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# **Model Guidelines Unreasonable Conduct within Councils (Elected Members) Recognition and Response**

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**December 2024**

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*This document has been prepared as a guideline for councils only and is not intended to offer legal advice. Independent legal advice should be obtained as and when considered appropriate in individual circumstances.*

# Glossary

<b>Code Of Conduct framework</b>	The Code of Conduct framework refers to the legislative and administrative arrangements for the management of complaints against elected members under the Code of Conduct that applies to all councillors under <i>Local Government Act 1993</i> .
<b>Council-related work</b>	Council-related work refers to the activities and responsibilities undertaken by elected members and council staff within the scope of their roles.
<b>Director of Local Government</b>	The Director of Local Government has a range of powers and responsibilities under the <i>Local Government Act 1993</i> for ensuring the sector's compliance with relevant legislative and regulatory provisions. Complaints under the <i>Local Government Act 1993</i> (that are not Code of Conduct complaints) should be directed to the Director of Local Government. The Director is supported by the Office of Local Government in the Department of Premier and Cabinet.
<b>Elected member</b>	A person duly elected and sworn in as a councillor in accordance with the <i>Local Government Act 1993</i> requirements.
<b>Equal Opportunity Tasmania</b>	The Office of the Tasmanian Anti-Discrimination Commissioner. Complaints under the <i>Anti-Discrimination Act 1998</i> should be made to this entity.
<b>Infringing person</b>	The person conducting the act/omission whose acts are considered by others to be Unreasonable Conduct.
<b>Officer</b>	Officers, under Work Health and Safety (WHS) legislation, must act with due diligence in reasonably ensuring that the PCBU (i.e. council) complies with its WHS obligations. In the context of local government, Officers include general managers/CEOs and possibly senior executive roles.
<b>Other Persons at the Workplace</b>	When conducting council-related work, elected members are considered 'Other Persons at the

Workplace'. As such, they are still captured as having responsibilities under WHS legislation.

## **PCBU**

Under the WHS Act, PCBUs (Person Conducting a Business or Undertaking) hold the primary duty of care to ensure, so far as is reasonably practicable, the health and safety of persons at the workplace. In the context of local government, councils as organisations are the PCBU.

## **Unreasonable Conduct**

Unreasonable Conduct includes:

- (a) A reasonable action done in an unreasonable way;
- (b) An unreasonable action done in a reasonable way; or
- (c) An unreasonable action done in an unreasonable way.

In simpler terms, Unreasonable Conduct is behaviour that a reasonable person would find unfair, disrespectful, aggressive, or rude in the circumstances. Examples of Unreasonable Conduct might include actions that are clearly unfair, or actions done in a way that a reasonable person would find inappropriate or disrespectful. A more detailed explanation of what is reasonable and unreasonable is incorporated in the body of the document.

## **Workers**

Workers, under WHS legislation, must take reasonable care for their own health and safety and that of others, as well as complying with applicable policies, procedures, and lawful and reasonable directions. In the context of local government, workers include council staff.

## **WorkSafe Tasmania**

Tasmania's Work Health & Safety Regulator responsible for the administration of the *Work Health and Safety Act 2012*.

# Background

***Oftentimes, unreasonable conduct can be seen as behaviour that a reasonable person would find unfair, disrespectful, aggressive, or rude in the circumstances.***

Across the local government sector, councils are reporting – and the Office of Local Government (OLG) is observing – an increasing prevalence of Unreasonable Conduct by some Elected Members. These issues were the focus of the work health and safety (WHS) review into the sector commissioned by the Local Government Association of Tasmania (LGAT) and sponsored by the Tasmanian Government in 2021 and have been further highlighted in more recent workplace safety reviews undertaken by several Tasmanian councils.

Maintaining professional levels of conduct and fostering respectful relationships within councils are fundamental to organisational integrity, effective decision-making and achieving good outcomes for local communities. Professional and respectful conduct are also essential to ensure a safe workplace.

Elected Members, general managers / CEOs, and council staff **all** have responsibilities under the *Work Health and Safety Act 2012* (WHS Act) to ensure that health and safety is prioritised in the workplace, and that individual behaviour is reasonable and does not adversely affect the health and safety of others in the workplace.

Unreasonable conduct, if not properly dealt with, presents real risks for councils in the context of their statutory obligations to maintain a safe workplace. Such conduct also has the potential to severely undermine community confidence in the professionalism of Elected Members and can damage the reputation and community standing of individual councils and the sector overall.

It is therefore crucial that Unreasonable Conduct is clearly identified and addressed appropriately.

This document seeks to provide clear, practical advice and associated guidance materials about the relevant responsibilities of councils, Elected Members, and general managers/ CEOs and other staff, and how Unreasonable Conduct can and should be managed appropriately using the available tools and complaints pathways.

## **A shared responsibility**

In many situations, it will be the General Manager or Mayor who is in the position of having to determine whether behaviour is unreasonable. However, other individuals, such as elected members or staff, also have a role. This approach distributes the responsibility for assessing conduct, ensuring it is not solely reliant on a single authority figure. Involving various stakeholders makes the process more balanced and inclusive, aligning with the goal of maintaining a safe workplace.

While this document references council employees at a high-level to adequately explain concepts, definitions and principles, *the primary focus is on Elected Member conduct*, given the challenges and complexities that can arise in this space, which have been the subject of more recent discussion and concern.

# Scope

The focus of this document is to provide guidance on:

- (a) what does (and does not) constitute Unreasonable Conduct in the context of WHS, Code of Conduct, and other formal complaints processes, including a broad range of 'real world' worked examples;
- (b) where and how the current legislative frameworks and obligations apply in responding to such conduct; and
- (c) management and early intervention strategies, including for conduct that persists despite the application of such strategies, including available (proportionate and appropriate) escalation pathways and their associated evidentiary requirements.

This document recognises the challenges for council in addressing Unreasonable Conduct within the context of increasing expectations on PCBU's (i.e. councils) and other statutory duty holders to effectively identify and then eliminate or manage psychosocial hazards and other Unreasonable Conduct in their workplaces.

## **Managing Unreasonable Conduct in your council**

This document is not intended to exhaustively define every possible manifestation of Unreasonable Conduct. Instead, it aims to help individuals assess whether behaviour is unreasonable or not and give them the confidence to respond in an appropriate way where this is required to support respectful relationships, manage workplace risk and avoid the real psychosocial harm that can be caused by certain behaviours. It provides guidance and examples to help individuals make informed judgements based on the specific circumstances they encounter.

Ultimately, responses to Unreasonable Conduct will be most effective when they are being driven by well-informed people acting in good faith and utilising sound judgement, with the overriding objective of minimising the risk of genuine harm to people in the council workplace.

Elected members should conduct themselves with civility, respect, and courtesy to others – even where they disagree. This supports good governance and decision-making and provides the community with confidence that they are being well represented.

## **Promoting a balanced approach**

It is important to recognise that people acting in a reasonable way can have different perspectives, and engage in robust debate and disagreement, and this document supports a balanced approach to handling such differences. There will always be



‘grey areas’, and conduct will not always fall neatly into categories of reasonable or unreasonable. Discretion and sound judgement remain essential in assessing each situation, and in utilising these guidelines.

The guidelines are intended to complement and support informed, common-sense judgements about what is and is not a reasonable behaviour in a given context, and also what constitutes an appropriate and proportionate response when someone is acting unreasonably. They also need to be read in conjunction with and complement the tools already available to councils to support good governance and manage workplace risks.

