

### Unreasonable Complainant Conduct Policy RTI, Privacy and Complaints Management Legal, Information Access and Prosecutions Corporate Division

### 25 November 2024

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# Acknowledgements

The Department of Transport and Main Roads is committed to respecting, protecting, and promoting human rights within our decision-making and actions. Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights; therefore, we want to continue promoting respect for human rights and freedoms, enhance access to services and supports, and lead changes to improve the lives of Aboriginal and Torres Strait Islander Queenslanders.

As part of this commitment, we want to acknowledge and display our connections with First Nations Australians which builds respect and helps us develop policies, services and programs that reflect the diversity in our communities and the needs of our customers.

## TMR Artwork – ‘Travelling’ by Gilimbaa



Meandering pathways wind their way across the land to the sea, opening up country and connecting people. Trade lines are established, knowledge is gained, and new ways of learning and living are passed on to the next generation. We live together in understanding, sharing our cultures, our customs and stories.

The TMR artwork “Travelling” essentially reads as a “road map” of the State of Queensland. Orientated to portrait format with the Rainbow Serpent facing upwards, this artwork explores both the cultural and geographical landscape of Aboriginal and Torres Strait Islander Peoples in Queensland.

Beginning from the bottom of the artwork the Rainbow Serpent slowly meanders its way northwards creating and forming the landscape. The bold red rectangular motifs represent the built up urban city-scape of the South-East Queensland region. The bright golden dotted strip is indicative of our beautiful coastline and magnificent beaches.

Moving out west over the great divide into dry arid country then up into River country before being engulfed by the Rainforest region of the Cape. Finally arriving at the tip of Queensland to the pristine turquoise waters of the Torres Strait Islands.

The TMR artwork is Connecting Queensland.

We pay our respects to the Aboriginal peoples and Torres Strait Islander peoples of this land, their spirits and their legacy.

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# Purpose

The Department of Transport and Main Roads’ (the department) has an obligation to implement an Unreasonable Complainant Conduct Policy (this policy) which:

* outlines the behaviour expected of staff and complainants, as guided by the Australian Standard 10002:2022, *Guidelines for complaint management in* organizations (the standard).
* provides a clear and proactive approach to managing unreasonable complainant conduct (UCC) which ensures the health, safety and well-being of staff while enabling complaints to be productively resolved, as guided by the Queensland Public Service [*Customer Complaint Management Framework*](https://www.forgov.qld.gov.au/__data/assets/pdf_file/0032/405788/Queensland-Public-Service-Customer-Complaint-Management-Framework.pdf) and [*Customer Complaint Management Guideline*](https://www.forgov.qld.gov.au/employment-policy-career-and-wellbeing/directives-policies-circulars-and-guidelines/queensland-public-service-customer-complaint-management-guideline).

# Policy statement

We are committed to being accessible and responsive to our customers. We place customers at the heart of everything we do. At times, our staff may encounter UCC when handling customer complaints.

This policy provides guidance on preventing, responding to, and managing UCC to support us to:

* do our work in the most effective and efficient ways possible.
* allocate our resources fairly across all the complaints we receive.
* safeguard the health, safety, and well-being of our staff.

# Objectives

Our staff and members of the public have a right to respect, in addition to physical and emotional safety. We’re committed to promoting, respecting, and protecting human rights.

If a complainant’s conduct is categorised as unreasonable, we uphold our responsibility to take reasonable and proportionate steps to manage and limit the impact of any UCC.

This policy will support our staff to better manage UCC, ensuring they feel confident and supported to take action.

# Scope

UCC is any behaviour from a customer making a complaint, which, because of its nature or frequency, raises substantial health, safety, resource, or equity issues.

