

1. Introduction

- 1.1 The purpose of this Policy aims to guide and assist the District Council of Cleve (the **Council**) in its management of Unreasonable Complainant Conduct.
- 1.2 This Policy establishes a framework for how the Council will respond to customer requests for service and information and, specifically, the approach to be adopted when managing unreasonable requests for service, information and complaints.
- 1.3 The Council:
 - 1.3.1 welcomes complaints as a form of feedback that identify service improvement opportunities;
 - 1.3.2 values integrity, responsible management, fairness and equity as it strives to maintain the highest standards in its dealings with its customers whilst meeting the needs of the community;
 - 1.3.3 promotes responsible management of customer complaints within its resource limitations and, in particular, in working towards resolving ongoing customer concerns or complaints, is mindful of not over-committing resources and funds to the detriment of the community at large;
 - 1.3.4 is committed to identifying, investigating and, where possible, resolving complaints and grievances;
 - 1.3.5 considers that principles of economy, efficiency, effectiveness, fairness, impartiality and responsiveness should underpin its service delivery;
 - 1.3.6 recognises the importance of transparency in decision making and the need to provide a fair and objective procedure for the review of all decisions and services provided; and
 - 1.3.7 has a responsibility to eliminate or reduce risks to mental and physical health and safety in accordance with its Work, Health and Safety Act obligations, which are recognised as fundamental considerations when dealing with unreasonable requests for service, information and complaints.
- 1.4 *The considerations above are of utmost importance in the Council's endeavours to retain the trust, confidence and support of its community and its staff.*

2. Scope

- 2.1 This Policy covers Unreasonable Complainant Conduct across the entirety of Council services and through all communication channels, including but not limited to face to face, telephone, mail, email, letters to the media and social media.
- 2.2 This Policy applies to unreasonable complaints made to the Council except where other mechanisms for appeal or resolution apply, including but not limited to the following:
- 2.2.1 complaints related to competitive neutrality;
 - 2.2.2 allegations of a breach of the conflict of interest obligations by a Councillor or employee – to be referred to the Behavioural Standards for Council Members or the Staff Member Code of Conduct;
 - 2.2.3 access to information
 - 2.2.4 internal staff complaints – to be referred to relevant human resources policies; and/or
 - 2.2.5 any matters before a Court, Tribunal, the South Australian Police, a Minister of the Crown, a South Australian or Federal Government Department, the Office for Public Integrity or the South Australian Ombudsman.
- 2.3 The Council has certain obligations under welfare, health and safety legislation to provide a safe working environment. Council is mindful of the stress that dealing with difficult complainants can place on Council staff.
- 2.4 Management will always provide support to staff when dealing with difficult complainants.
- 2.5 *Nothing in this Policy is intended to prevent a person from lodging a complaint with an external authority (such as SAPOL, the OPI, the Office of Local Government or the Ombudsman).*

3. Legislative and Strategic Framework

3.1 **Local Government Act 1999**

- 3.1.1 section 270 of the Local Government Act 1999 (the Act) requires Council to:
- establish procedures for the internal review of Council decisions; and
 - develop and maintain policies, practices and procedures for dealing with:
 - o any reasonable request for the provision of a service by the Council or for the improvement of a service provided by the Council; or
 - o complaints about the actions of the Council, employees of the Council, or other persons acting on behalf of the Council.

3.1.2 This Policy, in conjunction with the Council's Policy for the Internal Review of Council Decisions, has been adopted in accordance with the Council's obligations under section 270 of the Act. Specifically, this Policy applies in relation to requests for improvement of a service provided by the Council and/or customer complaints about the actions of the Council, its employees or other persons acting on its behalf.

3.2 ***Ombudsman Act 1972***

Establishes the office of the SA Ombudsman who, subject to the Ombudsman Act 1972, is responsible for investigating administrative acts, which includes decisions of the Council and its employees, as well as allegations pertaining to misconduct and maladministration in public administration.

3.3 ***Independent Commissioner Against Corruption Act 2012***

Establishes the office of the ICAC, who is responsible for identifying and investigating allegations of corruption.

4. **Definitions**

4.1 A **Complaint** is made when a customer:

4.1.1 expresses or infers dissatisfaction with the Council's decisions, policies, procedures, charges, employees, agents or the quality of Council services; or

4.1.2 forms and notifies the Council of his/her/its belief that the Council has failed to act upon a request for service within a reasonable timeframe; or

4.1.3 forms and notifies the Council of his/her belief that the conduct of a Council staff member is unsatisfactory.

