

PART 12 UNREASONABLE COMPLAINANT CONDUCT¹

Refer: *Ombudsman Act 1972 (Ombudsman Act)*
Freedom of Information Act 1991 (FOI Act)
Managing unreasonable complainant conduct Practice Manual, 2009
AGD Accident/Incident reporting & hazard management policy
AGD OHS&W Occupational violence policy

1. COMPLAINANT BEHAVIOUR

- On occasion, complainants can act in ways which:
 - are unreasonably persistent
 - involve unreasonable demands
 - exhibit a lack of cooperation
 - demonstrate unreasonable arguments.
- Ombudsman SA recognises that all members of the public have the right to access Ombudsman SA and to have their approach considered objectively, impartially and professionally.
- Ombudsman SA acknowledges that the nature or the method of a complainant's approach should not influence the Ombudsman's consideration of the issues he or she raises. However, staff of Ombudsman SA do not have to tolerate abuse, threats or aggression.

2. THE IMPORTANCE OF MANAGING UNREASONABLE CONDUCT

To ensure equity and fairness:

- Ombudsman SA is accountable for the use of its resources
- resources must be allocated fairly according to the substance and seriousness of the issue.

To improve efficiency:

- unreasonable conduct by a complainant can result in a large drain in the complaint handling resources of Ombudsman SA
- unreasonable complainant conduct must be managed to improve efficiency in the use of Ombudsman SA's resources.

To ensure health and safety:

- Ombudsman SA has an obligation to provide staff with a safe workplace.

3. EXPECTATIONS OF COMPLAINANTS' CONDUCT

When members of the public approach Ombudsman SA it is expected that they will treat staff with respect and courtesy and will adhere to the following standards:

- speak politely and with courtesy
- not make threats
- refrain from abusive language

¹ Note: This policy also applies to applicants and other parties in relation to external reviews under the FOI Act.

This policy is a guide only. Staff must always refer to relevant legislation.

- not act aggressively
- provide all reasonable and relevant information about their complaint
- limit contact to reasonable and required communications.

4. EXPECTATIONS OF CONDUCT OF STAFF OF OMBUDSMAN SA

Ombudsman SA has the right to decide how to deal with a complaint. This includes:

- making decisions on whether the issue/s will be investigated
- who will conduct the investigation
- the time and resources that will be allocated to the complaint
- the assistance the complainant needs to provide
- how the complaint will be resolved.

However, staff of Ombudsman SA are expected to:

- treat all complainants fairly and with respect
- demonstrate impartiality
- act professionally
- remain calm
- show respect for all complainants
- keep the complainant informed of the progress of their complaint.

If staff of Ombudsman SA do not meet a complainant's expectations:

- The complainant will not be automatically given access to the Deputy Ombudsman or the Ombudsman. Staff should attempt to deal with the complainant using the powers that have been delegated to them by the Ombudsman.
- However, if complainants continue to express dissatisfaction with a staff member they are to be referred to the Deputy Ombudsman (not the Ombudsman).

5. PREVENTING UNREASONABLE CONDUCT

It is important that all complaints to Ombudsman SA be managed well from the outset to minimise:

- delays
- misunderstandings
- unrealistic expectations.

Clear communication with complainants is the key to managing their expectations and minimising unreasonable conduct. Staff of Ombudsman SA should ensure that complainants understand what Ombudsman SA can and cannot do, for example by:

- giving complainants as much relevant and accurate information as possible
- explaining the role of Ombudsman SA
- explaining how the complaint will be handled
- informing the complainant of the anticipated timeframe
- explaining any further action or information required by the complainant
- keeping the complainant informed of the progress of their complaint
- informing the complainant of the possible outcomes.

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6. MANAGING UNREASONABLE COMPLAINANT CONDUCT

Despite implementing prevention practices, there will be instances where complainants are unreasonable in their conduct.

Ombudsman SA staff should manage unreasonable complainant conduct in accordance with the following table.

Types of conduct	Examples of complainant conduct	Strategies for dealing with conduct
Unreasonable persistence	<ul style="list-style-type: none"> • refusing to accept that a complaint is closed • continuing to phone or contact after a matter is closed • re-framing an old complaint • being unable to accept the final decision • persisting in interpreting the policy or the law in a way that is not in accordance with the accepted views on the subject 	<ul style="list-style-type: none"> • be prepared to say 'no' • it may be appropriate to advise the complainant that the issue will not be investigated further • clearly communicate if an unproductive telephone call is to be ended • provide one internal review only • adopt, when appropriate, a firm position of no further contact or correspondence • do not allow the complainant to re-frame the complaint to keep the matter alive unless there are significant new issues • make it clear that the decision of Ombudsman SA is final or in the case of external reviews under the FOI Act advise the complainant of their appeal rights
Unreasonable demands	<ul style="list-style-type: none"> • insisting on outcomes that are unattainable or not possible • demanding assistance with issues that are out of the Ombudsman's jurisdiction • demanding a remedy that is impractical, disproportionate or unavailable • insisting that more time be taken on the matter than is justifiable • wanting revenge • making unreasonable demands on the resources of Ombudsman SA • wanting unreasonable regular and lengthy contact with Ombudsman SA staff 	<ul style="list-style-type: none"> • set limits on what will be done ie what issues will be investigated, by whom, how communication will happen etc • be clear with complainant in advance what Ombudsman SA will do, and the limits • end telephone calls that are unproductive, with a warning • may need to limit contact to in writing only