There are five categories of UCC:

* Unreasonable persistence.
* Unreasonable demands.
* Unreasonable lack of cooperation.
* Unreasonable arguments.
* Unreasonable behaviour.

| **Category** | **Examples** |
| --- | --- |
| Unreasonable  **persistence** | * Refusing to accept a final decision even though the complaint has been dealt with to finality. * Inflexibly persevering with an issue by continuing to contact us. * Re-framing an old complaint without providing reasonable. grounds or substantively new and relevant information. |
| **Unreasonable demands** | * Raising issues outside our responsibility, after being advised that the issues exist outside of our remit. * Asking for outcomes that are unattainable or disproportionate to the issue. * Requesting actions that are inappropriate. * Demanding for the complaint to be dealt with in a particular way. |
| **Unreasonable** **lack of cooperation** | * Providing disorganised information. * Providing excessive information. * Providing irrelevant information. * Refusing to provide key documents. * Refusing to define the issues of the complaint. * Dishonestly presenting the facts. * Being unwilling to consider other valid viewpoints. |
| **Unreasonable ​arguments** | * Exaggerating issues. * Seeing cause and effect arguments where there are clearly none. * Expressing conspiracy theories or irrational beliefs. * Raising issues which lack merit and are unsupported by evidence. * Irrationally interpreting facts or laws and refusing to accept other more reasonable interpretations. |
| **Unreasonable behaviours** | * Abusive or violent actions or comments. * Offensive actions, gestures or comments. * Harassing behaviours. * Manipulative behaviours. * Threats towards staff, property, the department, other members of the public or self-harm. |

# Benefits

This policy empowers staff to proactively prevent, identify and appropriately manage UCC when handling customer complaints.

It aims to help staff:

* feel confident and supported in taking action to manage UCC.
* act fairly, consistently, honestly, and appropriately when responding to UCC.
* understand their roles and responsibilities when responding to UCC.
* understand the criteria we will consider before we decide to change or restrict a complainant’s access to our services.
* understand how to record and report UCC incidents.
* understand the process for notifying complainants about any proposed action or decision to change or restrict their access to our services.
* understand the process for reviewing decisions made under this policy.

# Applicability

This policy applies to:

* all staff including temporary and permanent employees, consultants, contractors, students, or any other person who provides us with services on a paid or voluntary basis.
* customer complaints that involve UCC. All other customer complaints should be handled using the department’s *Complaints Management Policy*.
* all services provided by the department, covering all communication channels, including but not limited to, face to face, telephone, email, mail, web enquiries, and social media.

Compliance with this policy is **mandatory.**

# Authority

Section 264 of the [*Public Sector Act 2022*](https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2022-034) requires us to establish and implement a system for dealing with customer complaints and comply with the Standard*.*

The Standard and the Queensland Public Service [*Customer Complaint Management Guideline*](https://www.forgov.qld.gov.au/employment-policy-career-and-wellbeing/directives-policies-circulars-and-guidelines/queensland-public-service-customer-complaint-management-guideline) requires us to implement this Policy.

## Accountability

The Director-General, as chief executive, is accountable for ensuring that the department complies with these requirements.

# Responsibility

## Functional responsibility

The Chief Legal Officer, Legal, Information Access and Prosecutions Branch is our nominated Complaints Management Manager under the Standard and our complaints management champion.

They have delegated authority to approve any significant changes to the complaints management framework, including the implementation of this policy.

## All staff

All staff are responsible for familiarising themselves with this policy. They are also encouraged to explain the contents of this policy to complainants, particularly those who engage in UCC or exhibit the early warning signs of UCC.

When responding to UCC, staff should:

* focus on the observable conduct, not the individual.
* take action that is proportionate and appropriate to the situation.
* give proper consideration to human rights.
* record and report any UCC incidents to an Authorised Officer, using Part A and Part C (as needed) of the *Unreasonable Complainant Conduct Form*.

## Authorised Officer

An Authorised Officer, in consultation with relevant staff, has the responsibility and authority to:

* identify and categorise UCC.
* approve a complaint response, UCC warning letter or UCC notification letter.
* approve a plan to manage UCC.

When deciding to change or restrict a complainant’s access, they will aim to:

* impose any service changes or restrictions in the least restrictive way possible, and only as a last resort.
* keep at least one open line of communication with a complainant, unless there are extreme situations which warrants all forms of contact to be restricted for a time to ensure the health, safety, and security of our staff or third parties.

They are also responsible for recording, monitoring, and reviewing all cases where this policy is applied using Part B and Parts D to F (as needed) ofthe *Unreasonable Complainant Conduct Form*.

## Managers and supervisors

All Managers and Supervisors, who may also be Authorised Officers, are responsible for:

* supporting staff to apply this policy and the strategies outlined in the department’s internal UCC procedures.
* ensuring staff are appropriately trained to deal with UCC.
* providing any staff affected by UCC with the opportunity to debrief, formally or informally.
* providing any staff affected by UCC with proper support and assistance, such as through programs like the Employee Assistance Program or medical or police assistance if needed.

