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# Rights and responsibilities of parties to a complaint

Waka Kotahi NZ Transport Agency wants to deal with all complaints fairly, efficiently and effectively and ensure it adheres with occupational health and safety standards and duty of care obligations. To achieve this, all parties to Waka Kotahi's process for managing unreasonable customer conduct must observe and respect certain rights and responsibilities.

This document outlines the rights and responsibilities of the following parties to a complaint:

1. Waka Kotahi
2. complainants
3. Waka Kotahi staff
4. subjects of complaints (individuals and organisations)

This document should be read alongside Waka Kotahi NZ Transport Agency's *Managing Unreasonable Customer Conduct procedures and guidelines*.

## WAKA KOTAHI

### Waka Kotahi responsibilities

Waka Kotahi is responsible for:

- having an appropriate and effective system in place to handle complaints
- deciding how to deal with complaints
- dealing with complaints professionally, fairly and impartially
- ensuring that its staff treat complainants and subjects of complaints with courtesy and respect
- ensuring that complaints are assessed and investigated using sound reasoning and evidence
- finalising complaints with outcomes that its responsible staff consider are satisfactory in the circumstances
- implementing appropriate policies, procedures and practices (including practices to maintain confidentiality, secrecy and privacy obligations) aimed at ensuring complainants and whistle blowers are not subjected to detrimental action because they have complained.

# 1.COMPLAINANTS

## Complainants' rights<sup>1</sup>

Complainants have the right to:

- be treated with courtesy and respect
- make complaints and express their opinions in reasonable, lawful and appropriate ways
- communicate their concerns and views without fear of reprisal or other unreasonable response
- receive reasonable explanations of the Waka Kotahi process for managing unreasonable customer conduct, including any confidentiality, secrecy, or privacy rights or obligations that apply
- have their complaint assessed, and where appropriate investigated, fairly and impartially
- be heard by the complaint handler or decision-maker. This right can be modified, curtailed or lost if the complainant behaves unacceptably
- receive a timely response
- be told about the outcome of their complaint and any actions Waka Kotahi will be taking as a result (as long as this won't affect investigations, or disciplinary or criminal proceedings)
- be told the reasons behind decisions that affect them
- ask for the outcome of their complaint to be reviewed by someone within Waka Kotahi who is unconnected to the original decision.

Waka Kotahi is entitled to require complainants to communicate their concerns in ways set out in legislation, policies and procedures established for complaints, allegations or disclosures.

## Complainants' responsibilities

Complainants are responsible for:

- treating Waka Kotahi staff with courtesy and respect
- explaining their complaints, or asking Waka Kotahi staff to help them do this providing Waka Kotahi with information they have that is relevant to their complaint
- communicating honestly with the Waka Kotahi
- advising Waka Kotahi if they have taken other actions relating to their complaint (such as complaining to another person or organisation, or starting legal proceedings)
- cooperating with Waka Kotahi staff who are dealing with their complaint.

If complainants do not meet their responsibilities, Waka Kotahi may put conditions on how they can communicate with its staff or access its services. Waka Kotahi NZ Transport Agency's *Managing Unreasonable Customer Conduct procedure and guidelines* explains this.

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<sup>1</sup> The word 'rights' is used in the sense of guaranteeing certain standards of service and behaviour that the complaint-handling system should provide to all parties to a complaint. It is not used in the sense of legally-enforceable rights (although some are).

## 2. WAKA KOTAHI STAFF

### Waka Kotahi staff rights

Waka Kotahi staff have the right to:

- be treated with courtesy and respect
- expect complainants and subjects of a complaint to be honest, cooperative and helpful
- determine whether and how they will deal with a complaint
- decide (subject to any statutory provisions that may apply):
  - who the complaint's case officer, investigator and decisionmaker will be
  - what resources and priority will be given to dealing with the complaint
  - what process will be used to deal with the complaint.
- finalise the outcome of the complaint in a way they consider is satisfactory and consistent with relevant policies or procedures, even if the complainant(s) or subjects of the complaint disagree with that outcome
- work in a safe and healthy environment<sup>2</sup>
- modify, curtail or decline the complainant's right to be heard, if the complainant behaves unacceptably.

### Waka Kotahi staff responsibilities

Waka Kotahi staff are responsible for:

- treating complainants and the subjects of complaints with courtesy and respect
- taking reasonable and practical steps to ensure complainants are not subjected to any detrimental action, because they have complained (this responsibility extends to whistle blowers)
- helping complainants when they make their complaints and during the process for managing unreasonable customer conduct
- dealing with complaints, complainants and subjects of complaints professionally, fairly and impartially
- giving complainants and their advocates the opportunity to explain their complaints
- giving complainants and subjects of complaints the opportunity to present their cases while their complaints are being investigated, and before final decisions are made<sup>3</sup>
- informing the subjects of complaints, at an appropriate time, about allegations made against them (unless the allegations lack merit and can be dismissed) and any proposed adverse comments or decisions that the subjects of complaints may need to respond to<sup>4</sup>

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<sup>2</sup> Staff can approach the Legal Services team for further resources, or consult the Health and Safety at Work Act 2015 at: <http://legislation.govt.nz/act/public/2015/0070/latest/DLM5976660.html>

<sup>3</sup> Waka Kotahi may not fulfil this responsibility if it is in the public's interest to so (because it could create serious risks to personal safety, public funds, or the integrity of an investigation into a serious issue).

<sup>4</sup> Waka Kotahi may not fulfil this responsibility if it is in the public's interest to so (because it could create serious risks to personal safety, public funds, or the integrity of an investigation into a serious issue).

- telling complainants the outcomes of their complaints and what actions Waka Kotahi will be taking as a result (as long as this won't affect any investigations, or disciplinary or criminal proceedings)
- telling complainants the reasons behind any decisions that affect them.

If Waka Kotahi staff don't comply with these responsibilities, complainants may complain to Waka Kotahi Manager Ministerial Services.

## 3. SUBJECTS OF COMPLAINTS

### Subjects of complaints' rights

Subjects of complaints have the right to:

- to be treated with courtesy and respect by Waka Kotahi staff
- to be protected from complainants harassing them or acting unreasonably towards them
- to have allegations made against them assessed, and where appropriate investigated, fairly and impartially
- to be told (at an appropriate time) about the substance of allegations made against them that are being investigated (unless it is in the public's interest to curtail this right, because it could create serious risks to personal safety, public funds, or the integrity of an investigation into a serious issue)
- to have an opportunity to state their case (depending on the circumstances and seriousness of the possible outcomes, this may be in writing, face-to-face discussion or a hearing with the investigator or decisionmaker) while the complaint is being investigated, and before a final decision is made
- to be told the outcome of investigations into their alleged conduct, and the reasons for decisions or recommendations that may be detrimental to them.

### Subjects of complaints' responsibilities

Subjects of complaints are responsible for:

- cooperating with Waka Kotahi staff who are dealing with complaints (they are not obliged to incriminate themselves in relation to criminal or disciplinary proceedings, unless otherwise provided by statute)
- providing Waka Kotahi staff with all relevant information they have when they are given a properly-authorized direction or notice
- communicating honestly with Waka Kotahi staff
- treating Waka Kotahi staff with courtesy and respect
- not taking detrimental action against complainants or whistle blowers in reprisal.

If subjects of complaints don't comply with these responsibilities, Waka Kotahi may act under relevant laws or codes of conduct.