

Good Practice Guide to Dealing with Challenging Behaviour

Report and Guide

May 2018

**Ordered to be published
Victorian government printer
Session 2014-18
P.P. No. 396**

Accessibility

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

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

Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973 (Vic)*, I present to Parliament my *Good Practice Guide to Dealing with Challenging Behaviour, Report and Guide*.



Deborah Glass OBE

Ombudsman

22 May 2018

Contents

Foreword	3
Report	4
Good Practice Guide to Dealing with Challenging Behaviour	7
Introduction	8
What is ‘challenging behaviour’?	11
Stage one: Prevent	14
Stage two: Respond	20
Defusing emotion	20
Behaviour associated with disability or mental illness	25
Threats of suicide	36
Stage three: Manage	39
Stage four: Limit – a last resort	43
Looking after yourself – advice for complaint handlers	49
Looking after your staff – advice for managers	51
Further reading	54
Appendix one – Example of a warning letter	55
Appendix two – Example of a letter limiting access	56
Appendix three – Model policy/procedure	57



Foreword

The complaints this Office receives are against “Bureaucracies”, organisations dependent on humans. Humans are unpredictable, have emotional ups and downs, good days and bad days ... a capacity to react to various situations in not always predictable ways, an ability for remembering the matters supporting their cause and forgetting or dismissing the facts that do not. With humans on both sides of the counter, the chance of misunderstandings, inaccurate assessments and subjective judgments is ever present ...

Victorian Ombudsman, Norman Geschke,
Annual Report 1981

If there is one subject that unites the Victorian Ombudsman with every person or agency dealing regularly with the public, it is how to deal with challenging behaviour.

Not only do we deal with challenging behaviour ourselves on a daily basis, we are constantly asked for advice from government departments, agencies, and local councils on what to do with overly persistent or abusive people. We hear about people who bombard agencies with complaints, refuse to listen to advice, swear at or threaten the agency’s staff, or threaten to harm themselves if they don’t get the outcome they seek.

We also hear from people who complain that an agency won’t deal with them, when they think they have a justified complaint.

We recognise this difficult balancing act. The public sector exists to serve the public, including those who may be demanding. But public sector resources are limited, and agencies need to protect the health and safety of their workforce.

As the second Victorian Ombudsman Norman Geschke so wisely observed, there are humans on both sides of the counter. This guide recognises that there is a wide spectrum of challenging behaviour – from behaviour which could be de-escalated if the complaint handler showed a greater understanding of its causes, to behaviour that should not be tolerated and needs to be contained.

It is based on many sources: our own experience, guidance developed by Parliamentary Ombudsmen over ten years ago, and the expertise of psychologists and agencies who deal with people who have a disability or a mental health issue affecting their ability to communicate. Importantly, it takes into account the requirements of Victoria’s human rights and anti-discrimination laws. I thank all of those who worked with us to create the guide.

I hope it helps to de-fuse, de-escalate, and de-mystify the behaviours that public servants encounter daily, and that greater understanding leads to fewer complaints.

Deborah Glass
Ombudsman

Report

1. This report introduces the Victorian Ombudsman's new guide for public sector complaint handlers dealing with challenging behaviour.
2. The guide responds to demand from government agencies and members of the public.
3. Every year we get calls and emails from agencies seeking advice about so-called 'difficult' people. We hear about people who bombard agencies with complaints, refuse to listen to reasonable advice or pepper their communication with threats and abuse.

[We have] endeavoured on many occasions to address [Mr A's] complaints but the pattern seems to be that he rejects the advice or actions we take, becomes aggressive and later denies a resolution because it was not what he demanded ...

[Mr A] has recently verbally abused a member of our staff ... Stories of verbal aggression undermine the confidence of our people and risk reducing customer service if we resort back to written communication ... I would like to discuss with you how we can best manage [Mr A's] contacts.

Email from government agency to
Victorian Ombudsman

4. We also hear the other side of these stories. Members of the public sometimes complain to the Ombudsman when agencies limit their contact or access to services. They believe their anger is legitimate and their complaints are justified.

I'm only allowed to contact [my case manager] on a Monday between two and four. I don't get home until a quarter to four so I miss time ... I'm left frustrated, angry and p***ed off that I'm not allowed to say what I need to say.

Complaint to the Victorian Ombudsman

5. Managing these situations can be one of the hardest parts of complaint handling.
6. On the one hand, we expect public sector organisations to be accessible to people from all walks of life. This includes people who communicate in unexpected ways because they are frustrated or distressed about their situation, or because of culture, disability or other personal circumstances.
7. On the other hand, we also expect organisations to protect the interests of the broader public and their staff. Public sector organisations need to use limited resources in the interests of all customers, not just the most demanding. They are also workplaces with obligations to protect the health and safety of their workers.
8. These situations can be especially fraught where mental illness or disability are involved. In 2013 the Victorian Civil and Administrative Tribunal found that a local council breached Victoria's discrimination and human rights laws when it banned a local resident from all buildings owned, occupied or managed by the council. The man had made thousands of complaints, many containing comments described as 'critical of and insulting about' councillors and council staff. The tribunal found the man's compulsion to complain and behaviour were a symptom or manifestation of his disabilities.¹

¹ *Slattery v Manningham City Council* [2013] VCAT 1869 (30 October 2013).

-
9. The guide aims to help public sector complaint handlers navigate these behavioural and legal issues so they can get on with their job – dealing with complaints.

What the guide recommends

10. The guide encourages public sector organisations to recognise that people present with a range of behaviours for a range of reasons. There is no ‘one size fits all’ solution.
11. It recommends a graduated response:
 - preventing challenging behaviour where possible through good complaint handling
 - de-escalating challenging behaviour in the first instance
 - managing behaviour where it raises health, safety, resource or equity issues
 - limiting access only as a last resort, in a way that is lawful, fair and transparent.
12. It contains practical tips and examples to help complaint handlers at each stage, and a model policy to guide leaders and managers.
13. There is specific advice about dealing with challenging behaviour that may be associated with a disability or mental illness, and responding to people who raise concerns about suicide.
14. The guide stresses that people who handle complaints in the public sector are human too. It provides practical advice for complaint handlers about looking after themselves, and for managers about taking care of their staff.