## Internal Review Officer

An Internal Review Officer, who may also be an Authorised Officer, has the responsibility and authority to conduct an internal review of the complaint decision or the decision to manage UCC. They will:

* examine, take action on and respond to the grounds of the internal review request.
* conduct a merits review (make a fresh determination and decide what is the correct and/or preferable decision).
* Use judgement or discretion to confirm a previous decision, overturn a previous decision or make a different decision.

The Internal Review Officer has responsibility for recording, monitoring, and completing the internal review using Part G of the *Unreasonable Complainant Conduct Form.*

# UCC model

We have a three-tier model for handling UCC.

| **Level 1: Prevent UCC** |
| --- |
| We make every reasonable and possible effort to proactively eliminate any potential barriers for customers and provide assistance, where required. This reduces the likelihood of UCC occurring when a customer is lodging a complaint or going through the complaints management process. |
| We also aim to:   * ensure our services meet a diverse range of needs and preferences. * provide clear and regular communication, such as an acknowledgement. response and provide progress update(s) if needed. * treat customers fairly and with respect. * communicate using plain English. * provide clear advice about what we can and can't do. |

| **Level 2: Respond to UCC** |
| --- |
| We are committed to empowering staff to act promptly and proactively at the early signs of UCC. We recognise that despite practising good complaint handling techniques, there may be instances where it may be necessary for staff to use short-term actions as an initial response to diffuse or de-escalate UCC. |
| This could include:   * asking the customer to change their behaviour. * providing a warning then terminating the conversation should behaviour persist. * referring the matter to a manager or supervisor. * the staff member removing themselves from the situation. * suggesting a break and agreeing on a time to restart the conversation. * declining a complaint or requesting it to be re-submitted. * advising that no further assistance can be provided. |

| **Level 3: Manage UCC** |
| --- |
| We may encounter situations where the use of short-term actions does not successfully de-escalate UCC, or the conduct poses a significant safety risk to our staff or members of the public.  In these instances, we may manage UCC by changing or restricting the ways that we interact with or provide services to the customer. We will give due consideration to the customer’s human rights and personal circumstances, including but not limited to any relevant regional, literacy, vulnerability and mobility factors to ensure that the measures are not excessively restrictive.  We will appropriately plan and obtain approval from an Authorised Officer before implementing any change or restriction to access. |
| This includes:   * the strategy(s) to manage the customer conduct. * how the plan will be communicated. * the timeframe for the limitations. * how the plan will be monitored. * the review process. |

### Strategies to manage unreasonable complainant conduct

We may implement one or more of the following strategies to change or restrict access to:

* **who the customer can have contact with** – which involves limiting contact to a nominated staff member/s.
* **what the customer can raise with us** – which involves restricting the subject matter of communications that we will consider and respond to.
* **when the customer can have contact** – which involves limiting a customer’s contact with the department to a particular time, day, or length of time, or curbing the frequency of their contact with us.
* **where the customer can make contact** – which involves limiting the location(s) where we will conduct face-to-face contact with a customer to specific facilities or areas of our centres or with particular requirements when accessing our facility or centre.
* **how they can make contact** – which involves limiting or modifying the forms of contact that the customer can have with us. This can include modifying or limiting face-to-face contact, telephone, and written communications, prohibiting access to our premises, contact through a representative only, taking no further action or as a last resort, terminating access to our services altogether.

### How the plan will be communicated

We will advise the customer in writing about:

* what action is being taken.
* the reasons for the decision.
* their responsibilities under the plan.
* their right to request a review or appeal of this decision.

### The timeframe for the restrictions

Every plan to manage UCC will include timeframes for:

* how long the plan will be in place.
* how frequently we will monitor the effectiveness of the plan.
* when we will review the plan.

### How the plan will be monitored

The Authorised Officer who approved the plan, in conjunction with relevant staff, will monitor and assess:​

* **the customer's conduct** – their response to the strategy(s) and any attempts to bypass the specified change or restriction.
* **our staff response** – and successful use of the strategy(s).
* **the level of success**​ – whether the plan has effectively reduced any well-being, safety or resource impacts experienced by staff and/or the general public.

