



# Code of Conduct

## 2026

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## Part 1 Introduction / Kupu Whakataki

### Introduction / Kupu whakataki

1. Clause 15, Schedule 7 of the Local Government Act 2002 provides that the Secretary for Local Government may approve and issue a standard Code of conduct to apply to members of local authorities, local boards and community boards. Clause 15(4) provides that members must comply with the Code of conduct.
2. The standard Code of conduct must set out:
  - (a) understandings and expectations about the manner in which members may conduct themselves while acting in their capacity as members, including—
    - (i) behaviour toward one another, staff, and the public; and
    - (ii) disclosure of information, including (but not limited to) the provision of any document, to elected members that—
      - (A) is received by, or is in the possession of, an elected member in their capacity as an elected member; and
      - (B) relates to the ability of the local authority to give effect to any provision of this Act; and
  - (b) a general explanation of—
    - (i) the [Local Government Official Information and Meetings Act 1987](#); and
    - (ii) any other enactment or rule of law applicable to members.
3. This document sets out the code of conduct provided for in Clause 15, Schedule 7 of the Act.

### Purpose / Te aronga

4. The purpose of this code is to guide and support members in fulfilling their responsibilities to their communities, ensuring democratic effective, and inclusive local governance. It sets out clear expectations for conduct and behaviour, promoting respectful, constructive engagement, even in times of disagreement. While councils may use the code as a tool to guide behaviours, its principles apply to all members, encouraging a commitment to collaboration, integrity, and community-focused decision-making. Ultimately, the code reinforces the shared goal of serving the public good with professionalism and respect.
5. Nothing in this code is intended to limit, restrict or detract from robust political debate or the right to freedom of expression.

### Application / Te pānga

6. This Code applies to:
  - Members of the local authority
  - Members of a local board
  - Members of a community board
  - Appointed members of a committee or sub-committee being persons appointed under clause 31(3), [Schedule 7](#) of the Local Government Act 2002 or pursuant to another Act, who are not members of the local authority, local board or community board, to which the committee or sub-committee relates,

but does not apply to the members of a reserve committee or hall committee or a similar committee where the membership of the committee comprises members of the community serving in a voluntary capacity.

## Interpretation / Whakamāramatanga

7. In this Code:

**Assessor** means a person appointed to carry out a preliminary assessment of a complaint, appointed under the process set out in Appendix 3

**Complainant** means a person who has made a complaint

**Investigator** means a person appointed to investigate and determine a complaint appointed from outside the membership and employees of a local authority under the process set out in Appendix 4

**Material complaint** means a complaint that is not dismissed under clause 33 part 5, and which would, if proven, bring a member or the local authority into disrepute or, if not addressed, risk unreasonable harm to another member of the local authority and materiality has a corresponding meaning

**Member** means a member of a local authority, local board, committee or subcommittee, and includes a Mayor or a Chairperson

**Respondent** means a member who is the subject of a complaint

This code uses lists as illustrative descriptions to support comprehension and clarity, and these lists are not necessarily exhaustive.

## Part 2 Expectations of members

### General expectations of members / Ngā kawatau ahuwhānui o ngā mema

1. The Mayor or the Chairperson of a local authority is expected to take a lead in developing and strengthening a constructive culture amongst the members of that local authority.
2. Members are expected to:
  - 2.1. contribute to developing and strengthening a constructive culture amongst the members of the local authority, board, committee or sub-committee of which they are a member
  - 2.2. take responsibility for ensuring they understand their roles and responsibilities and this code and attending any appropriate training opportunities provided by the local authority
  - 2.3. use their best endeavours to resolve issues outside of the Code of Conduct complaints process
  - 2.4. make their best endeavours to attend meetings (including meetings of external organisations to which they are appointed), workshops and working groups
  - 2.5. come to meetings prepared, including having read relevant material
  - 2.6. engage in robust political debate and constructive disagreement in a way that upholds freedom of expression for all members
  - 2.7. seek personal and skill development opportunities to effectively fulfil their statutory declaration of office and contribute to the good governance of the local authority
  - 2.8. attend any induction programmes organised by the local authority for the purpose of facilitating agreement on Council's vision, goals and objectives and the manner and operating style by which members will work
  - 2.9. take part in any assessment or evaluation of the local authority's performance and operating style
  - 2.10. ensure that pecuniary interest returns are provided in an accurate and timely manner.

### Rights of members / Ngā mōtika o ngā mema

3. The rights of members include:
  - 3.1. Subject to any conflicts of interest identified:
    - (i) The right to attend and participate in any meeting of the local authority, local board, community board, committee or sub-committee they are a member of
    - (ii) The right to vote on decisions to be made by the local authority, local board, community board, committee or sub-committee
  - 3.2. The right, under section 26A of the Local Government Act 2002 to access information held by the local authority
  - 3.3. The same rights as members of the public to request information under the Local Government Official Information and Meetings Act 1987.
4. Section 26A provides that:
  - 4.1. A member of a local authority is entitled to have access to documents held by the local authority that are reasonably necessary to enable the member to effectively perform their functions and duties, and to effectively exercise their powers, as a member of the local authority.
  - 4.2. A member of a local authority may request access to the documents specified in subclause (1) from the chief executive of the local authority
  - 4.3. If the chief executive declines the request, the member may request access to the documents from the local authority's governing body
  - 4.4. If the member requests access to the documents under subclause (3), the governing body must make a final decision on the request.

## Treaty of Waitangi / Te Tiriti o Waitangi

5. To reflect the Crown's obligations to the Treaty of Waitangi/Te Tiriti o Waitangi, Parliament, when delegating or devolving responsibilities to local authorities, requires local authorities to fulfil certain requirements. Such requirements are set out in legislation, including:
  - 5.1. Local Government Act 2002
  - 5.2. Resource Management Act 1991
  - 5.3. Land Transport Act 1998
  - 5.4. Treaty settlement legislation
6. It is common for such requirements to place an expectation on local authorities to take the principals of the Treaty of Waitangi / Te Tiriti o Waitangi into account or have regard to. Where the principles are referred to in legislation then they should be understood in accordance with the interpretations provided by the Waitangi Tribunal, which defines the principles as:
  - 6.1. Partnership: The principle of partnership requires local authorities to maintain strong and enduring relationship with mana whenua, whānau, hapū and iwi to govern, design, deliver and monitor services that are culturally appropriate for Māori and seek to improve outcomes for Māori. Partnership is underpinned by mutual good faith and reasonableness.
  - 6.2. Active protection: The principle of active protection requires local authorities to conduct themselves honourably; use fair processes; and consult fully and, where appropriate, make decisions with mana whenua, whānau, hapū and iwi, whose interests are to be protected, that enhance Māori self-determination.
  - 6.3. Participation: The principle of participation requires local authorities to identify opportunities, and develop and maintain ways, for mana whenua, whānau, hapū and iwi to contribute to council decisions, and consider ways council can help build Māori capacity to contribute to council decision-making.

