



Premier & Cabinet
Division of Local Government

Division of Local Government
Department of Premier and Cabinet

Procedures for Managing Complaints About Local Councils

January 2013

Index

Procedures for Managing Complaints About Local Councils	4
Purpose	4
Coverage/Scope of Procedures.....	4
Section One – Procedures for Managing Complaints about Local Councils	
.....	7
Understanding complainants – some background	7
Complaint Handling Model.....	8
Classification as a complaint.....	9
Business rules	10
Procedures for assessing, allocating and managing complaint types	10
Complaint assessment	10
Managing complaints	11
Complaint types	12
<i>NRN – No Reply Necessary</i>	12
<i>General Complaint Decline</i>	13
<i>General Complaint – Review/Preliminary Enquiry</i>	14
<i>Pecuniary Interest Allegations/Complaints</i>	14
<i>Misconduct (previously misbehaviour) Complaints</i>	15
<i>Political Donations</i>	15
<i>Public Interest Disclosures about local government authorities</i>	15
<i>Section 53/54 Referrals from the ICAC</i>	15
<i>Corrupt Conduct – Section 11 Referrals</i>	16
Timeframes for responding to complaints to the Division	18
Timeframes for responding to complaints to the Minister	19
Reporting	19
Key Responsibilities:.....	19
Section Two – Procedures for Managing Unreasonable Complainant	
Conduct	22
Understanding unreasonable complainant conduct – some background.....	22
Focus on the conduct of the person.....	22
Warning signs of unreasonable complainant conduct.....	23
When is complainant conduct unreasonable?	24
Managing unreasonable complainant conduct model.....	25
Objectives	25
Managing unreasonable conduct.....	25
Preventing unreasonable conduct	26
The Division’s responsibilities	26
Staff responsibilities	26
Implementation of management strategies	26
Case management	26
Limiting access	27
Steps to be taken before limiting access	28
Withdrawing services or refusing access	28
Recording service and access restrictions.....	28
Unreasonable complainant conduct decisions appeals	29
Key responsibilities	29
Attachment 1: Framework of strategies for managing unreasonable complainant conduct.	30
Attachment 2 :Form for recording service restriction/access.....	35

Section Three – Procedures for Managing Public Interest Disclosures

About Local Government Authorities..... 37

Who can make a public interest disclosure to the Division? 37

What can disclosures be made about? 37

Public interest disclosures assessment 37

Who deals with external disclosures in the Division?..... 38

Obligations for managing external public interest disclosures 39

Confidentiality 39

Timeframes..... 39

Procedures for Managing Complaints About Local Councils

Purpose

The Division receives complaints about the performance of local councils from a range of sources. These complaints can range from an expression of dissatisfaction with a council service, function or activity to concern about the performance of the council overall. This also includes concern about the action or inaction of individual council officials. The Division will use complaints about local councils to assist in meeting its corporate goal to monitor the performance of local government in NSW.

The quality of the Division's response to complaints has an impact on the Division's reputation.

The Division is committed to ensuring that complaints received are handled in a manner which is fair, courteous and respects the privacy of the person making the complaint. The Division is also committed to ensuring that reasons are provided for decisions made in relation to any complaint received. This Policy will ensure that complaints are managed consistently with the Division's corporate values.

These Procedures have been developed to assist the Division and its staff in the management and handling of complaints received by the Division about the performance of local councils. The Managing Complaints About Local Councils Policy and these Procedures have been designed for use by all staff. They are to be read in conjunction with the Correspondence Management Policy and Guarantee of Service Standards.

The development of these Procedures is intended to enable us to reduce risks associated with:

- untimely handling of complaints;
- customer dissatisfaction;
- unfair, discourteous handling of complaints;
- breaches of complainant privacy; and
- decisions made without transparency and objectivity.

Coverage/Scope of Procedures

This publication has been divided into three sections.

Section One – Managing Complaints About Local Councils - applies to complaints received by the Division about local councils and provides information on:

- background on understanding complainants;
- classification of complaints;
- procedures for assessing, allocating and managing complaints;
- reporting on complaints;

- timeframes for responding to complaints; and
- key responsibilities.

Section Two – Managing Unreasonable Complainant Conduct – applies to complaints received by the Division and provides information on:

- identifying and managing unreasonable complainant conduct;
- management strategies
- recording and reporting requirements; and
- key responsibilities.

Section Three - Managing Public Interest Disclosures About Local Government Authorities – applies to complaints received by the Division made under the *Public Interest Disclosures Act 1994* and provides information on:

- assessing disclosures;
- managing disclosures;
- referring disclosures.

Adhering to these Procedures will ensure consistency is achieved during the:

- registration of correspondence;
- assessment and classification of complaints;
- appropriate allocation of matters;
- preparation of responses and referral of matters;
- use of precedents;
- conducting enquiries and investigations; and
- reporting requirements.

This publication has taken into account and is consistent with:

- the 2010 edition of the NSW Ombudsman's Effective Complaint Handling Guidelines;
- NSW Ombudsman – Managing Unreasonable Complainant Conduct Practice Manual 2009
- NSW Ombudsman – Managing Unreasonable Complainant Conduct Practice Manual 2012

Section One

Procedures for Managing Complaints about Local Councils

Section One – Procedures for Managing Complaints about Local Councils

Understanding complainants – some background

Effective complaint resolution requires responding to the complainant's needs as a person as well as responding to the identified problem. Fixing a problem alone will not necessarily produce satisfaction. How a complainant is treated during the process is equally important in complaint resolution and will be a key factor in how that person will perceive the Division and the information we provide.

People make complaints for a number of reasons including, because they are unhappy with a decision, the level of service they have received or the conduct of staff or councillors they have been dealing with. It is important to establish why they are dissatisfied.

In clarifying the reason for the complaint and in determining the appropriate action required it can be helpful to identify what the complainant wants to happen or what they believe should happen.

Generally when people complain they want certain essential things:

- to feel secure;
- to be listened to patiently;
- to be heard but not judged;
- to have their point of view understood;
- to be treated with respect and courtesy;
- to be provided with an explanation;
- to be given an apology;
- to have corrective action taken as soon as possible, and while action is taken, to be kept up to date;
- to be compensated;
- to be treated fairly; and
- to make sure the problem never happens again.

The resolution of a complaint may involve giving more information, providing an explanation, suggesting a course of action, expressing empathy and understanding in situations where there is no ready solution to the problem. A sincere apology for any mistakes or misunderstandings can also be effective.

People are more likely to accept decisions they don't like or that are against their immediate interests if they believe the decision was reached fairly and they were treated fairly. Elements of fairness to consider in handling complaints relate to procedure, the provision of information and our interaction with the complainant.

Even if we are unable to take the action the complainant wants, if other elements are provided and the process seems fair, a complainant will usually feel reasonably satisfied.

It is also important to remember that information or comments about local councils contained in complaints, is a valuable resource for the Division. This feedback provides insight into emerging trends and issues, and allows opportunity for adequate support and intervention. It also enables us to work more confidently and successfully with councils to foster sustainable local government.