Should the customer continue to engage in UCC after the plan is implemented, the department may increase or extend the restrictions to reduce the risks associated with the behaviour.

### Review process

Any customer whose access is changed or restricted under this policy is entitled to one internal review of the decision.

The review will be undertaken by an Internal Review Officer who was not substantively involved in the original decision and who is at an equivalent or more senior level to the original decision maker.

A customer’s request for an internal review should:

* be made within 20 business days from when the customer received written notification of the plan.
* be made in writing, if possible.
* provide the grounds for the review.
* advise the department of any relevant change in circumstance which may impact a decision to change or restrict access, if applicable.

If a customer is still dissatisfied following the internal review decision, they may seek an external review from an oversight agency, such as the Queensland Ombudsman. The Queensland Ombudsman may accept the review (in accordance with its administrative jurisdiction) to ensure that we have acted fairly and reasonably.

## Legal Mechanisms

In extreme cases of UCC, legal mechanisms may be available to support and protect staff. Legal mechanisms should only be used in situations of apprehended or actual violence, stalking, intimidation, online defamation, or other unlawful conduct by customers against staff members.

Legal mechanisms should not be used to deal with customers who cause staff discomfort or whose behaviour may be difficult for staff members to manage.

# Human rights considerations

The department has given due consideration to the human rights protected under the *Human Rights Act 2019* (the Act) in the development of this policy.

Particular attention has been made to the following sections of the Act:

* Section 15 Recognition and equality before the law
* Section 20 Freedom of thought, conscience, religion and belief
* Section 21 Freedom of expression
* Section 25 Privacy and reputation

As guided by Section 58 of the Act, we will:

* ensure we act and make decisions in a way that is compatible with human rights; and,
* when making a decision, give proper consideration to human rights relevant to the decision.

Part D ofthe *Unreasonable Complainant Conduct Form* supports staff to conduct an assessment for compatibility with human rights under Section 13 of the Act.

# Information privacy considerations

The department is responsible for maintaining records relating to the management and monitoring of UCC incidents.

We protect and manage personal information in line with the *Information Privacy Act 2009.* This includes how we collect, store and use any personal information of our customers and staff.

# Supporting documents

This policy is supported by:

* The department’s *Complaints Management Policy*, internal complaints management procedures, including UCC procedures and local complaints processes.
* The department’s Work Health and Safety Policy.
* The NSW Ombudsman’s Managing Unreasonable Conduct by a Complainant Manual (2021).

# Implementation and review

This policy takes effect on 25 November 2024.

We review this policy at least every three years to ensure it meets business needs and best practice guidelines. If needed, an ad-hoc review outside the scheduled review period is undertaken to evaluate the performance of our complaint management system.

Information used to inform the review may include:

* feedback received from customers, stakeholders, and staff.
* the results of internal or external reviews, audits, or evaluations.
* any changes in policy, legislation, or organisational structure.

# Definitions

The following definitions apply to this policy.