## **Proactive Management is Critical**

At a broad level, the guidance materials in this document emphasise two critical points for effectively managing Unreasonable Conduct:

- (a) the conduct must be identified and named up as an objective risk to health and safety, and must include clear and specific reasons why it is considered Unreasonable Conduct; and
- (b) there must be clear and consistent documentation that demonstrates the reasonable and proportionate responses that have been undertaken to address the Unreasonable Conduct to support any subsequent escalation in response to that conduct persisting.

The reasoning and evidence will clarify Unreasonable Conduct, provide objective analysis, and equip an impartial decision maker to assist council and make findings if any matter needs to be further investigated.

Councils need to have an effective framework in place to support both early management and any ultimate referral to a regulator if necessary. This way, if they ever need help from WorkSafe Tasmania or other agencies like the Office of Local Government, they can show they are doing everything reasonably practicable to facilitate effective management of Unreasonable Conduct. Being prepared and organised can make a big difference in how investigations or issues are handled.

By setting up these measures early, councils can manage risks better and make it easier to get support when needed. It also means the involvement of external entities and investigations may be avoided. Simply put, having everything in order helps others help you when challenges come up.

# What is Unreasonable Conduct?

In very general terms, this document defines Unreasonable Conduct as behaviour that a reasonable person would find unfair, disrespectful, aggressive, or rude in the circumstances.

The following section sets out the broad legal landscape for better understanding the key characteristics and thresholds for what constitutes Unreasonable Conduct.

As noted above, it is impossible to arrive at a single, exhaustive definition of Unreasonable Conduct, but there are some clear and useful parameters that councils should understand when making judgements about whether a person's conduct falls into the category of being 'unreasonable'. To be considered Unreasonable Conduct, one of the following scenarios must apply:

- (a) an unreasonable act/omission is carried out in a reasonable manner;
- (b) a reasonable act/omission is carried out in an unreasonable manner; or
- (c) an unreasonable act/omission is carried out in an unreasonable manner.

In essence, Unreasonable Conduct requires an objective assessment of both **what** is done/not done and **how** it is done/not done.

## The 'What'

In simple terms, the act/omission can be characterised as the 'what' or the task to be undertaken. Permitted or lawful behaviour will usually be considered reasonable conduct. Non-permitted, unnecessary, oppressive, or unlawful behaviour will usually be Unreasonable Conduct.

Conduct (an act or omission) can also be considered unreasonable if a reasonable person – that is someone exercising reasonable judgement and care having regard to all the facts and circumstances – would consider it to be unreasonable.

Unreasonable Conduct can only be determined on a case-by-case basis and there are countless examples of what potentially could be considered Unreasonable Conduct – it all depends on the actual circumstances. They could include, for example, deliberately or repeatedly disrupting meetings, being overly critical with the express intent of discouraging other to contribute to debate or misconstruing facts with the intent of causing harm to others.

## The ‘How’

The ‘reasonable manner’ focuses on the behaviour of the person performing the act/omission – In simple terms, the manner or way in which an act/omission is performed can be characterised as the ‘how’.

The way or manner in which an act has been done will be unreasonable if a reasonable person, having regard to all the facts and circumstances, would consider it unreasonable. This is an objective not subjective test, with the measure of ‘reasonableness’ being a question of fact. Examples of an unreasonable manner include being aggressive to the point on intimidation or using language deliberately designed to offend.

## Understanding Reasonableness

The concept of what is reasonable behaviour or Unreasonable Conduct has been considered extensively in judicial review of administrative decisions. Importantly, for an Unreasonable Conduct claim to be made out, the Unreasonable Conduct must create and have a causal objective link to actually, or foreseeably adversely affecting another person’s health and safety.

A wide range of conduct may be deemed unreasonable, so long as there is evidence to objectively support the allegation (i.e. not ‘feelings’ based). Some key points to consider from decisions include:

- it does not matter if the complainant subjectively and sincerely believes they are being subject to Unreasonable Conduct, nor does it matter if the alleged perpetrator has a similar but contrary subjective and sincere belief that its act/omission was reasonable and carried out in a reasonable manner;
- an act/omission may be unreasonable when the act/omission lacks an evident and intelligible justification;
- an alleged perpetrator exercising their legitimate authority may result in some discomfort for another person without it being unreasonable.
- in order for an act/omission to be reasonable, it does not have to be the best or the preferable course of action;
- an act/omission may still be reasonable even if particular steps are not taken/ excluded; and
- unreasonableness is not limited to what is an irrational or bizarre decision, which is so unreasonable that no reasonable person could have arrived at it.

Relevant considerations may include but are not limited to:

- the circumstances that led to and created the need for the act/omission to be taken;
- the circumstances while the act/omission was being taken;
- whether the act/omission involved a significant departure from the established policies or procedures, and if so, whether the departure was reasonable in the circumstances;
- the consequences that flowed from the act/omission; and
- the persons involved emotional and psychological state at the time.

While a single act/omission may be Unreasonable Conduct, repetition will generally aggravate Unreasonable Conduct. There is no specific number of acts/omissions required to meet the condition of "repeated", nor does the exact same specific Unreasonable Conduct/action/omission have to be repeated before the act/omission is considered Unreasonable Conduct. All that is required for repetition is some objective level of persistence in the act/omission.

Finally, for an Unreasonable Conduct claim to be made out, the Unreasonable Conduct must create and have a causal objective link to actually, or foreseeably adversely, affecting another person's health and safety.

Conflict, disagreement, or breakdown in a working relationship does not necessarily indicate someone has engaged in Unreasonable Conduct, or acted in a way that would offend against other safety obligations. **There must be something more serious to the circumstances of the conduct that creates an objective risk to health and safety.** In the WHS context, the term "risk" has been taken to mean the mere possibility of danger, and not necessarily actual danger.

Further, a person does not actually need to be injured (physically or psychosocially) for an act/omission to be considered Unreasonable Conduct. It is the existence or presence of the risk to health and safety that constitutes the obligation for duty holders to reasonably behave and/or act. If an illness or injury happens, it can be considered a result of the risk involved, as long as it is causally connected to the unreasonable actions taken during council-related work.

The risk must be real and a person alleging Unreasonable Conduct will need to be able to explain objectively what the risk is. Hypotheticals will generally not be accepted. The compounding effects of severity, frequency and duration will all assist in identifying an objective risk to health and safety.

# Legal Framework

There is no single legislated obligation within local government to act reasonably, nor is there a general prohibition on Unreasonable Conduct. However, there are specific prohibitions and obligations covering both council and its Elected Members across a range of legislation. The key elements of the legislative framework that applies to councils and Elected Members are explained in the sections below.

The appropriate avenue(s) for dealing with and responding to Unreasonable Conduct will depend on:

- (a) the subject matter of the act/omission;
- (b) severity of the act/omission; and
- (c) the Infringing Person (e.g. Elected Member, council staff, member of the public etc)

There is no 'hard and fast' threshold, and an objective assessment or advice should be made/sought on individual matters.

Parliament has prescribed a number of frameworks which can apply to address Unreasonable Conduct. A level of judgement is required in choosing which framework or avenue of action is the most appropriate for a specific set of circumstances. The below frameworks provide structured approaches to managing and mitigating Unreasonable Conduct, ensuring that responses are consistent and effective. Understanding and applying these frameworks appropriately can help maintain a safe and respectful environment.