Complaint Handling Model

We are committed to providing a quality of service to complainants. This includes:

- treating complainants in a courteous, attentive and sensitive manner;
- managing complainant expectations to ensure they are realistic from the outset;
- providing information which is clear, informative, and with a level of complexity appropriate to the situation;
- ensuring that complainants understand what the Division can and cannot do, and will and will not do;
- making complainants aware of their responsibility to treat staff with respect, to provide information and to cooperate with the designated officer dealing with their matter;
- maintaining confidentiality and privacy of information, in accordance with our procedures to the extent that this is practically possible;
- following fair procedures;
- acting impartially;
- making decisions based on merit;
- providing clear reasons for our decisions;
- using resources efficiently and effectively.

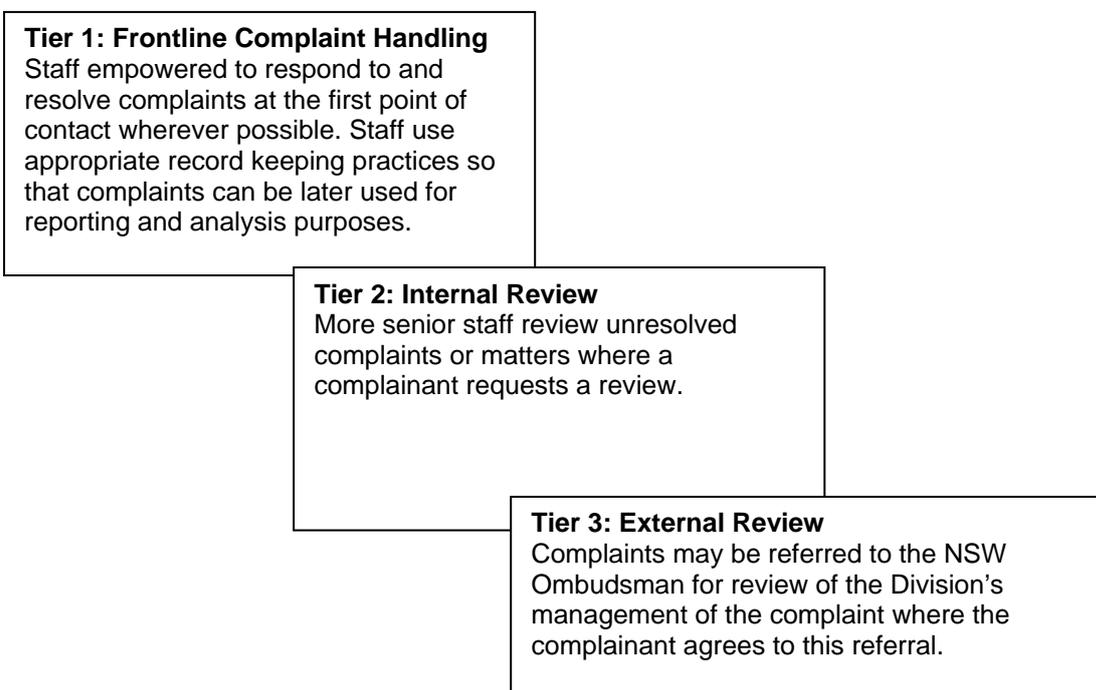
A complaint handling model aims to provide a mechanism for an organisation to respond to, record, report and use complaints to improve its own service delivery.

Such a model can also be used to guide us in managing the complaints we receive about local councils. The model we use includes a Policy and these Procedures to guide staff in the management and resolution of the complaints we receive about local councils. It provides us with an organised way of using complaint information to assist in meeting our corporate goal to monitor the performance of local government in NSW.

A successful complaints system will benefit us in four ways:

- creating an opportunity to provide service and satisfaction to members of the community who are dissatisfied with the performance of local councils;
- identify areas that need improvement within local councils;
- provide opportunities to strengthen community, government and sector relationships; and
- assist in the efficient allocation and use of our resources.

The following outlines our approach to complaint handling which aims at resolving the majority of complaints at the front line or first tier. In the context of complaints about local councils this means the officer who is allocated responsibility for managing the complaint in the first instance.



What is a complaint?

A complaint about local councils is considered to be any expression of dissatisfaction with:

- a council, including an allegation of maladministration,
- the action or inaction of a council official, including an allegation of misconduct.

Council official means a councillor, member of staff of a council or a delegate.

Classification as a complaint

In classifying complaints, there are some situations where, despite the matter meeting the requirements as outlined in the definition above, they will not be treated as a complaint. These situations include where:

- the matter has been previously dealt with and finalised, or
- duplicate complaints about the same matter by the same person.

However, these matters may still warrant a response. This determination should be based on the assessment procedures that follow below.

- Identical letters to the Minister and the Division– only one (the Ministerial unless directed otherwise by the Minister's Office) will be treated as a complaint, the other correspondence is cross referenced (linked) and

entered as general correspondence. It should also be classified as a NRN (no reply necessary).

- Identical letters to the Minister and/or Division but addressed to another Minister or the Premier, and then referred to the Minister or the Division. Provided the original is already being dealt with as a complaint, the other matters can, subject to the Minister's Office approval, be cross referenced (linked), entered as general correspondence and classified as a NRN.
- If additional information is provided making fresh allegations regarding essentially the same matter as in the originating complaint, the matter is entered as general correspondence, classified as a NRN with a reference to the documentation and new information provided in the Division's response. However this can only be done in this way if the preparation of the response is still being drafted. For additional information provided to the Minister, approval is to be obtained from the Ministerial Liaison Officer to treat the matter in this way.

Business rules

These procedures are supported by a number of business rules that provide specific guidance on the processes undertaken during the assessment, allocation and management of complaints. These business rules are provided in a centrally located repository that can be accessed by all staff.

Procedures for assessing, allocating and managing complaint types

Complaint assessment

The assessment of all complaints received by the Division is carried out in the context of the role played by the Minister and the Division in relation to local government and our statutory obligations under the *Local Government Act 1993 (the Act)*.

The Act confers no specific role on the Minister for Local Government to investigate complaints. It does provide that the Chief Executive has delegated responsibility for dealing with complaints about breaches of the pecuniary interest provisions of the Act, misconduct, and public interest disclosures about local government authorities.

The Chief Executive also has discretion to authorise the investigation of "any aspect of a council, or of its works and activities" pursuant to section 430 of the Act.

Complaints about matters other than pecuniary interest breaches, misconduct matters and public interest disclosures are assessed in line with the monitoring and compliance role of the Division, which is performed to ensure that councils are managed and operated to a high standard.

Complaints are used with information from other sources to identify councils that may require attention.

We are more likely to intervene in complaints where there is:

- credible evidence of a serious breakdown in council operations, where the council is operating in an unsatisfactory manner or where there are major flaws in significant processes within council
- credible evidence of breaches of the pecuniary interest provisions of the Act (see also the Pecuniary Interest Breaches – Guidelines)
- credible evidence of misconduct on the part of a councillor under the discipline provisions of the Act (see also the Misconduct Guidelines)
- credible evidence of a serious and substantial waste of council money, corrupt conduct¹, maladministration, government information contravention² or local government pecuniary interest contravention raised in a public interest disclosure to the Chief Executive. (See – *Section Three – Procedures for Managing Public Interest Disclosures*)
- credible evidence of non-compliance with important aspects of the Act and/or Regulations with adverse consequences for the broader local community or the local government sector as a whole.

All correspondence enters the Division via the Communications Team. This Team is responsible for the registration, preliminary assessment, entering of meta data and distribution of matters to individual Teams.