How we developed the guide

15. The guide builds on the *Managing Unreasonable Conduct by Complainants Practice Manual* that was first developed by parliamentary ombudsmen in Australia and New Zealand in 2007² – led by the NSW Ombudsman. This manual was designed to deal with the most extreme types of behaviour that confront complaint handlers.
16. The Victorian Ombudsman recognises there are many other types of behaviour that can be challenging for complaint handlers. It provides advice about how to respond in a way that is tailored to Victoria’s human rights and discrimination laws.
17. The information in the guide is partly based on the Victorian Ombudsman’s own experience. We know that challenging behaviour is difficult because we deal with it too. People contact the Ombudsman because they are frustrated with something an agency has or has not done. Sometimes that frustration spills over into the way they communicate with us.
18. We also drew on the expertise and experience of bodies that deal with vulnerable parts of the community every day: the Disability Services Commissioner, the Mental Health Complaints Commissioner, the Victorian Equal Opportunity and Human Rights Commission and the Office of the Public Advocate.
19. The guide takes account of international literature about de-escalating conflict, and was reviewed by a psychologist with experience in government complaint handling and investigations.

² At the time this report was prepared, the New South Wales Ombudsman was finalising a new edition of the manual in consultation with other Ombudsman offices.

Other help for authorities

20. The new guide complements the Victorian Ombudsman's other guides for public sector complaint handlers:
 - The 2015 *Councils and Complaints – A good practice guide*
 - The 2016 *Complaints: Good Practice Guide for Public Sector Agencies*
 - The 2017 *Good Practice Guide: Managing Complaints involving Human Rights* (undertaken in partnership with the Victorian Equal Opportunity and Human Rights Commission, the Human Rights Unit of the Department of Justice and Regulation, and the Independent Broad-based Anti-corruption Commission).
21. The Victorian Ombudsman will also be offering education workshops for public sector organisations on dealing with challenging behaviour. The workshops will help complaint handlers put the guide's advice into practice.
22. The new guide and workshops respond to the Victorian Parliament Accountability and Oversight Committee's 2017 report on education and training initiatives in oversight agencies. The Committee said there was interest from government agencies in greater guidance from the Ombudsman in the form of education and training activities. It recommended this office develop sector-specific guidelines to assist agencies to meet their legal obligations.³
23. The Victorian Ombudsman welcomes the Government's decision to introduce a bill to formally recognise a public education function for this office.⁴
24. In the meantime, it is hoped the guide and workshops will help organisations deal with challenging behaviour better, with fairer outcomes for complaint handlers and the public.

³ Parliament of Victoria Accountability and Oversight Committee, *Inquiry into education, training and communications initiatives of Victorian oversight agencies* (2017) 44-45.

⁴ Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Bill 2018 cl 149, 152.

Good Practice Guide to Dealing with Challenging Behaviour

May 2018

Introduction

Key things to remember

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

The key things to remember are:

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

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

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

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

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

How this guide can help

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

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



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

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

How we developed the guide

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

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

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

The advice in this guide also:

- takes account of Victoria's human rights laws (see opposite), equal opportunity laws (see page 26) and workplace safety laws
- reflects discussions with organisations whose core business is dealing with vulnerable people – people with mental illness or disability or their families, and people reporting discrimination
- draws on the growing body of literature about dealing with challenging behaviour. You will find references to this literature and other helpful resources on page 54.

Victoria's human rights laws

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

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

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

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

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

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

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



Tip: Using script suggestions

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

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

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

The terms used in this guide

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

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

A complaint is an expression of dissatisfaction with:

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

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

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

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

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

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

What is challenging behaviour?

Key things to remember

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

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

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

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

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

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

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

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

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

Consider your expectations

For complaint handlers, people with complaints would ideally:

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

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

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

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

Know your ‘triggers’

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

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

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

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

Don’t make assumptions about motives

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

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

Challenging behaviour can also arise from:

- The person’s frustration, anxiety or distress about their complaint.
- Previous bad experiences dealing with your organisation or government.
- Resentment about having to deal with your organisation in the first place, if this is not the person’s choice. This might be an issue, for example, if your organisation is involved in enforcing the law, or collecting fees and taxes.
- Stressful personal situations such as significant caring responsibilities or chronic pain.
- Drug or alcohol use.
- Cultural differences. Different cultures can have different ways of communicating problems or showing honesty and respect. You can find information to help you understand some of these differences in the *Managing Unreasonable Conduct by Complainants Practice Manual*.
- Some types of disability or mental illness. This guide discusses these issues on pages 25-35.

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

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

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

Distinguish between different types of behaviour

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

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

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

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

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

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

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

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

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

Stage one: Prevent

Key things to remember

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

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

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

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

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

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

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

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

Welcome complaints

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

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

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

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

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

Be accessible

Good organisations also make it easy for people to complain.

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

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

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

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

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

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

It is good practice to consult with different communities about how to meet their needs. You will find more information about communicating with people with a disability or a mental illness on pages 25-35.



Case study: How service delivery can affect behaviour

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

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

The Commonwealth Ombudsman investigated and identified service delivery problems including:

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

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

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

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

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

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

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

Respond promptly

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

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

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

At the Victorian Ombudsman, we respond to all complaints directed to us unless the person says they do not want a response, or we have previously told them that we may not respond to further contact (see pages 43-48).

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

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

Treat people with respect

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

You can demonstrate respect by:

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

Talk like a human being

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

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

You can do this by:

- taking time to introduce yourself and offering your name and contact details if the person has questions
- speaking or meeting with the person in person
- showing empathy (you will find more about this on page 21)
- explaining legal or bureaucratic terms in plain English
- giving common sense rather than bureaucratic explanations eg 'We ask people to do X because it helps Y' instead of 'It's our policy'.

