Chapter 24. Unreasonable and Vexatious Complainant Conduct

24.1 Preamble
This policy should be read in conjunction with the Advocacy Training and Development Program (ATDP) Code of Ethics, the Management Policy and Procedures Library, Chapter 2 (Governance) and the Operational Policy and Procedures Library, Chapter 10 (Professional Conduct and Discipline), which cover voluntary codes of conduct, professional behaviour and professional practice.

Where unreasonable and vexatious complainant conduct is directed towards:

- a Department of Veterans’ Affairs (DVA) staff member, the relevant DVA policy will apply;
- someone acting under the auspices of a Registered Training Authority (RTO), the relevant RTO policy will apply; and
- an ATDP Member, this ATDP policy will apply.

24.2 Introduction
ATDP is committed to ensuring equity, fairness and consistency in responding to all complaints (see Library 4, Chapter 21) and in maintaining a safe and healthy workplace for all ATDP Members', while ensuring the efficient use of ATDP resources.

24.3 Purpose
This procedure identifies the considerations and actions ATDP will take when dealing with unreasonable and vexatious complainant conduct.

24.4 Unreasonable Conduct
ATDP will consider complainant conduct as ‘unreasonable conduct’ as follows:

- **unreasonable arguments** means exaggerating issues, holding irrational beliefs, being obsessed with irrelevancies or trivialities, refusing to consider counter-arguments, being guided by conspiracy theories;
- **unreasonable behaviour** means threatening violence, abusing staff, being rude or aggressive, threatening self-harm;
- **unreasonable demands** means raising issues beyond ATDP’s responsibility, asking for a remedy that is impractical or disproportionate, insisting that more time be spent on a complaint than is warranted, insisting on speaking to the Chair Strategic Governance Board, Capability Framework Management Board

---

1 ‘ATDP Member’ means a person who:

- holds an ATDP office, or
- accepts a request by an office-holder to undertake an ATDP task, or
- a request by a DVA staff-member with the agreement of an ATDP office-holder to undertake an ATDP task.
Chair, Regional Implementation Group Managers, or DVA staff; or directing ATDP how to handle the complaint;

- **unreasonable lack of cooperation** means poor or confused definition of a complaint, unnecessary presentation of a large quantity of material, failing to provide key documents, constantly re-defining a complaint, or dishonestly presenting the facts; and

- **unreasonable persistence** means refusing to accept that a complaint is closed, re-framing an old complaint, persevering inflexibly with an argument, continuing to phone or contact an ATDP Member after a matter is closed.

### 24.5 Vexatious Conduct

ATDP will consider a complaint as frivolous, or vexatious, or not made in good faith where:

- complaints are of a repetitive nature that annoy, harass, or disrupt ATDP members or ATDP operations, or appear reasonably to have been made with any of the preceding intentions; or

- a new complaint, or series of complaints, relate to the same issue(s) as past complaints that ATDP has resolved or otherwise closed.

### 24.6 Policy

ATDP will take a zero-tolerance approach to any unreasonable conduct by a complainant.

ATDP will not undertake or continue to process a complaint if it is frivolous or vexatious, or not made in good faith.

### 24.7 Managing Unreasonable Complainant Conduct

To the extent reasonable, ATDP will keep at least one line of communication open with a complainant. This may include, for example, engaging with the authorised ex-service organisation of the unreasonable complainant as the appropriate line of communication.

Where ATDP identifies unreasonable complainant conduct the CFMG Chair has the authority to limit a complainant’s access to ATDP services, including by restricting:

- the location of face-to-face contact to secure office areas;
- communication to identified subject matter;
- contact to a sole, nominated ATDP Member; and
- contact to a particular day, time, length of time and frequency of contact.

In extreme situations all forms of contact may need to be restricted for some time to ensure the health, safety and security of ATDP Members and third parties.

To the extent practicable, ATDP will apply restrictions progressively as follows:

- where the complainant’s conduct relates to Recognition of Prior Learning (RPL), or a learning pathway, and is detrimental to good business management
and professional training practice, the complainant’s access to those services may be restricted for an identified period of time.

- where the complainant’s conduct relates to interaction with an ATDP Member, limit the unreasonable complainant’s access to that ATDP Member, or means of communicating with that Member, as identified in the Table 1 below:

<table>
<thead>
<tr>
<th>Serial</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Face-to-Face</td>
<td>Telephone/Mobile</td>
</tr>
<tr>
<td>2</td>
<td>Telephone/Mobile</td>
<td>Email/Fax/Private Message</td>
</tr>
<tr>
<td>3</td>
<td>Email/Fax/Private Message</td>
<td>Posted Letter</td>
</tr>
</tbody>
</table>

In rare cases, ATDP may decide that it is necessary to refuse to correspond further with a complainant. A decision to have no further contact with a complainant may be made if it appears that the complainant is unlikely to modify their conduct and/or their conduct poses reasonably a significant risk for ATDP Members, or third parties.

The maximum contact restriction may be applied where the complainant:

- makes threatening contact, phone calls, text messages, emails, faxes, letters, or posts on social media sites such as Facebook or Twitter, including online behaviour that amounts to cyberbullying or trolling;
- causes damage to ATDP property;
- intimidates or threatens physical harm to ATDP Members;
- makes unwanted personal contact in public places, or an ATDP Member’s residence or place of work;
- is physically violent; or
- produces a weapon or harm causing substance.