Team Leaders are required to conduct a further assessment of a matter prior to allocating to an appropriate team member. Individual team members are then responsible for examining the matter, conducting enquiries or investigations into the matter, communicating with complainants (via phone/email or preparing interim responses) and preparing final responses. Team Leaders are responsible for entering the relevant 'Outcome' in the complaint's meta data field when approving the final response.

Managing complaints

All complaints need to be managed as well as they possibly can be from the outset to reduce the chances of unnecessary delays, misunderstandings and unrealistic expectations.

Managing a complaint well from the beginning includes:

- declining, at the start, complaints that contain unreasonable arguments;
- declining 'trivial' complaints – for example, a complaint may be assessed as trivial on the basis of a lack of utility or no good purpose being served in taking the matter further;
- sending out a response that clearly indicates what the Division can and cannot do, will and will not do, and what the Division's complaint handling processes are;
- making and maintaining contact where possible and appropriate;

¹ this may be referred to the ICAC in accordance with the referral provisions of the Public Interest Disclosures Act 1994

² this may be referred to the Office of the Information Commissioner in accordance with the referral provisions of the Public Interest Disclosures Act 1994

- keeping complainants informed of the progress of their complaint;
- keeping records of telephone complaints in the TES (Telephone Enquiry System) and making file notes for more complex matters. The file note and TES entry should cross reference, where appropriate, to the TES No, & objective document ID of the file note,
- in the final letter, providing the reasons for the decision;
- showing empathy when telling the complainant that their complaint will not be taken up or has not been found sustained; and
- identifying complaints that are likely to, or do, involve unreasonable conduct on the part of the complainant as soon as possible and ensure that their case is strategically managed with appropriate supervision (see *Section 2 on Managing Unreasonable Complainant Conduct*).

You should keep file notes and/or relevant records of any interaction with a person making a complaint and of interactions with other persons associated with the complaint. File notes should be a factual record of what was discussed or what occurred and should outline any advice provided by the Divisional officer. File notes should not contain inappropriate personal views or reflections of the Divisional officer. File notes are subject to the provisions of the *Government Information (Public Access) Act 2009*.

Complaint types

Complaints are categorised as the following document types after the initial assessment carried out by the Communications Team:

- General Complaint Decline
- General Complaint – Review/ Preliminary Enquiry
- Misconduct (previously misbehaviour) Referral/Investigation
- Pecuniary Interest - Allegation/Complaint/Investigation
- Political Donations
- Public Interest Disclosure
- Section 53 Referral

Information that describes these complaints and the processes for allocating and managing these complaints follows.

In addition, complaints may allege corrupt conduct. All such allegations are managed by the Investigations Team. Information on the procedures for assessment and management of corrupt conduct allegations about local councils are detailed below.

NRN – No Reply Necessary

Complaints finalised without a written reply are those which meet the following criteria following an assessment. In these instances the complaint can be noted on the Objective system as “NRN” with reasons noted in the meta data.

- Complaints marked by the Minister’s Office, the Chief Executive or Executive Support as “For information”, “For filing” or “No reply necessary”.

- Emails “cc’d” to the Division’s corporate email address.
- Form letters.
- Anonymous complaints where no return address details are provided. However the complaint should still be assessed as in some instances the complaint may contain sufficient information concerning an issue that can warrant action to be taken without a response being provided.
- Complaints sent “for information only” where it is clear that a response is not sought or expected.
- Where a ‘Final Letter’ has been issued to a complainant stating no further correspondence is to be issued unless new issues of substance are raised or as any further correspondence on this matter will be filed without acknowledgement. However, this will not apply to letters to the Minister where the Minister has requested a response.

The procedure for dealing with NRN’s is set out in ‘Business Rule – NRN Correspondence’ in the business rule repository.

General Complaint Decline

We will generally decline to investigate or pursue the following types of complaints without any preliminary enquiries where:

- the complaint relates to a specific council activity, function or service falling within the discretion of council to determine or deal with and there is no valid reason why it should not/cannot be dealt with by the council;
- the alleged incident occurred more than two years ago and there is insufficient reason for the complaint to have been delayed;
- the matter complained about is assessed as being of a minor/insignificant nature (trivial);
- the allegation is not accompanied by basic information needed to support the complaint that would be reasonably accessible to the complainant;
- there are reasonably accessible avenues of appeal or civil law remedies available to the complainant;
- the allegation is dependent on an assessment of the merits of a council’s decision;
- the matter involves staff conduct not involving a breach of the Act and that may be appropriately dealt with by the council’s code of conduct;
- the matter is a private dispute between the council and the complainant;
- there is no threat to public interest involved in the matters raised and/or there is little scope for remedial action by the Division;
- the matter has previously been dealt with and the further complaint from the same complainant raises no substantive new issues and/or presents no substantive new facts;
- it is a matter that would be more appropriately dealt with by another investigative agency such as the ICAC or the Ombudsman, or where the matter has concurrently or previously been raised with such other agency;
- the matter is outside the Division’s jurisdiction,
- the matter is vexatious or frivolous, or
- the complainant is anonymous.

In such cases, the responsible officer will be required to prepare a reply to the complainant advising of the Division's or Minister's assessment/decision, and the reasons for it. A resource of text has been developed to assist drafting officers with replies to 'decline' complaints. This is called the Division's precedent text bank. The Communications Team is responsible for overseeing the content of the text bank.

General Complaint – Review/Preliminary Enquiry

Complaints which are assessed as a '*General Complaint – Review/Preliminary Enquiry*' are all matters where a further action by the Division is required to obtain a satisfactory explanation or resolution to the complaint. These actions may include making telephone and/or written enquiries directly with the council concerned, and also obtaining information relating to the matter from the complainant or others.

ICAC referrals where ICAC advise 'the Division may take whatever action it considers appropriate' and no further advice is sought, are treated as preliminary enquiries/review initially. Where the issues raised do not warrant preliminary enquiries the matter can then be NRN'd. (Note such referrals are reviewed by a Senior Investigator to determine whether there are any issues that should be examined by the Division prior to the matter being finalised as a NRN).

Section 734A authorises the Chief Executive to exercise the power to make preliminary enquiries in order to determine whether to exercise his powers to investigate or authorise an investigation. Divisional staff may rely on this power to undertake the appropriate preliminary enquiries.

The process of undertaking preliminary enquiries is varied. However, key issues to consider include the following:

- care must be taken to ensure that the council is clear that the nature of the Division's interest in the matter is to conduct preliminary enquiries only.
- generally, unless it is necessary in order to effectively examine the issue, the identity of the complainant should be kept confidential. Particular care is required in relation to serious allegations, matters involving public interest disclosures, and matters where the complainant, for sound reasons, has specifically requested that their identity not be disclosed. You should refer to the Division's Privacy Officer if in doubt on this issue.
- maintaining confidentiality is also an issue when examining serious allegations, disclosure of which could result in the alteration or deletion of relevant records. You should consult with a Team Leader or Group Manager if in doubt.
- proper records, such as file notes, should be kept of all enquiries made.

Pecuniary Interest Allegations/Complaints

The Investigations Team deals with all pecuniary interest complaints. All pecuniary interest complaints, where there is some evidence of a possible breach of the Act, must be carried out having regard to the Division's Pecuniary Interest Breaches Guidelines.