Legislative instrument	Role in the management of Unreasonable Conduct
<p><b><i>Local Government Code of Conduct</i></b></p> <p>The <i>Local Government Act</i> provides a Code of Conduct for Tasmanian Elected Members.</p> <p>The Code of Conduct defines the way that Elected Members are expected to behave in relation to all aspects of their role. Behaviours between Elected Members and members of the public are regulated.</p> <p>The Code of Conduct is enforced by an independent Code of Conduct Panel established to investigate and determine complaints involving alleged breaches of the Code and empowered to issue sanctions against Elected Members found in breach.</p> <p>As democratically elected representatives, there are practical limits in how Councils (through their Executive or elected leadership) can direct or compel Elected Members in relation to their conduct – the Code of Conduct is therefore a very important management tool for all parties to consider in appropriately responding to Elected member conduct concerns.</p> <p>Information on this instrument is available at:</p> <ul style="list-style-type: none"> <li>• <a href="https://www.dpac.tas.gov.au/divisions/local_government/local_government_code_of_conduct">https://www.dpac.tas.gov.au/divisions/local_government/local_government_code_of_conduct</a></li> </ul>	<p>Under this Framework, Unreasonable Conduct includes all conduct found to be in breach of the Code of Conduct as determined by the Code of Conduct Panel.</p> <p>Any person can make a Code of Conduct complaint, including a general manager, who may use the Code of Conduct process to manage Unreasonable Conduct of Elected Members.</p>
<p><b><i>Work Health and Safety Act 2012 (Tas) and Work Health and Safety Regulations 2022</i></b></p> <p>The <i>Work Health and Safety Act 2012</i> is the legislation that governs workplace health and safety in Tasmania. It sets out the legal framework, and obligations for ensuring the health, safety and welfare of Workers, and other individuals who could be affected by work activities.</p> <p>Division 11 of the <i>Work Health and Safety Regulations 2022</i> defines psychosocial hazards and requires a person conducting business or undertaking (PCBU) to</p>	<p>Under the <i>Work Health and Safety Act 2012</i>, PCBUs are responsible for eliminating or minimising risk of harm to individuals in the workplace.</p> <p>Councils (through their Officers) are responsible for managing Unreasonable Conduct that represents a psychosocial hazard, whether Workers or Other persons at the workplace, which includes Elected Members and visitors.</p> <p>The Code of Practice assists with the identification of hazards, assessment of risks, control of risks and review of control measures to ensure they are working as</p>

Legislative instrument	Role in the management of Unreasonable Conduct
<p>implement control measures to eliminate psychosocial risks so far as is reasonably practicable; and if it is not reasonably practicable to eliminate psychosocial risks, to minimise the risks so far as is reasonably practicable.</p> <p>Model Codes of Practice (under section 274 of the <i>Work Health and Safety Act 2012</i>) are practical guides to assist employers to achieve the required standards of health and safety. In Tasmania, workplaces can refer to and use the Code of Practice - Managing psychosocial hazards at work for authoritative advice on how to meet their obligations surrounding psychosocial hazards, under the Act.</p> <p>Information on this instrument is available at:</p> <ul style="list-style-type: none"> <li>• <a href="https://www.legislation.tas.gov.au/view/html/inforce/current/act-2012-001">https://www.legislation.tas.gov.au/view/html/inforce/current/act-2012-001</a></li> <li>• <a href="https://worksafe.tas.gov.au/topics/laws-and-compliance/codes-of-practice/cop-folder/managing-psychosocial-hazards-at-work#:~:text=The%20code%20of%20practice%20for,applies%20to%20all%20workplaces">https://worksafe.tas.gov.au/topics/laws-and-compliance/codes-of-practice/cop-folder/managing-psychosocial-hazards-at-work#:~:text=The%20code%20of%20practice%20for,applies%20to%20all%20workplaces</a></li> </ul>	<p>planned, and changes must be made as required.</p> <p>It's recognised that equivalent or better ways of achieving the required work health and safety outcomes may be possible. For that reason, compliance with the Code of Practice is not mandatory — providing that any other method used provides an equivalent or higher standard of work health and safety than suggested by the code of practice.</p> <p>Failing to take steps to manage the risk to an individual of death or serious injury or illness could constitute an offence, invoking significant penalties or prison sentences</p>
<p><b>Anti-Discrimination Act 1998 (Tas)</b></p> <p>The <i>Anti-Discrimination Act 1998</i> defines discrimination, notably when a person is treated less favourably (worse) than other people because they have a particular characteristic, such as their age, race, sex or disability, and details legal responsibilities and responses. It also prohibits certain conduct, including harassment (including sexual), victimisation, inciting hatred, promotion of discrimination and aiding contravention of the Anti-Discrimination Act.</p> <p>Information on this instrument is available at:</p> <ul style="list-style-type: none"> <li>• <a href="https://equalopportunity.tas.gov.au/discrimination/unlawful_discrimination">https://equalopportunity.tas.gov.au/discrimination/unlawful_discrimination</a></li> </ul>	<p>Under this Framework, Unreasonable Conduct includes all prohibited conduct and discrimination prohibited under this Act.</p> <p>Organisations must provide a safe environment for their employees and for people coming into their workplace. Section 104 of the <i>Anti-Discrimination Act</i> says organisations must take reasonable steps to ensure no member, officer, employee, or agent engages in discrimination or prohibited conduct. Further, it says an organisation that does not comply with this requirement is liable for any breach of the Act committed by any of its members, officers, employees, or agents.</p> <p>If an individual thinks they have been discriminated against, they can make a</p>

Legislative instrument	Role in the management of Unreasonable Conduct
	complaint about it to the Anti-Discrimination Commissioner through Equal Opportunity Tasmania.
<p><b><i>Fair Work Commission - Fair Work Act 2009 (Cth)</i></b></p> <p>Workers who reasonably believe they have been bullied at work may apply to the Fair Work Commission for an order to stop the workplace bullying. The Fair Work Commission can assist Workers to identify if they are eligible to apply for an order. Tasmanian local government employees are covered by this system, however this varies across other Australian jurisdictions.</p> <p>Information on this instrument is available at:</p> <ul style="list-style-type: none"> <li>• <a href="https://www.fwc.gov.au/about-us/legislation-and-regulations">https://www.fwc.gov.au/about-us/legislation-and-regulations</a></li> </ul>	<p>Under this Framework, Unreasonable Conduct includes, but is not limited to, workplace bullying covered under this Act.</p> <p>Workers who reasonably believe they have been bullied at work may apply to the Fair Work Commission for an order to stop the workplace bullying.</p>
<p><b><i>Local Government (Meeting Procedures) Regulations 2015 (Tas)</i></b></p> <p>Under the Local Government (Meeting Procedures) Regulations 2015, the Chair has a number of powers which are relevant to the prevention and management of Unreasonable Conduct by councillors in the meeting chamber and which may support the prompt and effective mitigation of workplace safety risks.</p> <p>Information on this instrument is available at:</p> <ul style="list-style-type: none"> <li>• <a href="https://www.legislation.tas.gov.au/view/whole/html/inforce/current/sr-2015-038">https://www.legislation.tas.gov.au/view/whole/html/inforce/current/sr-2015-038</a></li> </ul>	<p>The chairperson at a council meeting (being the Mayor in the ordinary course) has an important function in appropriately managing Unreasonable Conduct within the chamber. This can include through:</p> <ul style="list-style-type: none"> <li>• Objectively determining points of order, which may be called when a councillor is speaking and a statement is raised that is, or is likely to be, offensive to a councillor or to another individual; and</li> <li>• Appropriately regulating the way councillors debate and the questions they ask; and</li> <li>• Appropriately exercising the power under regulation 40 to suspend a councillor from a meeting if a councillor: <ul style="list-style-type: none"> <li>○ makes a personal reflection about another councillor or an employee of the council and refuses to apologise; or</li> <li>○ interjects repeatedly; or</li> </ul> </li> </ul>



Legislative instrument	Role in the management of Unreasonable Conduct
	<ul style="list-style-type: none"> <li>○ disrupts the meeting and disobeys a call to order by the chairperson.</li> </ul>

# Responsibilities under the *Work Health and Safety Act 2012* (WHS Act)

The WHS Act places duties on **all attendees** at a workplace, proportionate to the level of responsibility held by the position.

