Better Service and Communication Guidelines for Local Government

June 2000
Acknowledgments

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Important note

This publication has been prepared as an informative guide for public sector agencies and members of the public. It is designed to contribute to fairness, integrity and good public administration, particularly in the area of improved standards of service and communication and dealing with complainants who display challenging behaviours.

We have done the best we can within our resource constraints. Where the matter raises complex questions of law, where there is a real possibility of litigation or where the matter is otherwise highly contentious, further legal or other professional advice should be sought before taking action.

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Foreword

This publication brings together a number of the key standards for local government that are advocated by the NSW Ombudsman's Office. As the peak complaint handling body for the public sector in New South Wales, this Office has developed considerable expertise in dealing with a wide range of issues and people. It is important that this knowledge and experience be shared with local councils.

These guidelines set out the kinds of policies, procedures and standards that councils should have in place. Better service and communication between councils and their communities is based on two central themes: open and transparent decision-making and a customer service focus. The guidelines refer to the commitments every council should make to its local community regarding conduct and administrative practice.

Quality service is measured not only by satisfaction with outcomes but the quality of processes. These processes and the conduct of the staff who administer them should be designed by reference to service standards and objectives that councils should strive to achieve. This includes basic service goals such as turnaround times for correspondence and returning telephone calls as well as notification and complaint handling.

The guidelines also cover what responsibilities rest on members of the community in their dealings with their local council. They explore what members of the public can do when they have a problem with their council. They also look at what councils can do to manage complainants who exhibit challenging behaviour.

I am grateful for the contribution made by the Local Government and Shires Associations, the Department of Local Government and the Independent Commission Against Corruption to the development of this publication. I recommend these guidelines on service and communication to all councils in New South Wales.

Bruce Barbour
Ombudsman
1. Introduction

1.1 The scope of these guidelines

These guidelines are designed to assist councils, councillors and council staff interested in improving their standards of service and communication. They will be particularly helpful for councils that are experiencing difficulties in communicating with and in meeting the service and communication standards expected by their local communities.

Councillors are struggling to respond to greater demands for information and accountability. Council staff and councillors are facing greater criticism of their decisions, their processes and their general performance. Local communities have higher expectations of customer service. Councils must try to meet these expectations with fewer resources.

Consequently, there are growing demands on the Ombudsman from members of the public for action over these perceived shortcomings. More councils are calling on the NSW Ombudsman for advice and assistance. Behind some of these demands, there are examples of councils whose relationships with sections of their local communities have virtually broken down.

In these guidelines, we seek to set out a framework for better service and communication between councils and their communities. This framework is built on strong foundations. These are:

- the legal basis for local government, central to which is the relationship between the council and the local community, and
- one of the key contemporary movements in public sector management reform, which is a commitment to quality customer service.

1.2 The relationship between councils and their local communities

The fundamental relationship in any system of democratic government is the relationship between the community and that government. Local government is government by councillors who are elected by the residents and ratepayers of the council area. The governing authority of local government is derived from the local community through the electoral process.

The Local Government Act provides that councils are not only accountable to the local community through the electoral process. Section 7 of the Act states that one of the purposes of the Act is to provide a legal framework for an ‘...open system of local government in New South Wales.’ The Act is also intended to ‘...encourage and assist the effective participation of local communities in the affairs of local government.’ Under the council charter set forth in the Act, councils are committed to principles of due consultation, facilitating the involvement of the public and keeping the community informed about their activities.

These principles are designed to ensure that decision-making is transparent and accountable and to enable local communities to influence decisions that impact on their lives and on the well being of the local community as a whole. The Local
Government Act and the Environmental Planning and Assessment Act build on these principles by providing for:

- community access to the council meeting and to council records,
- mandatory community consultation as part of the development of annual management plans, plans of management for community land and local environmental plans,
- mandatory and optional community consultation as part of the assessment of development applications,
- mandatory community reporting on matters such as the state of the local environment, and
- public access to a wide variety of council records.

Councils are encouraged to communicate with their local communities even when there is no legal requirement to do so by:

- publishing community notices in local newspapers and on the council website,
- holding public meetings on topical local issues,
- conducting community surveys,
- providing service and information to the local community through counter staff, by telephone, letter and email, and
- providing assistance to members of the local community who wish to contact councillors.

1.3 Recent strains — the complainant who exhibits challenging behaviour

Councils face growing demands to tell their local communities what they are doing, ask their communities for input and to consider that input. Councils must also comply with growing legal obligations of this kind.

Greater levels of education and improved means of communication have given more people the opportunity to take up the invitation to participate and generate much higher expectations of councils on the part of the community.

Many decisions that governments make concern policy and resource allocation. These decisions often involve making choices that favour one group over another. They result in winners and losers. Excellent ‘service’ in these areas is not only measured by satisfaction with outcomes but by the quality of the process.

This distinction is not as well understood as it might be. Some members of the community take at face value the promise of a customer focus on the part of their council. For example, many members of the community believe that when councils receive objections in the course of assessing a development application, they are obliged to refuse the application. When this is not the outcome, their disappointment with the outcome often translates into wholesale criticism of the decision-making process and the overall performance of the council.

The gap between expectations and what is possible can result in frustration. Increasing numbers of councils have to deal with individuals or small sections of
their communities whose demands on the workload and resources are unreasonable and unmanageable. Council staff must devote huge amounts of time dealing with requests for information and responding to complaints on issues that have already been thoroughly examined. Resources must be diverted to deal with these problems.

Relationships between councils and complainants who exhibit challenging behaviour can descend into abuse, threats and general hostility. Threats of defamation action can be made to stop unjustified attacks on reputations. In some cases, councillors and council staff have even sought apprehended violence orders against members of the community who they consider pose a threat to their personal safety. This can have profound implications on the capacity of the members of the community to put their views to what are intended to be open and consultative public bodies.

1.4 A commitment to service and communication

The NSW Government has declared its commitment to providing quality customer service. As part of the Government’s Facing the World policy statement published in 1992, State Government agencies were encouraged to embrace quality service, required to report on performance in terms of service standards and produce guarantees of service detailing their policies on customer service. Premier’s Memorandum 95-49 outlined a four-stage process for achieving a public sector delivering ‘...value for money quality service to its customers and the community within the framework of the Government’s policies.’

A significant number of councils have adopted a commitment to quality management. A recent survey by us revealed that about 36 per cent of councils have adopted guarantees of service. Many of these documents reflect the principles set out in the NSW Government policy.

There are a number of service policies and strategies available to councils in order to become more open and accountable and in order to become providers of ‘quality service’. The overriding theme of these guidelines is that councils should adopt a comprehensive set of measures aimed at improving service provided to the local community and improving communication between councils and their communities. The strategies set out in these guidelines are directed at both sides of the communication process:

• improving the way councils provide services to and communicate with their local communities, and
• improving the way members of the local community communicate with their council.

These strategies are necessary pre-requisites for councils wanting to use more robust strategies to manage complainants who exhibit challenging behaviour. If councils commit to better service and communication, they can proceed to impose reasonable and sensible limits on what resources they will commit to these complainants.
2. Commitments by the council

2.1 Understanding needs and expectations

Councils with a deep understanding of the needs and expectations of the local community are able to achieve more effective communication with the local community. For example, councils confronted with evidence that community expectations are unrealistic can use this understanding to communicate information about what expectations they can realistically satisfy. Understanding needs and expectations is a vital part of improving service and increasing community satisfaction.

**Good practice**

Expectations about the development control process are often unrealistic. Many councils labour over contentious applications for development consent fearful of the consequences of approving applications in spite of strong objections.

One of our investigations concerned just such a council. The council demonstrated considerable reluctance in approving any development application's to which there was significant objection from neighbours.

The investigation revealed that there were widespread misconceptions in the local community about the role of the council in assessing and determining development applications. For instance, many residents appeared to believe the council was obliged to refuse applications that did not comply fully with the applicable development control plans. This sort of misconception is corrosive of community confidence in the development control processes of the council.

We recommend that councils confront these misconceptions. One way is to include with every notification letter information about the role of a consent authority when assessing and determining development applications. It is important to explain the difference between mandatory and discretionary considerations and the role of the council in assessing applications generally.

Councils should provide opportunities for the local community to comment on the performance of the council through measures like surveys, establishing customer councils (to advise them on service issues from a community perspective) and using the information provided in complaints and feedback forms.

Using this information, councils should assess their performance, establish service standards and measure their performance against those standards. Establishing and measuring performance in providing services to the local community can be done in a number of ways. One way is to establish guarantees of service and periodically review performance in meeting these service standards.

**Good practice**

Councils that adopt clear standards for service must support this policy with mechanisms to check actual performance. We currently conduct customer service audits on local and State Government agencies, using the ‘mystery shopper’ methodology. They are carried out without the agency’s knowledge in order to examine the standard of service in a number of areas including responsiveness, courtesy, and accuracy of information and standard of facilities.

This program is an ongoing program. A number of other mechanisms are available to evaluate performance including:

- analysing performance information available on council databases,
- monitoring complaints and customer feedback,
- carrying out internal audits of performance, and
- conducting community surveys.
2.2 Due consultation – giving individuals a voice

In order for a decision-making process to be considered fair, the public (or that part of the public whose rights, interests or expectations are or are likely to be affected by the decision) should be given an opportunity to air an opinion or make a submission and must have the assurance that this will be properly considered.