## Part 3 Behaviours / Ngā Whanonga

### Behaviours / Ngā Whanonga

1. The following sections of this code set out understandings and expectations about the manner in which members should conduct themselves.
2. The behaviour of members towards other members, staff and the public shall meet the following values and members should consider their actions against those values.

### Trust / Ngākau pono

**I can be trusted to act in the best interests of the local authority's communities / Ka whakapono ngā tāngata ki ahau kia mahi mō te painga o ngā hapori a te kaunihera**

3. To earn and uphold that trust, I will conduct myself in a way that demonstrates:
  - 3.1. **Integrity:** Communicate truthfully, and act honestly, fairly, and in the public interest, and not participate in decisions where these would be unduly compromised or perceived to be compromised due to personal interest or external influence.
  - 3.2. **Transparency:** Be open about my interests, relationships, and duties, and declare conflicts where impartiality may be compromised or perceived to be compromised.
  - 3.3. **Fairness:** Approach each decision with an open mind, valuing diverse perspectives and being willing to reconsider my views when presented with new information.
  - 3.4. **Independence:** Maintain freedom from undue influence and uphold my responsibilities with courage and clarity.
  - 3.5. **Accountability:** Take ownership of my decisions and actions and support appropriate public scrutiny.
  - 3.6. **Commitment:** Contribute actively and equitably to the work of the local authority, including meetings, civic events, and professional development.
  - 3.7. **Good stewardship:** Use local authority resources and events responsibly and lawfully, ensuring they serve the public good.
  - 3.8. **Leadership:** Uphold the law and model high standards of conduct through my actions and decisions.
  - 3.9. **Responsibility:** Honour the policies and protocols adopted by the local authority that guide our collective work and support good governance.

### Respect / Whakarangatira

**I will respect the people I work with and the communities the council serves / Ka whakarangatira ahau i ngā tāngata e mahitahi nei ahau me ngā hapori e whakaratoa ana e te kaunihera**

4. To demonstrate respect, I will conduct myself in a way that demonstrates:
  - 4.1. **Professionalism:** Treat colleagues, staff, and the public with courtesy, respect, and fairness.
  - 4.2. **Recognition:** Acknowledge and value the roles, responsibilities, contributions, and dignity of others.
  - 4.3. **Inclusivity:** Create space for diverse voices and perspectives to be heard, considered, and valued and foster a culture of mutual respect.
  - 4.4. **Collaboration:** Work together constructively, balancing individual accountability with shared responsibility for council outcomes.
  - 4.5. **Constructive dialogue:** Engage in robust, respectful debate focused on issues, not personalities.
  - 4.6. **Thoughtfulness:** Promote informed, evidence-based discussions and decision-making.
  - 4.7. **Openness:** Be honest, transparent, and receptive in my interactions.
  - 4.8. **Confidentiality:** Respect and protect confidential information entrusted to us, recognising its importance to trust and good governance.

5. In applying the behaviours set out, members should consider the application of the following concepts:
  - 5.1. **Manaakitanga** – Hospitality, kindness, generosity, respect, and care for others
  - 5.2. **Whanaungatanga** – Building and maintaining strong, reciprocal relationships and a sense of belonging (community cohesion).
  - 5.3. **Kotahitanga** – Unity, solidarity, and collective action for a common purpose.

#### **Conflicts of interest / Pānga Taharua**

6. Members must declare a conflict of interest and step aside from a decision in which they have a financial interest or where they are unable to approach a decision on its merits or it might be perceived that they will not approach a decision on its merits.

#### **Disclosure of information / Whākinga mōhiohio**

7. Members will not disclose information acquired, or given, in confidence, which they believe is of a confidential nature, unless:
  - 7.1. They have the consent of a person authorised to give it
  - 7.2. They are required by law to do so
  - 7.3. They are empowered by law to do so
  - 7.4. The disclosure is to a third party to obtain professional legal advice, and that the third party agrees not to disclose the information to any other person, or
  - 7.5. The disclosure is reasonable and in the public interest, is made in good faith, and in compliance with the reasonable requirements of the local authority.

#### **Expressing personal views / TE whakaputa i ō ake whakaaro**

8. Members, except when authorised to speak on behalf of the local authority will make it clear, when speaking to the media, on social media, or in hui and presentations, that statements reflect their personal view.

## Part 4 Conflicts of interest / Ngā panga taharua

### Conflicts of interest / Ngā panga taharua

1. Members are expected to:
  - 1.1. Maintain a clear separation between their personal interests and their duties as members in order to ensure they are free from bias or predetermination (either real or perceived) when making decisions
  - 1.2. Familiarise themselves and comply with the provisions of the Local Authorities (Members' Interests) Act 1968 in relation to pecuniary interests and the Office of the Auditor General's guidance about this; see – Local Authorities (Members' Interests) Act 1968: A guide for members of local authorities on managing financial conflicts of interest – Office of the Auditor-General New Zealand.
  - 1.3. Familiarise themselves with and comply with relevant guidance about conflicts of interest, for example List of our conflicts of interest resources – Office of the Auditor-General New Zealand and Part 5: Managing conflicts of interest in regional councils – Office of the Auditor-General New Zealand.
  - 1.4. Familiarise themselves with the policies and protocols of the local authority relating to conflicts of interest.
  - 1.5. Identify actual or perceived conflicts of interest existing in relation to a matter they may make decisions on and take appropriate action to ensure they do not compromise the decisions of the local authority, board or committee they are a member of.
  - 1.6. Be aware that the consequences of a member participating in a decision when that member has a conflict of interest may include:
    - 1.6.1. In the case of a pecuniary interest, prosecution of that member by the Auditor-General and if found guilty a fine and disqualification from office.
    - 1.6.2. In the case of any conflict of interest, judicial review of the local authority's decisions and damage to the reputation of the member and the local authority.
  - 1.7. Be aware that participation in a decision in a way that breaches clause 6 of part 3 may be grounds for a complaint.
2. Where a member is uncertain about whether they have a conflict of interest they must seek advice from the Chief Executive or another appropriate officer of the Council or another appropriate person.