There are two types of pecuniary interest allegations/complaints:

Pecuniary Interest Allegation – allegations that a person has or may have contravened Part 2 of Chapter 14 of the Local Government Act 1993, relating to pecuniary interest matters, that have been referred to the Division for assessment and any necessary action.

Pecuniary Interest Complaint – as above, but the allegation is accompanied by a statutory declaration and therefore becomes a formal complaint in accordance with section 460 of the Act.

Misconduct (previously misbehaviour) Complaints

The Investigations Team deals with all misconduct complaints. All misconduct complaints, where there is some evidence of a possible act of misconduct, must be assessed and determined having regard to the Division's Model Code of Conduct for Local Councils in NSW, and the Division's Misconduct Guidelines.

Political Donations

The Investigations Team deals with all political donation complaints. All political donations complaints, where there is some evidence of a possible act of misconduct, must be assessed and determined having regard to the provisions of the *Election Funding, Expenditure and Disclosures Act 1981*, the Division's Model Code of Conduct for Local Councils in NSW, and the Misconduct Guidelines.

Public Interest Disclosures about local government authorities

The Investigations Team manages public interest disclosures about local government authorities. Public Interest Disclosures are allegations reported to the Division from persons seeking protection from reprisal under the *Public Interest Disclosures Act 1994*. Specific complaint handling provisions apply under this legislation.

Actioning of public interest disclosure complaints must be carried out having regard to the *Public Interest Disclosures Act 1994* any guidelines provided by the NSW Ombudsman and the Division's procedures for Managing Public Interest Disclosures (see *Section Three - Managing Public Interest Disclosures*).

Section 53/54 Referrals from the ICAC

The Investigations Team deals with all section 53 referrals. This type of complaint is received from the ICAC. The Commission may refer a matter to any other agency in accordance with the provisions of the *ICAC Act 1988*. Under section 54 of the ICAC Act the Commissioner may require the Division to provide a report on the investigation of a matter it refers. The ICAC has produced guidelines for the completion of section 54 reports.

Corrupt Conduct – Section 11 Referrals

At assessment, if a matter may amount to corrupt conduct then the matter should be referred to the Investigations Team which will manage the referral process to the ICAC. Section 11 of the *Independent Commission Against Corruption Act 1988* places a statutory obligation on the principal officers of public agencies to refer all matters where the person suspects on reasonable grounds concerns or may concern corrupt conduct to the Independent Commission Against Corruption. The Chief Executive of the Division of Local Government is identified as a principal officer (ICAC Regulation). The mere fact that a complainant alleges corrupt conduct does not give rise to this obligation.

Corrupt conduct is defined under section 8 of the ICAC Act as: -

(1) *Corrupt conduct is:*

(a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or

(b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or

(c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or

(d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

(2) *Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:*

(a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),

(b) bribery,

(c) blackmail,

(d) obtaining or offering secret commissions,

(e) fraud,

(f) theft,

(g) perverting the course of justice,

(h) embezzlement,

(i) election bribery,

(j) election funding offences,

- (k) *election fraud,*
- (l) *treating,*
- (m) *tax evasion,*
- (n) *revenue evasion,*
- (o) *currency violations,*
- (p) *illegal drug dealings,*
- (q) *illegal gambling,*
- (r) *obtaining financial benefit by vice engaged in by others,*
- (s) *bankruptcy and company violations,*
- (t) *harbouring criminals,*
- (u) *forgery,*
- (v) *treason or other offences against the Sovereign,*
- (w) *homicide or violence,*
- (x) *matters of the same or a similar nature to any listed above,*
- (y) *any conspiracy or attempt in relation to any of the above.*

However, section 8 of the ICAC Act is limited by section 9 of the ICAC Act:

(1) Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- (a) a criminal offence, or*
- (b) a disciplinary offence, or*
- (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or*
- (d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct.*

(2) It does not matter that proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken.

(3) For the purposes of this section:

applicable code of conduct means, in relation to:

- (a) a Minister of the Crown—a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations, or*

(b) a member of the Legislative Council or of the Legislative Assembly (including a Minister of the Crown)—a code of conduct adopted for the purposes of this section by resolution of the House concerned.

criminal offence means a criminal offence under the law of the State or under any other law relevant to the conduct in question.

disciplinary offence includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.

Timeframes for responding to complaints to the Division

The Service Standards for dealing with complaints to the Division are set out in the following table:

Document Type	Response Time	Additional Requirement
<u>Registration and assessment processes</u>		
Registration – emails/faxes/mail	24 hours	
Assessment/Allocation	72 hours	
<u>Correspondence/complaint management processes</u>		
General Declines/General Correspondence	4 weeks	
Preliminary Enquiries	6 weeks	Interim response to be sent for complex matters within two weeks
Pecuniary Interest	90 days	Interim response within two weeks
Misbehaviour	90 days	Interim response within two weeks
Political Donation	90 days	Interim response within two weeks
Public Interest Disclosure	180 days	Interim response within four weeks
Section 53 Referral	As determined by the ICAC	

Timeframes for responding to complaints to the Minister

Timeframes for Ministerial correspondence:

Document Type	Response Time	Additional Requirement
<u>Registration and assessment processes</u>		
Immediate	1 hour	
Urgent	24 hours	
Early	48 hours	
Routine	72 hours	
<u>Correspondence/complaint management processes</u>		
Immediate	24 hours	
Urgent	1 week	
Early	2 weeks	
Routine	3 weeks	

Reporting

The Division has a number of reporting obligations. These include annual reporting and the reporting of the Division's complaints to the NSW Ombudsman, under the Memorandum of Understanding and the *Public Interest Disclosures Act 1994*, and the *ICAC Act 1988* (Section 11 Referrals).

The Division reports complaint data publicly via its website. This enables NSW councils to access and utilise the information in identifying and addressing trends and issues associated with their own service provision.

The Division also maintains reports in the form of data bases that detail complaints and investigations and their outcomes. These are used in identifying emerging trends and issues. This data may also be used in conjunction with the Intervention and Improvement Framework to assist in identifying appropriate intervention strategies.

By capturing, classifying and analysing complaint data, systemic and recurring problems can be more easily identified and rectified. Systems for aggregating complaints data and performing trends analysis are central to the Division's aim of continuous improvement in local government standards.

Key Responsibilities:

All Staff – manage complaints referred to them in accordance with the Policy and these Procedures. They must deal with complainants professionally, promptly and courteously. Where appropriate all staff should provide assistance and information either in writing or by telephone to people looking to make a complaint about their local council so that complainants' concerns can be resolved.

Communications Team – is responsible maintaining data bases, preparing reports and managing the metadata associated with all complaints.

Senior Communications and Operations Officers are responsible for the initial assessment and allocation of complaints received by the Division to the appropriate Team in accordance with the Policy and these Procedures. This includes entering “preliminary assessment” information in the meta data at the assessment stage.

Executive, Group Managers & Team Leaders/Coordinators - are responsible for:

- allocation of all complaints received by their Team
- ensuring complaints are effectively addressed in accordance with the Policy and these Procedures and the Correspondence Management Policy
- constructively addressing and identifying opportunities to resolve complaints promptly and avoid escalation
- ensuring complaint outcomes are entered in the appropriate metadata field (see separate fact sheet – Complaints Meta Data)
- ensuring appropriate records are kept.

Chief Executive is responsible for approving the referral of complaints for external review.