The Local Government Act and the council charter set forth in that Act broadly requires that councils have policies and procedures to ensure that:

- the local community is adequately informed of its activities,
- members of the local community (either generally or, in specified cases where the rights, interests and expectations of those members are or are likely to be affected by decisions) are adequately informed and given an opportunity to make submissions to the local council in writing and/or in person, and
- submissions receive due consideration insofar as they are relevant.

Councillors should provide advice and assistance wherever possible on how to frame effective submissions.

**Good practice**

The quality of submissions improves if members of the local community get simple advice on framing effective submissions to their council.

Such advice can cover issues like:

- inviting ‘submissions’ rather than ‘objections’ in order to reflect the intention to attract comment rather than merely procure opposition,
- the considerations the council will take into account in reaching a decision,
- how to get further information relevant to the matter under consideration,
- the desirable length for submissions,
- the need to provide supporting information when challenging issues of fact,
- the need to avoid using intemperate language;
- the need to avoid casting personal reflections on individuals including councillors, staff and third parties,
- the availability of submissions for inspection by decision-makers and the public, and
- a clear statement on the effect of making a submission.

2.3 Courteous, patient, sensitive and attentive treatment

Councillors should commit themselves to provide every member of the local community with courteous service. This commitment should extend to dealings with members of the local community who are not demonstrating courteous behaviour towards council staff or elected members.

A commitment to patient and sensitive service is also required. Local communities are diverse. Barriers to communication due to age, limited language skills, other cultural differences, education or physical or intellectual disability affect a significant proportion of the members of every local community. Council staff should be particularly conscious of the need to demonstrate patience and sensitivity in dealing with these members of the community.

How can this be done? We offer training courses for front-line staff stress that there are three key requirements for effectively dealing with members of the local
committed, particularly complainants who exhibit challenging behaviour. Staff members must be:

- calm
- respectful
- non-judgemental.

With a calm, respectful attitude and by withholding judgement, council staff can better communicate with members of the community, understand their needs and then work with them to meet these needs.

Attentive service also demands of service providers reflective or active listening skills and a capacity to accurately record and appropriately act on individual encounters with members of the local community.

**Good practice**

Rockdale City Council in its Telephone Answering Guarantee of Service includes clear guarantees reflecting its commitment to courteous, patient, sensitive and attentive treatment. Council guarantees to ‘be sensitive to the language difficulties experienced by callers from non-English speaking backgrounds...’. Council also guarantees that its staff will ‘keep calm and patient when dealing with agitated or rude callers.’

### 2.4 Clear advice and other information

Councils are constantly involved in the provision of a wide range of advice and other information to their local communities. In their guarantees of service, councils should commit to providing this information in a form that is appropriate for it to be understood and acted upon by the likely recipient.

In particular, standard information such as brochures, community notices and forms should be designed with careful regard to the comprehension skills of the target audience. Councils whose local community has significant numbers of people from non-English speaking backgrounds should consider including written information in brochures and the like in the major languages represented in the local community. These councils should also consider the need for interpreting services to be available to staff.

**Good practice**

Cowra Shire Council makes a commitment to the provision of clear information in its Correspondence Guarantee of Service. Council guarantees to ‘provide information in plain-English format’.

Councils commonly have strict policies on the provision of advice. Members of the community who seek advice that cannot be provided as a result of such policies should be advised of the policy and the reasons behind it.
2.5 Records

The State Records Act requires public officials to ‘make and keep full and accurate records’ of their business activities. This means that, where the advice or other information is of a detailed kind and/or relates to a specific matter, a record of the information should be made and placed on the appropriate file.

The State Records Act also requires public officials to establish and maintain a records management program. The obligations on public officials with regard to record keeping are ongoing.

Behind these statutory obligations is recognition that it is good administrative practice for agencies to maintain full and accurate records of their activities.

2.6 Fair, lawful and appropriate procedures

Councils should adopt procedures in all areas of their operations that are fair, lawful and appropriate. Procedures should be designed with care to balance:

- the need for proper consideration of all relevant matters (including determining what staff need to have input on the matter and how a decision is reached),
- the need for procedures to meet all statutory and common law requirements,
- the need to take into account the relevant interests of affected members of the community,
- the need to ensure that decision making processes are timely and not overly complex, and
- the need for procedures to deliver fairness and equity.

2.7 Conduct of councillors and staff

Councils should also embrace high standards of conduct and fair and appropriate procedures during meetings of the elected council and at other times. These standards should be reflected in the code of meeting practice and the code of conduct, to which all councillors and staff members should adhere.

Councils should adopt procedures for the objective assessment, investigation and determination of complaints and allegations that these codes have been breached. Codes should provide for appropriate sanctions in the case of proven breach.

2.8 Impartiality

Councils should provide a clear commitment to impartiality in all decision-making processes. There are three key elements to this commitment.

First, councils should commit to comply with the legal requirements placed on staff and councillors in relation to dealing with pecuniary interests. Staff members and councillors should also commit to observe the ethical requirements of the code of conduct and any supplementary conflicts of interest policy in dealing with any conflicts of interest that are not regulated by the Local Government Act.
Second, councils should ensure that the information relied on in reaching a decision is accurately and comprehensively presented. Allegations of partiality can often arise when decisions are not based or do not appear to be based on all of the relevant information or where that information is not represented accurately in reports to elected members.

Third, council staff and councillors should approach the consideration and determination of matters free from prejudice or improper discrimination. Matters should be determined with due regard for the considerations relevant to the matter and free from reliance on irrelevant considerations.

**Good practice**

The role of impartiality in discretionary decision making is not easy to grasp. Many complaints to us attack decisions as partial on the basis that the council or one or more councillors have previously expressed an opinion about the matter under consideration.

For instance, a councillor publicly declares that high rise development must be encouraged. The councillor then openly supports a high-rise development. Allegations of a lack of impartiality are made against that councillor. By itself, this does not demonstrate a lack of impartiality. Councillors and staff may hold pre-existing views on the considerations that the council must take into account.

All councils should try to explain to their local communities how discretionary decisions are made. This should include giving details about what considerations the council will take into account. Councils should explain that it is not improper for pre-existing views to be taken into account in the course of assessing and determining matters as long as the mandatory matters that councillors and staff are obliged to consider and the merits of the individual case are considered.

### 2.9 Using information and resources responsibly

Councils should commit to using the information available to them and the resources of the council in an appropriate manner at all times.

Information should be dealt with in accordance with the relevant legal obligations and with due regard to relevant council policies. Councils must be mindful of obligations of confidentiality that attach to some information in some circumstances as well as the need to respect the privacy of individuals in accordance with their obligations under the Privacy and Personal Information Protection Act.

Responsible use of information involves balancing restrictions on disclosure (e.g. see s. 664 of the Local Government Act and, generally, the Privacy and Personal Information Protection Act) with obligations to disclose information (e.g. under the Local Government Act and the Freedom of Information Act). The broader public interest in ensuring that all aspects of council decision making are transparent and accountable must also be considered.

Councillors and staff should observe scrupulous standards when using the property, services and facilities of the council. Council resources should not be used for private purposes unless lawfully authorised (in the case of councillors, by the council’s policy on facilities and expenses). Occasional minor use of equipment and resources is generally permissible (such as making local telephone calls). Public resources should not be used for private purposes unless they are also available to the public and prior permission has been given.
3. Towards better service and communication — what the council should guarantee to do

3.1 Answering correspondence

Correspondence (by letter, fax or email) between members of the local community and the council is a key means of communication. Councils should adopt procedures that:

- ensure correspondence is acknowledged within a specified period (say, one week in the case of letters and facsimiles and say, two days in the case of emails) of receipt,
- endeavour to provide a substantive response to the correspondence within a specified period (say two weeks) of receipt for routine inquiries and within a longer specified period (say, four weeks) of receipt for more substantive inquiries,
- provide for telephone responses for routine inquiries which, unless basic or general in nature, should be properly recorded on the relevant file,
- ensure that if delays in responding are anticipated, advice to this effect is given in an interim response,
- include in responses details of the name and contact telephone number of the officer responsible for the matter; and
- use clear, simple and courteous language.

3.2 Telephone calls

Telephone contact between council staff and members of the community gives councils an opportunity to respond quickly and effectively to inquiries, comments and complaints from members of the local community. Councils should adopt procedures that:

- guarantee telephone calls will be answered within a specified period either in person or by an automated telephone answering system,
- require all staff to give their name when answering telephone calls,
- require all staff to take responsibility to answer telephones,
- require all staff answering telephones to either:
  - respond to the call,
  - promptly transfer the caller onto the officer who can best respond, or
  - if the call cannot be responded to, take a message including brief details of the caller's name, contact details and the call,
- guarantee that telephone messages are responded to within a specified period (say, one day),
- provide for staff to make realistic commitments to respond to calls that cannot be responded to immediately,
- ensure staff honour those commitments or advise callers if they cannot,
- guarantee that staff will speak clearly and calmly to all callers at all times,
What the council should guarantee to do

- record all significant calls either in a file note placed on the relevant council file or on a customer service database, including sufficient details to identify the time and date of the call, the caller, the nature of the inquiry and any advice given to the caller.