## Part 5 Breaches and complaints / Ngā tkahanga ture me ngā amuamu

### Breaches of the Code / ngā takahanga o te Tikanga

1. A breach of this Code occurs if one or more of the principles or requirements listed in part 3 are breached.

### Complaints / Ngā amuamu

#### Who may make a complaint? / Ko wai e āhei ana ki te tuku amuamu?

2. Complaints about an alleged breach of the code by a member may be made by:
  - 2.1. Members of a local authority, local board, community board, committee or sub-committee
  - 2.2. The Chief Executive, either on behalf of themselves or on behalf of an employee of the local authority.

### Making a complaint / Te tuku amuamu

3. Where a person listed in clause 2 believes that a member has breached the code that person may make a complaint.
4. A complaint must be made in writing and lodged with the Chief Executive, and:
  - 4.1. Describe the breach
  - 4.2. Reference the part of the code which is alleged to have been breached
  - 4.3. Provide evidence of the alleged breach, and
  - 4.4. Provide evidence of attempts to resolve the breach prior to the complaint having been lodged, or an explanation as to why attempts have not been made e.g. that an attempt to do so would cause stress or anguish or place the complainant at risk.

### Member's capacity / Te Tuku amuamu

5. A complaint must relate to the conduct of a member while acting in their capacity as a member.
6. Where an act or behaviour by a member (including in a personal capacity) has the effect of bringing the local authority into disrepute, that act or behaviour is covered by this code.

### How complaints are to be dealt with / Te a`hua o te whiriwhiri I ngā amuamu

#### Requirements for dealing with complaints / Ngā whakaritenga o te whiriwhiri I ngā amuamu

7. Complaints will be considered and dealt with in accordance with the following requirements:
  - 7.1. The approach for assessing and investigating a complaint will be:
    - 7.1.1. Proportionate to the apparent seriousness, nature and complexity of the alleged breach
    - 7.1.2. Informed by the history of the matter including any previous complaints against the member alleging the same or similar misconduct
  - 7.2. Best efforts will be made to resolve complaints at the lowest level of resolution possible, with priority given to finding an agreed resolution.
  - 7.3. The concepts of natural justice, fairness and reasonableness will apply in the consideration, investigation and determination of any complaints made under this code.
  - 7.4. The complaints process will be independent and impartial
  - 7.5. Members will be given due notice that an investigation is underway and will be provided with an opportunity to be heard

- 7.6. Members will have a right to seek independent advice, be represented, and, if they choose, be accompanied by a support person throughout the process
- 7.7. Complainants and members subject to a complaint will:
  - 7.7.1. Have access to advice and support for the time it takes to find a resolution
  - 7.7.2. be informed throughout the process of progress in dealing with the complaint
8. Where the Chief Executive makes a complaint on behalf of an employee of a local authority the employee shall have the same rights as a complainant in the process through which the complaint is dealt with.

### **Information privacy principles / Ngā mātāpono tūmataiti mōhiohio**

9. Any person receiving, collecting, using, storing or disclosing personal information relating to a complaint shall apply the information privacy principles set out in [section 22](#) of the Privacy Act 2020, and where applicable, the protection of confidentiality provided to disclosers under the Protected Disclosures (Protection of Whistleblowers) Act 2022.
10. For the avoidance of doubt, clause 9 applies when providing information about a complaint to a person inside or outside of the local authority.

### **Subject matter of complaints dealt with under other processes / Ngā āhuatanga o ngā muamu i anganuihia i roro i ētahi atu tukanga**

11. Where the subject matter of a complaint is being dealt with by another authority (such as the New Zealand Police) an assessor or an investigator can:
  - 11.1. Cease dealing with the complaint under this code; or
  - 11.2. Defer dealing with the complaint under this code until that authority has finished dealing with the matter; or
  - 11.3. Continue dealing with the complaint under this code where it is still appropriate to do so.

### **Process for dealing with complaints / Te Tukanga o te whiriwhiri i ngā amuamu**

#### **Chief Executive receives complaint / Ka tae te amuamu ki te Tumu Whakarae**

12. On receipt of a complaint under this code the Chief Executive will, as soon as reasonably practicable:
  - 12.1. Refer the complaint to an assessor appointed under the process set out in Appendix 3.
  - 12.2. inform the complainant that the complaint has been referred to an assessor for preliminary assessment and the name of the assessor, and refer them to the process for dealing with complaints as set out in the Code
  - 12.3. Separately, inform the respondent that a complaint has been made against them, the name of the assessor and remind them of the process for dealing with complaints as set out in this code.

#### **Assessor makes preliminary assessment / Ka puta he aromatawai tuatahi ā te kaiaromatawai**

13. On receipt of a complaint the assessor will undertake a preliminary assessment to determine whether the complaint should be further considered and the nature of the subsequent process that will be followed. The assessor will consider whether:
  - 13.1. the complaint is trivial, vexatious, frivolous, not made in good faith or politically motivated and should be dismissed
  - 13.2. the complaint is without substance, or does not appear to be a breach of the code and should be dismissed
  - 13.3. the complaint is relatively minor, and no further action is necessary

