



# CODE OF CONDUCT

## RANGITIKEI DISTRICT COUNCIL

Adopted by Council resolution, 23 November 2022

### VERSION CONTROL

2022-25	25 November 2022
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## 1. Introduction

This Code of Conduct (“the Code”) sets out the standards of behavior expected from elected members (herein referred to as “members”) in the exercise of their duties. Its purpose is to:

- enhance the effectiveness of Council and the provision of good local government of the district;
- promote effective decision-making and community engagement;
- enhance the credibility and accountability of Council to its communities;
- promote strong and collegial relationships between members when working together in the course of their various functions and duties; and
- develop a culture of mutual trust, respect and tolerance between members and executive management.

This purpose is given effect through the values, roles, responsibilities and behaviors agreed in the Code.

## 2. Scope

The Code has been adopted in accordance with the LGA 2002 (schedule 7, cl. 16) and applies to all members, including the members of any local boards as well as the members of any community boards that have agreed to adopt it. The Code is designed to deal with the behaviour of members towards:

- each other;
- the Chief Executive and staff;
- the media; and
- the general public.

It is also concerned with the disclosure of information that members receive in their capacity as elected representatives and information which impacts on the ability of Council to give effect to its statutory responsibilities.

The Code can only be amended (or substituted by a replacement Code) by a vote of at least 75 per cent of members present at a meeting when amendment to the Code is being considered. The Code should be read in conjunction with Council’s Standing Orders.

### 3. Values

The Code is designed to give effect to the following values:

- **Public interest:** members will serve the best interests of the people within their community, district or region and discharge their duties conscientiously, to the best of their ability.
- **Public trust:** members, in order to foster confidence and trust in Council, will work together constructively and uphold the values of honesty, integrity, accountability and transparency.
- **Ethical behaviour:** members will not place themselves in situations where their honesty and integrity may be questioned, will not behave improperly and will avoid the appearance of any such behavior.
- **Objectivity:** members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.
- **Respect for others:** will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability. Members will respect the impartiality and integrity of staff.
- **Duty to uphold the law:** members will comply with all legislative requirements applying to their role, abide by the Code, and act in accordance with the trust placed in them by the public.
- **Equitable contribution:** members will take all reasonable steps to ensure they fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars.
- **Leadership:** members will actively promote and support these principles and ensure they are reflected in the way in which Council operates, including a regular review and assessment of Council's collective performance.

These values are aligned with the governance principles contained in the LGA 2002 (s. 14 and 39).

## 4. Role and Responsibilities

Good governance requires clarity of roles and respect between those charged with responsibility for the leadership of Council and those responsible for advice and the implementation of Council decisions. The key roles are:

### 4.1 Members of Council

The role of the governing body of Council includes:

- representing the interests of the people of the district as a whole;
- governing with an emphasis on strategic leadership;
- developing and adopting plans, policies and budgets;
- monitoring the performance of Council against stated goals and objectives set out in its long term plan;
- providing prudent stewardship of Council's resources;
- ensuring that governance structures and processes are open and transparent;
- ensuring that, so far as is practical, decision-making and processes for regulatory activities are kept distinct from those for non-regulatory activities;
- employing and monitoring the performance of the Chief Executive;
- providing reasonable delegations to the Chief Executive to enable them to meet operational demands (detailed within the Delegations Register); and
- ensuring that Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

Members must adhere to the Standing Orders, as adopted by Council.

### 4.2 Chief Executive

The role of the Chief Executive includes:

- implementing the decisions of Council;
- ensuring that all responsibilities delegated to the Chief Executive are properly performed or exercised;
- ensuring the effective and efficient management of the activities of Council;
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of Council;
- providing leadership for staff; and
- employing staff on behalf of Council (including negotiation of the terms of employment for those staff).

## 5. Relationships

This section of the Code sets out agreed standards of behaviour between members; members and staff; and members and the public.

### 5.1 Relationships between members

Given the importance of relationships to the effective performance of Council, members will conduct their dealings with each other in a manner that:

- maintains public confidence;
- is open and honest;
- is courteous;
- is focused on issues rather than personalities;
- avoids abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order; and
- avoids aggressive, offensive or abusive conduct, including the use of disrespectful or malicious language.

Any failure by members to act in the manner described in the above provisions represents a breach of the Code.

Please note that nothing in this section of the Code is intended to limit robust debate within Council as long as it is conducted in a respectful and insightful manner.