The need to make an adequate record of advice is important for a number of reasons. For example, besides being consistent with good administrative practice, it may assist in responding to a claim that the council gave a member of the public incorrect advice.

**Good practice**

The majority of councils now use technology to assist in responding efficiently to correspondence and telephone calls.

Document-tracking databases allow better management of correspondence in order that the time targets advocated in these guidelines can be met are readily available. Typically, this involves assessing incoming correspondence, allocating correspondence to responsible staff and entering details on the database. Most databases automatically generate acknowledgments. They also typically allow staff to quickly determine work priorities by identifying responses that are outstanding and overdue responses.

Similarly, customer service databases allow staff to enter details of calls received. Most allow for calls to be categorised as enquiries, complaints, reports or comments. These systems typically allow follow up action to be monitored. Again, staff members are able to identify outstanding and overdue responses. These systems can also provide useful information on how the council is performing against service standards.

Hurstville Council recently moved to supplement its own internal systems by engaging a call centre to record and pass on customer service requests made after-hours. The call centre uses council's database to respond to many calls immediately. Where this cannot be done, details are taken and the call centre refers the matter to the responsible council officer.

### 3.3 Availability of staff at counter and for interviews

The third routine method of communication between councils and their local communities is face-to-face interviews. All council offices are public buildings with designated areas where members of the local community can approach staff to transact business. Many councils now use customer service centres where members of the public can transact business, obtain information and discuss matters with staff.

Councils should provide all members of the local community with reasonable access to suitably qualified and experienced staff during business hours for face to face interviews. At a minimum, subject to the availability of resources, staff from the development control, strategic planning, engineering, community services and corporate services areas should be available to respond to inquiries during normal office hours.

Designated areas at which members of the public can transact business should be clearly identified. Staff members working in these areas should wear nametags identifying them by name. General information about council affairs in the form of pamphlets, brochures and the like should be freely available in these areas. Documents that are publicly available pursuant to s. 12(1) of the Local Government Act should be readily accessible from these areas.
What the council should guarantee to do

Ideally, councils should provide members of their community with complaint and feedback forms in these areas. Information about complaining to other agencies like the Independent Commission Against Corruption (ICAC), the NSW Ombudsman and the Department of Local Government should also be available in these areas.

Councils should endeavour to have easily accessible interview facilities. File notes or customer service database entries should be made following significant interviews. Councils should adopt standards of personal service that guarantee staff will be polite and courteous at all times and will use clear and readily understood language to express themselves.

**Good practice**

Councils need to carefully consider the training needs of their staff when considering upgrading their customer service standards. There are many training courses available covering the key skills in this area, including:

- telephone skills,
- customer service skills for frontline staff,
- designing and implementing complaints and feedback systems,
- dealing with difficult or challenging customers,
- negotiation and mediation skill and,
- plain-English writing skills.

3.4 Addressing meetings of the council

Councils have the discretion to allow members of their community to address meetings of the council and, if so, in what manner and for how long. This discretion should be exercised to allow members of the local community to address meetings at an appropriate time subject to reasonable conditions.

Councils should establish a clear procedure for addressing meetings. The local community should be made aware of this procedure through information such as enclosures with rates notices, community noticeboards published in local newspapers and on the council’s web site. An information sheet explaining procedures should be available at the start of meetings.

The procedure should at least provide for members of the public to be given an opportunity to speak to the council for a fixed period (with the option of an extension on a vote of the council). Councils generally should impose limits on the number and duration of presentations in order to ensure that the business of the meeting can be finalised in good time.

The procedure should apply to all meetings of the council and of council committees. The procedure ideally should provide for addresses on topical local matters relevant to council affairs at the beginning of the meeting and for addresses on particular items once those items are reached during the meeting. The procedure should be included in the code of meeting practice.
What the council should guarantee to do

**Good practice**

Council meetings are conducted in a highly formalised manner. Many members of the public are unfamiliar with these meeting procedures. This lack of familiarity means that members of the public wanting to address meetings may be unaware of when their matter comes up for debate and may not understand the debate. This situation arose in an investigation carried out by us. As a result, an objector who wanted to address the council was overlooked and the matter was disposed of almost instantly on the mistaken assumption there were no objectors.

We recommend that councils develop a simple information sheet that explains the way in which business is dealt with at council meetings. This should be made available to any person who wants to address a council meeting.

### 3.5 Access to councillors

Members of the local community should be provided with information on how to contact their councillors. This can be a contact address, a contact telephone number and, if required, contact times. It may be sufficient for members of the public to be advised to contact councillors at the council offices if a councillor has particular privacy or security concerns (which are generally avoided by providing councillors with a dedicated telephone number under the facilities and expenses policy).

### 3.6 Notification

Councils should adopt broad policies on the notification of affected members of the local community of matters materially affecting or likely to materially affect their interests. This should include (subject to any restrictions necessary in order to comply with obligations under the Privacy and Personal Information Protection Act):

- compliance with any mandatory legal requirements for notification such as those in relation to ‘designated development’,
- adopting development control plans/local approvals policies that provide for direct notification of all persons materially affected or likely to be materially affected by significant applications for development consent and applications for approval,
- adopting policies providing for direct notification of all persons materially affected or likely to be materially affected by other matters regulated by the council, including changes to traffic management, changes to community facilities, and strategic planning changes (most notably spot rezoning proposals),
- publishing details of all development applications received in a community newsletter or in a local newspaper and posting these details on the council’s web site,
- giving members of the public a reasonable time in which to view any material and lodge a submission (making proper allowances for public holidays and popular holiday periods like the Christmas/New Year period and Easter), and
- posting all relevant policy documents on the council’s web site.

Notification is a process designed to communicate to members of the local community details of a matter and to invite submissions on the matter that would assist in the council’s assessment of the matter. Accordingly, councils should invite submissions whenever direct notification is carried out.
Letters of notification should give:

- reasonable details of the matter to be determined by the council,
- details of a contact officer who can provide further information on the matter,
- an invitation to make submissions, and
- details of the time and place at which submissions may be lodged.

Councils should consider all submissions received within time insofar as they are relevant to the considerations the council must take into account in determining the matter.

Councils should re-notify proposals that are revised to the extent that they will materially affect members of the public who have previously been notified in a different way or affect members of the community other than those already notified.

### 3.7 Complaint handling

Councils should have in place effective complaints handling systems (consistent with the principles outlined in the Ombudsman’s Effective Complaint Handling Guidelines and the Department of Local Government’s Practice Note No. 9, Complaints Management in Councils). This enables members of the community to identify who is responsible when they are dissatisfied with the council and what the council will do to deal with the grievance.

Complaint handling systems should be flexible and informal (by, for example, providing for oral and written complaints). They should be widely advertised so that the community is well aware of its right to complain. Councils should include in their complaint handling systems provisions for investigating and reporting on, or otherwise dealing with, certain special types of complaints including:

- complaints about competitive neutrality issues,
- complaints about breaches of the code of conduct,
- complaints about breaches of the pecuniary interest provisions of the Local Government Act,
- complaints about other conflict of interest issues,
- protected disclosures, and
- complaints or information giving rise to a suspicion on reasonable grounds of corrupt conduct and thereby notifiable to the ICAC.

### 3.8 Reviewing decisions

Councils should adopt procedures that provide for all decisions that are capable of internal review to be so reviewed on the request of any person substantially materially affected by the decision. In this way, councils can demonstrate a commitment to fairness.

Wherever possible, a more senior officer should carry out reviews of decisions taken by a delegate of the council. The elected council should carry out reviews of decisions taken by the elected council.
**What the council should guarantee to do**

The council should adopt a presumption in favour of carrying out a review where there is a discretion to review decisions (e.g. in s.100 of the Local Government Act and s. 82A of the Environmental Planning and Assessment Act). Councils must observe their legal obligations if legislation sets out a mandatory requirement to review any decision.

Where the matter is particularly complex, it may be legitimate for the council to decline to review the decision unless the applicant for review has a sufficient interest in the matter and provides compelling new information (unless a review is legally mandated). It may also be legitimate to decline to review a decision if the decision has been previously reviewed at the request of another person unless compelling new information is provided (unless a review is legally mandated).

### 3.9 Using alternative dispute resolution methods

Councils should embrace policies that use or encourage alternative dispute resolution methods as an alternative to litigation involving the council. For instance, councils should consider mediation whenever defending appeals in the Class 1, Class 2 and Class 3 jurisdictions of the Land and Environment Court. Councils should also be prepared to use alternative dispute resolution methods as an alternative to prosecution action in appropriate cases.

Councils should adopt policies on enforcement and prosecution to assist with making consistent and reasonable decisions on appropriate enforcement action. Decisions on enforcement action should take account of these policies and the circumstances of the case.

Councils should also support alternative dispute resolution methods to resolve disputes between members of the community which arise in relation to matters falling to the council to determine. This includes disputes between applicants and objectors over the merits of applications for development consent and disputes between members of the local community over alleged unlawful development activity.