4.2 **Complaint Resolution** – a complaint is resolved when a customer is satisfied that the Council has made its best attempt to address and resolve the issues raised by the complainant. It is possible that a customer may not be completely satisfied with the outcome, but the complaint is taken to have been resolved where the customer accepts the outcome and does not seek to escalate the complaint any further.

4.3 **Customer** – is a natural or corporate person and includes a ratepayer, resident, visitor to the Council's area or a person who uses a Council service.

4.4 A **Frivolous Complaint** is a complaint that lacks substance or merit, or is otherwise trivial in nature.

4.5 A **Malicious Complaint** is a complaint that is motivated by improper, vicious, or mischievous purposes.

4.6 **Persistent** – a person is persistent if he/she/it refuses to give up or let go of an issue and/or is obstinate and/or continues to raise an issue notwithstanding the Council having reasonably communicated its position to the person in respect of that issue.

4.7 **Internal Review of a Council Decision** - when a customer seeks a review of a decision made by the Council, an employee of the Council, or persons acting on behalf of the Council. These are dealt with in Council's "Internal Review of Council Decisions Policy".

- 4.8 **Unreasonable Complainant Conduct** is any behaviour by a current or former complainant which, because of its nature or frequency, raises substantial health, safety, resource or equity issues for the parties to a complaint. Unreasonable complainant conduct is discussed in greater detail at clause 5.8.
- 4.9 A **Vexatious Complaint** is a complaint that is made to harass, annoy, delay or cause detriment or trouble to the Council or a third party. A complaint may be considered vexatious if:
- 4.9.1 it comprises false allegations, and cannot possibly succeed; or
 - 4.9.2 there is an absence of any reasonable grounds for lodging the complaint; or
 - 4.9.3 the complainant does not have sufficient interest in the matters the subject of the complaint.

5. Policy

5.1 Objectives and Application

The objective of this Policy is to establish clear guidelines and procedures for handling complaints in the interests of improving service delivery and to:

- 5.1.1 improve customer service through effective management of complaints;
- 5.1.2 facilitate the resolution of complaints in a timely manner;
- 5.1.3 ensure that a complainant understands what the Council can and cannot do and will and will not do;
- 5.1.4 ensure resolution processes in relation to complaints are equitable, transparent and accountable;
- 5.1.5 require all complaints to be recorded in the Council's Electronic Records System to enable tracking and effective response;
- 5.1.6 prevent the Council's limited resources being utilised towards malicious, frivolous, unreasonable, persistent or vexatious complaints;
- 5.1.7 outline the considerations to be considered in determining whether a complaint is frivolous, malicious or vexatious; and
- 5.1.8 define what constitutes Unreasonable Complainant Conduct, to outline the options available to Council to manage Unreasonable Complainant Conduct and the circumstances in which it is appropriate to implement these options.

5.2 Lodging Complaints and Requests for Service

- 5.2.1 Subject to any written direction to a complainant made in accordance with this Policy, complaints or concerns may be lodged with the Council in the following ways:

EMAIL: council@cleve.sa.gov.au

POSTAL: District Council of Cleve,
PO Box 36,
Cleve SA 5640

IN PERSON: District Council of Cleve,
10 Main Street,
Cleve SA 5640

- 5.2.2 In some cases, it may not be possible for the Council to progress a verbal complaint until the complainant has particularised his/her/its concerns in writing. If this is the case, the complainant will be advised accordingly.
- 5.2.3 If it is obvious from a complaint that the complainant is seeking a review of a decision of the Council the matter will be managed in accordance with Council's Internal Review of Council Decisions Policy.
- 5.2.4 Where the complaint relates to the conduct or behaviour of a staff member, it will be handled by the Chief Executive Officer and may trigger action under the Council HR policies. If the complaint relates to the conduct of the Chief Executive Officer it must be directed to the Mayor.

5.3 Acknowledgement of Complaint

- 5.3.1 Receipt of all complaints will be acknowledged within five (5) calendar days.
- 5.3.2 The staff member responsible for managing the complaint will keep the complainant advised of the status of the complaint and any ensuing investigation process. Wherever possible, the complainant will be advised of the likely timeframe within which complaint will be determined.

5.4 Anonymous Complaints

- 5.4.1 If the complainant is anonymous, the complaint will not be progressed unless it is accompanied by sufficient information to enable the complaint to be investigated and/or sufficient evidence to substantiate the allegations therein.
- 5.4.2 If the complainant is unknown, the Council will not be in a position to advise him/her/it of the progress or the outcome of his/her complaint.

5.5 Record of Complaints

A record of all complaints received by the Council will be made in the Council's Electronic Records System.