### 5.2 Relationships with staff

Under the LGA 2002 (s. 42), the Chief Executive is the only person directly employed by Council. Members will respect arrangements put in place to facilitate their relationships with staff, and:

- raise any concerns about employees, officers or contracted officials with the Chief Executive;
- raise any concerns about the performance or behaviour of the Chief Executive with the Mayor;
- make themselves aware of the obligations that Council and the Chief Executive have as employers and observe those requirements at all times, such as the duty to be a good employer;
- treat all employees with courtesy and respect and avoid publicly criticising any employee;
- observe any protocols put in place by the Chief Executive concerning contact between members and employees; and
- avoid doing anything which might compromise, or could be seen as compromising, the impartiality of an employee.

Any failure by members to act in the manner described above represents a breach of the Code.

**Please note:** members should be aware that failure to observe this portion of the Code may compromise Council's obligations to be a good employer and consequently expose Council to civil litigation.

### 5.3 Relationship with the public

Given that the performance of Council requires the trust and respect of individual citizens, members will:

- interact with members of the public in a fair, respectful, and honest manner;
- be available to listen and respond to community concerns;
- consider all points of view or interests when participating in debate and making decisions; and
- act in a way that upholds the reputation of Council as a whole.

## 6. Contact with the Media

The media play an important part in the operation and efficacy of local democracy. In order to fulfil this role, the media needs access to accurate and timely information about the affairs of Council.

The Mayor is the first point of contact for the official view on any Council issue. Where the Mayor is absent, any queries from established media should be forwarded to the Deputy Mayor or Chief Executive.

Members should take care not to bring Council or its staff into disrepute.

In dealing with the media, members must clarify whether they are communicating a view endorsed by Council, a committee or Community Board, or are expressing a personal view.

Members are free to express a personal view to the media or on social media at any time, provided that the following rules are observed:

- comments shall be consistent with the Code;
- comments must not purposefully misrepresent the views of Council or the views of other members; and
- social media pages controlled by members and used for making observations relevant to their role as members should be open and transparent, except where abusive or inflammatory content is being posted;
- social media posts about other members, staff or the public must be consistent with the Code;
- comments should not imply that the member has a pre-determined view in relation to a future Council decision;
- comments must not promote a position that personally benefits the member, and is likely to give rise to a significant conflict of interest; and
- public comments must not be made around any content that has been discussed, or is likely to be discussed, in a public excluded session of Council, unless the content has since been deemed by the Chief Executive to no longer require the public's exclusion (e.g., commercial decisions).

Special rules on dealing with the media apply during the triennial election period. Advice around these will be distributed to members by Council's Deputy Electoral Officer, prior to the election period commencing.



Members are entitled to use the provisions of the Protected Disclosures Act 2022 to draw attention to serious wrongdoing. Members should refer to Council's 'Protected Disclosures Policy and Procedures' in such cases. Any queries or concerns around the Policy should be directed to the Group Manager – Corporate Services, or the Chief Executive.

## 7. Information

Access to information is critical to the effective performance of Council and maintaining the public's confidence.

### 7.1 Confidential information

In the course of their duties, members will occasionally receive information that is confidential. This will generally be information that is either commercially sensitive or subject to privacy considerations (i.e., relating to a particular individual or organisation). Accordingly, members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member.

### 7.2 Information received in capacity as a member

Members will disclose to other members and, where appropriate the Chief Executive, any information received in their capacity as a member that concerns Council's ability to give effect to its responsibilities.

Members who are offered information on the condition that it remains confidential will inform the provider of the information that it is their duty to disclose the information and will decline the offer if that duty is likely to be compromised.

Any failure by members to act in the manner described above represents a breach of the Code.

**Please note:** failure to observe these provisions may impede the performance of Council by inhibiting information flows and undermining public confidence. It may also expose Council to prosecution under the Privacy Act and/or civil litigation.

## 8. Conflicts of Interests

Members will maintain a clear separation between their personal interests and their duty as members in order to ensure that they are free from bias. To this end, members must familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 (LAMIA).

It is the responsibility of each member to declare any conflicts of interest.

There are three distinct types of a conflict of interest:

1. A **pecuniary interest**: involving a financial gain/loss directly or indirectly for the member, their family or business interests.
2. A **non-pecuniary interest**: non-financial interests that arise out of a member's employment, membership of community organisation, or relationship with private individuals.
3. A **demonstrated bias**: where a firm commitment to a particular view has been indicated (in words or through actions) before a Council motion has been debated. Members have a duty to approach decision-making on any matter with an open mind.