#### Good practice

Councils have been strongly encouraged to embrace alternative dispute resolution techniques by the Parliamentary Public Accounts Committee. In its report Changing the Culture: Dispute Management in Councils (1998), the committee made a number of valuable recommendations, including:

- councils formally incorporate provisions for the use of alternative dispute resolution in their policies,
- that alternative dispute resolution techniques be used prior to lodgement of development applications, during assessment and subsequent to determination but prior to commencement of an appeal,
- the Local Government Act be amended to make provision for the formal incorporation of alternative dispute resolution into the policies, practices and procedures of councils,
- best practice guidelines be developed by the Department of Local Government on the use of alternative dispute resolution in councils,
- benchmarking and performance indicators be developed further in this area,
- councillors and staff be provided with an appropriate level of training,
- councils consider implementing a legal services committee to review policy and management of legal matters and the better use of alternative dispute resolution in the management of disputes,
- councils review their policies on delegated authority, and
- councils better inform the local community about the availability of alternative dispute resolution.
4. Towards better service & communication – the responsibilities of the local community

4.1 Focus on conduct not personalities

Complaints about the action or inaction of a council are increasingly recognised as a valuable means of identifying and improving operational aspects of the council. Many complaints identify inadequate performance. This can often be attributable to particular members of staff.

Councils should encourage members of their local communities who make complaints to identify the conduct they are dissatisfied with and the responsible members of staff if they are known to the complainant. However, councils should discourage complainants making personal reflections on those staff.

This is a distinction that can be hard to recognise. Some examples are helpful. A complaint that an officer has delayed acting on an application is quite different from a complaint that an officer is lazy or corrupt. A complaint that a member of staff spoke rudely is different from one alleging that staff member is a rude person. How to deal with these situations is discussed below.

4.2 Appropriate behaviour

Councils should recognise and accept that sometimes, members of the local community will be angry when they deal with their council. This may manifest itself in making unreasonable demands, using harsh words or gestures and being unwilling to listen. This is part of normal customer behaviour that the council, with a customer focus, should expect and should be capable of managing.

However, councils are entitled to expect that the behaviour of members of the local community who are angry with the council must stay within certain acceptable limits. If behaviour strays beyond these limits, the council is entitled to consider placing and enforcing limits on contacts between the council and the person displaying the inappropriate behaviour.

Councils should determine for themselves what these limits are. They should be articulated in a relevant policy. Examples of discretionary limits councils might consider applying are set out in part 6 of these guidelines.
Responsibilities of the local community

Good practice

Here is one approach for dealing with angry complainants:

- remain calm and respectful: greet the person, introduce yourself and, if possible, ask them to sit down,
- use a low, calm tone of voice,
- speak at a similar pace to the complainant and try to gradually slow down that pace,
- listen: do not intervene too quickly, allow the person a chance to ‘blow off steam’,
- show you are open to their point of view and use active listening skills (such as maintaining eye contact, nodding the head and using other open body language),
- acknowledge the person’s anger without encouragement, diagnosis or criticism,
- paraphrase and summarise what the person is saying by picking out the key points and repeating them (this shows that you have heard and understood what has been said),
- if an apology is deserved for some act or omission that is your organisation’s responsibility, apologise as often as is necessary,
- agree with the person: without assuming any blame, listen for things that you can agree with i.e. ‘You are right, that is what should happen’ or ‘Yes, I can see how that must make you feel frustrated’,
- do not debate the facts while the person still feels angry,
- ensure the person understands what you are saying: avoid jargon and legalese in particular.

For more information on how to deal with the behavioural and organisational aspects of dealing with complainants who exhibit challenging behaviour, see our publication Dealing With Difficult Complainants.

4.3 Providing all relevant information

Councils are entitled to assume that when members of the local community make complaints or raise concerns with the council, they will put before it all relevant information available to them at that time.

Councils should re-examine complaints if new information comes to light. However, investigation is far less efficient if new information comes to light later and requires the matter to be re-investigated. Sometimes, this is a deliberate strategy by complainants so that the complaint is never effectively resolved. It is important that complainants ‘lay all their cards on the table’ at the start of the investigation process and councils are entitled to expect that this is done.

4.4 Accepting resource constraints

Consistent with a commitment to quality service, councils should endeavour to respond to the demands of the local community in as short a time as is possible. However, councils have limited resources. As a result, priorities must be determined. Councils are entitled to expect that members of the local community will accept these reasonable limitations.

The time taken to respond should be consistent with the council’s own publicised standards. If a matter cannot be finalised in a reasonable time, the council should advise of the delay and give a realistic and reasonable estimate of when the matter will be finalised.
4.5 Pursuing alternative redress

Councils can investigate and review complaints. However, after doing so, some members of the community will remain dissatisfied. Councils are entitled to expect that these people will, following a review, accept that the council cannot continually review the matter and will thereafter pursue alternative redress.

These alternatives include:

- making complaints to the NSW Ombudsman, the Department of Local Government (if the matter concerns a serious breakdown in council operations, if the council as a whole is not operating satisfactorily or the matter relates to pecuniary interest breaches) or the ICAC (if the matter concerns corrupt conduct) (see 5.2),
- publicising the grievance in the hope that this may change the view of the council (see 5.3), and
- taking legal action (see 5.4).

Good practice

Councils must take steps to inform the community of their commitments and of the responsibilities of members of the community. These should be widely notified, for example, in a guarantee of service or a service charter sent to each resident. They should also be posted on the council website and displayed prominently in customer service areas.
5. **Options for redress for members of the local community**

5.1 **Complaining to the council**

Members of the local community who do not believe their council has fulfilled one or more of its commitments should first make a complaint to the council. Ideally, complaints should be made in writing, although councils should accept and act on oral complaints. They should outline the circumstances of the case. Ideally, the complaint should state what the complainant wants in order to resolve the matter. All relevant documentation should be attached to the complaint.

Once the council has dealt with the complaint, the complainant may remain dissatisfied. If so, the complainant is entitled to have the complaint reviewed in a timely fashion by a more senior officer or by the elected council. Review requests should specify the reason(s) why the complainant remains dissatisfied.

If further compelling information comes to the attention of the complainant then, irrespective of whether the matter has been reviewed, the complainant is entitled to have the matter looked at again.

5.2 **Complaining to the NSW Ombudsman, the Department of Local Government or the ICAC**

Members of the local community who do not believe their council has fulfilled any of its commitments should generally complain to the council in the first instance. If this complaint and any subsequent review does not resolve the matter, they can complain to:

- the NSW Ombudsman (if the matter concerns maladministration or is related to child abuse),
- the Department of Local Government (if the matter concerns a serious breakdown in council operations, if the council as a whole is not operating satisfactorily or the matter relates to pecuniary interest matters), or
- the ICAC (if the matter concerns corrupt conduct).

Each agency has a separate role in relation to the oversight of the conduct of councils. The NSW Ombudsman is responsible for complaints about a broad range of matters generally described as maladministration. The Department of Local Government is responsible for investigating pecuniary interest matters and will intervene if councils are operating in an unsatisfactory manner or if council operations have seriously broken down. The ICAC is responsible for investigating corrupt conduct. Councils should be able to explain to the public, on request, these different roles.

Councils should be aware that there are other specialist complaint agencies that may be able to assist with certain types of grievance. For example, the Privacy Commissioner deals with complaints about privacy issues and the Anti-Discrimination Board deals with discrimination issues.
Options for redress for members of the local community

Councils should also ensure that their complaint handling policies make provision for complainants to be given information about the option of complaining to these agencies. Councils should also ensure that brochures and other information about these agencies is available in public areas of council offices.

5.3 Publicising a grievance

Members of the local community who do not believe their council has fulfilled any of its commitments have the option of attempting to draw attention to their grievance in the community. This may involve writing to newspapers, contacting electronic media agencies or distributing leaflets explaining the grievance. This approach is best suited to grievances concerning policy issues that the council is in a position to remedy.

In running a publicity campaign, members of the public need to be aware of the need to abide by the laws of defamation. Caution dictates that campaigns should be based on strong factual information and should avoid personal criticism.

5.4 Legal action

Complainants may have legal rights that could be relied upon to resolve their difficulty with the council. For example:

- complainants have statutory rights of appeal or review of the merits of many decisions taken by councils in the Land and Environment Court and/or the Administrative Decisions Tribunal (e.g. refusing development applications, refusing to reclassify land, and refusing access to documents under the Freedom of Information Act),
- complainants can challenge discretionary decisions by councils which fail to comply with the principles of natural justice and/or the general principles of administrative law,
- the conduct giving rise to the complaint may amount to negligence or breach of contract giving rise to civil law remedies, or
- there may be other statutory remedies available such as rights under a variety of legislation including anti-discrimination legislation, human rights and equal opportunities legislation or trade practices legislation.

As a matter of policy, we generally will not investigate complaints where there is a satisfactory alternative means of redress including legal action. Complainants and councils should always attempt to resolve conflict that may lead to legal action using alternative dispute resolution.

**Good practice**

The principles of natural justice establish that a decision-maker should be disinterested in the matter for decision and should allow a person materially affected by the decision to be heard.

General administrative law requirements include:

- acting within the scope of the power relied upon and in accordance with any procedural requirements,
- exercising powers for their proper purpose, after considering only relevant matters and reasonably,
- exercising discretionary powers promptly, independently and having regard to the merits of the matter under consideration.

Decision-makers who fail to adhere to these requirements in making decisions are at risk of having their decisions set aside should they be challenged.
6. Options for councils — limiting access

6.1 Putting limitations in their proper context

Councils are entitled to expect that members of the public will fulfil their responsibilities as outlined in part 4 of these guidelines. If these responsibilities are not fulfilled, then it is legitimate for a council to consider putting appropriate limits on what kinds of service and what types of communication that will be available.