Section Two

Procedures for Managing Unreasonable Complainant Conduct

Section Two – Procedures for Managing Unreasonable Complainant Conduct

Understanding unreasonable complainant conduct – some background

The NSW Ombudsman Managing Unreasonable Complainant Conduct Practice Manual (2nd Edition – May 2012) sets out a framework of strategies to assist complaint handlers to manage unreasonable complainant conduct.

Staff are encouraged to familiarise themselves with these strategies and to utilise the Practice Manual when managing and dealing with unreasonable complainant conduct. The Division's Procedures are based on the Ombudsman's Practice Manual and the previous version released in 2009. The 2012 Practice Manual provides more extensive detail than these Procedures. The Practice Manual is available on the Division's intranet site.

It is important to appreciate that some complainants are more challenging than others. This may be due to frustration after making prior approaches to Council and other agencies without satisfaction. Some complainants may also be distressed, obsessive or aggressive for any number of reasons connected with personal circumstances.

These Procedures apply to complainants who exhibit what may be termed as "challenging behaviour". For conduct to be unreasonable, it must clearly go beyond the usual situational stress commonly experienced by complainants when they bring a grievance to an agency.

Unreasonable conduct by complainants, if not properly managed, has the potential to pose significant resource management and equity issues for the Division. Such behaviour has the potential to force the Division to divert resources that may have been more appropriately allocated elsewhere to address the demands of a minority of complainants.

Focus on the conduct of the person

In managing unreasonable complainant conduct the focus needs to be on the conduct of the complainant, rather than on the complainant as a 'difficult' person. Terms such as 'difficult complainant', 'vexatious complainant' and 'unusually persistent complainant' focus on the person rather than the behaviour. Such labels can negatively influence how these persons are responded to within the complaint handling system. While the term 'vexatious' is used in the Act (section 463), the term is used to describe the complaint, not the complainant.

The term adopted by the Division and used in these Procedures is '**unreasonable complainant conduct**', meaning the unreasonable conduct by complainants.

Warning signs of unreasonable complainant conduct

The warning signs of unreasonable conduct may include one, but more likely involve a number of the following.

The complainant may have a **history of repeatedly raising issues** with the Division. This may include:

- making a number of previous complaints about an issue or related issues;
- making a number of review requests, especially second review requests about the same issue;
- making contact with other government agencies, MPs, Ministers or other oversight bodies about the current complaint;
- seeking legal advice about the current complaint or the agency's handling of the complaint;
- making applications under the GIPA Act about or related to the issue of the complaint; and
- raising issues about the case officer's integrity or competence in handling the case.

The complainant may **seek an outcome** that:

- is a manifestly inappropriate provision of services;
- is manifestly inappropriate compensation;
- is a manifestly illogical or irrational solution;
- is an apology where this is clearly not warranted or where the terms of the apology sought are clearly unreasonable; and
- amounts to revenge or retribution.

The complainant may also have **unrealistic expectations** about what the Division can achieve or may keep restating their desired outcomes in terms of morals, justice, principles or the public interest.

Written complaints may:

- display excessive and idiosyncratic emphasis;
- show punctuation, font changes and bolding excessively;
- show coloured highlighting excessively;
- use legal or medical terminology inappropriately;
- imitate an official reporting style, such as a police operational format;
- use excessively dramatic language; and
- include excessive and/or irrelevant information that may also be annotated.

When ***interacting with the Division***, the complainant may:

- make excessive written and telephone contact;
- give forceful instructions about how the complaint must be handled;
- refuse to define the issues of their complaint;
- be resistant to the officer's explanation if this disagrees with their own views;
- refuse to accept the officer's advice, even if it is clearly valid and reasonable;
- provide information in dribs and drabs, despite requests to provide all relevant information;
- withhold information;
- provide false information;
- at the end of the process, provide previously withheld information in an attempt to have the case reopened;
- make excessive demands on resources – copies, expert opinion etc;
- be rude, confronting, angry or aggressive; and
- be overly ingratiating or manipulative or make threats.

When ***reacting to the news that their complaint will not be taken up*** or will be discontinued, the complainant may:

- refuse to accept the officer's or Division's decision;
- reframe their complaint in an attempt to have it taken up again;
- raise a range of minor or technical issues, arguing that these call into question the merits of the decision;
- expect a review of the decision based merely on an expression of dissatisfaction, unsupported by any arguments or new evidence;
- demand a second review after the first review; and
- take the complaint to other forums and go on to allege bias or corruption on the part of the Division, simply because the decision went against them.

When is complainant conduct unreasonable?

Many complainants are distressed for very good reasons. They are caught up in what they see as a terrible wrong. Their challenging conduct may not be unreasonable given the circumstances. For conduct to be unreasonable, it must clearly go beyond the norm of situational stress.

What can be termed 'unreasonable' will vary depending on a number of factors. The same conduct may be unreasonable in one set of circumstances, but may not be unreasonable in another. When deciding whether a complainant's conduct is unreasonable, the following factors need to be considered.

- **The merits of the case** - Is there an inherent right or wrong in the matter?
- **The circumstances of the complainant** - does the complainant have the health, intellectual, educational, language, financial and social resources required to cooperate and meet the requirements of the

- **Proportionality** - is the complainant's distress in reasonable proportion to the loss or wrong suffered?
- **The complainant's responsiveness** - do calming measures and explanation help to settle the complainant down?
- **The officer's personal boundaries** -if it feels threatening, stressful or otherwise wrong to the officer dealing with the matter, then it is.
- **Conduct that is unreasonable and unacceptable under all circumstances** - this is conduct that involves overt anger, aggression, violence and assault – this should never be tolerated.

Managing unreasonable complainant conduct model

We will use the following model for managing unreasonable conduct:

Objectives

- Ensure equity and fairness.
- Efficiency in the use of resources.
- Ensure staff safety and compliance with Work Health and Safety and duty of care obligations.

Managing unreasonable conduct

- Recognise that dealing with unreasonable complainant conduct is part of the Division's core work.
- Exercise ownership and control over the complaint. The Division decides how the complaint will be dealt with, by whom, how quickly, with what priority, what resources will be given to it and what will be the outcome – not the complainant.
- Focus on specific, observable conduct (the problem is not the person).
- Use clear terminology that focuses on the conduct of the complainant, not the person (unreasonable conduct, not difficult complainant).
- Apply the following management strategies:

• Unreasonable persistence	⇒ saying no
• Unreasonable demands	⇒ setting limits
• Unreasonable lack of cooperation	⇒ setting conditions
• Unreasonable arguments and unreasonable behaviour	⇒ saying no, setting limits and conditions, invoking risk management protocols.

- Respond with consistency to individual complainants across complaints.
- Respond to the complainant with clear, timely and firm communication.
- Implementing restrictions on access to the Division's complaint handling processes only if management strategies do not work.

Preventing unreasonable conduct

- Manage complainant expectations from the beginning.
- Insist that the complainant shows respect. Set boundaries by not tolerating rudeness, anger or aggression.

The Division's responsibilities

- Maintain commitment to the Policy, Procedures and this model for dealing with unreasonable conduct.
- Provide staff with adequate supervision and support in their dealings with unreasonable conduct.
- Give staff sufficient time and resources to deal with unreasonable conduct.
- Provide staff with adequate training and guidance in how to deal with unreasonable conduct.