Members will not participate in any Council discussion or vote on any matter in which they have a pecuniary interest (beyond that of a regular member of the public), aside from being available to answer questions during a public meeting (only with approval of the Mayor or presiding Chair).

If a member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should seek immediate guidance from the Chief Executive. Members may also contact the Office of the Auditor General for guidance as to whether they have a pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which the interest is relevant. The latter must be done before the discussion or vote.

**Please note:** failure to observe the requirements of the LAMIA 1968 could potentially invalidate any decision or action taken by Council. Failure to observe these requirements could also leave the member open to prosecution. In the event of a conviction, members can be ousted from office.

## 9. Register of Interests

Members shall annually make a declaration of interest, in accordance with the Local Government (Pecuniary Interests Register) Amendment Act 2002. These declarations are recorded in a Register of Interests maintained by Council. The declaration must include information on the nature and extent of any interest, including those outlined in Section 54E of the Act:

- a) 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 main business activities of each of those companies:
- b) 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:
- c) if the member is employed, the name of each employer of the member and a description of the main business activities of each of those employers:
- d) the name of each trust in which the member has a beneficial interest:

- e) the name of any organisation or trust and a description of the main activities of that organisation or trust if—
- (i) the member is a member of the organisation, a member of the governing body of the organisation, or a trustee of the trust (as applicable); and
  - (ii) the organisation or trust receives funding from, or has applied to receive funding from, the local authority, local board, or community board to which the member has been elected:
- f) the title and description of any organisation in which the member holds an appointment by virtue of being an elected member:
- g) 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:
- h) the location of real property, and a description of the nature of the real property, held by a trust to which the following apply:
- (i) the member is a beneficiary of the trust; and
  - (ii) the member knows or ought reasonably to know that the member is a beneficiary of the trust; and
  - (iii) it is not a unit trust whose name is disclosed under subclause (1)(d); and
  - (iv) it is not a retirement scheme whose membership is open to the public.

If a member is in any doubt on the above provisions, they should seek guidance from the Chief Executive.

Where a member's circumstances change, they must ensure that the Register of Interests is updated as soon as practicable.

Members who have an interest that is regulated by the LAMIA 1968 must work with the Chief Executive to seek an exemption where their situation exceeds the \$25,000 annual limit (LAMIA 1968, s. 3(3)). The application for exemption must be made on a timely basis

## 10. Ethical Behaviour

### 10.1 Standards

Members will:

- claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of Council developed in accordance with that determination;
- not influence, or attempt to influence, any Council employee, or other member in order to benefit their own, or their families, personal or business interests;
- only use Council resources (such as facilities, staff, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests; and

- not solicit, demand, or request any gift, reward or benefit by virtue of their position and notify the Chief Executive if any such gifts are accepted.

Any failure by members to comply with the provisions set out in this section represents a breach of the Code.

## 10.2 Undischarged bankrupt

In accordance with the LGA 2002 (schedule 7, cl. 15(5)) any member who is an “undischarged bankrupt” will notify the Chief Executive prior to the inaugural meeting or as soon as practicable after being declared bankrupt. The member will also provide the Chief Executive with a brief explanatory statement of the circumstances surrounding the member’s adjudication and the likely outcome of the bankruptcy.

## 10.3 Dress Code for Meetings / Workshops

Members are expected to dress appropriately when attending meetings and workshops. This means:

- Full Council meetings – men should wear a tie and jacket or a smart business shirt and jacket. Women need to dress smartly.
- Committee meetings – smart attire should be worn. Jackets and ties for men is not necessary.
- Workshops – smart casual attire should be worn.

# 11. Creating a Supportive and Inclusive Environment

In accordance with the purpose of the Code, members agree to take all reasonable steps in order to participate in activities scheduled to promote a culture of mutual trust, respect and tolerance. These include:

- attending post-election induction programmes organised by Council for the purpose of facilitating agreement on Council’s vision, goals and objectives and the manner and operating style by which members will work;
- taking part in any assessment of Council’s overall performance and operating style during the triennium; and
- taking all reasonable steps to ensure they possess the skills and knowledge to effectively fulfill their Declaration of Office and contribute to the good governance of the district.

# 12. Members Remuneration

## 12.1 Salary

The Mayor and Community Board members will be paid a salary as determined by the Remuneration Authority.