- 13.4. the complaint is outside the scope of the code and should be re-directed to another agency or process
- 13.5. The complaint does not vary in substance from complaints about the same member that have been previously dismissed
- 13.6. The complaint amounts to a protected disclosure made under the Protected Disclosures (Protection of Whistleblowers) Act 2022 and must be dealt with in accordance with that Act.
14. Factors that can be considered when determining if a complaint is trivial, frivolous, vexatious, not made in good faith, or without substance include whether complaints are intended to:
  - 14.1. intimidate or harass another member or employee
  - 14.2. damage another member's reputation
  - 14.3. obtain a political advantage
  - 14.4. influence the Council in the exercise of its functions or to prevent or disrupt the exercise of those functions
  - 14.5. avoid disciplinary action under this code
  - 14.6. prevent or disrupt the effective administration of this code.
15. In making the assessment the assessor may make whatever initial inquiry is necessary to determine their decisions, including interviewing relevant parties.
16. Subject to clause 14 a full copy of the complaint will be provided to the respondent which will include the name of the complainant.
17. Where appropriate and having considered relevant matters such as natural justice obligations, legal issues, including the requirements of the Protected Disclosures (Protection of Whistleblowers) Act 2022 and the Privacy Act 2020 (as referred to in clause 9), and potential prejudice to the future supply of complaint information the assessor may:
  - 17.1. Decline to provide a copy of the complaint to the respondent, or
  - 17.2. Provide a redacted copy of the complaint to the respondent.

### **Outcomes of preliminary assessment / Ngā putanga o te aromatawai tuatahi**

18. Where an assessor determines that a complaint falls within one of the categories listed in clause 13: .
  - 18.1. The complaint shall be dismissed
  - 18.2. The Chief Executive will advise both the complainant and the respondent of the assessor's decision and the reason for it
  - 18.3. The complaint will not be reported to the local authority.
19. Where an assessor finds that the complaint involves a potential legislative breach and/or is outside the scope of this code and is more appropriately dealt with by another process, the assessor may recommend that it should be re-directed by the Chief Executive to another agency or process. The Chief Executive will advise both the complainant and the respondent of the assessor's recommendation.
20. If the complaint is not dismissed or redirected, the assessor will initiate one of the following processes:
  - 20.1. Arrange for an informal facilitated discussion between the complainant and respondent under clause 23
  - 20.2. refer the complaint to the Mayor or Chairperson under clause 24
  - 20.3. Refer the complaint to mediation under clause 28
  - 20.4. If neither 20.1, 20.2, 20.3 are appropriate to the complaint, refer the complaint to an investigator

21. The assessor will use their best endeavours for a complaint to be resolved through facilitated discussion, referral or mediation before determining that the complaint is to be resolved through an investigation, unless that is considered inappropriate in the circumstances.
22. For the purposes of determining which process is to initiate under clause 20, the assessor will, where appropriate, have access to any previous complaints lodged against the respondent and their outcome.

## **Informal Resolution / Whakataunga ōpaki**

### **Informal discussion / Ngā kōrero ōpaki**

23. Where the assessor considers that the complaint can be resolved by an informal facilitated discussion between the complainant and the respondent, kanohi ki te kanohi (face to face), the assessor will seek the agreement of each to such a discussion and arrange for it to take place.

### **Referral to Mayor or Chairperson / Ka whakapiki ki te Kahika te Upoko o te Kaunihera rānei**

24. Where the assessor considers that a discussion between the respondent and the Mayor or Chairperson will be the best way to resolve the complaint the assessor will so recommend. A meeting or meetings with the Mayor or Chairperson will be regarded as sufficient to resolve the complaint. The assessor may also recommend a course of action appropriate to the breach for the Mayor or Chairperson's consideration, such as:
  - 24.1. that the respondent attends appropriate courses or programmes to increase their knowledge and understanding of the matters resulting in the complaint
  - 24.2. that the respondent work with a mentor for a period
  - 24.3. that the respondent tenders an apology to the complainant.
25. The Chief Executive will advise both the complainant and the respondent of the assessor's decision and any recommendations.
26. The outcomes of any referral to the Mayor or Chairperson will be confidential and, other than reporting that a complaint has been resolved through referral to the Mayor or Chairperson for guidance, there will be no additional report to Council.
27. Where a complainant or respondent is a Mayor or Chairperson a referral shall be made to the Deputy Mayor or Deputy Chairperson, or if it is not appropriate that they be involved, to another appropriate member.

### **Mediation / Hui takawaenga**

28. If the complaint concerns a dispute between two members, or between a member and another party, the assessor may recommend mediation.
29. The assessor will contact the parties and seek their agreement to independently facilitated mediation.
30. If the parties agree and the issue is resolved by mediation the matter will be closed, and no further action is required. The outcomes of any mediation will be confidential and, other than reporting that a complaint has been resolved through mediation, there will be no additional report to council unless the complaint is referred for further investigation due to a failure of the mediation process.

### **Outcome of informal resolution / Te putanga o te whakataunga ōpaki**

31. Where a complaint has been resolved through informal discussion, referral to the Mayor or Chairperson, or mediation, the complaint shall not be referred to the local authority.

## Referral for full investigation by investigator / Ka tukau kia mātaitia nuitia e tētahi kaimātai

32. Where:
  - 32.1. A complaint cannot be resolved through referral or mediation; or
  - 32.2. An assessor has determined that a complaint should be referred to an investigator without referral or mediation being attempted.

The complaint shall be referred to an investigator appointed under the process set out in Appendix 4.

## Materiality / Te kiko

33. Where a complaint is referred to an investigator, the investigator shall first determine the materiality of the complaint.
34. The degree of materiality of the complaint will assist the investigator to determine:
  - 34.1. The scale and nature of the investigation; and
  - 34.2. The scale and nature of any sanctions recommended.
35. An alleged breach under this code is material if, in the opinion of an investigator, it would if proven, bring a member or the local authority into disrepute or, if not addressed, risk unreasonable harm to another member of the local authority.
36. The following may be taken into account when assessing materiality:
  - 36.1. The conduct was not stopped on request
  - 36.2. The conduct appeared to be intentional, malicious or motivated by ill-will
  - 36.3. The conduct caused serious harm, such as reputational harm for an individual or organisation, bringing the local authority into disrepute
  - 36.4. There has been an ongoing pattern of breaches
  - 36.5. Even though the conduct complained of occurs on only one or two occasions it represents a major departure from expected standards.
37. In considering whether or not an alleged breach is material the investigator shall consider whether any of the following should be taken into account as aggravating factors:
  - 37.1. Participating in a decision where the member has been formally advised through the 'conflict of interest' provisions Part 4 of this code that a conflict of interest exists
  - 37.2. Bullying, aggressive or offensive behaviour
  - 37.3. Discrimination
  - 37.4. Deliberately undermining the role of other elected members
  - 37.5. Misrepresentation of the statements or actions of others
  - 37.6. Disclosure of confidential information
  - 37.7. Misuse of council resources
  - 37.8. Harassment, including but not limited to:
    - 37.8.1. Violent threats or language directed against another person
    - 37.8.2. Discriminatory jokes and language
    - 37.8.3. Posting sexually explicit or violent material
    - 37.8.4. Posting (or threatening to post) other people's personally identifying information
    - 37.8.5. Personal insults
    - 37.8.6. Unwelcome sexual attention