Councils (as organisations, not Elected Members) are considered PCBU's. PCBU's have the primary WHS duty and are subject to the following summarised requirements:

- (a) the provision and maintenance of a work environment without [psychosocial] risks to health and safety; and
- (b) the provision and maintenance of safe plant and structures; and
- (c) the provision and maintenance of safe systems of work [to mitigate psychosocial risks]; and
- (d) the safe use, handling and storage of plant, structures and substances; and
- (e) the provision of adequate facilities for the welfare at work of Workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and
- (f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from [psychosocial] risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and
- (g) that the health of Workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of Workers arising from the conduct of the business or undertaking.

PCBU's are tasked with the implementation of the applicable management and governance measures including but not limited to council policies, procedures, and other measures aimed at eliminating or handling and resolving Unreasonable Conduct issues. At a minimum it is recommended that councils have up to date policies and procedures applying to both employees and Elected Members (either separately or concurrently) addressing:

- (a) Appropriate workplace behaviour;
- (b) A risk assessment; and
- (c) Grievance/ complaint and/or conflict resolution.

**General Manager / CEO and likely senior executive roles** – are considered Officers and must act with due diligence in reasonably ensuring that that council complies with its WHS obligations. This involves taking reasonable steps with regard to the following:

- (a) **Knowledge** - acquire and keep up-to-date knowledge of work health and safety matters; and
- (b) **Understanding** - gain an understanding of the nature of the operations of council and generally of the hazards and risks associated with those operations; and
- (c) **Resourcing** - ensure that council has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of council; and
- (d) **Monitoring** - ensure that council has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information; and
- (e) **Compliance** - ensure that council has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under the WHS Act; and
- (f) **Verification** - verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

**Other council staff** – are considered Workers and must:

- (a) take reasonable care for their own health and safety and that of others;
- (b) comply, so far as is reasonably able, with any lawful and reasonable direction given by council to comply with the WHS Act; and
- (c) cooperate with any reasonable policy or procedure of council relating to health or safety at the workplace that has been notified to Workers.

**Elected members** – while not considered Officers or Workers under the WHS Act, are still captured as having responsibilities under that legislation; namely, when conducting council-related work, Elected Members are considered ‘Other Persons’ at the Workplace. Accordingly, Elected Members, as Other Persons at the Workplace, must also:

- (a) take reasonable care for their own health and safety and that of others; and
- (b) comply, so far as is reasonably able, with any lawful and reasonable direction given by council to comply with the WHS Act.

# Threshold for referral of matters to WorkSafe Tasmania

Determining whether a person's conduct is so unreasonable that it creates an objective basis to pursue action under the WHS Act requires a clear, documented and supported assessment of a risk to health and safety.

While WorkSafe Tasmania may assist in its capacity as regulator, it will be looking specifically at the steps taken by the parties to utilise the mechanisms under council's internal processes and/or the *Local Government Act 1993* ("the LGA") (outlined below) to resolve any disputes before it considers taking action against the person acting unsafely.

When making assessments as to whether it will intervene in a particular allegation of complaint of Unreasonable Conduct, WorkSafe Tasmania will consider if a council's applicable internal management processes have first been exhausted and that the PCBU is compliant with its duties under the LGA. While a management process is not prescriptive, WorkSafe will be looking specifically for:

- (a) notice to the potential Infringing Person of the **behaviours** (i.e. specific acts/omissions) that are alleged to be Unreasonable Conduct;
- (b) notice to the potential Infringing Person **why** the acts/omissions are considered to be Unreasonable Conduct;
- (c) notice to the potential Infringing Person what is the **effect** (ie safety impact) of the acts/omissions are considered to be Unreasonable Conduct;
- (d) notice to the potential Infringing Person what act/omission, what time period, and under what basis (e.g. Act, policy, procedure, guideline etc) council requires the potential Infringing Person to **remedy** to the Unreasonable Conduct;
- (e) notice that the matter will be **referred** to WorkSafe Tasmania if the specified remedy is not performed and/or Unreasonable Conduct continues; and
- (f) whether the Unreasonable Conduct is continuing; and
- (g) whether the processes in (a-e) have been reasonably actioned.

A failure to address any or all of the above steps is likely to result in WorkSafe (or any other regulator) not being able to act to address the Unreasonable Behaviour in an effective manner.

The continuation of the Unreasonable Conduct despite the notification should be the threshold for referral to WorkSafe Tasmania in most circumstances, unless the Unreasonable Conduct is so serious that it forms a notifiable incident under that legislative framework.

In relation to council employees, WorkSafe Tasmania will typically consider adherence to internal WHS and behaviour policies, where applicable. This will most likely be relevant to council employees, who are subject to lawful and reasonable directions, including stand down.

WorkSafe Tasmania will, in the first instance, understand the allegations and obtain factual evidence of the behaviours. They will then assess how the PCBU, and other duty holders, has discharged their duties and obligations. They will also consider the behaviour of the infringing party.

Finally, action will be taken to remedy any contraventions identified through the application of compliance and enforcement powers.

## Responsibilities under the Local Government Code of Conduct

The *Local Government (Code of Conduct) Order 2024* applies automatically to all councils, and prescribes standards of conduct on Elected Members in relation to:

- (a) **Decision making** – making decisions in the best interests of the community, including being free of prejudice;
- (b) **Conflict of interest** – must manage professional or personal interests to ensure they are not influencing (nor seen to be influencing) the performance of their role;
- (c) **Use of office** – solely to represent and serve the community, conducting themselves in a way that maintains the community's trust in Elected Member and the council as a whole;
- (d) **Use of resources** – the use of council resources are used solely for the purpose of council business;
- (e) **Use of information** – used to perform functions in the best interests of the community;
- (f) **Gifts and benefits** – transparency and avoidance of being influenced by gifts or benefits in the performance of their duties;
- (g) **Relationships with community, Elected Members and council employees** – Councillors are to treat people fairly and not bully, harass or cause any reasonable person offence or embarrassment. These obligations apply to Elected Members conduct, communication and relationships with members of the community, fellow Elected Members and council employees;
- (h) **Representation** – distinguish between views that are personal and those of the council, and not engage in prohibited conduct (as defined under the *Anti-Discrimination Act 1998*).

Within the context of this guide, the standards of conduct pertaining to relationships are particularly relevant. However, interpersonal conflicts are often intertwined with other grievances or criticisms borne from perceived breaches of other standards of conduct (e.g. use of information, conflicts of interest and use of resources).

Practically, the Code of Conduct is the primary channel for addressing concerns with the behaviour of Elected Members where they cannot be resolved via the processes available under council's dispute resolution processes or cannot otherwise be resolved between the parties to a dispute.

In addition, the people management skills outlined in the attached quick reference guide are intended to address and resolve concerns with Unreasonable Conduct in the short term and otherwise provide a basis for making a Code of Conduct complaint where concerns cannot be satisfactorily resolved.

The Code of Conduct allows for the following sanctions to be applied to a respondent Elected Member:

- (a) a caution;
- (b) a reprimand;
- (c) a requirement to apologise to the complainant or other person affected by the contravention of the Code of Conduct;
- (d) a requirement to attend counselling or a training course;
- (e) a referral of the determination to the Director of Local Government for consideration of a recommendation to the Minister to issue a Performance Improvement Direction; and
- (f) a suspension from performing and exercising the functions and powers of his or her office as an Elected Member for a period not exceeding 3 months.

# Responsibilities under the *Anti-Discrimination Act 1998*

Complaints under the Anti-Discrimination Act must be about behaviour that is in breach of its specific prohibitions in an area of activity covered by the Act. This means that the Unreasonable Conduct must also attach to a specific protected attribute (eg race, gender, age etc).