Members (excluding the Mayor and Community Board members) will be paid the salary applicable to their position, based on the remuneration rate calculated from the indicative pool that is determined by the

Remuneration Authority each year, and following the process required under legislation, where Council and Remuneration Authority approval is obtained.

Members must complete a 'Tax code declaration' form (IR330) and provide this to the People & Performance team at the beginning of their term. Salary payments will be made on a fortnightly basis, and will not be paid in advance.

## 12.2 Mileage

Mileage is payable to members in accordance with the policy approved by the Remuneration Authority. This includes return from their normal place of residence to the venue of the meeting, workshop or gathering to which they are invited or expected to attend as a representative of Council or a Community Board, less any non-claimable distance set by the Remuneration Authority.

The below provisions apply:

- the route chosen should be the most direct one that is reasonable in the circumstances;
- if a member resides outside of the district, they are only eligible for a vehicle-kilometer allowance for eligible travel after the member crosses the boundary into the district; and
- no travel time allowance is payable to any member.

Unless provided with a Council vehicle as part of the remuneration, the Mayor shall keep a vehicle log book for travel detailing the date and kilometers travelled on Council business. The Mayor shall be reimbursed for travel on the same basis as for other members.

## 12.3 Expenses

Members may claim for expenses incurred during the course of their duties, in accordance with the below provisions:

- all claims must for actual and reasonable costs incurred by the member shall be submitted to the People & Performance team;
- wherever possible, travel and accommodation should be booked in advance, in order to enable the most cost-efficient purchasing arrangements to be progressed. Where not possible, a claim may be made by the member retrospectively;
- loyalty schemes (e.g., air points) may be collected, provided that this has not influenced the decision to use a specific provider;
- all claims for expenses are subject to the approval of the Chief Executive, or their delegate; and
- generally, claims should be made within 60 days of the expense occurring.

## 13. Sensitive Expenditure and Gifts

### 13.1 Sensitive Expenditure Policy

Council's 'Sensitive Expenditure Policy' is applicable to all Council employees, including members.

Members will abide by all provisions contained in the Policy, which provide guidance around:

- air travel
- accommodation expenses (including meals)
- car rental / taxi
- internal events and functions
- gifts / koha
- hospitality expenditure

The Policy is reviewed by the Executive Leadership Team and the Audit & Risk Committee on a six-monthly basis. Any queries or concerns around the Policy should be directed to the Group Manager – Corporate Services, or the Chief Executive.

### 13.2 Specific considerations for members

Members need to take care when accepting gifts or hospitality from individuals or organisations that this does not give rise to a situation where the host may infer certain rights, positions or benefits. Members need to ensure that their ability to make decisions with an open mind is preserved, and that they are not unduly influenced by gratuitous offers.

Where an offer of a gift or hospitality may reasonably be seen to be inappropriate, and where the circumstances allow, it is the responsibility of the member concerned to respectfully decline the offer. If a member is unsure on the appropriateness of accepting or declining an offer, advice should be sought from the Mayor, Chief Executive or Strategic Advisor – Mana Whenua.

Accommodation expenses may be incurred when a member is required to travel outside of the district for official Council business. Expenses incurred by a member's partner will not be reimbursed, with one exception:

- The Mayor's partner travel and accommodation expenses may be reimbursed when accompanying the Mayor to the Local Government New Zealand Annual Conference.

### 13.2 Gifts that are received by members

Gifts received by members, either greater in value than \$50 or of unquantifiable value, should be declared to the Chief Executive. Any gifts that can be used by Council for collective benefit should be surrendered to the Chief Executive.

Generally, inexpensive gifts (e.g., stationery) will be able to be kept by the member concerned.

## 13.2 Credit Cards

Credit cards will not be issued to members, with the exception of the Mayor. Where the Mayor is issued with a Council credit card, the following provisions must be observed:

- the credit card limit will be set by the Chief Executive, in consultation with the Group Manager – Corporate Services;
- any purchases are only to be for the purpose of enabling the Mayor to undertake their duties;
- all purchases must be accompanied by a receipt;
- no personal purchases are to be made, regardless of whether the amount is intended to be reimbursed to Council at a later date; and
- all claims for expenses are subject to the approval of the Chief Executive, or their delegate.