Staff responsibilities

- Remain calm in the face of unreasonable conduct.
- Show respect for all complainants, those acting reasonably and those not.
- Act impartially in all matters.
- Demonstrate professionalism in dealing with all complainants.

Implementation of management strategies

The Division will use the management strategies outlined in the 2009 version of the NSW Ombudsman Practice Manual, pages 12 to 16. These pages are attached at the end of this section as a reference source. The framework in the 2009 Practice Manual is consistent with the more detailed strategies provided in the 2012 version of the Manual. These strategies should be used in the first instance before progressing to limiting access or withdrawing service.

Supporting and protecting officers is a key priority for the Division and its management team.

You should keep file notes and/or relevant records of any interaction with a person making a complaint and of interactions with other persons associated with the complaint. File notes should be a factual record of what was discussed or what occurred and should outline any advice provided by the Divisional officer. File notes should not contain inappropriate personal views or reflections of the Divisional officer. File notes are subject to the provisions of the Government Information (Public Access) Act 2009.

Case management

When it becomes apparent that unreasonable complainant conduct is involved, and it seems that it will be ongoing, it is essential for the matter to be discussed between the relevant officer/s and their Team Leader. At this point it is important to:

- make a plan about how the case will be managed
- stick to the plan as closely as possible without being inflexible.

When deciding on a plan, it is important to look at both the complainant's and the Division's conduct. The officer and the Team Leader have to critically and honestly ask themselves, 'Is there anything we have done to create or exacerbate the unreasonable conduct?' If there is, steps need to be taken immediately to rectify this.

Team leaders need to make it clear to their officers that they have their support. This support enables the officer to make confident, clear decisions and to act firmly in the face of unreasonable complainant conduct.

As far as the complainant is concerned, the officer should be seen as having the authority to handle the case. It is not appropriate to allow a complaint to be escalated to a Team Leader just because the complainant demands this, unless the complaint is about the officer's handling of the matter. If this occurs, the Team Leader needs to deal with the complaint against the case officer and, if there is no substance to it, leave the responsibility for handling the complaint with the officer.

If the unreasonable complainant conduct management strategies do not work, then consideration will need to be given to limiting the complainant's contact with the Division as outlined below.

Limiting access

Limiting the complainant's contact with the Division may need to be considered where the unreasonable conduct is not managed through the adoption of the management strategies outlined above. The management strategies should be implemented in the first instance.

Steps to limit access to the Division will only be taken with the greatest reluctance. They are only justified if there are safety concerns for staff or to ensure that other meritorious cases are not robbed of the resources to which they are entitled.

Contact with the Division can be limited in terms of:

- the times a complainant may make contact;
- the staff the complainant may have contact with;
- the form in which the contact may take place – eg contact may only be in writing;
- not to enter the Division's premises and not to contact Division staff by telephone.

If limitations require complainants to only contact a specific officer, it is important that this role is spread among a number of officers. Limiting contact by all complainants exhibiting unreasonable conduct to one member of staff can place an unacceptable burden on that person.

Decisions to place limitations on contact must to be approved by the Group Manager and letters informing the complainant of those limitations must be issued.

Steps to be taken before limiting access

In the few circumstances where limits are justified, the appropriate steps to take before limiting access will depend on the circumstances of each case.

In the small number of cases where it is clear that a complainant will not accept the Division's decision on a matter and all appropriate avenues of internal review or appeal have been exhausted, and the complainant continues to contact the Division, it may be appropriate to notify them that in future:

- no phone calls will be accepted or interviews granted concerning the specific matter already reviewed;
- correspondence will be received, read and filed but only acknowledged or responded to if they provide significant, new information about their complaint or concern or raise new issues which, in the Division's opinion, warrant fresh action.

In these cases, it is important that adequate documentary records (such as file notes) have been made and maintained.

Withdrawing services or refusing access

The only circumstances where the Division will consider withdrawing services or refusing access will be where the complainant concerned:

- is consistently abusive, or makes threats to staff (or others) on the phone or at the Division's premises;
- causes damage to the Division's property, or intimidates or threatens physical harm to staff or third parties;
- is physically violent.;
- produces a weapon.

If a complainant is physically violent or produces a weapon, the matter must be immediately reported to the police.

Recording service and access restrictions

A senior officer of the Division will be responsible for maintaining a list of complainants whose access to the Division has been restricted, including the specific directions for each individual. They should also have copies of all the relevant correspondence advising the complainant of the limits imposed.

When complainants who are on the 'no personal contact list' contact the Division by telephone or in person, they should be reminded of the Division's decision outlined in correspondence to them and the conversation or contact should be politely brought to an end. No debate or discussion should be entered into.

If complainants have been informed that they must not contact the agency except in writing, they should also be warned that they may be escorted from the Division's premises if they do approach and that telephone calls will be ended.

The form for recording service and access restrictions can be found at the end of this section. The precedent text to be used in letters advising complainants of the Division's decision to place service and access restrictions on them is located in the precedent text bank.

Unreasonable complainant conduct decisions appeals

Complainant/s who have been assessed and determined to fall within the guidelines as persons who exhibit unreasonable complainant conduct have the right to appeal the decision made by the Division in the first instance. All such appeals should be made in writing and considered on merit by the Chief Executive.

In the event that the Chief Executive has determined the decision made by the Division is correct and within the guidelines any further appeal should be made by the complainant directly with the NSW Ombudsman.

Key responsibilities

All Staff – are responsible for identifying complainants exhibiting unreasonable complainant conduct and managing this appropriately in conjunction with their supervisor. Staff should ensure they keep relevant records of any interactions.

Group Managers & Team Leaders/Coordinators - are responsible for:

- implementing relevant management strategies with their team for complainants exhibiting unreasonable complainant conduct
- advising the Deputy Chief Executive of any management strategies in place for individual complainants
- providing relevant documentation for inclusion in the unreasonable complainant conduct register.

Deputy Chief Executive is responsible for maintaining a list of complainants whose access to the Division has been restricted and for keeping the unreasonable complaint conduct register up to date. The Deputy Chief Executive will determine relevant information to provide to complaint Assessment Officers and Switchboard operators to ensure any management strategies are effectively implemented.

Chief Executive is responsible for considering appeals from complainants who have had access restrictions placed upon them.

Attachment 1: Framework of strategies for managing unreasonable complainant conduct.

Taken from NSW Ombudsman, June 2009, Managing Unreasonable Complainant Conduct Practice Manual, pages 12 – 16.

3.4. Framework of strategies for managing unreasonable complainant conduct

The unreasonable complainant conduct commonly seen by many agencies can, in most cases, be grouped into five categories:

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

Table 1 sets out these conduct categories, the associated trigger conduct and the corresponding strategy for managing that conduct. This framework is a guide – it should be applied flexibly, bearing in mind that more than one category of conduct may need to be managed at one time.

The use of these strategies must also be based on the clear understanding that:

- every complainant deserves to be treated with fairness and respect
- in the absence of very good reasons to the contrary, members of the public have a right to access the agency
- no complainant, regardless of how much time and effort is taken up in responding to their complaint, should be unconditionally deprived of having their complaint properly and appropriately considered
- a complainant whose conduct is unreasonable may have a legitimate complaint.
- the substance of the complaint dictates the level of resources allocated to it, not the complainant's wishes, demands or behaviour.

See also Chapter 4: Communicating with complainants.