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

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

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

Manage expectations

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

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



Tip: Active listening

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

Active listening techniques include:

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

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

At a minimum, it is good practice to communicate:

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

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

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

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

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

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



Case study: Managing expectations

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

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

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

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

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

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

Don't avoid difficult conversations

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

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

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

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

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

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



Tip: Delivering bad news

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

The following strategies can make it easier:

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

Reflect and learn

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

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

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

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

Stage two: Respond

Defusing emotion

Key things to remember

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

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

If the behaviour involves or turns into unreasonable behaviour, consider the strategies on page 40.

This section looks at strategies for defusing challenging emotional behaviour.

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

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

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

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

Acknowledge – allowing the person to speak and acknowledging their feelings

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

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

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

Control yourself first

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

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

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

Common techniques people use are:

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

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

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

Stay professional

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

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

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

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

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

Listen to the person

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



Tip: When you cannot get a word in

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

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

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

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

Acknowledge and empathise

Page 16 of this guide talks about people wanting to be listened to and taken seriously when they complain. If someone is expressing strong feelings, you need to acknowledge this before you can move on to discussing the issues.

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

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

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

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

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

Refocus the discussion

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

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



Case study: Dealing with anger

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

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

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

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



Case study: Dealing with distress

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

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

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

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

Start problem solving

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

Check your language and tone

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

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

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

Review and adjust if needed

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

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



Tip: Cooperative language⁹

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

Examples are:

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

Avoid tone, words and phrases that:

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

8 Robert Bacal, above n 7, 30.

9 Robert Bacal, above n 7, 64.



Tip: Disarming attacks

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

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

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



Tip: Face to face meetings

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

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

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

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

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

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

Behaviour associated with disability or mental illness

Key things to remember

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

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

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

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

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

This guide has already talked about making your complaint handling system accessible for all members of the community (see pages 14-15).

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

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

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

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

Educate yourself

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

This guide provides information about some types of disability on pages 31-35. You will find references to other government and community websites on page 54.

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

Do not discriminate

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

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

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

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

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

Victoria's equal opportunity laws

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

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

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

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

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

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

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

If you conclude that limiting services is the only option, you will find information about what to do on pages 43-48.

Make reasonable adjustments

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

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

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

Your organisation can consider all relevant facts and circumstances including:

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

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

You will find other suggestions for 'reasonable adjustments' on pages 31-35.

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

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

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

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

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



Case study: A man who needed flexible communication

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

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

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

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

The case officer:

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



Case study: A man who needed more time

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

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

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

Our officers:

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

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



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

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

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

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

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

Ask, don't assume

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

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

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

Deal with the complaint on its merits

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

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

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

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



Case study: Experiences of people with a disability reporting crime

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

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

One person said:

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

Another said:

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

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

If unsure, get advice

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

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

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

**Tip: Respectful communication**

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

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

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

Your language should:

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

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

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

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

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

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

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

Acquired Brain Injury

What is it?

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

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

How common is it?

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

How does it affect people?

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

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

Tips for communication

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

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

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

Tips for challenging behaviours

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

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

Useful information

Brain Injury Australia
www.braininjuryaustralia.org.au

BrainLink
www.brainlink.org.au

Synapse Australia
www.synapse.org.au

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

Autism spectrum disorder

What is it?

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

How common is it?

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

How does it affect people?

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

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

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

Tips for communication

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

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

Tips for challenging behaviour

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

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

Useful information

Amaze
www.amaze.org.au

UK National Autistic Society
www.autism.org.uk

²⁰ Australian Bureau of Statistics, above n 11.

Intellectual disability

What is it?

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

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

How common is it?

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

How does it affect people?

Intellectual disability can range from mild to severe.

It can affect the person's:

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

Tips for communication

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

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

Useful information

Communication Rights Australia
www.communicationrights.org.au

Scope Australia
www.scope.vic.gov.au

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

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

Mental illness

What is it?

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

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

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

How common is it?

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

How does it affect people?

It depends on the condition.

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

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

Tips for communication

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

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

Tips for challenging behaviours

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

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

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

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

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

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

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

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

Useful information

Sane Australia
www.sane.org

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

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

Threats of suicide

Key things to remember

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

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

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

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

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

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

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

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

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

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

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

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

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

Check if the person is serious

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

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

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

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

Explain your concern

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

Consult a manager

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

Depending on the situation, the manager might decide to:

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

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

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

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

It will help if you can tell the police:

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

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

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

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



Tip: Where to get help

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

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

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

Look after yourself

Dealing with someone who is talking about suicide can be upsetting. You will find advice about getting support and looking after yourself on page 49. Managers can find advice about looking after their staff on page 51.

Stage three: Manage

Key things to remember

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

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

Sometimes a person's behaviour is or becomes unreasonable. Page 13 discusses how to tell when behaviour has reached this point.

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

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

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

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

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

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

Adopt an appropriate strategy

Different types of unreasonable conduct require different strategies.

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

Be respectful

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

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

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

In some cases, you may be able to use cooperative language (see page 23), positive suggestions and choices. An example might be, 'Ms Smith, I need to be able to speak to help you and you're talking over the top of me. We can continue talking or end the call. It's up to you'. The case study on page 41 is an example of how we managed one case without the need for confrontation.

In other cases, you might want to provide a very firm, formal warning. You will find an example of a formal warning letter on page 55.

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



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

Behaviour

Unreasonable persistence

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

Unreasonable demands

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

Unreasonable lack of cooperation

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

Unreasonable arguments

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

Unreasonable behaviour

- verbal abuse
- aggressive behaviour
- harassment
- making threats (see page 42)

Strategy

Say no

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

Set limits

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

Set conditions to motivate action

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

Decline or discontinue involvement

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

Set limits and conditions

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



Case study: Managing multiple calls

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

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

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

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

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

Consider the complaint on its merits

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

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



Case study: Keeping an open mind

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

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

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

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

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



Tip: Ending calls and meetings

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

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

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

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



Tip: Responding to threats to harm you or other people

We recommend you always take threats seriously.

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

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

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

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

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

Stage four: Limit – a last resort

Key things to remember

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

Make sure that:

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

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

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

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

Assess the risk

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

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

- The person's personal circumstances, such as health, disability or homelessness.
- The impact of limiting access on the welfare of the person and their dependants.
- What alternative strategies have been tried or considered to reduce the impact of the behaviour.
- Your organisation's legal obligations (see pages 44-45).