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	<ul style="list-style-type: none"> • showing reactions or demanding action that is out of proportion with the significance of the issue 	
Unreasonable lack of cooperation	<ul style="list-style-type: none"> • poor or confused definition of the complaint • providing a large quantity of unnecessary material / information • unhelpful behaviour • failing to provide requested information or documents within the given timeframe • dishonestly presenting the facts • constantly re-defining a complaint • focusing on principles rather than substantive issues 	<ul style="list-style-type: none"> • staff need to set limits before proceeding with the matter • require complainants to clarify and summarise information they have provided before proceeding with the matter • require complainants to clearly define what their issues are before the complaint will be looked at • refuse to deal with the matter if it is found that the complainant has been wilfully misleading or untruthful in a significant way
Unreasonable arguments	<ul style="list-style-type: none"> • exaggerating issues • holding irrational beliefs • refusing to consider the other side • being obsessed with irrelevant or trivial points • having a conspiracy theory that is not supported by any evidence 	<ul style="list-style-type: none"> • decline or discontinue the matter • if unreasonable issues are mixed with reasonable issues, ensure that they are clearly identified and separated and only deal with the reasonable ones
Unreasonable behaviour	<ul style="list-style-type: none"> • displaying confronting behaviour • being rude • being aggressive • making threats of self harm • making threats of harm / violence to others 	<ul style="list-style-type: none"> • staff will not tolerate unreasonable behaviour • complainant is to be told that threats are unacceptable and may be reported to police • rude correspondence will not be responded to. Complainant is asked to reframe their complaint in more moderate terms • if a complainant is behaving unreasonably in a telephone conversation he or she should be warned that their conduct is unacceptable and that if the behaviour persists the call will be terminated • telephone calls are to be ended if the complainant continues to behave unreasonably after being warned. The Deputy Ombudsman is to be advised of this action.

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7. LIMITING OR WITHDRAWING A COMPLAINANT'S ACCESS TO OMBUDSMAN SA

If a complainant's unreasonable behaviour persists or becomes extreme one of the following steps must be taken:

7.1 Issue the complainant with a final warning outlining expectations and repercussions

- This is to be in writing and is to inform the complainant that their access to Ombudsman SA may be limited or withdrawn if their behaviour continues.
- Warning letters need to be signed off by the Ombudsman or the Deputy Ombudsman.

7.2 Place limitations on the complainant's right to access Ombudsman SA

- The contact may 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 ie the complainant may be directed that he or she can only make contact in writing and not via telephone or in person.
- A decision to limit a complainant's access to Ombudsman SA must be approved by the Ombudsman or the Deputy Ombudsman.
- Any limitations on a complainant's right to approach Ombudsman SA must take into account that person's individual circumstances. For example, a person who is illiterate should not be required to communicate in writing.

7.3 Withdraw a complainant's right to access Ombudsman SA

- It may be appropriate to refuse access to a complainant. The circumstances in which this would be done include where the complainant:
 - is consistently abusive
 - makes threats to staff
 - causes damage to the property of Ombudsman SA
 - intimidates or threatens physical harm to staff or third parties
 - is physically violent
 - produces a weapon.
- A decision to refuse access to a complainant must be approved by the Ombudsman or the Deputy Ombudsman.
- If a person is refused access to Ombudsman SA, alternative contact arrangements may be considered. For example, contact may be possible via an advocate or nominee for the complainant. The Ombudsman or the Deputy Ombudsman will determine when it would be appropriate to consider such arrangements.
- Staff safety will always be the first consideration.

Note:

- A person's access to Ombudsman SA must not be restricted or withdrawn without giving the complainant written notice in their language.
- The written notice is to provide the complainant with clear information about the decision and why it has been made.

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- The written notice should include:
 - a description of the complainant's unacceptable behaviour
 - the consequences of the complainant's behaviour
 - the Ombudsman's directive.
- The written notice is to be approved and signed by the Ombudsman or the Deputy Ombudsman.

8. RESOLVE FLAG/ALERT

When a complainant has behaved unreasonably, the details of their conduct must be recorded on Resolve as follows:

- MATTER ENTRY screen - a description of the complainant's unreasonable conduct should be added under the 'flag' note
- PUBLIC ENTRY screen - a description of the complainant's unreasonable conduct should be added under the 'person alert' note

9. THREAT OF SELF HARM

Where a complainant expresses thoughts of suicide or other self harm the matter should be reported to the Mental Health Triage Service/Assessment and Crisis Intervention Service by telephoning 131 465. If there is any doubt about reporting the matter, the staff member should consult the Ombudsman or the Deputy Ombudsman.