Elected Members must not engage in:

- (a) discriminatory conduct on the basis of protected attributes;
- (b) \*prohibited conduct (offensive, humiliating, intimidating, insulting or ridiculing) on the basis of a particular protected attribute;
- (c) sexual harassment;
- (d) victimisation;
- (e) inciting hatred, serious contempt, or severe ridicule on the basis of a particular protected attribute;
- (f) publishing or displaying discriminatory or prohibited conduct; or
- (g) knowingly causing, inducing or aiding another person to contravene the *Anti-Discrimination Act*.

\*Please note that the Local Government Code of Conduct (above) also provides an avenue to raise concerns in relation to 'prohibited conduct'.

Council, as an organisation, must ensure that Elected Members and staff are made aware of discrimination and prohibited conduct and take reasonable steps to ensure that these people don't engage in such conduct.

Complaints under the *Anti-Discrimination Act* are made to the Anti-Discrimination Commissioner through Equal Opportunity Tasmania (**EOT**), who will:

- (a) assess the complaint to satisfy itself that it falls within their jurisdiction;
- (b) if the complaint is accepted, offer early conciliation;
- (c) investigate the complaint; and
- (d) make a decision on the complaint which may result in the complaint being dismissed, directed to conciliation, or directed to the Tasmanian Civil and Administrative Tribunal for hearing.

# Responsibilities under the *Local Government Act 1993*

## Director of Local Government

In the first instance, Unreasonable Conduct should be addressed through informal dispute resolution, the Code of Conduct complaints process and the other appropriate mechanisms outlined above, as applicable.

However, there may be circumstances where Unreasonable Conduct remains ongoing and/or escalating despite interventions being put in place through these processes. In these circumstances, and where there is evidence that the ongoing and/or escalating conduct constitutes a failure/s to comply with statutory requirements under the LGA, under other legislation or subordinate legislation (eg regulations), the matter may be referred to the Director of Local Government for consideration of whether it is appropriate to recommend that the Minister for Local Government issue a Performance Improvement Direction (**PID**) to the relevant councillor. A PID is a direction to take action to comply with the relevant statutory obligation/s (including a direction to cease or refrain from taking certain actions).

Council should consider the following before raising the matter with the Director:

- (a) the nature and frequency of the Unreasonable Conduct;
- (b) the impact of the Unreasonable Conduct;
- (c) what previous measures and/or processes have been undertaken to address the Unreasonable Conduct;
- (d) how the Unreasonable Conduct has breached a statutory obligation (e.g. failure to take reasonable care for the safety of others); and
- (e) identify what actions are sought to address the Unreasonable Conduct.

Where the Minister issues a PID and the Elected Member fails to comply with it, the Minister may suspend the Elected Member for a period of up to 6 months.

It is important to note there are inherent limitations on the application of a PID. For example, it would not be appropriate for the Minister to issue a PID in circumstances where more appropriate avenues have not been reasonably explored first (e.g. for an alleged serious breach of the Code of Conduct Framework before any efforts have been undertaken to raise the matter via a Code of Conduct complaint).



## Board of Inquiry

The Minister may establish a Board of Inquiry to investigate a council. A Board of Inquiry may be established where a council has failed to comply with a PID or where the Minister otherwise considers it is justified. This may include circumstances where there is credible evidence of a potential failure of the council or one or more Elected Members to perform a function, or where there is evidence of irregular conduct of the council or one or more Elected Members, that may be affecting the operation of the council.

Following a Board of Inquiry, the Minister may give a direction to one or all Elected Members, to:

- (a) rectify or mitigate the effects of their action;
- (b) discontinue their action;
- (c) give reasons for their action; or
- (d) take other steps as the Minister thinks necessary.

In certain circumstances, the Minister can make a recommendation to dismiss any or all Elected Members, upon approval from the Governor.

## Other Offences

There is also a range of various offences created by the *Local Government Act 1993* in Part 16, Division 3 which could relate to Unreasonable Conduct:

- (a) s.338A – disclosure of information from closed meeting or which is otherwise confidential;
- (b) s.339 – improper use of information; and
- (c) s.339A – misuse of office (i.e. procure the doing or not doing of anything by the council to gain, directly or indirectly, an advantage or to avoid, directly or indirectly, a disadvantage, to a class of persons that includes the councillor).

The usual 6-month limitations period for prosecuting summary offences imposed by the *Justices Act 1959* is significantly extended to 2 years in the case of offending against the *Local Government Act*.

## **Lawful and reasonable direction**

Council employees are subject to any employment related policy and procedure and/or lawful and reasonable directions.

Council has significant control over its employees' conduct in so far as it relates to the performance of their duties. Accordingly, there is also a greater expectation on council to manage the Unreasonable Conduct of its employees, including through internal processes such as workplace assessments, workplace investigations and disciplinary processes etc.

There are some circumstances where 'out of hours' conduct may justify council management action if a sufficient connection to the performance of council duties can be identified.

# Guidance for the General Manager / CEO

The above frameworks demonstrate the challenges in managing Unreasonable Conduct.

Unreasonable Conduct requires a reasonable response. This starts with setting an expectation of what is reasonable compared to what is unreasonable and consulting, cooperating, and coordinating with the applicable duty holders.

From here, the onus is on council (as PCBU) to diligently but reasonably enforce its expected standards of conduct, with reference to its WHS obligations. Like most organisations the actions of the PCBU are implemented through one or more of the Officers.

In a council environment the General Manager / CEO is the most senior Officer in the PCBU and usually is looked towards for guidance and action. Council as the PCBU can specifically authorise the General Manager / CEO to take appropriate action on its behalf to ensure a safe workplace.

Where the behaviour of Elected Members is involved this provides a challenge for the General Manager / CEO as the Elected Members can have a significant impact on the ongoing employment of the General Manager / CEO. Having said that this responsibility is similar to corporate environments where a CEO may report to a Board of Directors. In any event the law does provide for specific protections for any victimisation or any adverse action taken by any duty holder based on taking appropriate action to address Unreasonable Conduct or other unlawful behaviour.

It is for all of these reasons that it is very important for a council to establish clear protocols and procedures that, consistent with legal requirements, support and clearly specify when the PCBU *must* step in to appropriately manage Unreasonable Conduct. The *Local Government Association Tasmania* is preparing model policies to support councils in this respect.

The Quick Reference Guide at the end of this document is intended to assist all parties to understand what is expected of them when engaging in the workplace, which council is ultimately responsible for. However, it is also designed to empower council to engage with Elected Members who continually act unreasonably in a manner which creates an evidentiary basis for a complaint under one of the legal frameworks outlined above.

For example, if an Infringing Person's conduct is persistently unreasonable, the below table will assist the General Manager/ CEO (as an Officer of the PCBU) to:

- (a) articulate the type of Unreasonable Conduct and set out specific details of the actual behaviours (i.e. what was seen, heard, observed etc);
- (b) set out why council considers the above conduct unreasonable and on what basis (e.g. Act, policy, procedure, guideline etc);
- (c) provide the steps already taken by council to address the Unreasonable Conduct;
- (d) advise the person what action/ omission is required to occur to make their conduct acceptable/ reasonable;
- (e) seek a specific response from the person requiring confirmation that Unreasonable Conduct will stop and/or any other information required;
- (f) notify the person that if the Unreasonable Conduct continues, what proposed remedy will be implemented by council (e.g. banning the Infringing Person from meeting attendance, referral to external body etc);
- (g) provide a reasonable time period for rectification/ improvement;
- (h) observe further conduct and consider/ assess the person's response (if any);
- (i) implement reasonable outcome(s) as proposed in (f); and
- (j) (if further necessary) identify the most relevant avenue for complaint (e.g. WorkSafe Tas, EOT, Code of Conduct etc...).