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

Ensure the limits are proportionate

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

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

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



Tip: Options for limiting access

Depending on the behaviour, your organisation can consider limiting:

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

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

In 2013, the Victorian and Civil Administrative Tribunal (VCAT) found that a local council's decision to limit a resident's access was unlawful (see page 46). VCAT's decision appears to have been influenced by the disproportionate nature of the council's response. The council had banned the resident from all premises owned, occupied and managed by the council, including places where he had never caused anyone concern.

Conduct a human rights assessment

In the 2013 VCAT case, the tribunal found the council failed to act compatibly with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (see page 46).

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

If they do, consider whether:

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

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

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

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

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

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

Consider other legal obligations

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

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

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

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

Make the decision at a senior level

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

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

Document your assessment and decision

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

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

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

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

²⁶ *Equal Opportunity Act 2010* (Vic) s 4 (definition of ‘disability’).

²⁷ *Equal Opportunity Act 2010* (Vic) s 86.



Case study: The 2013 VCAT case

In 2013 VCAT found limits imposed by a local council on contact by a resident breached Victoria's Equal Opportunity Act and the Charter of Human Rights and Responsibilities Act.²⁸

The council had banned the resident from all buildings owned, occupied or managed by the council. Some years later the resident asked the council to review the arrangements. It refused.

The resident had been diagnosed with bipolar disorder, attention deficit hyperactivity disorder, a post-traumatic stress disorder and an acquired brain injury.

He had made many thousands of complaints to the council. VCAT noted that many of the complaints contained comments 'critical of and insulting about' councillors and officers and there had been several 'highly charged' interactions with officers.

VCAT found that the resident's behaviours were a manifestation of his disabilities and the council's ban was discriminatory.

VCAT described the council's arrangements as 'blunt, broad and insufficiently tailored'. It noted the council had banned the resident from places where he had not caused anyone concern. It noted the ban was indefinite, with no transparent process for review.

VCAT stated there was no evidence that staff were trained or supported or instructed about how to respond to the resident's behaviour, and there were non-discriminatory alternatives.

VCAT also rejected the council's arguments that the arrangements were necessary to protect the health and safety of staff. It agreed the councillors and council staff were entitled to a safe workplace but said there was no evidence to show they had suffered harm or were afraid. It said the ban did not constitute 'an appropriate and commensurate measure of protection from a level of identified risk'.

VCAT also found the council had breached the resident's rights under the Charter:

- the right to participate in the conduct of public affairs (section 18)
- freedom of expression (section 15)
- the right to enjoy human rights without discrimination (section 8).

because there were less restrictive means for the council to achieve its purposes.

VCAT ordered the council to revoke the ban, provide human rights training to councillors, its CEO and directors and pay \$14,000 compensation to the resident.

²⁸ *Slattery v Manningham City Council* [2013] VCAT 1869 and *Slattery v Manningham City Council* [2014] VCAT 1442.



Case study: Reasonable and proportionate limits

A man complained to the Ombudsman that an agency was not addressing his complaints about fire risks near his home. The man told us he was a bushfire survivor and had other health problems. He said the agency had banned him from its office and he was not allowed to speak with its staff.

We contacted the agency. The agency told us it had been dealing with the man for many years and tried to deal sensitively with him. It said he could visit its office, but it had taken out intervention orders to protect some staff in the past when the man had been abusive.

The agency offered to respond to the man's complaint to our office. It sent us a copy of the response, which explained what it was doing to address the fire risks and which staff would speak with him when he visited its office.

Although the man was not happy with the response, we were satisfied the agency's actions were reasonable. The agency had only limited his access to the extent necessary to protect its staff and it was continuing to respond to his concerns.

Inform the person

It is good practice to inform the person of any limits on their access.

The Victorian Ombudsman sometimes deals with complaints where an organisation has limited a person's access but failed to tell the person. It is not surprising that the person becomes more and more frustrated with the organisation and escalates the matter to our office. In these cases, we ask the organisation to write to the person to explain the decision and their reasons.

You can find an example of the type of letters we use on page 56.

Explain the options for review

It is good practice to explain the person's options for review if they are dissatisfied with your decision.

If the decision was made by a delegate, give the person an opportunity to seek internal review from a more senior officer.

You should also inform the person they are able to complain to the Victorian Equal Opportunity and Human Rights Commission if they believe the decision is discriminatory, or to the Victorian Ombudsman.

Deal with complaints on their merits

You still need to assess complaints from the person, even after you have limited their access to your services.

Organisations are sometimes surprised when we tell them this.

However, as page 8 of this guide explains, there can be a legitimate grievance at the heart of these complaints. If you ignore the person completely, you risk overlooking valid issues.

For example, your organisation may have told a person you will not respond to further complaints about X unless they raise new issues that warrant investigation. Unless you continue to read the person's correspondence, you will never know if they are writing about X or something else. You do not have to waste your resources responding to correspondence about X, but you do need to assess the correspondence.

Review your strategy regularly

Finally, it is sound practice to review any limits on access to your services regularly to make sure they are still effective and warranted. This should happen at least once every 12 months.

Consider subsequent contact from the person, whether the limits reduced the impact of the behaviour on your staff and resources, and whether the limits are still justified.

Document your review and decision. If you decide to change or add to the limits, seek approval at a senior level again and inform the person of your decision.

The following case study is an example of a situation where, on reflection, an agency decided to remove the limits on a person's access with good results.



Case study: Reviewing the limits

A man contacted the Ombudsman to complain that he had been stopped from telephoning an agency that provided support services for him.

The agency told us the man had been calling 20 to 30 times a day so it had limited his contact to one call on Tuesdays and one call on Fridays.

The agency decided to review the arrangements. It concluded the restrictions had made the problem worse and the man was still calling multiple times a day. It decided to lift the restrictions so the man could telephone his case officer at any time. It said this appeared to have helped and the man was now calling less often.