37.8.7. Advocating for, or encouraging, any of the above behaviour

37.8.8. Publicly criticising staff by calling into question their professionalism or integrity.

38. For the avoidance of doubt, disagreeing with another member or a member of staff is not in itself a breach.

### **Investigator to undertake full investigation / Ka whakahaeretia e te kaimātai he mātaihanga nui**

39. Where a complaint proceeds to full investigation the investigator will undertake an investigation appropriate to the scale of the seriousness of the alleged breach.

40. In carrying out an investigation, the investigator:

40.1. Shall consult with the complainant, respondent, and any other directly affected parties

40.2. May undertake a hearing with relevant parties

40.3. May refer to any relevant documents or information.

41. Following an investigation the investigator may uphold the complaint in whole or in part or dismiss the complaint.

42. Where a complaint is dismissed by the investigator neither the complaint nor the investigator's decision shall be reported to the local authority.

43. Where a complaint is upheld, the investigator will also decide whether to recommend any sanctions<sup>1</sup> on the member. These may include, but are not restrict to:

43.1. a requirement to apologise and, if applicable, withdraw remarks

43.2. a requirement to make a public statement correcting or clarifying previous remarks

43.3. a requirement to undertake specified training or personal development

43.4. suspending the elected member from committees, subcommittees or other representative bodies

43.5. requiring the member to seek guidance from the chairperson or a mentor

43.6. for a nominated period, restrict the member's access to Council staff (other than the Chief Executive or their specific nominees) and/or to Council premises

44. In deciding whether to recommend a sanction, and what the sanction should be recommended the investigator must take into account:

44.1. The seriousness of the breach

44.2. Any other action already taken to resolve the cause of the complaint, e.g. a member already having been removed from a committee.

45. Following the investigation, the investigator will provide the Chief Executive with a report on the findings of the investigation including:

45.1. Any sanctions recommended to be imposed on the respondent, or other remedies to the complaint

45.2. Any other matter the investigator wishes to comment on.

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<sup>1</sup> The terms of reference given by the Minister of Local Government exclude from the Commission's consideration (1) disqualification from office as a potential penalty; (2) creation of offences. These issues, along with the wider issue of sanctions, are being considered by the Department of Internal Affairs and the Department's work may result in proposals to amend the legislation in relation to disqualification and offences. This part of the draft Code may require change after the outcome of the Department's work is known.

## **Consideration by determining body / Ka whai whakaarotia e te kähui whakatau**

46. In clauses 47 to 52, **determining body** means the governing body, local board, community board, or committee or sub-committee with delegated authority to consider code of conduct complaints.
47. Where the investigator has provided the Chief Executive with a report on the findings of an investigation the process shall be as follows:
  - 47.1. The Chief Executive shall submit a report to the determining body, containing the investigator's report and recommendations.
  - 47.2. The determining body will ensure that members with an interest in the complaint are not present during the discussion on the investigator's recommendation.
  - 47.3. The report will be received in a public meeting unless the determining body has resolved under section 48 of the Local Government Official Information and Meetings Act 1987 that the public be excluded from the meeting.
  - 47.4. The Chief Executive's report may outline, for the determining body's information and comment, arrangements for the report's public release.
  - 47.5. The determining body may accept the investigator's recommendations for sanctions or other remedies or, if it believes it is justified amend the investigator's recommendations.
  - 47.6. A complainant may be asked to appear before the determining body to answer questions from members.
48. Where the determining body determines a sanction relating to employees of the local authority for example restricting access by a member to employees, the determination shall be in the form of a recommendation to the Chief Executive as the employer.
49. Where the determining body's decision differs from the investigator's recommendation the determining body must:
  - 49.1. In its decision provide a clear, transparent and detailed explanation about why its determination so differs.
  - 49.2. Record that decision in the minutes of the meeting.

## **Further Action / Ētahi atu mahi**

### **Public disclosure of complaints and outcomes / Te whakaputanga tūmatanui o ngā amuamu me ngā whakatau**

50. The outcomes of complaints resolve under clauses 23 to 30 will not be publicly reported by the council, except in an anonymised form for the purpose of sharing good practice.
51. In considering how and to what extent an investigator's report and recommendations should be publicly reported the determining body shall consider how the public interest in the accountability of elected members should be balanced against the requirements of natural justice and privacy, having regard to the Local Government Official Information and Meetings Act 1987.

### **After a complaint has been dealt with / I muri i te whiriwhiri i tētahi amuamu**

52. After a complaint has been dealt with:
  - 52.1. Members should reflect on how to rebuild any relationships affected by the cause of a complaint.
53. The Chief Executive shall consider whether there are any actions that can be taken to help ensure that the causes of a complaint are less likely to occur in the future or that the negative impacts of those causes can be better mitigated.

## **Retention of records / Te pupuri tonu I ngā mauhanga**

54. In addition to any requirements of the Public Records Act 2005:
  - 54.1. Records of complaints that have been dismissed or not upheld shall be retained by the local authority for the purposes of determining whether a future complaint should be dismissed under clause 13.
  - 54.2. Records of complaints that have been upheld shall be retained by the local authority for the purposes of determining the materiality of a complaint under clauses 33 to 38, and in each case, records shall be made available to an assessor or an investigator as require for a preliminary assessment or an investigation.