5.6 Complaints of a Serious Nature

- 5.6.1 Any complaint that alleges serious or systematic misconduct or maladministration and/or corrupt conduct will be referred to the Ombudsman or to the Office for Public Integrity (OPI) without further consideration by the Council.
- 5.6.2 Complainants may be entitled to protection under the Public Interest Disclosure Act 2018 if there is disclosure of public interest information.

5.7 Malicious, Frivolous or Vexatious Complaints or Requests for Service

- 5.7.1 Following a preliminary assessment of a complaint and any relevant information that is provided, it will be determined whether it is frivolous, vexatious or trivial.

- 5.7.2 A determination that a complaint is frivolous, vexatious or trivial will consider:
- (a) any previous complaints of a similar nature submitted by the complainant
 - (b) the response and outcome to the previous complaints
 - (c) whether this complaint differs to previous complaints on the same matter and to what degree or new evidence has been provided
 - (d) the resources required to address the complaint (to ensure that it is not an unreasonable diversion of resources for little to no public benefit)
 - (e) the principles of equity and procedural fairness.
- 5.7.3 Where the Council determines that a complaint to be frivolous, vexatious or trivial a response will be provided to the complainant in writing after taking into account the individual circumstances of each complaint and providing reasons for the determination.

5.8 Unreasonable Complainant Conduct

- 5.8.1 Occasionally a complainant may engage in Unreasonable Complainant Conduct.
- 5.8.2 A complainant's conduct is unreasonable if it has unacceptable consequences for the Council, the Council officers who may be involved in managing his/her/its complaint(s) and/or any other person.
- 5.8.3 Unreasonable Complainant Conduct includes, but is not limited to:
- (a) Using unreasonable persistence by:
 - (i) persisting with a complaint with the Council even though it has been comprehensively considered and the Council has notified the complainant of and provided reasons for its position in respect of that complaint; and/or
 - (ii) even where all avenues of internal review have been exhausted, showing an inability to accept the Council's decision in respect of the complaint.
 - (b) Making unreasonable demands
 - by insisting on outcomes that are unattainable, (e.g. demanding outcomes that are beyond the Council's power to deliver and/or demanding unreasonable outcomes that the Council is not in a position to deliver). Other examples include insisting on a 'moral' outcome, (e.g. justice in the community interest when, really, a personal interest is at stake) and demanding an apology and/or compensation when no reasonable basis for expecting such an outcome exists.

(c) Using unreasonable arguments

Including by making irrational assertions not based on fact and/or insisting that a particular solution is the only correct one, without consideration for valid contrary or alternative arguments.

(d) Using unreasonable behaviour including by:

- (i) confrontational behaviour that shows a lack of respect for others and otherwise constitutes rude and/or aggressive conduct; or
- (ii) making threats (whether implied or express) or including inappropriate, offensive, or abusive content in or associated with a complaint; or
- (iii) continuing with a complaint which is not supported by any evidence and is unsubstantiated; or
- (iv) making a frivolous or vexatious complaint or a complaint about a matter that is beyond the Council's jurisdiction or outside of the Council's control;
- (v) making excessive demands on Council's resources, including by making frequent and numerous complaints to the Council that are suggestive of a compulsive course of conduct that is, objectively, without basis other than to complain and consume resources; or
- (vi) alleging bias and/or corruption on the part of the Council in connection with his/her complaint to third parties simply because the Council's decision was not what the complainant desired or expected.

(e) Using unreasonable lack of cooperation including by:

- (i) sending excessive amounts of correspondence and large quantities of information which is not organised, sorted, classified or summarised, where the complainant is clearly capable of doing this;
- (ii) displaying unhelpful behaviours (e.g. withholding information, acting dishonestly, misquoting others);
- (iii) refusing to define the issue(s) subject of his/her complaint; and/or
- (iv) remaining resistant to any reasonable explanation that counters the complainant's views.

5.8.4 Unreasonable Complainant Conduct does not arise if a complainant makes a complaint to an external authority.

5.8.5 Where the Council determines that a complainant has engaged in Unreasonable Complainant Conduct it may choose to deal with the complainant in accordance with this Policy.