General Managers/ CEO will need to:

- (a) behave as the 'public exemplar';
- (b) act lawfully and reasonably; and
- (c) use people management skills to address Unreasonable Conduct.

# Guidance for the Mayor

Mayors are responsible for overseeing the councillors in the performance of many of their functions and, for the most part, this responsibility is discharged through the development of constructive working relationships between the Mayor and Elected Members.

However, the Mayor has specific functions in managing Unreasonable Conduct during council meetings. The effective and appropriate use of these unique functions and powers during meeting processes can minimise the risk of Unreasonable Conduct escalating and will further assist in supporting the escalation of such matters to a regulator, should the behaviour continue.

## **Powers to manage Unreasonable Conduct during council meetings**

The Mayor or other delegated chairperson of a meeting may suspend an Elected Member from part or all of the meeting if the Elected Member–

- (a) makes a personal reflection about another Elected Member or an employee of the council and refuses to apologise; or
- (b) interjects repeatedly; or
- (c) disrupts the meeting and disobeys a call to order by the Mayor/ chairperson.

Before deciding to suspend an Elected Member, the chairperson is to –

- (a) advise the Elected Member that suspension is being considered and of the reasons for considering suspension; and
- (b) give the Elected Member an opportunity to argue against suspension or to apologise.

If, after considering any argument or apology from an Elected Member the Mayor/ chairperson suspends the Elected Member, the Elected Member –

- (a) must leave the meeting; and
- (b) must not attend the meeting while suspended.

A financial penalty can be imposed on an Elected Member if they do not comply with the Mayor/ chairperson's suspension.

Further, the Mayor/ chairperson may request the assistance of a police officer to remove an Elected Member who refuses to leave a meeting as required.

## **Exercising these functions in a challenging political environment**

It is understandable (and often appropriate) for a Mayor to exercise a degree of caution when considering the use of these powers. Councils are often politically charged environments where democratically elected community representatives exercise their right to free speech. However, there can be practical limits to free speech where it may amount to Unreasonable Conduct that breaches the legislative frameworks discussed in these Guidelines. Mayors therefore have an important responsibility in appropriately responding to Unreasonable Conduct, and have a very direct leadership role where it occurs in the council chambers.

Under the *Local Government (Meeting Procedures) Regulations 2015*, it is also open to Councils to develop additional meeting procedures should further clarification on expected standards be deemed necessary. Beyond this, where the appropriate response to any specific behaviour remains unclear, Councils should consider seeking additional legal advice.

# Steps to take relating to Unreasonable Behaviour of elected members

## 1. Articulate Unreasonable Conduct

- Detail Specific behaviours (seen, heard, observed)

## 2. Basis for Unreasonableness

- Explain why conduct is considered
- Reference applicable Act, policy, procedure, guideline

## 3. Steps Already Taken

- Provide the steps already taken by council to address Unreasonable Conduct

## 4. Required Action/ Omission

- Advise on necessary changes for acceptable conduct

## 5. Seek Response

- Seek confirmation that the behaviour will stop

## 6. Notify of Proposed Remedy

- Inform about potential consequences if conduct continues
- Examples: banning from meetings, referral to external body

## 7. Time Period for Improvement

- Provide a reasonable timeframe for behaviour correction

## 8. Observe and Assess

- Monitor further conduct
- Evaluate response from the person

## 9. Implement Outcome

- Enforce proposed remedies if necessary

## 10. Identify Relevant Complaint Avenue

- Determine appropriate external body for further complaints (e.g., WorkSafe Tas, EOT, Code of Conduct)

# Quick Reference Guide

This table provides a summary of what can constitute recurring Unreasonable Conduct and some suggested alternatives that can be reinforced as the expected standard of conduct.

Unreasonable Conduct		Professional and respectful standard of behaviour
Unreasonable arguments	<ul style="list-style-type: none"> <li>• Personal criticism (<i>You're an idiot!</i>)</li> <li>• Irrationally interpreting laws or facts (<i>That is a stupid outcome</i>)</li> <li>• Holding views that are unsupported by evidence ( . . . <i>because I say so – that's why</i>)</li> </ul>	<p>Where based on actual evidence criticise specific conduct, ideas or outcomes or engage others in argument:</p> <ul style="list-style-type: none"> <li>• I don't understand your argument, would you please explain how you arrived at that position and what evidence you relied on</li> <li>• I think you are incorrect for these reasons on (list evidence) I think based on (list evidence) the correct answer is...</li> </ul>
Unreasonable actions	<ul style="list-style-type: none"> <li>• Aggression, Threats, Violence (eg physical assault such as biting, scratching, hitting, kicking, pushing, grabbing, or throwing objects</li> <li>• intentionally coughing or spitting on someone</li> <li>• sexual assault or any other form of indecent physical contact</li> <li>• harassment or aggressive behaviour that creates a fear of violence, such as stalking, sexual harassment, verbal threats and abuse, or yelling and swearing</li> <li>• hazing or initiation practices for new or young workers</li> <li>• gendered violence, which is any behaviour directed at any person or that affects a person because of their sex, gender or sexual</li> </ul>	<p>Minimum standards for participation:</p> <ul style="list-style-type: none"> <li>• Calm demeanour</li> <li>• Respect to others</li> <li>• Professionalism</li> <li>• Evidence based criticism.</li> </ul>



Unreasonable Conduct		Professional and respectful standard of behaviour
	<p>orientation, or because they do not adhere to socially prescribed gender roles, that creates a risk to health and safety)</p> <ul style="list-style-type: none"> <li>• Over-escalation (e.g. 'cc' of Ministers, other unrelated persons into emails where unnecessary or impractical)</li> <li>• Public criticism of council staff without discretion or due process</li> <li>• Offensive or antagonistic personal reflections about other councillors, staff or community members, particularly when unrelated to or not furthering legitimate debate</li> </ul>	
Unreasonable demands	<ul style="list-style-type: none"> <li>• Insistence on unachievable or unreasonable outcomes (<i>I need an answer now!</i>)</li> <li>• Moving goalposts (capriciously shifting expectations from previously discussed positions)</li> </ul>	<p>Establish boundaries, expectations or requirements legally, through agreement, policy or vote.</p> <p><b>eg</b> Would you please consider and provide an answer by next week / meeting?</p>
Unreasonable lack of cooperation	<ul style="list-style-type: none"> <li>• Disorganised, excessive of irrelevant information or arguments.</li> <li>• Failure to identify or define their arguments.</li> </ul>	<p>Organised and coherent request or arguments:</p> <p><b>eg</b> Please refer to the list of hazards identified on the beach that I sent around before the meeting. I recommend tendering some contractors to advise on remedial works.</p>
Unreasonable persistence	<ul style="list-style-type: none"> <li>• Persistence with a question or line of inquiry even though it has been responded to (I'll ask again, when will you step down?)</li> <li>• Persistent s 28A requests for information without justification.</li> <li>• Refusal to accept a final decision.</li> <li>• Excessive correspondence.</li> </ul>	<p>Follow established processes which include a review of decisions.</p> <p><b>eg</b> I'll follow up again next months, please let me know if you feel like that's an unreasonable deadline?</p>

# Conduct and Management Interventions

This table provides a more detailed overview of the types of Unreasonable Conduct, with examples of reasonable alternatives, and steps which General Managers can take to intervene.