Table 1. Management strategies

Conduct category	Unreasonable conduct (trigger)	Management strategies
Unreasonable persistence	<p>Unreasonable persistence includes:</p> <ul style="list-style-type: none"> • persisting with a complaint even though it has been comprehensively considered by an agency, and all avenues of review have been exhausted • reframing a complaint in an attempt to get it taken up again • showing an inability to accept the final decision • insisting that a particular solution is the correct one in the face of valid contrary or alternative arguments • persisting in interpreting the law or policy in a way that is not in accordance with generally accepted or expert views on the issue and insisting that action be taken accordingly 	<p>Strategies for dealing with unreasonable persistence are about saying 'no'. They include:</p> <ul style="list-style-type: none"> • communicating clearly and transparently – eg telling complainants firmly that something is 'not going to happen' • to the 'where-do-I-go-to-now' question, telling complainants that not all problems have an institutional solution and they may have reached the end of the line, unless a realistic referral can be made • requiring complainants who want a review to provide an argument for one – eg to tell the agency how it has erred or provide new information – and, if they don't, their file will remain closed

Table 1. Management strategies cont'd

Conduct category	Unreasonable conduct (trigger)	Management strategies
Unreasonable persistence cont'd	<ul style="list-style-type: none"> • persisting in wanting to know where to go next, when it has been explained that there is nowhere else to go • demanding a review because it is available, but not arguing a case for a review • making an issue out of anything • getting gratification from the process of regular contact with the case officer, possibly including inventing unnecessary reasons for having such contact. 	<ul style="list-style-type: none"> • providing one review only • maintaining a 'no means no' stance following review • adopting, when appropriate, a firm no-further-correspondence or contact stance and requiring any variation from this to be authorised at a high level • not allowing complainants to reframe the complaint to re-enter the process, unless they raise new and important issues • ending telephone calls that are unproductive • asserting the agency's position – eg 'I acknowledge that your view is ..., we see it differently', or 'I acknowledge that your view differs from ours, however, our job is to make a decision about ... and this is what we have decided' • making it clear that our decision is final and, for better or worse, we have made our decision. <p>Managing unreasonable persistence also includes:</p> <ul style="list-style-type: none"> • managing expectations from the beginning, including ensuring initial expectations are realistic • adopting a firm and authoritative communication style both in writing and verbally • defining key issues and keeping the focus on them.
Unreasonable demands	<p>Unreasonable demands include:</p> <ul style="list-style-type: none"> • insisting on outcomes that are unattainable • insisting on a 'moral' outcome – eg justice in the community interest, when really a personal interest is at stake • demanding an apology or compensation when no reasonable basis for expecting such outcomes exists 	<p>Strategies for dealing with unreasonable demands are about setting limits. They include:</p> <ul style="list-style-type: none"> • letting complainants know in advance how the agency intends to deal with the complaint – having a plan and sticking to it • making sure the complainant is clear that the agency decide how the complaint should be handled

Table 1 Management strategies cont'd

Conduct category	Unreasonable conduct (trigger)	Management strategies
Unreasonable demands cont'd	<ul style="list-style-type: none"> • wanting revenge, retribution • wanting what is not possible or appropriate – eg copies of sensitive documents, names and contact details of staff, other complainants or whistleblowers • issuing instructions and making demands about how a complaint should be handled • providing supporting details that are extraordinarily detailed when such detail is not relevant to the complaint • making unreasonable resource demands, out of proportion to the seriousness of the issue • wanting regular and lengthy phone contact where this is not warranted • showing reactions or demand for action that are out of proportion to the significance of the issue • moving the goal posts – changing the desired outcome • shopping for a sympathetic ear in the agency – demanding to talk to a supervisor or the manager personally • placing the agency on an extensive email copy list and expecting responses to these emails • consistently creating complexity where there is none • presenting as overly needy or dependent – eg wanting to transfer responsibility for their wellbeing to the complaint handler or agency. 	<ul style="list-style-type: none"> • clarifying the limitations of the particular complaint handling system • avoiding being drawn into hypothesising, catastrophising, conspiracy theories, unproductive argument and personal attacks more generally • restricting contact to defined times and staff members where necessary • responding only to emails and mail addressed to the agency directly – not responding to mail where the agency is copied in • ending telephone calls that are unproductive • limiting contact to writing only • not doing for unreasonably demanding complainants something the agency would not normally do for any other complainant, just to appease them • as a last resort, informing the complainant that the agency finds their interactions unreasonably demanding and setting defined limits for further contact. <p data-bbox="879 1375 1254 1435">Managing unreasonable demands also includes:</p> <ul style="list-style-type: none"> • managing expectations from the beginning, including ensuring initial expectations are realistic • adopting a firm and authoritative communication style both in writing and verbally • defining key issues and keeping the focus on them.

Table 1. Management strategies cont'd

Conduct category	Unreasonable conduct (trigger)	Management strategies
Unreasonable lack of cooperation	<p>Unreasonable lack of cooperation includes:</p> <ul style="list-style-type: none"> • presenting a large quantity of information which is not organised, sorted, classified, summarised, where the complainant is clearly capable of doing this • presenting information in dribs and drabs – refusing to present all information at the outset • refusing to define issues of complaint – ‘the attached (usually a large amount of information) speaks for itself’ – where the complainant is clearly capable of doing this • focusing on principles rather than substantive issues • changing the complaint and raising new issues while the complaint is in the process of being considered • displaying unhelpful behaviour – eg withholding information, being dishonest, misquoting others, swamping the agency with documents. 	<p>Strategies for dealing with unreasonable lack of cooperation are about setting conditions. They include:</p> <ul style="list-style-type: none"> • requiring complainants to organise or summarise the information they have provided before the agency will look at the complaint (where they are capable of doing this) • requiring complainants to define what their issues are or to pursue further inquiries before the agency will look at the complaint • telling complainants that the agency will not look at their complaint until all the information has been presented • ending the agency's involvement in the complaint if it is discovered that the complainant has been willfully misleading or untruthful in a significant way. <p>Managing unreasonable lack of cooperation also includes:</p> <ul style="list-style-type: none"> • managing expectations from the beginning, including ensuring initial expectations are realistic • adopting a firm and authoritative communication style both in writing and verbally • defining key issues and keeping the focus on them.

Table 1. Management strategies cont'd

Conduct category	Unreasonable conduct (trigger)	Management strategies
Unreasonable arguments	<p>Unreasonable arguments include:</p> <ul style="list-style-type: none"> • holding irrational beliefs – eg seeing cause and effect links where there are clearly none • holding what is clearly a conspiracy theory unsupported by any evidence • interpreting facts in a clearly irrational/unreasonable way and insisting this interpretation is the correct one. • arguing the clearly bizarre • insisting on the importance of an issue that is clearly trivial. 	<p>The strategy for dealing with unreasonable arguments in complaints is primarily about declining or discontinuing the agency's involvement.</p> <p>These complaints need to be declined at the beginning, or discontinued as soon as it becomes clear that the complaint is groundless.</p> <p>Alternatively, if unreasonable arguments are mixed with reasonable arguments, the strategy should be to refuse to deal with the unreasonable portion.</p> <p>This category of conduct is often associated with mental illness.</p> <p>See also 4.4 Script ideas for dealing with unreasonable demands and persistence.</p>
Unreasonable behaviour	<p>Unreasonable behaviour includes:</p> <ul style="list-style-type: none"> • displaying confronting behaviour – eg rudeness, aggression, threats or harassment • sending rude, confronting or threatening letters • making threats of self harm • making threats of harm to others • displaying manipulative behaviour – overly ingratiating, tears or veiled threats. 	<p>The strategies for dealing with unreasonable behaviour are primarily about 'saying no' to unacceptable behaviours, and setting limits and conditions for future interactions.</p> <p>Overt anger, aggression and threats in person, on the phone or in writing are never acceptable. Dealing with these includes having risk management protocols in place.</p> <p>Also:</p> <ul style="list-style-type: none"> • Return letters framed in rude and intemperate language and request that the complainant reframe their concerns in more moderate language. • Point out that more moderate language is clearer and therefore more likely to achieve better outcomes. • End telephone calls and interviews if the complainant becomes abusive and confronting. <p>See also 4.4 Script ideas for dealing with unreasonable demands and persistence.</p>