However, there are eight critical matters that must be considered by councils considering imposing such limitations.

1. In the absence of compelling reasons to the contrary, members of the public are entitled to seek advice and assistance and utilise the services and facilities provided by their council.

2. Complaints and criticism are legitimate and potentially constructive aspects of the relationship between a council and its local community. They are a valuable means of reflecting on the operations of the council and improving both those operations and the quality of the council’s relationship with the local community.

3. Anger is an understandable and, to some degree, an acceptable emotion on the part of members of the local community frustrated with the actual or perceived misconduct or inaction of the council. It is an emotion that needs to be properly managed so that effective service can be delivered, communication can take place and council staff members and council facilities are not put at risk. It is unacceptable to unconditionally deprive any member of the local community of the right to have their complaints and concerns examined or to use the services and facilities provided by the council.

4. Before applying limitations, the council should be prepared to try alternatives, like seeing whether different (generally more senior) officers are able to deal with the person in question.

5. In all but the most serious of cases, limits on access and use of services and facilities should be applied only following a warning to the person that limits will be applied unless the specified unacceptable behaviour ceases.

6. When framing reports and recommendations regarding the imposition of limits, councils should ensure that staff avoid inflaming matters by using defamatory or otherwise derogatory language.

7. The council should specify in writing the limits that have been imposed and the reasons for their imposition.

8. The council should be prepared to have any limitations it has imposed reviewed by the general manager or the elected council on application by the person on whom the limitations are imposed after a reasonable period (such as three months). This creates an incentive to address the problematic behaviour.

Applying limitations on contact requires tact, discretion, flexibility and common sense. Each situation needs to be considered separately, in light of the provisions of the relevant council policy. If in doubt, discuss the general principles and the circumstances with us. However, the final decision rests with council.
Nevertheless, councils must also consider their obligation to responsibly manage their limited resources and their obligations as employers in terms of occupational health and safety. The sorts of situations giving rise to the need to consider limitations are often extremely stressful for staff. Good management of these situations contributes to a healthier workplace.

For more information on how to deal with the organisational aspects of dealing with complainants who exhibit challenging behaviour, see our publication Dealing With Difficult Complainants.

### Good practice

| It is a good idea for decisions on limiting access to be made by the elected council rather than the general manager or other senior staff member. | However, if the council has a policy on imposing limits, it may delegate this task to the general manager or some other senior staff member. |

### 6.2 Not replying to correspondence

Where, following due warning to the author, a council receives further correspondence that contains substantial and clearly inappropriate content (such as abusive or threatening language or adverse personal reflections on individuals), the council is entitled to inform the sender that they will not receive a substantive reply. In this way, the sender is given a further opportunity to reframe the correspondence.

This limitation is not appropriate unless the inappropriate content is substantial, explicit and material. Trivial or isolated remarks seldom justify the imposition of this limitation. In such cases, comment in the course of a substantive reply on the need to refrain from using inappropriate language is generally sufficient.

### 6.3 Terminating telephone calls

Where, following due warning, a caller to the council continues to use inappropriate language (such as strong abusive language, making threats or casting adverse personal reflections on individuals), it may be appropriate for the staff member taking the call to terminate the telephone call.

This limitation should only be imposed in the most exceptional circumstances. Overall commitment to providing quality service.

### Good practice

| If you are dealing with an angry caller, give the caller the chance to ‘self censor’. For example, say to the caller: ‘While you are using that language, I cannot concentrate on helping you. If you would like to call back in a few minutes and speak in a different way, I should be able to assist you.’ | If there is no improvement, say to the caller: ‘I am terminating the call now. Please call back if you wish to continue with your complaint.’ |

Councils should consider whether, in the case of persistent callers using inappropriate language, the caller should be requested to transact future business in writing or, if by telephone, then only with a nominated senior officer.
6.4 Limiting face to face contact

It may be appropriate for the council staff member to terminate a personal attendance where, following due warning, the person in question continues to:

- use inappropriate language (such as strong abusive language, making threats or casting adverse personal reflections on individuals), or
- behave otherwise inappropriately (such as acting in an overtly aggressive or threatening manner).

Where there appears to be imminent danger of assault or serious harassment, staff members should be advised to immediately terminate the consultation or meeting. It may be necessary to call the Police, contact building security or institute any relevant procedures for alerting staff to the situation.

For more information on the physical security issues associated with dealing with angry complainants in person, refer to the section on security issues in our publication Dealing With Difficult Complainants.

**Good practice**

Many councils that have encountered complainants who exhibit challenging behaviour have described them as 'vexatious'. It is a good idea to avoid any sorts of labels when responding to inappropriate behaviour. This can inflame the situation and indeed often serves to focus attention on the perceived unreasonableness of the council’s conduct.

Councils should avoid any sort of procedure that involves declaring or otherwise labelling a person to be a 'vexatious complainant' or a 'difficult complainant'. Focus on behaviour not personalities.

6.5 Limiting rights of address to meetings

Where, following due warning, a member of the public makes comments during council meetings that contravene the provisions of the code of meeting practice or are otherwise inappropriate (by, for example, using abusive or threatening language or casting adverse personal reflections on individuals), the presiding officer at that meeting should consider whether this conduct should be dealt with as disorderly conduct.

Where members of the public repeatedly address council meetings on the same or similar issues and, as a result, other members of the public are unable to themselves address council meetings, the council is entitled to impose limits on the number and length of opportunities it will give to that person to address council meetings.

6.6 Declining to further investigate complaints

Where, following a thorough examination of a complaint and following a proper internal review of that decision, the complainant remains dissatisfied with the outcome of the complaint, the council may consider placing limits on further communications with the complainant. As this is an action of the last resort, it is recommended that a senior council officer or the elected council takes this decision once other options are exhausted.
These limits should generally be confined to communications concerning the issues raised by the complaint and are generally only appropriate where there are unacceptable demands being placed on the complaint handling resources of the council. Limitations may include the following:

- declining to respond to any communications unless in writing, and
- informing the author that all further correspondence will be filed without acknowledgment unless it includes significant new information or raises new issues that in the opinion of the council warrant action.

In these cases, it may be appropriate to provide complainants with information on other complaint handling bodies like the NSW Ombudsman or the ICAC.

If a council believes on reasonable grounds that a complainant is deliberately providing fresh information in a selective way, the council should advise the complainant in writing to immediately pass on all relevant material to the council. The council should further advise the complainant that if such material is raised later, the council will require a satisfactory explanation as to why the material was not supplied earlier before considering that material.

**Good practice**

Councils need to ensure that there is extensive community consultation before they adopt a policy that has the effect of limiting the rights of members of the public to use the services of the council. These kinds of policy will usually be contentious. Support for the policy will be stronger if councils first invite submissions and take careful account of community opinion before deciding whether to adopt such policies and, if so, in what form.

### 6.7 Abusing the right to information

On some occasions, individuals or groups place what, viewed reasonably, are excessive demands on the resources of the council in responding to continual and extensive demands for information (such as sending large numbers of letters each containing detailed requests for information). In these cases, the council may, if it is satisfied that the resource demands in responding to these contacts are excessive, place specific limits on the manner and/or degree to which it will respond to these demands.

However, any such limitations cannot impede the statutory rights of the public to information (e.g. under the Freedom of Information Act, the Local Government Act or the Environmental Planning and Assessment Act.)

In these cases, it may be helpful for the council to consider imposing strategies to manage information demands. Management techniques include:

- using identified contact people in the council and the community,
- using newsletters and the like to disseminate information more efficiently, or
- making the council’s relevant files available for inspection to the individual or group.
Similarly, there are times when members of the community constantly raise new issues with the council despite having no significant personal interest in them nor representing any broader community interest in them. In these circumstances, the council may, if it determines that the resource demands in responding to these contacts are excessive, place specific limits on the degree to which it will respond to these communications (again, however, subject to any statutory rights to information available to the public).

Limits include determining not to respond to correspondence unless it raises new and significant issues, or placing numerical limits on the number of inquiries the council will respond to in a designated period.

**Good practice**

One council analysed the information demands made by a particularly active local resident. It emerged that over a period of 17 months, the resident had sent 137 letters to the council covering 97 different topics. Many of the letters contained detailed questions. As a result, the council imposed some limits on access for the resident.
7. When things go wrong— defamation

7.1 Cases giving rise to concern

At the more serious end of the range of problems that arise when councils deal with complainants who exhibit challenging behaviour are when statements are made that councils, councillors or council staff regard as seriously defamatory. A number of complaints to the Ombudsman over the past three years have concerned threats of defamation made against members of local communities by councils, councillors, council staff or bodies associated with councils. Here is an example:

Case story

An ex-council employee allegedly told a group of road workers from the council that they were going to be replaced by casual day labour. The workers raised this with their supervisor who denied the claim and informed senior staff. The council referred the case to its solicitors.

The solicitors wrote to the resident warning him not to interfere in council work sites. The letter also accused the resident of making a statement imputing that the council was an uncaring employer. The resident was warned not to contact council staff with the intention of making statements injurious of council, spreading rumours or lowering morale. Although not specific, the implication of the warning was that the resident’s comments were defamatory.