24.8 Member’s Responsibilities

An ATDP Member that is subjected to unreasonable conduct by a complainant must as soon as possible:

- during face-to-face or telephone contact:
  - let the complainant complete their complaint;
  - listen and respond calmly;
  - try to help the complainant focus on the facts within their complaint;
  - avoid escalating the situation by allowing emotions to rule responses;
  - if physically or emotionally threatened, advise the complainant calmly the conversation is going to be terminated and either leave the room or call in a colleague if available, or hang up;
MANAGEMENT POLICY AND PROCEDURES LIBRARY

- after face-to-face or telephone interaction, prepare a detailed written record on the interaction:
  - what the complainant said, including abusive language;
  - the complainant’s tone of voice;
  - the duration of the contact or call;
  - your responses, including tone of voice;
- if contact is by email, Facebook, Message or other social media:
  - save the complainant’s post as a PDF or screenshot, and file securely;
  - do not respond unless it can be done in a factually and unemotive manner;
  - where there is an exchange, save a copy and file securely;
  - if the situation is the result of a prolonged build-up, normal record-keeping should ensure that appropriate notes or filed correspondence are kept; and
  - at the earliest possible time report the situation to the appropriate RIG Manager, or the CFMG Chair.

24.9 ATDP Duty of Care
Following an ATDP Member’s encounter with unreasonable conduct by a complainant, the CFMG Chair is responsible for ensuring the ATDP Member:

- has the opportunity to debrief; and
- receives appropriate support.

The CFMG Chair will also ensure that the SGB Chair and relevant DVA Assistant Secretary are kept informed of any encounter with an unreasonable complainant.

A complainant’s access to ATDP services and ATDP-related premises may also be restricted using legal/law enforcement mechanisms such as damage to or trespass on property laws and/or apprehended violence orders to protect members from personal violence, intimidation or stalking by a complainant.

In all cases, the CFMG Chair will:

- notify the complainant in writing that their access has been restricted and what form(s) that restriction will take; and
- forward a copy to the ATDP Secretariat.

24.10 Managing Vexatious Complainant Conduct
The CFMG Chair has discretion to decide that the ATDP will not undertake or continue to investigate a complaint that is vexatious, frivolous, mischievous or not made in good faith.

The CFMG Chair may decide a complaint to be vexatious where reasonably satisfied that:
the complainant has engaged persistently in a complaint that involves, or if processed would involve, an abuse of process;\(^2\) or
investigation of a specific complaint, or series of complaints by the complainant would be manifestly unreasonable.\(^3\)

24.11 Right of Appeal/Internal Review
A complainant is entitled to one appeal of a CFMG Chair’s decision to restrict their access or to not deal with their complaint.

The appeal will be undertaken by a SGB Member who has not been involved in the original access decision. The SGB Member will consider the complainant’s arguments along with all relevant records regarding the complainant’s past conduct.

The complainant will be advised of the outcome of the appeal by letter signed-off by the SGB Chair.

24.12 ATDP Procedural Fairness
ATDP Members will afford the complainant procedural fairness (or natural justice) by:

- providing an opportunity to be heard to a person(s) who will be adversely affected by the decision;
- being disinterested or unbiased in the matter to be decided;
- ensuring that similar cases are dealt with in the same way; and
- ensuring that similar outcomes occur for similar cases.

24.13 Complaint to Commonwealth Ombudsman
There is no right of external administrative review of any decisions made under this ATDP policy. If a complainant is dissatisfied with the appeal/internal review decision, the Commonwealth Ombudsman may investigate most complaints about the conduct (ie. process and procedures) of Government agencies. In that regard, the Ombudsman has no power to overturn an agency’s decision, but may make recommendations to the agency. The office of the Ombudsman can be contacted on phone 1300 362 072.

24.14 Periodic Review
Not less than 12 months after the complainant is informed that their access to ATDP services or personnel has been restricted, the complainant may in writing request the CFMG Chair to review the restriction.

When conducting the review the CFMG Chair will consider:

- the complainant’s conduct during the restriction period; and

\(^2\) ‘Abuse of process’ requiring action(s) that are, or would be, contrary to procedural fairness.

\(^3\) ‘Manifestly unreasonable’ means the time reasonably required to investigate the complaint, would unreasonably divert ATDP effort from the day-to-day administration of the Program.
any contact between the complainant and ATDP during the period of restriction; and
any information/arguments put forward by the complainant for review; and
any other relevant information.

The CFMG Chair will notify the complainant by letter of the outcome of the review. The review letter will:

- indicate whether or not any restriction has been rescinded, or varied or continued;
- state the nature and the duration of any varied or continued restriction; and
- provide the name and contact details of a contact officer, designated by the CFMG Chair, with whom the complainant can discuss the letter.

### 24.15 Records

All ATDP Members involved in an unreasonable complainant conduct case are responsible for keeping a record of all actions taken pursuant to this policy.

### 24.16 Privacy

The collection of personal information is (including any subsequent use and disclosure of information will be) in accordance with the Privacy Act 1988. For example, the use and disclosure of this information to a third/external party may be:

- required or authorised under an Australian law or Court/Tribunal Order;
- reasonably necessary for activities conducted by or on behalf of an enforcement body;
- necessary to lessen or prevent a serious threat to the life, health or safety of any individual; or
- reasonably necessary for the exercise or defence of a legal or equitable claim.

### 24.17 Ombudsman Audit or Review

The ATDP Website will be the repository of all case records where this policy is applied, including a record of the total number of cases where it is applied every year.

This data may be requested by the Commonwealth Ombudsman to conduct an overall audit or review in accordance with its administrative functions and/or to inform its work on unreasonable complainant conduct.

### 24.18 Statement of Compliance

This policy is compliant with and supported by the following:

- provisions of the Commonwealth Crimes Act 1914; and
- legislation addressing violent actions and threatening behaviour by complainants.