Attachment 2 :Form for recording service restriction/access

No	Complainant Name	Form of restriction	Date of restriction decision	Specific directions relating to restriction	Date complainant advised and relevant objective ID	Date restriction reviewed	Outcome of review	Date restriction removed
1.	Ms James	<i>eg correspondence or phone calls</i>	10 Nov 2036	<i>Eg correspondence will be received, read and filed but not acknowledged Or No phone calls will be accepted re certain matters</i>	10 Nov 2036 A299999	14 Apr 2037	<i>Eg restriction on correspondence to remain in place</i>	N/A

Section Three

Procedures for Managing Public Interest Disclosures About Local Government Authorities

Section Three – Procedures for Managing Public Interest Disclosures About Local Government Authorities

Who can make a public interest disclosure to the Division?

For a disclosure to be afforded the protections under the Public Interest Disclosures Act (PID Act) it must be made by a public official as defined by section 4A of the PID Act.

When a complaint is received that is identified by the complainant as one being made under the PID Act, it should be verified that the complainant is a public official. A disclosure made while the person was a public official is protected by the Act even if the person is no longer a public official.

What can disclosures be made about?

Public officials can make disclosures to the Division about corrupt conduct, maladministration, serious and substantial waste of local government money, government information contravention or local government pecuniary interest contravention. For disclosures to be protected by the PID Act they must be made voluntarily (section 9 of the PID Act).

The person making the disclosure must disclose information that the person honestly believes, on reasonable grounds, shows or tends to show the above concerns.

Public interest disclosures assessment

The following checklist will assist in assessing whether or not a complaint may be a public interest disclosure:

1. Is the complainant a public official? (section 8 PID Act).
2. Has the disclosure been made in the right way? – i.e is it to the Director General, Department of Premier and Cabinet or the Chief Executive (section 12B PID Act) (only under certain circumstances can disclosures be made to the Minister or MPs).
3. Is the disclosure about a local government authority (council, county council), a delegate of a local government authority, a councillor, a member of a county council or a member of staff of a local government authority?
4. Does the disclosure show or tend to show any of the following:
 - a. Corrupt conduct
 - b. Maladministration
 - c. Serious and substantial waste of local government money
 - d. Government information contravention
 - e. Local government pecuniary interest contravention.
5. Is the disclosure based on an honest belief on reasonable grounds that the information shows or tends to show the wrongdoing? (section 12B PID Act)

6. Is the disclosure not primarily questioning the merits of government policy? (section 17 PID Act)
7. Is the disclosure not made substantially to avoid dismissal or disciplinary action? (section 18 PID Act)

See definition of corrupt conduct in section 1 of these Procedures.

Maladministration is defined as:

action or inaction of a serious nature that is:

- (a) contrary to law, or*
- (b) unreasonable, unjust, oppressive or improperly discriminatory, or*
- (c) based wholly or partly on improper motives.*

If the answer is yes to these questions above, then the matter is likely to be a disclosure. Any complaint that we receive from a public official where we are unsure if it meets elements 4, 5, 6 and 7 of the above assessment, but that we decide to make preliminary enquiries into, should be categorised as a public interest disclosure

A person does not need to specifically state that the matter is a public interest disclosure. Conversely, because a person says that the matter is a disclosure does not mean that it is.

If the assessment officer is unclear as to whether the matter the subject of the complaint meets the definitions of corrupt conduct and maladministration, the matter should be categorised as a public interest disclosure and this can be reviewed when it is allocated to the relevant officer to manage.

From time to time the Division receives a complaint from a public official that shows or tends to show any of the above concerns but the public official has not requested the matter be dealt with as a public interest disclosure. If the matter meets the above criteria then it should be assessed as a disclosure, the officer dealing with the matter will verify with the complainant as to whether he/she wishes the complaint to be dealt with as a public interest disclosure.

An example of a disclosure that the Division is likely to receive frequently is a pecuniary interest allegation lodged with the Division by the general manager of a council.

Who deals with external disclosures in the Division?

Once assessed, all external public interest disclosures are allocated to the Investigations Team. The Investigations Team is responsible for managing the disclosure in accordance with the PID Act. Where matters are then allocated to other Teams because the nature of the matter requires another Team to respond, the Investigations Team will provide support and assistance.

Obligations for managing external public interest disclosures

Confidentiality

Section 22 of the PID Act places specific obligations on officers managing disclosures and must not disclose information that might identify or tend to identify the person who has made the disclosure unless:

- the person has consented in writing to the disclosure of that information or it is generally known that the person has made the disclosure because the person has voluntarily identified themselves,
- it is essential, having regard to the principles of natural justice, that the information be disclosed to a person whom the information provided in the disclosure may concern,
- the officer managing the disclosure is of the opinion that disclosure of the information is necessary to investigate the matter effectively or is otherwise in the public interest.

Timeframes

Officers managing disclosures made in accordance with the PID Act should endeavour to meet the timeframes set down for dealing with the Division's complaints (*as per Section One*).

The PID Act requires that the Division must notify the person who made the disclosure within 6 months of the disclosure being made of the action taken or proposed to be taken in respect of the disclosure. However, the Division's general complaint handling procedures for managing complaints about the local government sector apply to complaints made as disclosures under the PID Act. Where necessary, interim responses should be sent or telephone calls made to keep the complainant apprised of action.

Referral of disclosures to another investigating authority

There may be occasions where it will be necessary to refer the disclosure to another investigating authority or to a public official or public authority considered to be appropriate in the circumstances for investigation or other action (Part 4 of the PID Act). The Division must refer such a disclosure if it is not authorised to investigate the matter concerned under the *Local Government Act 1993* (eg corruption, fraud).

A referral can be made before or after the matter is investigated and whether or not any investigation is complete.

A misdirected disclosure can be referred to the appropriate investigating authority, public official or public authority in accordance with Part 4 of the PID Act. A misdirected disclosure is one where the public official making the disclosure honestly believed the disclosure was made to the appropriate authority.

Section 25 of the PID Act provides circumstances where arrangements can be made between investigating authorities for managing each referred disclosure.

A referral cannot be made to another investigating authority, public official or public authority except after taking into consideration the views of the authority, public official or public authority (section 25 of the PID Act).

If a matter is to be referred to another body, including a local council, then contact should be made with the relevant person at that body to advise of the intention to refer and to seek their views. A referral made in accordance with section 25 of the PID Act ensures that the protections under the Act are afforded to the referred disclosure.