Looking after yourself – advice for complaint handlers

Key things to remember

Dealing with challenging behaviour is emotionally demanding. Take time to look after yourself by:

- monitoring how you feel
- drawing on support networks
- expressing your feelings
- managing stress in healthy ways.

If you feel upset after dealing with someone who is distressed or aggressive, it is not a sign of weakness. It is important to be aware of and deal with these feelings so they do not become a long-term problem.

This guide has already talked about some strategies to help you look after yourself:

- having realistic expectations of yourself and what you can achieve (see page 11)
- knowing your triggers, and times when you are more vulnerable (see page 12)
- disengaging with people if the matter is not urgent and it is not productive to continue (see page 20)
- seeking advice or help to deal with challenging behaviour (see pages 13, 29, 37)
- taking decisive action to deal with behaviour that is or becomes unreasonable (see page 39).

This section looks at other ways to look after your health and wellbeing while dealing with challenging behaviour.

Monitor yourself

Be mindful of how you feel following incidents that are upsetting or stressful.

Common signs stress is affecting your health can be:

- difficulty sleeping
- irritability
- anxiety
- feeling tearful or depressed
- feeling overwhelmed or powerless
- feeling cynical about your work and the people you are dealing with
- increased use of alcohol or drugs
- physical signs like headaches, nausea, clenching your jaw or grinding your teeth
- more frequent illnesses
- difficulty concentrating
- loss of self-confidence.

Some people react immediately to significant events. Others have a delayed reaction and may not feel the effects until after the event, sometimes hours or days later.

The impact of stress can also be cumulative and build over time in response to a series of more minor incidents.

You and the people who know you well are the best judges of when you need support. The better you understand yourself and your triggers, the easier it will be for you to recognise if you have reached this point.

Draw on support

Wherever you work in the public sector, there should be people around you who can provide support and talk over challenging behaviour with you.

They might be:

- your colleagues, if you work in a team
- a manager
- an employee assistance program that offers free, confidential counselling services, if your workplace provides one.

Talk about it

Many people find it helpful to talk about how they feel after challenging interactions.

Debriefing is one option. It is a structured, usually voluntary process which aims to provide clarity about incidents and help people recover. It is usually carried out soon after the incident and explores what happened, your experience and reactions, and ways to manage your emotional responses.

Some people debrief naturally after difficult incidents without realising it – it can be as simple as turning to the person sitting next to you and talking about what happened.

Consider formal debriefing if this is offered in your workplace.

Manage stress

There are many things you can do to manage stress and boost your wellbeing in a healthy way. They include:

- Taking time out from your telephone or desk after challenging conversations. Getting a glass of water or going for a walk can clear your head so you are ready to keep working.
- Taking regular breaks during the day.
- Avoiding excessive hours at work or taking work home.
- Looking after your physical health. Maintain a good diet, get regular exercise and avoid using alcohol or drugs to manage your feelings.
- Sticking to a routine for meal times and bed times to make sure you eat well and get enough sleep.
- Using positive self-talk. Remind yourself the person is upset with the situation and not you personally, and that you can handle these situations.
- Practising relaxation. Some people use relaxation techniques like meditation and yoga, but you can choose any activity you find relaxing or uplifting.
- Spending time with people you love.
- Doing something you enjoy every day. This can be as simple as having coffee with friends, going for a walk, or reading a good book.

You will find references to useful information about managing stress on page 54.

Looking after your staff – advice for managers

Key things to remember

You have a legal obligation to provide a working environment that is safe and without risk to health.

Challenging behaviour from members of the public is one health and safety risk that needs to be managed.

We recommend you:

- set clear guidance for staff about dealing with challenging behaviour
- train and support your complaint handling staff
- take decisive action to deal with unreasonable behaviour.

This section looks at how leaders and managers can support staff dealing with challenging behaviour.

Challenging behaviour is a risk to your employees' health and safety if it is not managed properly. In 2017, WorkSafe reported that work-related mental injury accounts for 11 per cent of workers compensation claims in Victoria, and work-related stress is a leading cause.²⁹

As a leader or manager, you need to balance:

- public sector values of responsiveness, accountability, and respect for human rights³⁰
- the right of your employees to a workplace that is safe and without risk to health.³¹

Provide clear guidance

Provide clear guidance to staff so they know how your organisation expects them to deal with challenging behaviour.

We recommend you adopt a policy or guidelines that explains:

- the standard of behaviour you expect of your staff and the people who use your services
- the processes staff should follow when dealing with challenging behaviour, using the staged approach recommended by this guide
- when staff are expected to escalate issues to managers
- how staff should respond to statements about suicide
- how staff should respond to threats of harm to themselves or others
- security arrangements for meeting people face to face
- processes for recording and responding to behaviour that is or becomes unreasonable.

The policy or guidelines should include definitions of 'challenging behaviour' and 'unreasonable behaviour'. Although different people have different thresholds for dealing with unreasonable behaviour, you need a consistent approach across your organisation. If one of your staff lets a person verbally abuse them because they can handle it, it sends a message that your organisation accepts this behaviour. The person will think they can treat everyone else in your organisation this way.

29 WorkSafe Victoria, *Work-related stress* <https://www.worksafe.vic.gov.au/pages/safety-and-prevention/health-and-safety-topics/work-related-stress>.

30 *Public Administration Act 2004 (Vic)* s 7.

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

Train and support your staff

There are many training programs and resources about challenging behaviour. At the Victorian Ombudsman, we provide:

- Training on dealing with challenging behaviour during our induction program for new complaint handlers.
- Annual refresher training on 'difficult conversations' and self-care.
- On-the-job coaching and mentoring by experienced complaint handlers.

We also offer training workshops for state and local government organisations.

You can also support your staff in other ways by:

- Adopting good complaint handling and service delivery practices to help prevent challenging behaviour (see pages 14-19).
- Providing resources so complaint handlers can take regular breaks.
- Giving complaint handlers authority to respond to challenging behaviour eg to end conversations that are unproductive.
- Taking decisive action to deal with unreasonable behaviour when it arises.
- Supporting complaint handlers to take time out following challenging behaviour.
- Meeting regularly with complaint handlers to check their welfare.
- Encouraging staff to talk about the impact of their work.
- Recognising staff who deal with challenging behaviour well.
- Providing feedback to staff on ways to improve if needed.