We wrote to the council advising that we did not understand how the solicitor’s letter could go so far as to request the resident to stop talking to council staff about matters damaging to the council. Had this request been acted upon, it would have amounted to an unwarranted suppression of the right of the resident to discuss local affairs with council employees.

7.2 Balancing free speech with protecting reputation

The law of defamation...involves a balancing of the interests of those whom it protects in the maintenance of their reputation, and the interests of the community in free speech...

Gleeson CJ in Ballina Shire Council v Ringland

As an open and democratic system of government, local government embodies the values of open and free society. Central among these values is the value of free speech. Members of the local community are entitled to express opinions on local issues whether or not they have a direct interest in these matters.

The right to free speech is not unlimited. Laws place limits on this right in a number of ways. Laws on censorship restrict public access to certain kinds of material in print, television and radio broadcast, on the Internet and on film. Laws prohibit racial vilification and other forms of discrimination that can arise from individuals expressing opinion. The law of defamation also limits free speech.

Just what is defamatory? A statement is defamatory of a person if it is likely to cause an ordinary reasonable member of the community to think less of a person or to shun or avoid the person. Individuals can seek damages and other redress if they are defamed.
7.3 The special case of commenting on public affairs and political matters

Council affairs are public or political matters on which members of the public are entitled to comment exercising the right of free speech. The law of defamation includes some special rules designed to balance the right to free speech and the right to protect a person’s reputation. The defences of qualified privilege and fair comment operate to ensure that the law of defamation does not unreasonably impede the essential flow of information and the right to comment on public or political matters.

Qualified privilege

The common law defence of qualified privilege arises where a person making or reproducing a defamatory statement has a duty to provide information on a subject to a person who has a duty or an interest in receiving the information. The benefit of the defence is not to the person making the statement but the general community. The statement must be made in good faith. A statutory defence of qualified privilege is set forth in s. 22 of the Defamation Act.

Fair comment

The defence of fair comment applies to statements that constitute comment on some matter rather than statements of fact. For this defence, the facts must be set out and an opinion is then expressed or drawn from them. If the bare inferences or allegations are made without reference to the facts on which they are based, the defence may not cover them. The facts must not be distorted or invented. Although the comment must be on a matter of public interest, the courts have held that local government matters generally are matters of public interest.

7.4 Can a council be defamed?

While there is no question that a councillor or a member of staff from a council can be defamed, the Court of Appeal of the Supreme Court of New South Wales recently held that councils do not have standing to sue for defamation arising from damage to their governing reputation. Despite this, councils sometimes threaten to take legal action over statements damaging to their reputations.

7.5 Factors to consider before taking legal action?

Everyone involved in council affairs should be clear that complaints and criticism are a normal part of modern local government. They are often valuable forms of communication between councils (especially as service providers with a commitment to quality service) and their local communities. Legal action should be a last resort, and only after other means of resolving a problem have been tried. Here are some other options:

- ignore it — consider the impact of legal action on the council’s reputation in dealing with complaints and feedback and the higher standards courts apply to what constitutes defamation in relation to public affairs and political matters,
- deal with the matter as an example of inappropriate communication having regard to the strategies outlined in part 6 of these guidelines,

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1 The statutory defence of qualified privilege applies where:
- the recipient has an interest or apparent interest in having the information;
- the matter is published in the course of giving to the recipient information on that subject; and
- the conduct of the publisher is reasonable.

2 See Ballina Shire Council v Ringland (1994) 83 LGERA 115
When things go wrong — defamation

- attempt to resolve the matter through negotiation or mediation, or
- request a voluntary correction or making a public statement replying to the alleged defamation (see 7.6).

**Good practice**

| Mediation is recognised by the NSW Law Reform Commission as a cost-effective means of quickly and effectively settling disputes over alleged defamatory publications. Mediation can allow the parties to explore the impact of the publication on the parties, and to explore the suitability of remedies like corrections and rights of reply. Councils should offer mediation as a means of resolving disputes in which they have an interest and which are currently or have the potential to draw on their financial resources. |

If councillors or staff believe they have been defamed and are considering taking legal action or otherwise seeking redress they should obtain their own professional advice. Here are some questions that should be considered in order to determine if taking action to seek redress (including taking legal action) would be viewed as a reasonable and proportionate response to the allegedly defamatory statement:

**Is the statement contained in a complaint or some other bona fide communication designed to pass on information in which the member of the community has an interest and the council has a duty or interest in receiving?**

If so, seeking redress in response to such a statement is less likely to be reasonable.

**Is the statement contained in a publication that is or will be widely disseminated?**

Seeking redress is difficult to justify in response to a statement made in a closed forum, such as during a telephone conversation, a personal interview or in an isolated item of correspondence.

**Is the statement one that comments on political or professional conduct or one making unsupported personal reflections on individuals?**

This distinction is often difficult to draw. For example, on the one hand a person might outline the circumstances of a local issue to support an accusation a councillor misled the community. On the other, a person might call the councillor a mischievous or deceitful individual over the same issue without reference to the facts. Seeking redress is very hard to justify in the former case.

**Has the person making the statement previously been warned about making statements that may be defamatory?**

Seeking redress is harder to justify if the person making the statement is unfamiliar with and has not been warned about what is acceptable and what is not.

**Good practice**

We are concerned about cases of councils referring statements made by members of the public that are or could be defamatory of a third party to that third party. We are aware of instances where a council referred letters from objectors strongly criticising the council’s consultants to those consultants. In these cases, there did not appear to be any compelling reason to do so. As a result, the consultants had their solicitors send letters threatening defamation proceedings to the objectors. Councils should only refer material of this kind to their consultants if there is a compelling reason to do so connected with the work being undertaken by the consultants. There are legal restrictions on disclosing information of this kind to third parties. Councils should be satisfied that their actions are lawful and reasonable.
7.6 **Restoring reputation**

One effective alternative means of redress open to a person alleging that they have been defamed is to seek a voluntary correction. This is a voluntary statement that has the effect of correcting or repudiating the earlier statement. Another alternative is where the victim makes a public statement responding to the alleged defamation.

Councils conduct their business in an open forum — the council meeting — that could be used as a venue for making voluntary corrections or delivering statements responding to the alleged defamation. This is generally only appropriate where:

- the alleged defamation is serious,
- the alleged defamation would, viewed reasonably, warrant action for redress,
- the alleged defamation is of a kind that, viewed reasonably, undermines or tends to undermine public confidence in the capacity of the subject of the defamation to honestly, impartially and competently discharge their public functions,
- on balance, the use of an open forum for the making of a correction or delivery of a right of reply is appropriate having regard to the nature of the allegedly defamatory publication, and
- in the case of a correction, the councillor or staff member the subject of the alleged defamation supports the delivery of the correction as full or substantial resolution of the matter, having obtained appropriate legal advice.

Councils should ensure that decisions to grant or refuse permission for a councillor or member of staff to exercise a right of reply are made:

- in good faith,
- based on relevant considerations, or
- for a purpose (e.g. not as a means to facilitate criticism of a political opponent or as a means for the councillor or member of staff to settle proceedings that have little or no connection to the affairs of the council).

7.7 **Meeting the cost of legal advice and legal action**

Councillors cannot have their legal costs and disbursements reimbursed other than in accordance with the relevant policy on the provision of facilities and expenses to councillors (s. 252 of the Local Government Act).

In Department of Local Government Circular 94/60, the department stated that a council may not meet the cost of an action for defamation taken by a councillor or council employee as plaintiff in any circumstances. This does not extend to situations where the councillor or council employee is involved in a representative capacity.

In appropriate circumstances, councils can elect to meet the cost of legal advice and legal representation for councillors and staff in defending actions for defamation. This applies where the publication is made in good faith in connection with the performance of the functions of a councillor or a council officer.

As these matters have the potential to draw significantly on the financial resources of councils, it is in the interests of councils to encourage councillors and staff to offer persons alleging defamation corrections and opportunities to exercise a right of reply.
8. When things go wrong — apprehended violence orders

8.1 What are apprehended violence orders

Apprehended violence orders (AVOs) are orders made, usually by the Local Court, where it is satisfied on the balance of probabilities that a person has reasonable grounds to fear and in fact fears personal violence, harassment, molestation, intimidation or stalking (s. 562B of the Crimes Act). These orders are issued in increasing numbers every year. They are used in many domestic disputes, neighbourhood disputes and other situations of conflict.

The purpose of the orders is to protect the person seeking the order. This is done by prohibiting or restricting contact by the person the subject of the order with the person seeking the order (s. 562D of the Crimes Act).

8.2 Balancing protection from the apprehension of violence with other rights

There is, as with defamation matters, a risk in the local government context that the right to protection from the apprehension of violence will conflict with rights of free speech. In cases involving councillors, there is the added risk that there will be conflict with the representation duties of councillors.

Again, at the more serious end of problems that arise from dealing with complainants who exhibit challenging behaviour are situations where a councillor or staff member feels threatened by the actions of the complainant. There have been a number of instances where conflict in the local government context has resulted in application being made for an AVO. These cases feature councillors and staff seeking orders against members of the community. Sometimes, councillors seek orders against other councillors. A recent case that came to us illustrates the potential for conflict between the right to protection and rights to free speech.

Case story

A resident was a spokesperson for a group of residents angry with moves by their council to include a notation on the s. 149 zoning certificates for the properties owned by these residents. The notation was to the effect that there was a possibility that the properties were affected by landslip.