## **Part 7 Bankruptcy / Pēkerapu**

1. Members who are declared an undischarged bankrupt must notify the Chief Executive when first elected as a member or as soon as practicable after being so declared.
2. The member will provide the Chief Executive with a brief description of the circumstances surrounding the bankruptcy.
3. Any information provided under clauses 55 and 57 shall be recorded with the Register of Interests required to be kept by section 53A of the Local Government Act 2002.

## **Appendix 1 General explanation of legislation applying to Local Authority members / Whakamārama whānui o te ture e hai panga ana ki ngā mea kaunihera**

Clause 15 of Schedule 7 of the Local Government Act (the Act) 2022, requires that the Code of Conduct provides members with a general explanation of the Local Government Official Information and Meetings Act 1987, and any other enactment or rule of law that affects members.

The key statutes that promote ethical behaviour are the Local Government Act 2002 (LGA), Local Government official Information and Meetings Act 1987 (LGOIMA), the Local Authorities (Members' Interests) Act 1968 (LAMIA) the Protected Disclosures (Protection of Whistleblowers) Act 2022, the Serious Fraud Office Act 1990, the Local Government (Pecuniary Interests Register) Act 2022, the Health and Safety at Work Act 2015, and the Harmful Digital Communications Act 2015.

### **The Local Government Act 2002**

The LGA 2002 is local government's empowering statute. It establishes our system of local government and sets out the rules by which it operates. Those rules include the principles underpinning council decision-making, governance principles, Te Tiriti obligations as set by the Crown, and the role of the chief executive which is:

- Implementing the decisions of the local authority,
- Providing advice to members of the local authority and to its community boards, if any and
- Ensuring that all responsibilities, duties and powers delegated to him or her or to any person employed by the local authority, or imposed or conferred by an Act, regulation, or bylaw, are properly performed, or exercised.
- Ensuring the effective and efficient management of the activities of the local authority,
- Facilitating and fostering representative and substantial elector participation in elections and polls held under the Local Electoral Act 2001,
- Maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority,
- Providing leadership for the staff of the local authority,
- Employing, on behalf of the local authority, the staff of the local authority (in accordance with any remuneration and employment policy), and
- Negotiating the terms of employment of the staff of the local authority (in accordance with any remuneration and employment policy)

### **The Local Government Official Information and Meetings Act 1987**

The LGOIMA sets rules for ensuring the public are able to access official information unless there is a valid reason for withholding it. All information should be considered public and released accordingly unless there is a compelling case for confidentiality. Even where information has been classified as confidential, best practice is for it to be proactively released as soon as the grounds for confidentiality have passed.

There are both conclusive and other reasons for withholding information set out in sections 6 and 7 of LGOIMA, which include:

Section 6: Conclusive reason for withholding – if making the information available would likely:

- Prejudice the maintenance of the law, including the prevention, investigation and detection of offences, and the right to a fair trial; or
- Endanger the safety of any person

Section 7: Other reasons for withholding – withholding the information is necessary to:

- Protect the privacy of natural persons, including that of deceased natural persons
- Protect information where it would disclose a trade secret or would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
- In the case of an application for resource consents or certain orders under the Resource Management Act 1991, to avoid serious offence to tikanga Māori, or to avoid the disclosure of the location of waahi tapu
- Protect information the subject of an obligation of confidence, where making that information available would prejudice the supply of similar information (and it is in the public interest for this to continue), or would be likely otherwise to damage the public interest
- Avoid prejudice to measures protecting the health or safety of members of the public
- Avoid prejudice to measures that prevent or mitigate material loss to members of the public
- Maintain the effective conduct of public affairs through free and frank expression of opinions between or to members and local authority employees in the course of their duty or the protection of such people from improper pressure or harassment
- Maintain legal professional privilege
- Enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or
- Prevent the disclosure or use of official information for improper gain or improper advantage.

Regarding these ‘other’ reasons, a public interest balancing test applies. In these cases, the council must consider whether the withholding of that information is outweighed by other considerations that render it desirable, in the public interest, to make that information available. Decisions about the release of information under LGOIMA need to be made by the appropriately authorised people within each council, and elected members must work within the rules adopted by each council.

The LGOIMA also sets the rules that govern public access to meetings and the grounds on which that access can be restricted, which occurs when meetings consider matters that are confidential.

### **The role of the Ombudsman**

An Ombudsman is an Officer of Parliament appointed by the Governor-General in the recommendation of Parliament. An Ombudsman’s primary role under the Ombudsmen Act 1975 is to independently investigate administrative acts and decisions of central and local government departments and organisations that affect someone in a personal capacity. Ombudsmen investigate complaints made under LGOIMA.

Anyone who has a complaint of that nature about a local authority may ask an Ombudsman to investigate that complaint. Investigations are conducted in private. The Ombudsman may obtain whatever information is considered necessary, whether from the complainant, the chief executive of the local body involved, or any other party. The Ombudsman’s decision is provided in writing to both parties.

If a complaint is sustained, the Ombudsman may recommend the local authority takes whatever action the Ombudsman considers would be an appropriate remedy. Any such recommendation is, however, not binding. Recommendations made to the local authority under this Act will, in general, become binding unless the local authority resolves otherwise. However, any such resolution must be recorded in writing and be made within 20 working days of the date of the recommendation.

## The Local Authorities (Members' Interests) Act 1968

### Pecuniary interests

The LAMIA provides rules about members discussing or voting on matters in which they have a pecuniary interest and about contracts between members and the council. LAMIA has two main rules, referred to here as the contracting rule (in section 3 of the LAMIA) and the participation rule (in section 6 of the LAMIA).

- The **contracting rule** prevents a member from having interests in contracts with the local authority that are worth more than \$25,000 in any financial year, unless the Auditor-General approves the contracts. Breach of the rule results in automatic disqualification from office.
- The **participation rule** prevents a member from voting or taking part in the discussion of any matter in which they have a financial interest, other than an interest in common with the public. The Auditor-General can approve participation in limited circumstances. Breach of the rule is a criminal offence, and conviction results in automatic disqualification from office.

Both rules have a complex series of subsidiary rules about their scope and exceptions.

