviour. The strategies will depend on the behaviour type of involved:

Behaviour

Unreasonable persistence

- bombarding officers with calls or visits that are not warranted
- contacting different officers seeking a different answer
- reframing an old complaint so it looks like there are new issues
- refusing to accept the decision after we have investigated the complaint, provided a decision and reasons, answered questions and provided review options
- questioning the skills or competence of the complaint handler

Unreasonable demands

- insisting on an immediate response or priority that is not warranted
- insisting on a response to every point, no matter how minor
- demanding information they are not entitled to
- insisting that the head of your organisation handle the complaint when that is not warranted
- instructing officers how to investigate the complaint

Unreasonable lack of cooperation

- sending voluminous amounts of information
- providing little or no information
- presenting information in 'drips and drabs'
- refusing to comply with reasonable requests for information

Unreasonable arguments

- insisting on the importance of minor issues
- making unsubstantiated allegations eg bias or corruption
- insisting on 'cause and effect' without evidence

Unreasonable behaviour

- verbal abuse, aggressive behaviour, harassment or threats

Strategy

Saying no

- asking the person to stop calling or visiting
- setting time limits for discussions
- transferring the person back to the original complaint handler or their manager
- declining to consider new issues that are not supported by information or evidence

Setting limits

- explaining how you will be dealing with the complaint
- explaining that you will not meet the demand and why
- 'reality checking' ie explaining that we deal with many complaints and need to decide when and how they are handled

Setting conditions to motivate action

- asking the person to take action (eg providing certain information) before you will consider the complaint further

Declining or discontinuing involvement

- requiring evidence before taking a complaint further
- not investigating issues where there is no practical outcome

Setting limits and conditions

- naming the behaviour and asking the person to stop
- providing a warning

Officers can refer to the New South Wales Ombudsman's *Managing Unreasonable Conduct by Complainants Practice Manual* for more information about these categories and ideas about management strategies.

When choosing an appropriate strategy, officers will consider:

- the person's prior conduct eg is the behaviour isolated or part of a pattern?
- the nature of the conduct
- whether the complainant's personal circumstances are contributing to the behaviour eg health, social circumstances or disability
- the likely effectiveness of different strategies
- the impact of the strategy on the welfare of the complainant and any dependents
- relevant legal obligations, including [name any legal obligations that affect your organisation's ability to apply management strategies].

Stage four: Limiting access – a last resort

[Organisation name] can consider limiting access to our services if other strategies have not worked and the person continues to engage in unreasonable behaviour.

Depending on the type of behaviour, we may consider limiting:

- who the person can contact eg limiting contact to a named officer
- what issues we will respond to eg not responding to issues that have already been the subject of an assessment and explanation, unless the person raises new issues that warrant attention
- when a person can have contact
- where the person can contact us eg limiting locations for face to face meetings to secure areas
- how the person can contact us eg confining contact to writing where the person has been verbally abusive.

Deciding to limit access

Decisions about limiting access to services will only be made by [name a senior officer with authority to make these decisions. This will usually be the head of your organisation or a senior delegate].

In most cases, [name of the senior officer] will warn the person of the action we propose to take and give the person an opportunity to stop.

Before approving any limits, [name of the senior officer] must be satisfied that:

- the behaviour is unreasonable ie poses a risk to the health, safety, equity or resources of one of the parties involved
- all alternative strategies have been, or are likely to be, ineffective in managing the risk
- all relevant factors have been considered including the person's history, the nature of the conduct, the person's personal circumstances and the impact of limiting access on the welfare of the person and their dependants
- the limits are proportionate to the level of risk posed by the behaviour
- there is sound evidence to support the decision
- the limits are consistent with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and we have documented:
 - o which, if any, human rights will be affected
 - o why we are satisfied that the limits are reasonable and demonstrably justified under section 7 of the Charter
- if the behaviour may be a symptom or manifestation of a disability, the limits are consistent with the *Equal Opportunity Act 2010* (Vic)
- [if other legislation affects your organisation's ability to limit services, explain its impact here].

[Name of the senior officer] will ensure that the decision and reasons are documented in [explain how your organisation wants officers to document decisions eg in your case management system].

Informing the parties

[Name of the senior officer] will inform:

- affected officers about the decision
- the person. This will be in writing (unless another form of communication is more appropriate) and will explain the decision and the reasons for the decision. It will set a timeframe for reviewing the limits (see below) and explain the person's options for complaining about the decision.

Reviewing limits

[Name of the senior officer] will ensure that any limits on a person's access are reviewed within the named timeframe, and at least once every 12 months, to determine if they are effective and still warranted.

[Name of the senior officer] will document the review and inform affected officers and the person of any decision to remove or vary the limits on access.

[Explain how the person can complain about the decision in the meantime eg your organisation's processes for seeking an internal review. Once the person has exhausted their options in your organisation, advise them that they can complain to external oversight agencies such as the Victorian Ombudsman or, if the person claims discrimination, the Victorian Equal Opportunity and Human Rights Commission].

Where limiting access is not appropriate – alternative dispute resolution

[Name of the senior officer] may decide it is not appropriate to limit a person's access eg because it would breach legal obligations, unduly affect the welfare of the person or a dependant, or our actions have contributed to the behaviour.

In these cases, we can consider arranging alternative dispute resolution using an independent third party. [Name of the senior officer] will consider whether alternative dispute resolution is likely to be effective in the circumstances, including the person's willingness to engage genuinely in the process.

Recording and reviewing unreasonable behaviour

Officers must all record incidents of unreasonable behaviour in [describe how officers should record incidents eg in your organisation's case management system] within 24 hours. The record will:

- describe what the person said or did in neutral terms
- describe the action the officer took in response.

[Name of an appropriate officer] will review reports regularly to:

- ensure strategies are being applied appropriately and consistently
- identify possible patterns, and, if appropriate, recommend changes to service delivery that may help prevent challenging behaviour in future.

Security

[Explain your organisation's security arrangements for matters such as:

- face to face meetings eg duress alarms, use of secure meeting rooms
- incident response eg an assault or attempted assault, threats to harm other people
- harassment of officers outside the workplace eg on social media]

Roles and responsibilities

All officers are authorised to apply the strategies in Stages one to three of this policy (Prevent, Respond and Manage).

Officers must consult a manager if:

- [outline your organisation's policy on what officers should do when a person asks to speak with a manager]
- a person threatens suicide
- a person makes threats to harm a staff member or another person.

Decisions to limit access to services (Stage four) may only be made by [name the senior officer/s authorised to make the decision].

Support for staff

[Organisation name] recognises that dealing with challenging or unreasonable behaviour can be upsetting and stressful and we are committed to supporting our officers.

We will uphold our legal obligations to provide a safe workplace and support officers by:

- [list the training and support provided by your organisation eg formal training, coaching and mentoring arrangements, debriefing arrangements or employee assistance programs]

Managers will speak with officers who handle complaints regularly to check their welfare, in addition to any other supervision arrangements.

Officers are encouraged to monitor the impact of challenging behaviour on their wellbeing, draw on available supports and maintain a healthy approach to managing stress.

Officers who are injured at work can report this in accordance with [name your organisation's policy/procedure for reporting workplace injuries and claims].

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