## 14. Equipment and Connection to Services

Members are expected to have the following equipment and services:

- a cellphone
- a broadband internet connection

The Chief Executive will issue members with a device (i.e., laptop computer) for official Council use only. It is a requirement for members to take reasonable care of any Council-issued device and notify the Manager of Information Services of any loss or damage, as early as possible.

Members will abide by Council's 'Information Security Policy' and 'Acceptable Use Policy' where applicable, and undertake any IT or cybersecurity training, as required by the Chief Executive.

## 15. Breaches of the Code

In accordance with the LGA 2002 (schedule 7, s. 15), members must comply with the provisions of the Code. Any member, or the Chief Executive, who believes that the Code has been breached by the behaviour of a member, may make a complaint to that effect. All complaints will be considered in a manner that is consistent with the following principles.

### 15.1 Principles

The following principles will guide any processes for investigating and determining whether or not a breach under the Code has occurred:

- a) that the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the breach complained about;

- b) that the processes of complaint, investigation, advice and decision-making, will be undertaken separately, in chronological order, and as per the guidance contained in Appendix B of the Code; and
- c) that the concepts of natural justice and fairness will apply in the determination of any complaints made under the Code. This requires, conditional on the nature of an alleged breach, that affected parties:
  - have a right to know that an investigation process is underway;
  - are given due notice and are provided with an opportunity to be heard;
  - have confidence that any hearing will be impartial;
  - have a right to seek appropriate advice and be represented; and
  - have their privacy respected.

## 15.2 Complaints

All complaints made under the Code must be made in writing and forwarded to the Chief Executive. On receipt of a complaint the Chief Executive must forward the complaint to the Mayor or, where the Mayor is party to the complaint, an independent investigator, drawn from a pool of names or agency agreed in advance.

Only members and the Chief Executive may make a complaint under the Code.

### **Option 1 – Complaint referred to Mayor**

On receipt of a complaint made under the provisions of Council’s Code of Conduct, the Mayor will, as the situation allows:

- interview the complainant to assess the full extent of the complaint;
- interview the member(s) subject to the complaint;
- assess the complaint to determine materiality; and
- where a complaint is assessed by the Mayor to be trivial, frivolous or minor, either dismiss the complaint, require an apology or other course of action, or assist the relevant parties to find a mutually agreeable solution.

Where a complaint is found to be material, or no mutually agreed solution can be reached, the Mayor will refer the complaint back to the Chief Executive who will forward it, along with any recommendations made by the Mayor, to the Council or an adjudicative body established by the Council to assess and rule on complaints made under the code.

If the Mayor chooses, they may, instead of undertaking an initial assessment, immediately refer the complaint to the independent investigator, via the Chief Executive.



## Option 2 – Complaint referred to an independent investigator

On receipt of a complaint from a member which concerns the Mayor, or from the Mayor after initial consideration, the Chief Executive will forward that complaint to an independent investigator for a preliminary assessment to determine whether the issue is sufficiently serious to be referred, with recommendations if necessary, to the Council or an adjudicative body for assessing and ruling on complaints.

### 15.3 Investigation (via an external investigator), advice and decision

The process, following the referral of a complaint to an external investigator, will follow the steps outlined in Appendix B.

### 15.4 Materiality

An alleged breach under the Code is material if, in the opinion of the independent investigator, it would (if proven) bring a member or Council into disrepute or, if not addressed, reflect adversely on another member of Council.

## 16. Penalties and actions

Where a complaint is determined to be material and referred to Council, the nature of any penalty or action will depend on the seriousness of the breach.

### 16.1 Material breaches

In the case of material breaches of the Code, Council, or a committee with delegated authority, may require one of the following:

- a letter of censure to the member;
- a request for an apology (to be made either publicly or privately);
- a vote of no confidence in the member;
- removal of certain Council-funded privileges (such as attendance at conferences);
- restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
- limitation on any dealings with Council staff so that they are confined to the Chief Executive only;
- suspension from committees or other bodies; or
- an invitation for the member to consider resigning from the Council.

Council or a committee may decide that a penalty will not be imposed, on the condition that the respondent agrees to undertake one or more of the following:

- attend specified training;
- work with a mentor for a specified period of time;

- participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- tender an apology.

The process is based on the presumption that the outcome of a complaints process will be made public unless there are grounds, such as those set out in the LGOIMA 1987 (s.7) for not doing so.