The LAMIA does not define when a person is “concerned or interested” in a contract (for the purposes of section 3) or when they are interested “directly or indirectly” in a decision (for the purposes of section 6). However, it does set out two situations where this occurs. These are broadly where:

- A person’s spouse or partner is “concerned or interested” in the contract or where they have a pecuniary interest in the decision; or
- A person or their spouse or partner is involved in a company that is “concerned or interested” in the contract or where the company has a pecuniary interest in the decision.

However, in some situations outside the two listed in the Act a person can be “concerned or interested” in a contract or have a pecuniary interest in a decision, for example, where a contract is between the members family trust and the council.

### Non-pecuniary conflicts of interest

In addition to the issue of pecuniary interests, which are addressed in the LAMIA, there are also legal rules about conflicts of interest more generally. These are rules that apply to non-pecuniary conflicts of interest and include the common law rule about bias. To determine if bias exists, consider this question: Is there a real danger of bias on the part of the member of the decision-making body, in the sense that he or she might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?

The question is not limited to actual bias but relates to the appearance or possibility of bias. This is in line with the principle that justice should not be done but should be seen to be done. Whether or not you believe that you are not biased is irrelevant. The focus should be on the nature of any conflicting interest or relationship, and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

- Statements or conduct indicate that a member has predetermined the decision before hearing all relevant information (that is, they have a “closed mind”), or
- A member has close relationship or involvement with an individual or organisation affected by the decision.

### Seeking exemption from the Auditor-General

Members who have a financial conflict of interest that is covered by section 6 of the LAMIA, may apply to the Auditor-General for approval to participate. The Auditor-General can approve participation in two ways.

- The application of the rule would impede the transaction of business by the council; or
- It would be in the interests of the electors or residents of the district/region that the rule should not apply.

More information on non-pecuniary conflicts of interest and how to manage them can be found in the Auditor-General’s Guidance for members of local authorities about the law on conflicts of interest.

## Protected Disclosures (Protection of Whistleblowers) Act 2022

The Protected Disclosures (Protection of Whistleblowers) Act 2022 is designed to facilitate the disclosure and investigation of serious wrongdoing in the workplace, and to provide protection for employees and other workers who report concerns. A protected disclosure occurs when the discloser believes, on reasonable grounds, that there is, or has been, **serious wrongdoing** in or by their organisation, they disclose in accordance with the Act, and they do not disclose in bad faith.

A discloser is a person who has an employment type relationship with the organisation they are disclosing about and includes current and former employees, homeworkers, secondees, contractors, volunteers, and board members. Serious wrongdoing includes:

- An offence
- A serious risk to public health, or public safety, or the health or safety of any individual, or to the environment
- A serious risk to the maintenance of the law including the prevention, investigation and detection of offences or the right to a fair trial
- An unlawful, corrupt, or irregular use of public funds or public resources
- Oppressive, unlawfully discriminatory, or grossly negligent or that is gross mismanagement by a public sector employee or a person performing a function or duty or exercising a power on behalf of a public sector organisation or the Government

Council need to have appropriate internal procedures that identify who in the organisation a protected disclosure may be made to, describe the protection available under the Act, and explain how the organisation will provide practical assistance and advice to disclosers. A discloser does not have to go through their organisation first. An appropriate authority can include the head of any public sector organisation and any officer of Parliament, such as the Ombudsman and Controller and Auditor-General. Ombudsmen are also an “appropriate authority” under the Protected Disclosures (Protection of Whistleblowers) Act 2022.

## The Serious Fraud Office Act 1990

The Serious Fraud Office (SFO) is the lead law enforcement agency for investigating and prosecuting serious financial crime, including bribery and corruption. The SFO has an increasing focus on prevention by building awareness and understanding of the risks of corruption – noting that the extent of corruption is influenced by organisational framework and support given to staff. The SFO encourages organisations to adopt appropriate checks and balances and build a culture based on ethics and integrity.

The four basic elements of best practice organisational control promoted by the SFO involve:

- Operations people with the right skills and experience in the relevant areas, with clear accountability lines
- Risk mitigation to manage risks that can't be eliminated through segregation, discretion reduction, delegations, management oversight, and audit
- Basic standards of behaviour moderated by a Code of Conduct, ongoing interests and gift processes (not simply annual declaration), plenty of opportunities and ways to speak up, disciplinary options, training and support
- Design and oversight based on a clear understanding of operational realities (design, governance, management, audit, investigation, business improvement, and legal)

## **The Local Governance (Pecuniary Interests Register) Act 2022**

Following passage of the Local Government (Pecuniary Interests Register) Amendment Bill in 2022, a local authority must now keep a register of the pecuniary interests of their members, including community and local board members. The purpose of the register is to record members' interests to ensure transparency and strengthen public trust and confidence in local government processes and decision-making. Registers must comprise the following:

- The name of each company of which the member is a director or holds or controls more than 10% of the voting rights and a description of the 30 main business activities of each of those companies
- The name of every other company or business entity in which the member has a pecuniary interest, other than as an investor in a managed investment scheme, and a description of the main business activities of each of those companies or business entities
- If the member is employed, the name of each employer of their employer and a description of the main business activities of those employers
- The name of each trust in which the member has a beneficial interest
- The name of any organisation or trust and a description of the main activities of that organisation or trust if the member is a member of the organisation, a member of the governing body of the organisation, or a trustee of the trust, and the organisation or trust receives funding from the local authority, local board, or community board to which the members has been elected
- The title and description of any organisation in which the members hold an appointment by virtue of being an elected member
- The location of real property in which the member has a legal interest, other than an interest as a trustee, and a description of the nature of the real property
- The location of real property, and a description of the nature of the real property, held by a trust if the member is a beneficiary of the trust and it is not a unit trust (disclosed under subclause 20) or a retirement scheme whose membership is open to the public

Each council must make a summary of the information contained in the register publicly available; and ensure that information contained in the register is only used or disclosed in accordance with the purpose of the register; and is retained for seven years.