One afternoon, the resident went to the home of the mayor of the council and had a conversation with the mayor. The nature of the conversation is disputed. However, shortly afterwards, the mayor sought an AVO against the resident, citing both this conversation and earlier calls by the resident to the mayor’s place of work. At the court hearing, the order was made. The resident appealed and the case was eventually settled after the resident gave the mayor certain undertakings not to intimidate, threaten, harass or otherwise interfere with the mayor.
The resident had been a prominent spokesperson for the residents at council meetings and other public meetings. So in granting the order, the magistrate expressly provided that the resident could continue to attend council meetings and represent the residents. This was reflected in the final terms of settlement that provided that nothing in the undertakings given would inhibit the resident from attending meetings of the council or demonstrations or meetings of residents’ action groups or from speaking at such meetings or demonstrations.

8.3 Alternatives to an apprehended violence order

The potential for the granting of an AVO to seriously conflict with other rights is significant. Therefore, as with alleged defamation, it is important that legal action be viewed as a last resort and only when all other appropriate means of dealing with the situation have been tried (see 7.5 for some other options), or if the situation is so serious that an AVO is the only reasonable and practical means open to deal with the matter.

Where the perceived threat comes from a member of the local community, then limitations of the kind discussed in Part 6 of these guidelines may be considered as an appropriate response to the perceived threat. These include limitations on:

- telephone contact with relevant person (possibly with arrangements for the person to liaise with other named officers or councillors),
- face-to-face contact (possibly with arrangements for the person to have face to face contact with other named officers or councillors), and
- the right to address meetings (possibly with an invitation for the person to nominate another person to speak on their behalf).

Councils should also ensure that appropriate levels of security are in place for staff and councillors generally and in response to specific situations of actual or potential threat. In this regard, councils need to consider their obligations as employers under the Occupational Health and Safety Act.

Where the situation involves two councillors, some simple measures are open to the council to manage the conflict. For instance, seating arrangements at council meetings could be reviewed. Membership of council committees could be reviewed in order to minimise situations of conflict. Further, the authority of the chair must be maintained during meetings to ensure that the conflict between the councillors does not unduly interfere in the orderly disposal of council business.

Particularly (but not exclusively) in situations involving two councillors, mediation should be carefully considered. These conflicts are often personal, have a long and complex history and affect the capacity of individuals in a long-term association to work together. These are strong indicators of conflicts that may lend themselves to resolution using mediation.
8.4 Framing a reasonable apprehended violence order

If an application for an AVO is unavoidable, it is nevertheless important for the person seeking protection through the AVO to propose prohibitions and restrictions that will remove or reduce the threat to that person’s safety without unduly hindering the ability of the defendant to exercise rights of free speech and/or representation.

For example, it may be possible for the prohibitions or restrictions to allow the respondent to continue to attend the council offices or chambers subject to certain restrictions.

The final decision on the terms of an AVO is a matter for the court to determine. However, it is open to the person seeking protection to make submissions to the court on appropriately framing the prohibitions or restrictions if an order is in fact to be made.
9. Model policies on service and communication

Note: These are separate but related policies. It is possible for a council to adopt a single policy. However, it is likely that adopting a policy on service and communication that sets out both service standards and limits on access will send a mixed message to the local community that may undermine the overall impact of the policy.

Councils need to consider whether any changes need to be made to their codes of conduct, codes of meeting practice, complaint handling policies and other internal policies and codes as a result of adopting these policies.

9.1 Part A – Model policy on service and communication

Objectives

This policy will:

• set forth and outline the commitment of council to quality service and effective communication,
• outline a program for improving service and improving communication between council and the local community,
• specifically outline the commitments of council regarding communication and standards of service, and
• outline what are the responsibilities of members of the local community in their dealings with the council.

Commitment to service and communication

Council is committed to providing quality service to the local community in order to meet the needs of the local community using the available resources. To demonstrate this commitment, council will build and maintain a relationship based on open and effective communication with the local community.

Council is committed to better understanding the needs and expectations of the local community. Council will enhance its understanding of the needs and expectations of the local community by:

• carrying out periodic community surveys to learn about what the local community thinks about the areas where council is performing well and the areas where council needs to improve service,
• establishing a consumer council with representatives from council and the local community to create an ongoing dialogue between council and the local community about service performance and improvement,
• maintaining opportunities for feedback by encouraging the public to complete feedback forms that council will record and analyse,
• maintaining a complaint handling system to respond to service failures and unsatisfied expectations and to enable council to identify and rectify service failures,
• establishing guarantees of service in a number of areas and regularly measure the performance of council against these guarantees,

• continuing to deliver information on the activities of council through a variety of means including publishing regular community updates, publishing community information in local newspapers and on the council website, placing on exhibition at council offices and libraries plans and other documents relating to council activities and, using public meetings and other open forms of consultation and dialogue where appropriate,

• maintaining an open file policy whereby members of the public can inspect files by prior arrangement (subject to the fees and conditions detailed in the policy and subject to council’s duties of confidentiality and privacy), and

• continuing to encourage input from the community on council’s activities through a variety of means including encouraging the local community to attend and speak at council meetings, encouraging the local community to contact councillors to discuss concerns, publicising council’s complaint handling and feedback systems and encouraging submissions on plans and other documents relating to council activities.

General guarantee of service

Council guarantees to:

• take major decisions affecting the local community only after due consultation with the local community,

• treat members of the local community with courtesy, patience, sensitivity and attentiveness,

• provide the local community with advice and other information that is clear and concise,

• be sensitive to any language or other communication difficulties experienced by members of the local community when providing advice and other information,

• adopt fair, lawful and appropriate procedures when making decisions, carrying out activities and performing services,

• make decisions using processes that are impartial and otherwise ethical,

• use information and council resources responsibly and efficiently, and

• act in accordance with the law, council’s code of conduct and the code of meeting practice.

Specific guarantees of service

Answering correspondence

Council recognises the importance of correspondence (including letters, facsimiles and email messages) and will try to provide a clear and concise response promptly. Council guarantees to:

• acknowledge correspondence or provide an interim reply within one week in the case of letters or facsimiles and two days in the case of email messages,

• respond to correspondence by telephone where appropriate (such as simple requests and correspondence for information only) and record the response,

• provide a substantive response within two weeks in the case of simple inquiries and within four weeks in the case of more complex inquiries,
• keep the writer informed if a final reply cannot be provided within the time allowed,
• ensure all correspondence includes the name and contact details of the officer dealing with the matter and council’s file reference, and
• use language that is clear and concise.

**Telephone calls**

Council recognises the importance of telephone calls and will try to answer them promptly, quickly refer calls to the appropriate officer and provide clear and concise information in response to caller inquiries. Council guarantees to:

• answer calls within five rings either in person or by automatic telephone answering service,
• advise the caller on answering of the full name of the officer answering,
• deal with the call, redirect the call or take a clear message as appropriate,
• ensure messages include details of the caller’s name and number, the caller’s message and details of who took the message and when,
• if the call cannot be fully responded to, give clear advice on what has to be done to respond to the call fully and how long that will take,
• put calls on hold for no longer than one minute at a time (or such other time as is reasonable having regard to council’s resources),
• speak clearly and deal with callers calmly, courteously and patiently even where callers are angry,
• record all significant telephone calls in the form of a written file note,
• answer unattended telephones in the absence of the responsible officer, and
• return telephone messages within one business day when an officer is unavailable (unless voice mail is available).

**Availability of staff at counter and for interviews**

Council recognises the need to promptly serve members of the public who come to Council to seek information and transact other business. Council will try to ensure the council offices are accessible. Council will provide customer service help desks where the public can obtain information and transact business. Council guarantees to:

• make staff available for interviews by prior arrangement and otherwise during council’s hours of business (which council will widely publicise),
• attend to members of the public at customer service help desks within five minutes,
• promptly advise staff if there is a member of the public in the reception area for an appointment,
• if staff cannot attend interviews on request, attempt to arrange a mutually convenient appointment in the future,
• provide a full range of information for public inspection in customer service areas including:
  – all documents required to be publicly available,
- relevant council policies and plans (including details of council’s complaints policy),
- community information brochures and newsletters,
- business papers,
- information on the NSW Ombudsman and the ICAC, and
- development applications and other information on public exhibition; and

- speak clearly and deal with visitors calmly, courteously and patiently even where visitors are angry.

**Addressing meetings of the council**

The council meeting is the peak decision-making forum of council. Council values the input of members of the public in the consideration of issues determined by council. Council guarantees to:

- publicise the time and date of meetings of council and council committees as per council’s obligations under the *Local Government Act*,
- make agendas and business papers available to interested persons prior to meetings as per council’s obligations under the *Local Government Act*,
- provide opportunities for members of the public to address meetings of council and council committees,
- provide members of the public wanting to address meetings with information on the conduct of meetings,
- take into account insofar as they are relevant the points of view expressed by members of the public on issues for decision,
- make available details of the address and telephone number (and, if relevant, the contact hours) of each councillor to members of the public wanting to present their views to councillors directly, and
- endeavour to provide councillors in a timely fashion with submissions and other information provided by members of the public for the consideration of councillors.