## 16.2 Statutory breaches

In cases where a breach of the Code is found to involve regulatory or legislative requirements, the complaint will be referred to the relevant agency. For example:

- breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under the LAMIA 1968);
- breaches which result in Council suffering financial loss or damage, which is not covered by a member's indemnity (LGA 2002, s. 46), where the Auditor-General may make a report on the loss or damage which may result in the member having to make good the loss or damage; or
- breaches relating to the commission of a criminal offence which will be referred to the NZ Police (which may leave the elected member liable for criminal prosecution).

## 17. Review

Once adopted, a Code of Conduct continues in force until amended by Council. The Code can be amended at any time but cannot be revoked unless Council replaces it with another Code. Once adopted, amendments to the Code require a resolution supported by 75 per cent of the members of Council present at a Council meeting where the amendment is considered.

Council may formally review the Code as soon as practicable after the beginning of each triennium. The results of that review will be considered by Council in regard to potential changes for improving the Code.

## Appendix A: Legislation bearing on the role and conduct of members

This is a summary of the legislative requirements that have some bearing on the duties and conduct of members. The full statutes can be found at [www.legislation.govt.nz](http://www.legislation.govt.nz).

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

The Local Authorities (Members' Interests) Act 1968 (LAMIA) provides rules about members discussing and voting on matters in which they have a pecuniary interest and about contracts between members and the relevant local authority.

A pecuniary interest is likely to exist if a matter under consideration could reasonably give rise to an expectation of a gain or loss of money for a member personally (or for their spouse or a company in which they have an interest). In relation to pecuniary interests the LAMIA 1968 applies to both contracting and participating in decision-making processes.

With regard to pecuniary or financial interests a person is deemed to be "concerned or interested" in a contract or interested "directly or indirectly" in a decision when:

- a person, or 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.

There can also be additional situations where a person is potentially "concerned or interested" in a contract or have a pecuniary interest in a decision, such as where a contract is between an elected members' family trust and the council.

### **Determining whether a pecuniary interest exists**

Members are often faced with the question of whether or not they have a pecuniary interest in a decision and if so whether they should participate in discussion on that decision and vote. When determining if this is the case or not the following test is applied:

- whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned.

In deciding whether you have a pecuniary interest, members should consider the following factors.

- what is the nature of the decision being made?
- do I have a financial interest in that decision - do I have a reasonable expectation of gain or loss of money by making that decision?
- is my financial interest one that is in common with the public?
- do any of the exceptions in the LAMIA 1968 apply to me?

- could I apply to the Auditor-General for approval to participate?

Members may seek assistance from the Mayor or Chief Executive to determine if they should discuss or vote on an issue, but ultimately it is their own judgment as to whether or not they have pecuniary interest in the decision. Any member who is uncertain as to whether they have a pecuniary interest is advised to seek legal advice. Where uncertainty exists members may adopt a least-risk approach which is to not participate in discussions or vote on any decisions.

Members who do have a pecuniary interest will declare the pecuniary interest to the meeting and not participate in the discussion or voting. The declaration and abstention needs to be recorded in the meeting minutes. (Further requirements are set out in Council's Standing Orders.)

### **The contracting rule**

A member is disqualified from office if he or she is "concerned or interested" in contracts with Council if the total payments made, or to be made, by or on behalf of Council exceed \$25,000 in any financial year. The \$25,000 limit includes GST. The limit relates to the value of all payments made for all contracts in which a member is interested during the financial year. It does not apply separately to each contract, nor is it just the amount of the profit the contractor expects to make or the portion of the payments to be personally received by the member.

The Auditor-General can give prior approval, and in limited cases, retrospective approval for contracts that would otherwise disqualify a member under the LAMIA 1968. It is an offence under this Act for a person to act as a member of a local authority (or committee of a local authority) while disqualified.

### **Non-pecuniary conflicts of interest**

In addition to the issue of pecuniary interests, rules and common law govern conflicts of interest more generally. These rules apply to non-pecuniary conflicts of interest, including common law rules about bias. In order to determine if bias exists or not members need to ask:

- 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 reflecting the principle that justice should not only be done, but should be seen to be done. Members should ask themselves whether a perception of a bias may reasonably be perceived by the public, regardless of whether real bias exists.

Members should focus on the nature of the 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:

- member's statements or conduct indicate that they have predetermined the decision before hearing all relevant information (that is, members have a "closed mind"); and
- members have a close and/or personal relationship or involvement with an individual or organisation affected by the decision.