- Offering debriefing after incidents of challenging behaviour. Remember debriefing is about helping the person recover emotionally, not about supervision or feedback. You can provide feedback another time if you need to.
- Offering other support, such as employee assistance programs.

The better you know your staff, the better you will be able to support them. Some people like to talk straight after an incident and get immediate feedback. Others need time to reflect before they are ready to talk about what happened.

Model good behaviour

The best managers model the behaviour they want their staff to follow.

Your staff are more likely to feel comfortable talking about how their work affects them if you do too. You might reflect on an example of challenging behaviour from your own past and how you managed it.

This shows staff it is OK to admit when they find behaviour challenging, and that they can talk with you about how to deal with it.

Only change decisions with good reason

People sometimes ask to speak to a manager when they are unhappy with the advice provided by officers.

This is often an effective short-term way to deal with challenging behaviour. It can short-circuit interactions that have become upsetting for everyone. The person may start acting more respectfully because they see you as a person with higher status. Providing people with options for review is also good practice.

Be careful, however, not to undermine your staff by allowing people to escalate matters automatically, or by changing decisions just to keep people happy. If you do this without good reason, you give people an incentive to keep acting this way. You also undermine the confidence and authority of your staff.

At the Victorian Ombudsman, we employ skilled and capable staff and we do not expect them to escalate matters just because a person asks to speak with a manager. Complaint handlers and managers discuss requests and decide whether the manager should become involved on a case by case basis. We also publish criteria for when people can request an internal review of our decisions.

If you decide to change a decision made by one of your staff, explain why you made the decision to both the staff member and the person complaining.

If you need to provide feedback, this should happen in private, not in front of members of the public.

Further reading

We referred to the following publications when developing this guide:

Australia/New Zealand Standard™, *Guidelines for complaint management in organizations* (AS/NZS 120002:2014)

Australian Federation of Disability Organisations, '*Communication with people with disabilities*' website, <http://www.afdo.org.au>

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

Bill Eddy, *Managing High Conflict People in Court* (High Conflict Institute, 2008)

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

Human Rights Unit of the Department of Justice and Regulation, Victorian Equal Opportunity and Human Rights Commission, Independent Broad-based Anti-corruption Commission and Victorian Ombudsman, *Good Practice Guide: Managing Complaints involving Human Rights* (2017)

Judicial College of Victoria, *Disability Access Bench Book*, <http://www.judicialcollege.vic.edu.au> (This resource is intended for judicial officers dealing with litigants and witnesses with disabilities, but contains useful advice that can be applied in other contexts).

Paul E Mullen and Grant Lester, 'Vexatious litigants and unusually persistent complaints: From querulous paranoia to querulous behaviour' (2006) 24 *Behavioural Sciences and the Law* 33

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

Queensland Government, '*Better communication*' website, <http://www.qld.gov.au/disability/community/communicating>

Victorian Government Better Health Channel, '*Stressbusters*' website <http://www.betterhealth.vic.gov.au>

Victorian Ombudsman, *Complaints: Good Practice Guide for Public Sector Agencies* (2016)

Victorian Ombudsman, *Councils and complaints - A good practice guide* (2015)

WorkSafe Victoria, *Work-related stress* <https://www.worksafe.vic.gov.au/pages/safety-and-prevention/health-and-safety-topics/work-related-stress>

Appendix one – Example of a warning letter

This is a fictional example of a warning to a person about unreasonable conduct.

Dear Mr Sullivan

Your complaint about Pacific City Council

I am writing about your complaint regarding your council's process for collecting unpaid rates.

I have listened to the recordings of the telephone calls you made to this office on 20 and 24 March 2018.

On the recordings, you can be heard making abusive and insulting comments to the officer who took your calls, despite being asked on a number of occasions to stop.

We expect our officers to treat you with courtesy and respect. We expect this courtesy to be returned.

I can hear on the recordings that you are frustrated with the council's actions and the time our office needs to consider your complaint. However, if you continue to speak to our officers in this way, we may have to limit your contact with us to writing in future.

I have spoken with the officer handling your case. She is currently making enquiries with the council about your complaint and will contact you when she has more information.

Yours sincerely

Anna Cattermole
Assistant Ombudsman

Appendix two – Example of a letter limiting access

This is a fictional example of a letter to a person explaining a decision to limit access.

Dear Mr Sullivan

Your complaint about Pacific City Council

We received your letter dated 16 July 2018 about your council's process for collecting unpaid rates.

In your letter, you repeat your concerns that the council's process is unlawful and that it should compensate you for the distress and embarrassment you experienced.

As you know, this office made enquiries about your concerns earlier this year. The investigation officer wrote to you on 4 April 2018 outlining her views. She advised you that she reviewed the laws and policies that apply to the council and inspected officers' records of their conversations with you. This evidence showed that the council had followed its laws and policies, and that you and the officers had different interpretations of your conversations. She explained that she was unable to find that the council had acted in a way that was contrary to law, unreasonable or wrong in these circumstances.

You wrote to the investigation officer expressing disagreement with her findings and restating your request for compensation. The investigation officer spoke to you on the telephone and wrote to you again on 26 April 2018. She answered your questions and suggested you seek legal advice if you want to pursue compensation.

You wrote to the investigation officer again stating that you should be compensated by the council. She responded on 20 June 2018 and noted that there was no new information or evidence that would change her decision.

I can see from your letter that you continue to disagree with this office's decision regarding your complaint. For the reasons the investigation officer previously explained, we are unable to assist you further.

As there is no further role for this office in relation to your complaint, any further correspondence regarding the council's process for collecting unpaid rates will be considered and kept on file, and we may not respond unless it raises new issues which we consider warrant attention.

If you want an internal review of the decision not to respond to further contact about these issues, you can write to the Deputy Ombudsman within 60 days with an explanation and any evidence about why this decision is wrong.