Unreasonable persistence		
Unreasonable act/omissions	Reasonable alternative	GM/ CEO Intervention / Management techniques
<p>Repeated questions that have been fully answered.</p> <p><b>e.g.</b> You just don't get it. When will council ban dogs from the park during school holiday times?</p>	<p>Asking for reconsideration of an answer in light of new information or circumstances.</p> <p><b>e.g.</b> I think it would be appropriate for council to reconsider its position on dog access during these times for school holiday periods. You will be aware of the recent dog attacks of children at the park at lunch and early evenings. Please find attached a list of these existence provided by the relevant council employee in chronological order noting the school holiday period.</p>	<p>Take control and firmly but politely say that the question has already been answered and move on.</p>
<p>Interruption or talking over the top of an answer to a question that is not favourable.</p>	<p>Asking a reasonable follow up question after receiving an answer.</p> <p><b>e.g.</b> You mentioned that the funding was</p>	<p>Silence – let elected member finish talking and let a 'pregnant pause' sit uncomfortably before asking 'are you finished? I</p>

Unreasonable persistence		
Unreasonable act/omissions	Reasonable alternative	GM/ CEO Intervention / Management techniques
e.g. That wasn't approved!	approved, would you please provide the authorisation?	would like to answer your question now'
<p>Demands a review because they do not accept an answer or outcome.</p> <p>e.g. 'You're wrong, my constituents want this. You don't know what you're doing and need to give them what they want.</p> <p>'I will raise a code of conduct against you for this if you don't change your decision'</p>	<p>Identifies a specific error or misjudgements and seeks a review on that basis.</p> <p>e.g. 'I note that your response to my question last week was based on old information. There's new data now that is more accurate and supports my constituent's position.'</p>	<p>Take control and firmly but politely say that the question has been answered and move on.</p>
<p>Tenuous, unsubstantiated or manufactured allegations.</p> <p>e.g. 'You're biased, unethical, corrupt</p>	<p>Raising legitimate concerns, based on objective evidence that is fully presented.</p> <p>e.g. 'I am concerned that the General Manager has a conflict of interest in making this contract because her husband is on the board of the company'. Please provide the relevant conflict of interest declarations.</p>	<p>Ask for information or evidence to support the allegation. If none is provided, move on.</p>

Unreasonable persistence		
Unreasonable act/omissions	Reasonable alternative	GM/ CEO Intervention / Management techniques
<p>Personal criticisms of council staff</p> <p><b>e.g.</b> ‘The General Manager is an idiot.’</p> <p>‘Staff are lazy and their response was pathetic. Their employment is a waste of rate payer money and should be sacked.’</p>	<p>Identify specific concerns with staff performance.</p> <p><b>e.g.</b> ‘I was notified of a member of the public who attended council to make a complaint and wasn’t acknowledged for over an hour. In my opinion this if true is unacceptable. I would like to know what actually occurred and if there is something wrong will be done to improve.’</p>	<p>Bring the dispute back to the critical issue.</p> <p><b>e.g.</b> ‘councillor X, I believe you refrain from personal criticisms and should elaborate on your earlier point about...’</p>
<p>Irrational or plainly wrong interpretation of facts or law.</p> <p><b>e.g.</b> The General Manager’s failure to address the non-collection of bins is incompetent’</p>	<p>Criticisms that are supported by evidence</p> <p><b>e.g.</b> I am concerned that the General Manager’s response to the bin audit is inadequate to meet its legal obligations. What is being done immediately for the constituents?’</p> <p>‘I understand your view of the legislation / policy. However, council adopts a different interpretation and applies it as requiring monthly review.’</p>	<p>Firmly define the correct position.</p> <p><b>e.g.</b> ‘This is not an issue relating to individual competency. It’s an issue of interpreting council’s obligations. As I said, we will seek advice on the matter and get back to you by next month.’</p>
<p>Dismissing council’s response as inadequate</p> <p><b>e.g.</b> ‘It’s clear council does not take this</p>	<p>Identify actual alternatives or further avenues for progressing the concern.</p>	

Unreasonable persistence		
Unreasonable act/omissions	Reasonable alternative	GM/ CEO Intervention / Management techniques
important matter seriously'	<b>e.g.</b> 'I understand the competing issues for council. However, this is a serious issue that is important to my constituents. I think it is appropriate to consider some changes on a trial period.'	
Requests for operational or sensitive personal information from staff that does not relevant to elected members. <b>e.g.</b> Give me the employee records for project officer Dan Smith.	Requests for de-identified information relevant to council's decision making. <b>e.g.</b> 'Could I please have a de-identified list of council project officers and their classifications?'	<ul style="list-style-type: none"> <li>• Identify the unreasonable demand</li> <li>• Be explicit that the demand cannot be met</li> <li>• State the demands must stop</li> <li>• Offer an alternative or choice</li> </ul>
Blackmail or emotional manipulation <b>e.g.</b> 'If you don't do what I want, I will be in the media and escalate this to the Minister which will make life very difficult for the council.'  Stalking or turning up to public places where you know someone will also be attending to intimidate them.	Raising genuine, evidence based concerns and providing examples of consequences. <b>e.g.</b> 'I have received a complaint from a constituent that their bin has not been collected five times in the last six months. They have had to pay to dispose of their household waste at the tip on multiple times. Council	Call out the behaviour <b>e.g.</b> 'councillor X, that sounds like a threat and does not assist in resolving the core issue'

Unreasonable persistence		
Unreasonable act/omissions	Reasonable alternative	GM/ CEO Intervention / Management techniques
<p><b>e.g.</b> ‘Your actions are hurting innocent people and you should be personally ashamed.’</p>	<p>needs to increase its reliability for waste collection – I propose the following solution.’</p>	
<p>Demands answers only in an unreasonable format</p> <p><b>e.g.</b> ‘It’s a pretty simple question – Yes or no?’</p> <p>‘I don’t want to hear any excuses, just accept you’re in breach’</p> <p>‘So you don’t deny the allegations entirely?’</p>	<p><b>e.g.</b> “I would first like a yes or no response and understand that you may also need to provide additional clarification”</p>	<p>Interrupt the member to allow the person answering to provide their full response.</p> <p><b>e.g.</b> ‘councillor X, you’ve asked your question, now please give them an opportunity to provide a full response.’</p> <p>‘councillor X, I think she is trying to address your issue but you’re being too dismissive’</p>
<p>Demands unreasonable timeframes or responses out of hours.</p> <p><b>e.g.</b> Phone calls to the General Manager on weekends.</p> <p>‘The review needs to be completed inside a week or I will contact the media’.</p> <p>‘Answer me now!’</p>	<p>Agree on timeframes for the completion of tasks.</p> <p><b>e.g.</b> ‘When will council be able to complete its review?’</p> <p>‘That seems like a long time to provide the report where the matters are relatively simple and there do not appear to be competing demands. Can you provide it by next week?’</p>	<p>Seek clarification on an achievable timeframe, communicate a deadline and stick to it.</p>

Unreasonable persistence		
Unreasonable act/omissions	Reasonable alternative	GM/ CEO Intervention / Management techniques
<p>Moving goalposts or changing the issue to require further answers.</p> <p><b>e.g.</b> Shifting from a conflict of interest complaint to requiring a full justification of a particular project within the same question.</p>	<p>‘Thank you for clarifying that matter. I intend to request a further review of the project for the following reasons and will provide that in writing so you can review and set a reasonable timeframe for completion.’</p>	<p>State that the initial question has been answered and that they’ve now moved on to a different line of questioning that may require notice or consideration.</p> <p><b>e.g.</b> ‘councillor X, he has answered your question but you’ve now moved onto a new topic that appears complex. Do you think it would be reasonable to pick this up later?’</p>
<p>Inappropriate, unprofessional or offensive language.</p> <p>Shouting or interrupting</p> <p><b>e.g.</b> ‘That’s a f*%\$ed outcome. Unbelievable waste of time.’</p> <p>‘You’re full of S&amp;%t</p> <p>‘You’re stupid if you think that’.</p>	<p>Criticism of ideas, interpretations or applications.</p> <p><b>e.g.</b> ‘I understand that you think council has done all it can to address these issues but it hasn’t solved the problem and won’t change anything’.</p> <p>‘The difficulty with that position is that it fails to take into account the obligation on council to disclose actual or perceived conflicts of interest’.</p>	<p>Call out the unreasonable language or statement.</p> <p><b>e.g.</b> ‘councillor, this is a formal meeting and your language is unacceptable.’</p>