|  |  |
| --- | --- |
| **Term** | **Definition** |
| **Authorised Officer** | Any staff member can be an Authorised Officer, if they have the appropriate authority and expertise in their role to make decisions and take action, such as:   * identify and categorise UCC. * approve a complaint response, UCC warning letter or UCC notification letter. * approve a plan to manage UCC.   Authorised Officers have responsibility for recording, monitoring, and reviewing all cases where this policy is applied using Part B and Parts D to F (as needed) of the *Unreasonable Complainant Conduct Form.* |
| **Complaint** | A complaint is where a customer expresses verbal or written dissatisfaction with (and is apparently directly affected by) a policy, product, project or service provided by the department and/or our staff.  This includes:   * past, current or proposed policies, products, projects or services. * past or current staff, including the customer service provided by staff. * actions or decisions made, including proposing an action, making a recommendation, and failing to take an action or make a decision. |
| **Complaints management system** | All of the policies, procedures, practices, systems, staff and resources used to manage complaints. |
| **Customer** | Any person or organisation who would like to make a complaint. This includes a member of the public, stakeholder, or staff member acting as a member of the community.  A complainant is the customer who makes a complaint. |
| **External review** | Is a process conducted by an independent oversight agency, such as the Queensland Ombudsman who will investigate our handling of a customer's complaint. It's available after the customer has progressed through our complaints process and exhausted their internal right of review. |
| **Human rights** | Refers to the 23 protected human rights in the *Human Rights Act 2019*(Part 2, Divisions 2 and 3). |
| **Internal review** | An internal review is an impartial review of a complaint decision or a decision to manage UCC. It's conducted by a staff member who wasn't substantively involved in the original decision and who is at an equivalent, or more senior level, to the original decision maker.  A nominated Internal Review Officer will conduct a merits review, which involves making a fresh determination and deciding what is the correct and/or preferable decision.  An internal review is not a re-investigation of the original complaint. |
| **Internal Review Officer** | The staff member nominated to conduct an internal review. Any staff member can be an Internal Review Officer.  They should be:   * independent of the original decision maker (have had no substantive dealings with the original complaint or decision). * at an equivalent, or more senior, level than the original decision maker.   They should have the appropriate authority and expertise in their role to:   * examine, take action on and respond to the grounds of the internal review request. * be able to conduct a merits review, which involves making a fresh determination and deciding what is the correct and/or preferable decision. * use judgement or discretion to confirm a previous decision, overturn a previous decision or make a different decision.   The Internal Review Officer has responsibility for recording, monitoring, and completing the internal review using Part G of the *Unreasonable Complainant Conduct Form.* |
| **Merits review** | The process where a staff member makes a fresh determination and decides what is the correct and/or preferable decision.  The staff member can:   * consider any evidence, including information that may not have been available to the original decision maker. * substitute new findings, even if the original findings were correct based on the evidence available at the time. * use their own judgement to apply discretion where appropriate. |
| **Staff member** | A staff member includes all temporary and permanent employees, consultants, contractors, students or any other person who provides us with services on a paid or voluntary basis.  Staff members are responsible for:   * familiarising themselves with this policy. * recording and reporting any UCC incidents to an Authorised Officer, using Part A and Part C (as needed) of the *Unreasonable Complainant Conduct Form.* |
| **Unreasonable arguments** | Unreasonable arguments include any arguments that are not based on any reason or logic, that are incomprehensible, false, or inflammatory, trivial, or delirious, and that disproportionately and unreasonably impact upon our organisation, staff, services, time, or resources. |
| **Unreasonable behaviour** | Unreasonable behaviour is conduct that is unreasonable in all circumstances (regardless of how stressed, angry, or frustrated a complainant is) because it unreasonably compromises the health, safety and security of our staff, other service users or the complainant themselves. |
| **Unreasonable complainant conduct** | Any behaviour from a customer making a complaint, which, because of its nature or frequency, raises substantial health, safety, resource or equity issues for those involved in the complaints process. Examples of UCC includes unreasonable persistence, unreasonable demands, unreasonable lack of cooperation, unreasonable arguments and unreasonable behaviour. |
| **Unreasonable demands** | Unreasonable demands are any demands expressly made by a complainant that have a disproportionate and unreasonable impact on our organisation, staff, services, time, or resources. |
| **Unreasonable lack of cooperation** | Unreasonable lack of cooperation is when a complainant is unwilling or unable to cooperate with us, our staff, or our complaints process – resulting in a disproportionate and unreasonable use of our services, time, or resources. |
| **Unreasonable persistence** | Unreasonable persistence is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on our organisation, staff, services, time, or resources. |

# References

### Legislation

* *Criminal Code Act 1899*
* *Human Rights Act 2019*
* *Information Privacy Act 2009*
* *Occupational Health and Safety Act 2004*
* *Occupational Health and Safety Regulations 2017*
* *Public Sector Act 2022*
* *Work Health and Safety Act 2011*

### New South Wales Ombudsman

* Managing Unreasonable Conduct by a Complainant Manual (2021).

### Queensland Ombudsman

* Managing Unreasonable Complainant Conduct Resource (2023)
* Unreasonable Complainant Conduct Quick Guide (2023).

### Queensland Public Service

* Customer Complaint Management Framework and Guideline (2023)

### Standards Australia

* Guidelines for complaint management in organizations (AS 10002:2022)

### Transport and Main Roads

* Complaints Management Policy
* Recordkeeping Framework
* Risk Management Framework
* Safety and Wellbeing Framework