6. Procedure for Managing Malicious, Frivolous, and/or Vexatious Complaints

- 6.1 If Council or the Chief Executive Officer determines that a request is malicious, frivolous, or vexatious, this is grounds to dismiss the request and to not take any further action in relation to it.
- 6.2 A determination that a request is unreasonable on this basis, must consider:
- 6.2.1 any similar requests previously made by the person (i.e. about the same or similar service, information, or documents);
 - 6.2.2 the response and outcome to previous requests made by the person (if any);
 - 6.2.3 the outcomes sought by the person;
 - 6.2.4 if it is a request for information, the resources required to provide the information (to ensure that it is not an unreasonable diversion of public resources);
 - 6.2.5 if it is a request for service, whether the service is capable of being provided by or is required to be provided by Council. and/or
 - 6.2.6 if applicable, the findings of any independent investigation as initiated in accordance with clause 7.14.
- 6.3 A decision to take no further action in respect of a complaint that is considered to be malicious, frivolous, and/or unreasonable (and the reasons therefore) will be communicated to the complainant in writing.
- 6.4 The person who made the request may seek to review a decision made under clause 6.1 (to take no further action) according to the procedure set out in the Internal Review of Council Decisions Policy.
- 6.5 A person that persists in making the same or similar requests for service will be treated as an unreasonable complainant under this Policy and may be managed and dealt with under the provisions for dealing with Unreasonable Complainant Conduct.

7. Dealing With Unreasonable Complainant Conduct

- 7.1 The Council is entitled to expect that non-Council members/officers who have a complaint will behave in an acceptable manner that demonstrates respect towards Council staff. In certain circumstances the Council may limit communication between the Council and a complainant in relation to complaints. Such limitations may be imposed on a complainant whose behaviour:
- 7.1.1 constitutes Unreasonable Complainant Conduct; or
 - 7.1.2 gives rise to a risk to the safety and/or welfare of Council staff and/or other persons and/or may reasonably be considered to be an excessive drain on Council resources.

- 7.2 Where the Council imposes limitations on a complainant, the Council will notify the complainant in writing, specifying the limits, and the reasons for doing so.
- 7.3 The options available to the Council in imposing limitations upon communication for the purposes of managing Unreasonable Complainant Conduct are set out at clauses 7.5-7.14 below. In deciding to pursue one or more of these options in respect of a complainant, the Council (or the Chief Executive Officer as the case may be) will have regard to the following:
- 7.3.1 the number of complaints made to the Council by the complainant and the period within which they have been made;
 - 7.3.2 the nature of and outcome of any previous complaints made by the complainant to the Council;
 - 7.3.3 the costs incurred by the Council (if any) in having addressed the complaints previously made by the complainant;
 - 7.3.4 principles of equity and procedural fairness; and
 - 7.3.5 any other matters that the Council (or the Chief Executive Officer) considers relevant.
- 7.4 The Council is aware of the legitimate right of members of the public to access Council information under the Freedom of Information Act 1991. Any limitations imposed on a complainant under this Policy will not impede these statutory rights.

7.5 Requiring Communication in Writing

The Council and/or the Chief Executive Officer may:

- 7.5.1 request that a complainant provide all complaints in writing; and/or
- 7.5.2 decline to respond to any further communication from the complainant unless it is in writing.

7.6 Not Replying to Correspondence

- 7.6.1 Where, following a written response to a complaint, the Council receives further complaints from the same complainant that detail the same or substantially similar matters, the Council may inform the complainant that the Council will not provide a substantive response to that or any similar complaints.
- 7.6.2 The Council will always notify the complainant of any alternative recourse that may be available to him/her/it (such as making a complaint to the Ombudsman).

7.7 Unreasonable Telephone Communication

- 7.7.1 In some circumstances it may be appropriate for a Council officer to inform a complainant that they will no longer deal with his/her/its complaints over the telephone, and to terminate the call. This will only occur in exceptional circumstances where the complainant is engaging in unreasonable behaviour as described above.
- 7.7.2 Where a complainant repeatedly telephones a Council employee, or employs insulting, threatening or abusive language, they will be requested to limit their communications to written correspondence and maybe also only to a nominated recipient. This will be communicated to the complainant in writing.

7.8 Limiting all Contact to a Nominated Person

- 7.8.1 Where a complainant is making the same or a substantially similar complaint or multiple complaints to numerous Council officers, the Council or the Chief Executive Officer may nominate a particular officer to deal with the complainant.
- 7.8.2 The Council will notify the complainant in writing of the name and contact details of the officer who will respond to his/her/its complaints, specifying that no other officer will respond to complaints made by the complainant.

7.9 Restrictions Following Repeat Unreasonable Complainant Conduct

- 7.9.1 In addition to implementing any of the options specified above, where a complainant repeatedly engages in Unreasonable Complainant Conduct the Council may:
 - (a) inform the complainant that any further complaints will be acknowledged by the Council without further response unless they detail significant new information or raise new issues which in the opinion of the Council warrant action; and/or
 - (b) restrict the times and days that a complaint may be accepted from a complainant by refusing to respond to any complaint from him/her/it that is received outside the times and other than in the manner notified to the complainant.
- 7.9.2 This action will only be taken as a last resort; with the decision taken by the Chief Executive Officer after all other avenues have been exhausted, and where the complainant is making unacceptable demands on the Council's complaint handling resources.