Yours sincerely

Anna Cattermole

Assistant Ombudsman

Appendix three – Model policy/procedure

This is an example of a policy/procedure that follows the advice in this guide. Your organisation can tailor it to suit your role and circumstances. You might add it to your existing complaint handling or service delivery policy, or adopt it as a stand-alone policy.

Introduction

[Organisation name] is committed to providing an accessible, responsive service to all Victorians. We recognise that people using our service have diverse backgrounds and needs. We also recognise they will sometimes be angry, frustrated or distressed or act in other ways we find challenging. We employ skilled officers who can communicate well and deal with complex issues.

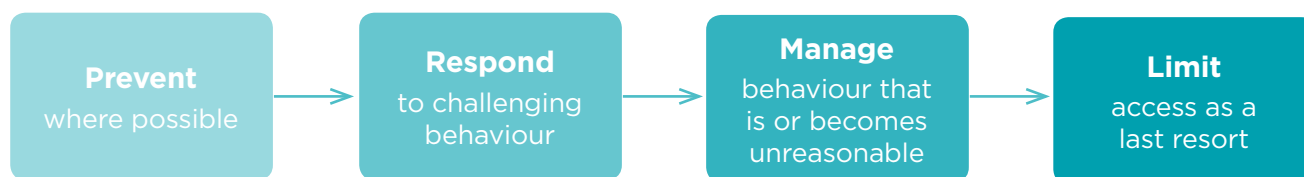
At the same time, we are committed to providing a safe and healthy workplace and using our resources efficiently and fairly. We expect our officers to treat people with courtesy and respect. We expect this courtesy to be returned. We do not tolerate behaviour that is offensive, abusive or threatening or consumes disproportionate resources.

This document sets out how we deal with challenging behaviour in a way that is fair and balances the interest of [complainants, or another term used in your organisation], our officers, our organisation and the public.

We recognise that people who demonstrate challenging behaviour often have a legitimate grievance. Our officers will continue to deal with complaints on their merits.

Dealing with challenging behaviour

[Organisation name] encounters a spectrum of challenging behaviour, from slightly confronting to clearly unreasonable, and our responses will be graduated as follows.



‘Challenging behaviour’ is any behaviour officers find challenging. Officers can deal with most types of behaviour using prevention and responding strategies (see Stage one and Stage two on the following pages).

Behaviour becomes ‘unreasonable’ when, because of its nature or frequency, it raises health, safety, resource or equity issues for [organisation name], our officers and other people who use our services. Officers can deal with this behaviour using management strategies (see Stage three) or recommending limits on the person’s access to our services (see Stage four).

Unreasonable behaviour includes verbal abuse, threats to harm officers or other people, and violence. This behaviour is never acceptable.

If officers are unsure about whether a person’s behaviour has moved from challenging to unreasonable, they should consult a manager or another experienced colleague.

Stage one: Prevent

[Organisation name] aims to prevent challenging behaviour where possible by practising good complaint handling. Our [name your organisation's complaint handling or service delivery policy] explains how we respond to complaints.

Stage two: Respond

Defusing emotional behaviour

Officers will respond to angry or emotional behaviour in the first instance by attempting to defuse the situation. This involves the following sequence of actions:

- Taking control of their own response. At times officers may need to take a break so they can collect themselves. If this is not possible and the matter is not urgent, officers can arrange to speak with the person again at another time.
- Giving the person reasonable time to express themselves and acknowledging what they are saying and how they feel.
- When the person's feelings are under control enough to speak about the complaint, refocusing the discussion on to the complaint.
- Problem solving using good complaint handling techniques.

Behaviour associated with a disability

Where challenging behaviour may be a symptom or manifestation of a disability, officers need to consider [organisation name's] obligations under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the *Equal Opportunity Act 2010* (Vic). [Name your organisation's equal opportunity policy or accessibility action plan] provides advice about avoiding discrimination and making reasonable adjustments so people can access our services.

Officers can consult [name an appropriate officer in your organisation eg your organisation's equal opportunity representative or legal counsel] where:

- they are unsure about whether or how to make reasonable adjustments
- they believe discrimination may be justified because the person's behaviour is a risk to health, safety or property.

Responding to threats of suicide

[Organisation name] does not expect officers to provide crisis support or counselling to people who talk about suicide. Our role is to check if the person is serious and connect them with people or services that can help.

If a person makes statements about harming themselves, officers will:

1. Ask the person clearly and directly if they are thinking about suicide.
2. Explain that they are concerned and want to make sure the person is safe.
3. Alert a manager, who will decide what action to take.

If the person's safety is at risk or they need immediate help, the manager will contact Victoria Police on 000. [If your organisation has specific secrecy or privacy obligations that limit your ability to provide information to the police, explain how these should be handled]

In other cases, the manager will consider whether to:

- encourage the person to speak with someone they trust, or
- offer information about contacting Lifeline (13 11 14), the Suicide Call Back Service (1300 659 467), SuicideLine Victoria (1300 651 251) or Kids Helpline (1800 55 1800).

Managers will check on the welfare of affected officers following a threat of suicide and ensure support is available.

Stage three: Manage

If a person's behaviour becomes unreasonable, officers must apply appropriate and proportionate strategies for managing the behaviour. The strategies will depend on the behaviour type of involved:

Behaviour

Unreasonable persistence

- bombarding officers with calls or visits that are not warranted
- contacting different officers seeking a different answer
- reframing an old complaint so it looks like there are new issues
- refusing to accept the decision after we have investigated the complaint, provided a decision and reasons, answered questions and provided review options
- questioning the skills or competence of the complaint handler

Unreasonable demands

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

Unreasonable lack of cooperation

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

Unreasonable arguments

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

Unreasonable behaviour

- verbal abuse, aggressive behaviour, harassment or threats

Strategy

Saying no

- asking the person to stop calling or visiting
- setting time limits for discussions
- transferring the person back to the original complaint handler or their manager
- declining to consider new issues that are not supported by information or evidence

Setting limits

- explaining how you will be dealing with the complaint
- explaining that you will not meet the demand and why
- 'reality checking' ie explaining that we deal with many complaints and need to decide when and how they are handled

Setting conditions to motivate action

- asking the person to take action (eg providing certain information) before you will consider the complaint further

Declining or discontinuing involvement

- requiring evidence before taking a complaint further
- not investigating issues where there is no practical outcome

Setting limits and conditions

- naming the behaviour and asking the person to stop
- providing a warning

Officers can refer to the New South Wales Ombudsman's *Managing Unreasonable Conduct by Complainants Practice Manual* for more information about these categories and ideas about management strategies.