## **The Health and Safety Act at Work 2015**

The Health and Safety at Work Act 2015 aims to create a new culture towards health and safety in workplaces. A council is termed a Person Conducting a Business or Undertaking (PCBU) – all involved in work including elected members, are required to have a duty of care. Elected members are “officers” under the Act and officers are required to exercise due diligence to ensure that the PCBU complies with its duties. However, certain officers, such as elected members, cannot be prosecuted if they fail in their due diligence duty. Despite this, as officers, the key matters to be mindful of are:

- Stepping up and being accountable
- Identifying and managing your risks
- Making health and safety part of your organisation’s culture, and
- Getting your workers involved

Councils have wide discretion about how these matters might be applied, for example:

- Adopting a charter setting out the elected members’ role in leading health and safety – with your chief executive
- Publishing a safety vision and beliefs statement
- Establishing health and safety targets for the organisation with your chief executive
- Ensuring there is an effective linkage between health and safety goals and the actions and priorities of your chief executive and their senior management, or
- Having effective implementation of a fit-for-purpose health and safety management system

Elected members, through their chief executive need to ensure their organisations have sufficient personnel with the right skill mix and support, to meet the health and safety requirements. This includes making sure that funding is sufficient to effectively implement and maintain the system and its improvement programmes.

### **The Harmful Digital Communications Act 2015**

The Harmful Digital Communications Act (HDCA) was passed to help people dealing with serious or repeated harmful digital communications. The Act covers any harmful digital communications (like text, emails, or social media content) which can include racist, sexist and religiously intolerant comments – plus those about disabilities or sexual orientation and sets out 10 communication principles for guiding communication online. Under the Act a digital communication should not:

- Disclose sensitive personal facts about an individual
- Be threatening, intimidating, or menacing
- Be grossly offensive to a reasonable person in the position of the affected individual
- Be indecent or obscene
- Be used to harass an individual
- Make a false allegation
- Contain a matter that is published in breach of confidence
- Incite or encourage anyone to send a message to an individual for the purpose of causing harm to the individual
- Incite or encourage an individual to commit suicide
- Denigrate an individual by reason of colour, race, ethnic or national origins, religion, gender, sexual orientation or disability

## Appendix 2 Freedom of expression / Mana whakapuaki

This appendix provides an explanation of how freedom of expression as guaranteed by the New Zealand Bill of Rights Act 1990 (BORA) applies, including the limits placed on this right by other statutes such as the incitement provisions of the Human Rights Act 1993.

Local authorities and their members must comply with the BORA. Section 14 of BORA protects the right to freedom of expression. Section 14 of BORA provides that:

*Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.*

The right to freedom of expression therefore means:

- The right to hold opinions without interference (freedom of opinion)
- The right to seek and receive information (access to information)
- The right to impart information (freedom of expression)

The New Zealand High Court has stated that freedom of expression guarantees “everyone [the right] to express their thoughts, opinions and beliefs however unpopular, distasteful or contrary to the general opinion or to the particular opinion of other in the community”.

However, the right to freedom of expression is not an absolute right and may be restricted. Section 5 of BORA provides that:

*Subject to section 4, the rights and freedoms contained in the Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*

Section 5, therefore, asks whether the objective of the limitation on freedom of expression is sufficiently important, whether the limitation is rationally connected and proportionate to that objective, and whether it limits freedom of expression no more than reasonably necessary.

Some other Acts contain specific limitations on freedom of expression. Local authorities and members must comply with these limitations when applying the freedom of expression under section 14.

Some Acts contain specific limitations to the freedom of expression. These include, but are not restricted to limitations relating to:

- Communication causing racial disharmony, section 61, Human Rights Act 1993
- Communication constituting sexual harassment, section 62, Human Rights Act 1993
- Communication constituting racial harassment, section 63, Human Rights Act 1993
- Communication with the intent to excite hostility or ill-will against, or bring into contempt or ridicule, section 131, Human Rights Act 1993
- The responsibility of broadcasters to maintain programme standards, section 4(1), Broadcasting Act 1989
- Offensive behaviour or language, section 4, Summary Offences Act 1981
- Posting a digital communication with the intention it causes harm to a victim, section 22, Harmful Digital Communications Act 2015
- Privacy breaches under the Privacy Act 2020, including those causing interference with the privacy of an individual, as described in section 69 or breaches that either have caused or are likely to cause anyone serious harm as described in section 112
- The ability of local authorities to exclude the public from meetings under the grounds set out in section 48, Local Government Official Information and Meetings Act 1987
- In relation to offers of stocks or bonds, disclosure of information that breaches the Financial Markets Conduct Act 2013, in particular Part 2 relating to fair dealing, Subpart 2 Part 5 relating to insider trading, and Subpart 3 Part 5 relating to market manipulation
- The Defamation Act 1992, which gives individuals the right to seek remedy against false statements that could harm reputation

In addition, in *Goulden v Wellington City Council*, the High Court found that the Wellington City Council's code at that time constituted a justified limitation of the freedom of expression.

More information about the right to freedom of expression can be found on the Human Rights Commission's website [Freedom of Opinion and Expression](#).

### **Appendix 3 Selecting an assessor / Te kōwhiri I tētahi kaiaromatawai**

The chief executive is responsible for appointing assessors. In selecting the assessor, the chief executive will consult with the local authority.

The assessor should be a person that is independent of a local authority's political governance, while also being easily accessible, as their role is crucial if complaints are to be expedited quickly and without controversy. For example:

- The external appointee on a local authority's Audit and Risk Committee
- A member of staff, such as an internal staff member responsible for dealing with complaints or an ethics adviser, as long as they have operational independence from the chief executive (similar to the independence afforded an Electoral Officer).
- A member of the local authority's legal team.
- A retired local authority chief executive.
- A retired local authority politician
- A professional or member of the public with relevant experience and competency.

## **Appendix 4 Selecting an investigator / Te kōwhiri I tētahi kaimātai**

The chief executive is responsible for compiling a panel or list of independent investigators.

At the beginning of each triennium the Chief Executive, in consultation with the governing body, will compile a list of independent investigators. In selecting them, a chief executive may consider:

- The council's legal advisers
- A national service specialising in public sector integrity
- A national service providing assessment and investigation services, or
- An individual with relevant skills and competencies.

Given the litigious nature of some code of conduct disputes, independent investigators should have relevant liability insurance, provided on their own behalf or by the local authority.

The chief executive also needs to ensure that investigations are undertaken within budgetary limits negotiated in advance.

Local authorities are encouraged to establish panels of investigators jointly with other local authorities, e.g. covering one or more region.