Unreasonable persistence		
Unreasonable act/omissions	Reasonable alternative	GM/ CEO Intervention / Management techniques
<p>Use of social media or technology to vilify or harass.</p> <p><b>e.g.</b> 'The General Manager's time is up. Share and like if you think it's time for a change'.</p>	<p>Sharing of legitimate information.</p> <p><b>e.g.</b> See this article which I consider underlines the need for a progressive approach to short stay accommodation.</p>	<p>Remind everyone that statements on social media can expose individuals to legal risk.</p> <p>Raise specific concerns with individual elected members privately.</p> <p><b>e.g.</b> 'Dear councillor X, I refer to your recent post on Facebook where you show a photo of an empty beach with a caption of 'this is what the General Manager wants for our public spaces'.</p> <p>I am concerned that your post is unreasonable and misleading for the following reasons...</p> <p>I request your response by 4pm Wednesday...</p>
<p>Aggressive or belittling gestures.</p> <p>Gestures which may be perceived to be aggressive.</p> <p><b>e.g.</b> Pointing, eye rolling, huffing, leaning into someone's personal space.</p>	<p>Generic gestures to emphasise a particular point when speaking.</p> <p>Maintain personal boundaries (keeping physical distance) and professional boundaries (lowered tone of voice and calm body language).</p>	<p>Advocating for constituents does not excuse objectively unreasonable or inappropriate behaviour.</p>



Unreasonable persistence		
Unreasonable act/omissions	Reasonable alternative	GM/ CEO Intervention / Management techniques
<p>Personal attacks or criticisms of specific council employee's performance in open meetings.</p> <p><b>e.g.</b> 'Every time I walk into council, I see them on their phone? What do they do all day?' Who do you think you are? What a pathetic response.</p>	<p>Raising a genuine concern with provision of council services</p> <p><b>e.g.</b> 'I'm concerned with the cleanliness of the pool. Would you please investigate and report back to me by (time) whether the cleaners are doing an adequate job?'</p>	<p>Interrupt the meeting and address the personal criticism.</p> <p><b>e.g.</b> 'councillor X, you're no longer discussing an issue and are personally attacking the values of a council employee. Would you please explain what action you are seeking here?'</p>
<p>Unwillingness to consider alternative views or interpretations.</p> <p><b>e.g.</b> 'You're just wrong, you don't get it.'</p>	<p>Challenging other's arguments by identifying flaws.</p> <p><b>e.g.</b> 'That's fair enough but how does that fit with your earlier promise to provide a tender document by May 2024?'</p>	<p>Support the person who has provided an answer and recommend the issue be addressed at a later time once alternative views have been considered.</p> <p><b>e.g.</b> 'To be fair to councillor X, It seems like they hold a reasonable position that deserves a genuine response. Do you have a specific concern with what they have said or do you think some time to consider their position would assist you?'</p>
<p>Cherry picking information or misquoting others.</p>	<p>What is council's response to the report findings about excessive paid personal leave being</p>	<p>Ask why they have formed that view of the material.</p> <p><b>e.g.</b> 'councillor X, that appears to be one quote</p>

Unreasonable persistence		
Unreasonable act/omissions	Reasonable alternative	GM/ CEO Intervention / Management techniques
e.g. 'This report proves council is corrupt.'	taken beyond accrued entitlements?	from the introduction of the report. What else in the report supports your position?'
Complaining about dispute resolution procedures without reasonably engaging with them or suggesting improvements.  e.g. 'council has done nothing, it's pointless to even try'.	I tried lodging a dispute yesterday and there was no one available to assist. Why is that the case?	Ask whether they have made a report, complaint or formal request.  e.g. 'I understand there may be limitations of the process but it seems like the outcome your looking for is available.'
Ignoring requests, questions or complaints	This is a risk for council employees responding to persistent or unrealistic communications from members of the public or elected members.  It is also a good example of where an omission may be Unreasonable Conduct.  Ensure all requests are responded to on their merits and repeat / unreasonable requests are managed as Unreasonable Conduct.	Acknowledging the request, question or complaint and taking an alternative view or resolving the matter.  e.g. Thank you for your request dated 7 May 2024. Unfortunately, council is not in a position to allocate out of hours resources because of budget restrictions. I consider this matter resolved.

## Example Notification (eg email or letter)

(Date)

Dear (alleged infringing person)

### Direction to Cease Alleged unreasonable conduct

I refer to (ie event e.g. council meeting) on (date) at approximately (time). You and the following other persons (list) were at that event.

In that (event) I observed you (give specific behaviours eg Shouting at Person X the following comment “You are a stupid corrupt cow” in response to (list eg Person X voting against your motion) whilst banging a folder of papers on the desk in front of you. Your face was flushed red. You said “You had no reason to apologise” when asked to by the Mayor. [NOT generic terminology and conclusions. eg behaving aggressively towards Person X]). As a result of your alleged unreasonable conduct (describe impact eg Person X physically recoiled and became visibly distressed with their eyes welling up and they became uncharacteristically quiet for the remainder of the meeting. Person E immediately became concerned regarding Person X ‘s welfare and comforted them by sitting with them and checking in on their well-being. Persons A, B and C also came up to me after the (event) to raise concerns regarding your behaviour and the personal impact to Person X’s safety and well-being.)

I consider your alleged unreasonable conduct to be a breach of (list applicable Act, policy, procedure, guideline etc eg clause 7 of the elected member Appropriate Workplace Behaviour Policy because it is an unnecessary and derogatory characterisation of Person X, with no reasonable or substantiated basis and was delivered in a manner designed to cause Person X of offense, embarrassment or other harm.)

Council has already taken the following steps to address unreasonable conduct generally and specifically in relation to similar conduct as alleged:

- a) (list actions – e.g. I spoke to you immediately following the meeting;
- b) the Mayor advised you they were considering suspending you as per Regulation 40
- c) you were a member of council when the elected member Appropriate Workplace Behaviour Policy was voted on;
- d) you attended elected member Appropriate Workplace Behaviour Policy training on (date);
- e) you attended psychosocial risk training on (date);

- f) I emailed you on (date) counselling you regarding refraining from referring to other elected members as “the great unwashed” during a meeting on (date);
- g) you attended the LGAT workshop regarding appropriate behaviour during council meetings on (date) etc).

I require you to:

- a) (list actions – e.g. stop and do not repeat the alleged unreasonable conduct as described above as well as referring to other persons at the workplace in a manner which is derogatory, likely to cause offence embarrassment or other harm;
- b) personally apologise to Person X and any other person at the (event); and
- c) adopt alternative reasonable responses if you disagree with any other elected member regarding a motion similar in future. The acceptable/reasonable response such as advise them that you disagree with their position and set out the basis for that disagreement without any personal or characteristic references nor raising your voice above the accepted meeting).
- d) Please confirm that you understand the above requirements by way of reply email/letter by no later than (date).
- e) Please confirm that you have implemented (list action – e.g. personally apologise to the Person X and the other Elected Members) by way of reply email/letter by no later than (date).
- f) If the above requirements are not met by the required timeframes and/or the alleged unreasonable conduct continues or is repeated, I proposed to (list remedy to be implemented by council - e.g. referral to external body etc);

Yours sincerely

GM/CEO