7.10 Seeking Legal Advice

In some instances, it may be appropriate for Council to seek legal advice with respect to the implications of a suspected malicious, frivolous and/or vexatious complaint and/or regarding Unreasonable Complainant Conduct. A decision to seek legal advice will be made by the Chief Executive Officer.

7.11 Notice Before Action

Before pursuing action in relation to a complainant, the Council will write to the complainant to notify him/her of the action that the Council proposes to take and the reasons why and will invite comments from the complainant within a specified period (that is not less than seven (7) days) to show cause why such action should not be taken. The Council will take any relevant comments provided by the complainant into account before determining whether to proceed with the proposed or any action.

7.12 Review of Action

7.12.1 Where a decision is made to pursue action in relation to a complainant, the Council will review the appropriateness of any restrictions imposed on the complainant every 12 months.

7.12.2 If, following a review, the Council considers that the restrictions imposed on the complainant are no longer necessary considering the complainant's conduct in the 12 months prior the Council will:

- (a) Revoke or modify the restrictions; and
- (b) notify the complainant of its decision in writing accordingly.

7.13 Warning to Complainant

Following the first occasion that a customer engages in Unreasonable Complainant Conduct, wherever practicable, the Council will:

7.13.1 notify the customer (either verbally or in writing, depending on the circumstances) that his/her conduct constitutes Unreasonable Complainant Conduct under this Policy;

7.13.2 depending on the circumstances, either provide the Customer with a copy of this Policy or refer him/her/it to the Policy on the Council's website; and

7.13.3 notify the customer either verbally or in writing, depending on the circumstances) that the Council may deal with his/her/its Unreasonable Complainant Conduct in accordance with this Policy including, in the case of repeat Unreasonable Complainant Conduct, by restricting access to the Council for the purposes of making complaints.

7.14 Independent Investigation

7.14.1 Where appropriate, the Council can initiate an independent investigation into the conduct of an individual for the purpose of aiding the Council in

determining whether the conduct is malicious, frivolous, unreasonable or vexatious.

7.14.2 Where the Council initiates an independent investigation as approved by the Chief Executive Officer, the Council will:

- (a) seek to limit the cost of the investigation to the extent that is reasonably possible.
- (b) consider the findings of the investigation in determining whether to classify the conduct the subject of the investigation as malicious, frivolous, unreasonable or vexatious in accordance with this Policy; and
- (c) consider the privacy and confidentiality provision in clause 8.3 when dealing with the findings of the independent investigation, including, for example, when distributing them to any external authorities as may be necessary.

8 Privacy and Confidentiality

- 8.1 Complainants have a right to expect that their complaint will be investigated in private and the Council will ensure that confidentiality is maintained in respect of complaints it receives wherever appropriate and possible. The identity of a complainant who is being considered for Unreasonable Complainant Conduct will be made known only to those who need to know in the process of investigating and resolving the complaint. The complaint will not be disclosed or made public by the Council, except where required by law.
- 8.2 Complaints that are considered by the Council may be considered in confidence subject to the Council being satisfied that there are grounds for confidentiality under section 90(3) of the Local Government Act 1999 that should, in the circumstances, be utilised by the Council.
- 8.3 All complaints lodged with Council are subject to the Freedom of Information Act 1991 and confidentiality cannot be guaranteed under the provisions of that legislation. A complainant will be consulted with if a Freedom of Information application involves documents that are capturing matters of their personal affairs (as defined by the FOI Act).
- 8.4 Complaints that have arisen from or are managed via the Public Interest Disclosure Act 2018, will be managed in accordance with the privacy and confidentiality provisions of that Act.

9. Further Information

This policy is available for inspection at the District Council of Cleve principal office, 10 Main Street, Cleve SA 5640 during ordinary business hours upon payment of the fee fixed by Council in accordance with Council's Fees & Charges. It is also available to be downloaded, free of charge, from Council's Website www.cleve.sa.gov.au

Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.

Responsible Department/Officer	Chief Executive Officer
Applicable Legislation	See Section 3 of this policy
Related Policies	Customer Complaints Policy
Related Procedures	See Section 6 of this policy

10. Policy/Document Review

This Policy/Document will be reviewed by the District Council of Cleve at a minimum every four (4) years. Council has the right to review this policy at any time, if considered desirable.

11. Document History

Version	Adopted	Description of Change
1.0	17 September 2024	New Policy