When choosing an appropriate strategy, officers will consider:

- the person's prior conduct eg is the behaviour isolated or part of a pattern?
- the nature of the conduct
- whether the complainant's personal circumstances are contributing to the behaviour eg health, social circumstances or disability
- the likely effectiveness of different strategies
- the impact of the strategy on the welfare of the complainant and any dependents
- relevant legal obligations, including [name any legal obligations that affect your organisation's ability to apply management strategies].

Stage four: Limiting access – a last resort

[Organisation name] can consider limiting access to our services if other strategies have not worked and the person continues to engage in unreasonable behaviour.

Depending on the type of behaviour, we may consider limiting:

- who the person can contact eg limiting contact to a named officer
- what issues we will respond to eg not responding to issues that have already been the subject of an assessment and explanation, unless the person raises new issues that warrant attention
- when a person can have contact
- where the person can contact us eg limiting locations for face to face meetings to secure areas
- how the person can contact us eg confining contact to writing where the person has been verbally abusive.

Deciding to limit access

Decisions about limiting access to services will only be made by [name a senior officer with authority to make these decisions. This will usually be the head of your organisation or a senior delegate].

In most cases, [name of the senior officer] will warn the person of the action we propose to take and give the person an opportunity to stop.

Before approving any limits, [name of the senior officer] must be satisfied that:

- the behaviour is unreasonable ie poses a risk to the health, safety, equity or resources of one of the parties involved
- all alternative strategies have been, or are likely to be, ineffective in managing the risk
- all relevant factors have been considered including the person's history, the nature of the conduct, the person's personal circumstances and the impact of limiting access on the welfare of the person and their dependants
- the limits are proportionate to the level of risk posed by the behaviour
- there is sound evidence to support the decision
- the limits are consistent with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and we have documented:
 - which, if any, human rights will be affected
 - why we are satisfied that the limits are reasonable and demonstrably justified under section 7 of the Charter
- if the behaviour may be a symptom or manifestation of a disability, the limits are consistent with the *Equal Opportunity Act 2010* (Vic)
- [if other legislation affects your organisation's ability to limit services, explain its impact here].

[Name of the senior officer] will ensure that the decision and reasons are documented in [explain how your organisation wants officers to document decisions eg in your case management system].

Informing the parties

[Name of the senior officer] will inform:

- affected officers about the decision
- the person. This will be in writing (unless another form of communication is more appropriate) and will explain the decision and the reasons for the decision. It will set a timeframe for reviewing the limits (see below) and explain the person's options for complaining about the decision.

Reviewing limits

[Name of the senior officer] will ensure that any limits on a person's access are reviewed within the named timeframe, and at least once every 12 months, to determine if they are effective and still warranted.

[Name of the senior officer] will document the review and inform affected officers and the person of any decision to remove or vary the limits on access.

[Explain how the person can complain about the decision in the meantime eg your organisation's processes for seeking an internal review. Once the person has exhausted their options in your organisation, advise them that they can complain to external oversight agencies such as the Victorian Ombudsman or, if the person claims discrimination, the Victorian Equal Opportunity and Human Rights Commission].

Where limiting access is not appropriate – alternative dispute resolution

[Name of the senior officer] may decide it is not appropriate to limit a person's access eg because it would breach legal obligations, unduly affect the welfare of the person or a dependant, or our actions have contributed to the behaviour.

In these cases, we can consider arranging alternative dispute resolution using an independent third party. [Name of the senior officer] will consider whether alternative dispute resolution is likely to be effective in the circumstances, including the person's willingness to engage genuinely in the process.

Recording and reviewing unreasonable behaviour

Officers must all record incidents of unreasonable behaviour in [describe how officers should record incidents eg in your organisation's case management system] within 24 hours. The record will:

- describe what the person said or did in neutral terms
- describe the action the officer took in response.

[Name of an appropriate officer] will review reports regularly to:

- ensure strategies are being applied appropriately and consistently
- identify possible patterns, and, if appropriate, recommend changes to service delivery that may help prevent challenging behaviour in future.

Security

[Explain your organisation's security arrangements for matters such as:

- face to face meetings eg duress alarms, use of secure meeting rooms
- incident response eg an assault or attempted assault, threats to harm other people
- harassment of officers outside the workplace eg on social media]

Roles and responsibilities

All officers are authorised to apply the strategies in Stages one to three of this policy (Prevent, Respond and Manage).

Officers must consult a manager if:

- [outline your organisation's policy on what officers should do when a person asks to speak with a manager]
- a person threatens suicide
- a person makes threats to harm a staff member or another person.

Decisions to limit access to services (Stage four) may only be made by [name the senior officer/s authorised to make the decision].

Support for staff

[Organisation name] recognises that dealing with challenging or unreasonable behaviour can be upsetting and stressful and we are committed to supporting our officers.

We will uphold our legal obligations to provide a safe workplace and support officers by:

- [list the training and support provided by your organisation eg formal training, coaching and mentoring arrangements, debriefing arrangements or employee assistance programs]

Managers will speak with officers who handle complaints regularly to check their welfare, in addition to any other supervision arrangements.

Officers are encouraged to monitor the impact of challenging behaviour on their wellbeing, draw on available supports and maintain a healthy approach to managing stress.

Officers who are injured at work can report this in accordance with [name your organisation's policy/procedure for reporting workplace injuries and claims].

Victorian Ombudsman
Level 2, 570 Bourke Street
Melbourne VIC 3000

Phone 03 9613 6222
Toll free 1800 806 314 (regional only)
Email ombudvic@ombudsman.vic.gov.au
Website www.ombudsman.vic.gov.au