**Notification and consultation**

Council recognises that a fundamental component of quality service and improved communication is effective notification and consultation with the local community. Council recognises that the local community is entitled to be notified of proposals that affect or might reasonably be seen as likely to affect their interests and to have their attitudes, concerns and needs acknowledged and taken into account. Council guarantees to:

- comply with all legal requirements in relation to notification (including, where relevant, its obligations under the *Environmental Planning and Assessment Act* and/or the *Privacy and Personal Information Protection Act*),
- comply with Development Control Plan and Local Orders Policy in relation to notification,
- publish details of all development applications in council’s newsletter and on web site (subject to obligations under the *Privacy and Personal Information Protection Act*),
- provide persons notified with information on how to best frame submissions,
Model policies on service and communication

• meet council’s obligations under the Privacy and Personal Information Protection Act, including informing persons notified that submissions may be obtained by members of the public under the Local Government Act and/or the Freedom of Information Act,
• ensure letters of notification include the full name and the direct telephone number of the officer responsible for the application and information on how to obtain further information on the matter,
• in relation to issues of significant community or public interest or where the issue is likely to materially adversely affect the interests of a significant number of members of the community, to undertake consultation irrespective of any legal or policy requirement to do so,
• ensure that information is available for inspection and staff are available for consultation in relation to matters the subject of notification and consultation;
• ensure that consultation is timely and appropriate but does not unduly delay the decision making process, and
• provide access to council files consistent with council’s legal obligations under the Local Government Act, the Freedom of Information Act and the Privacy and Personal Information Act.

Complaint handling and reviewing decisions
Council values the opportunity complaints give to identify areas of service that need improvement, to respond to individual dissatisfaction and to strengthen the relationship between council and the local community. Council guarantees to:
• deal with complaints in accordance with its complaint handling system,
• widely publicise the existence of council’s complaint handling system,
• encourage members of the public dissatisfied with council’s conduct to lodge complaints (and facilitate such action by making complaint and feedback forms freely available in public areas of council’s offices),
• ensure that complainants who are dissatisfied with the outcome of their complaint and remain dissatisfied are offered a review by a more senior officer,
• advise complainants of their right to complain to the Ombudsman, (if the matter relates to pecuniary interest issues or alleges a serious breakdown in council operations) the Department of Local Government or (if there are reasonable grounds to suspect corrupt conduct), the ICAC,
• deal with protected disclosures in accordance with its internal reporting policy, and
• regularly report publicly on the outcome of complaints, using this information to identify and rectify deficiencies in council services.

Using alternative dispute resolution methods
Council is committed to the efficient use of its resources. Disputes involving council are capable of draining substantial amounts of council’s human and financial resources. Council recognises the capacity of alternative dispute resolution methods to assist parties in dispute to identify their interests and resolve their disputes quickly and at a fraction of the cost of formal legal action.
Council will endeavour to resolve quickly and fairly disputes in which it is involved, utilising alternative dispute resolution methods whenever appropriate. Council guarantees to:

- ensure appropriate staff members are trained in alternative resolution methods,
- use alternative dispute resolution methods to assist members of the community in dispute over development applications to resolve their disputes,
- support alternative dispute resolution methods to assist in the resolution of disputes to which council is a party, and
- provide council representatives at mediation session with adequate authority to settle disputes the subject of mediation.

**What are the responsibilities of members of the local community**

Communication is a two-way process. To be effective, both council and the public should strive to adopt a fair and reasonable approach to communicating with each other. When communicating with council, members of the public will as far as possible in the circumstances:

- focus their dissatisfaction on the conduct or performance of council, councillors and/or staff members rather than on personal criticism of councillors and/or staff,
- behave appropriately, avoiding the excessive use of abusive language and/or threatening behaviour,
- provide council with all relevant information in order that their opinion, concern or complaint can be readily understood,
- accept that council operates under resource constraints, noting that the allocation of resources is a matter for council to determine, and
- pursue alternative means of resolving complaints and disputes through external agencies, publicity and/or taking legal action if the complaint or dispute cannot be resolved to their satisfaction.

9.2 **Part B – Model policy on limits on service and communication**

**Objectives**

This policy will:

- outline options for redress for members of the local community if the council’s commitments to service and communication set out in its policy on service and communication are not met,
- outline options for redress for the council if members of the public do not meet their responsibilities set out in the council’s policy on service and communication or otherwise become abusive of council’s staff or resources, and
- provide advice on quick and effective resolution of actions for defamation or threatened defamation proceedings involving councillors and council staff.

**What if council does not honour its commitments?**

Any member of the public who believes that council has failed to honour its commitments set forth in council’s policy on service and communication should raise the matter with council in the form of a complaint. Council will investigate the complaint and advise the complainant of the outcome in a reasonable time.
Complaints will be investigated in accordance with council’s complaint handling policy.

If the complaint is justified, council will try to explain the problem and outline what council is doing to resolve the matter.

If the complainant remains dissatisfied, the complainant can seek a review. Alternatively, the complainant can complain to the NSW Ombudsman, the ICAC or the Department of Local Government.

**Putting limits on services from and communication with council**

Council accepts and values complaints and criticism of council’s performance. Council also understands and accepts that some members of the public may experience strong anger arising from dissatisfaction with council services.

Nevertheless, council will consider placing limits on communication between certain members of the public and council. This applies where communication becomes abusive of persons or resources. This is in the interests of responsible management of council’s limited resources and in order to fulfil council’s obligations as a responsible employer.

These limits will only be applied on the decision of the council, the general manager or a member of staff with appropriate delegated authority in serious cases of inappropriate conduct and only if the person concerned has first been warned about the consequences of persisting with the identified inappropriate conduct. Council will set the limits out in writing and include a statement of reasons for their imposition.

Council will not impose unconditional limits on communication between council and any member of the public. Council will keep an accurate record of the limit imposed and will, on request, review the limitation (on the decision of the council) following the expiration of a period of three months.

The following limits will be considered subject to the preconditions outlined above if:

- council receives correspondence that contains substantial inappropriate content (such as abusive or threatening language or adverse personal reflections on individuals), council may advise the sender that the sender will not receive a substantive reply,
- a caller to council uses inappropriate language (such as strong abusive language, threatening language or language casting adverse personal reflections on individuals), council staff may terminate the telephone call,
- council receives persistent calls from a member of the public during which inappropriate language is used, council may advise the caller (both personally and subsequently in writing) that in future, business is to be transacted only in writing,
- a person being personally interviewed by council staff continues to use inappropriate language (such as strong abusive language, threatening language or language casting adverse personal reflections on individuals) or otherwise behave inappropriately (such as acting in an overtly aggressive or threatening manner), council may terminate the interview,
Model policies on service and communication

- a person repeatedly addresses meetings of council on the same or similar issues and, as a result, other members of the public are unreasonably deprived of the opportunity to themselves address meetings, council may impose limits on the number of opportunities it will give to that person to address meetings on similar issues;

- following a thorough examination of a complaint and following a proper internal review of that decision, the complainant remains dissatisfied with the outcome of the complaint, council may place limits on further communications with the complainant regarding the complaint (including filing further correspondence not raising new information without acknowledgment or referring the complainant to an appropriate external agency);

- council believes on reasonable grounds that information available to a member of the public who has lodged a complaint is deliberately being provided to council in a selective way, council may advise the complainant to immediately pass on all relevant material to the council in order that the matter can be properly assessed, failing which, council will not consider further material unless a satisfactory explanation is given to explain why the material was not supplied earlier;

- a person places what, viewed reasonably, are excessive demands on the resources of council in responding to continual and extensive demands for information, council may, if it is satisfied that the resource demands in responding to these contacts are excessive, place specific limits on the manner and/or degree to which it will respond to these demands, including:
  - providing information only if council is under a statutory responsibility to do so,
  - using identified contact people in council to deal with the matter,
  - using newsletters and the like to disseminate information more efficiently, or
  - making council’s relevant files available for inspection to the person,

- a person continually raises new issues with the council, particularly where these issues are not issues in which the individual has a significant personal interest or does not represent a broader interest group in the local community, council may, if it determines that the resource demands in responding to these contacts are excessive, place specific limits on the degree to which it will respond to these communications (such as not responding to correspondence unless it raises new and significant issues or placing numerical limits on the number of inquiries it will respond to in a designated period).

Defamation and apprehended violence orders

Council notes that despite its commitment to quality service and improved communications, there are occasions where conflict between council (including staff and councillors) and members of the public may escalate to the point where parties resort to legal action such as defamation proceedings or applying for an apprehended violence orders.

Council is committed to improved service to and communication with the local community, the speedy and cost effective resolution of disputes involving council and minimising any impact on the rights of members of the public to participate in the affairs of council. Council also considers that legal action should be considered only when all other reasonable and appropriate alternatives to resolving disputes have been attempted.
To this end, council will encourage and assist the parties to disputes giving rise to defamation proceedings or applications for apprehended violence orders to resolve these disputes through other means (including, where appropriate, by engaging appropriate external mediators). In the case of action taken against council, councillors and/or council staff, council may contribute towards the cost of any mediation.
Useful resources

The Complaint Handler’s Toolkit, NSW Ombudsman, June 2000.

Effective Complaint Handling Guidelines, NSW Ombudsman, June 2000 (incorporated in The Complaint Handler’s Toolkit).


Complaints Management in Councils, Department of Local Government Practice Note No. 9, 1994.

Australian Standards on Complaint Handling (AS 2469), Australian Standards Association.