In determining whether or not they might be perceived as biased, members must also take into account the context and circumstance of the issue or question under consideration. For example, if a member has stood on a platform and been voted into office on the promise of implementing that platform then voters would have every expectation that the member would give effect to that promise, however he/she must still be seen to be open to considering new information (this may not apply to decisions made in quasi-judicial settings, such as an RMA hearing).

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

The Local Government Official Information and Meetings Act 1987 (LGOIMA) sets out a list of meetings procedures and requirements that apply to local authorities and local/community boards. Of particular importance for the roles and conduct of members is the fact that while the chairperson has the responsibility to maintain order at meetings, all members should accept a personal responsibility to maintain acceptable standards of address and debate. No member should:

- create a disturbance or a distraction while another member is speaking; or
- be disrespectful when they refer to each other, staff, or other individuals;

Refer to Council's Standing Orders for more detail.

### **Secret Commissions Act 1910**

Under this Act it is unlawful for a member (or officer) to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result, or to present false receipts to Council.

If convicted of any offence under this Act a person can be imprisoned for up to two years, and/or fined up to \$1,000. A conviction would therefore trigger the ouster provisions of the LGA 2002 and result in the removal of the member from office.

### **Crimes Act 1961**

Under this Act it is unlawful for a member (or officer) to:

- accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of Council; and
- use information gained in the course of their duties for their, or another person's, monetary gain or advantage.

These offences are punishable by a term of imprisonment of seven years or more. Members convicted of these offences will automatically cease to be members.

## **Financial Markets Conduct Act 2013**

Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places members in the same position as company directors whenever Council offers stock to the public. Members may be personally liable if investment documents such as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

## **The Local Government Act 2002**

The Local Government Act 2002 (LGA) sets out the general powers of local government, its purpose and operating principles. Provisions directly relevant to the Code include:

### **Personal liability of members**

Although having qualified privilege, members can be held personally accountable for losses incurred by a local authority where, following a report from the Auditor General under the LGA 2002 (s. 44), it is found that one of the following applies:

- money belonging to, or administered by, a local authority has been unlawfully expended;
- an asset has been unlawfully sold or otherwise disposed of by the local authority;
- a liability has been unlawfully incurred by the local authority; or
- a local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

In accordance with the LGA 2002 (s. 46), members will not be personally liable where they can prove that the act or failure to act resulting in the loss occurred as a result of one of the following:

- without the member's knowledge;
- with the member's knowledge but against the member's protest made at or before the time when the loss occurred;
- contrary to the manner in which the member voted on the issue; or
- in circumstances where, although being a party to the act or failure to act, the member acted in good faith and relied on reports, statements, financial data, or other information from professional or expert advisers, namely staff or external experts on the matters.

In certain situation members will also be responsible for paying the costs of proceedings (LGA 2002, s. 47).

## Appendix B: Process for the determination and investigation of complaints via an independent investigator

### Step 1: Chief Executive receives complaints

On receipt of a complaint under the Code, whether from a member (because the complaint involves the Mayor) or from the Mayor after an initial assessment, the Chief Executive will refer the complaint to an independent investigator. The Chief Executive will also:

1. Inform the complainant that the complaint has been referred to an independent investigator and the name of the investigator, and refer them to the process for dealing with complaints as set out in the Code.
2. Inform the respondent that a complaint has been made against them, the name of the investigator and remind them of the process for dealing with complaints as set out in the Code.

### Step 2: Investigator makes preliminary assessment

On receipt of a complaint the investigator will complete a preliminary assessment and determine whether:

1. The complaint is trivial or frivolous and should be dismissed.
2. The complaint is outside the scope of the Code and should be re-directed to another agency or institutional process.
3. The complaint is minor or non-material.
4. The complaint is material and a full assessment is required.

The investigator may make whatever inquiries are necessary to determine their recommendations, including interviewing relevant parties. Depending on the investigator's findings, they may:

1. Where the investigator determines that a complaint is trivial or frivolous:
  - inform the Chief Executive of their findings. The Chief Executive is responsible for informing the complainant, respondent and other members (if there are no grounds for confidentiality) of the investigator's decision.
2. Where the investigator determines that a complaint involves a potential legislative breach and is outside the scope of the Code, they will:
  - forward the complaint to the relevant agency and inform the Chief Executive. The Chief Executive is responsible for informing the complainant, respondent and other members.

### Step 3: Actions where a breach is found to be non-material

If the subject of a complaint is found to be non-material, but more than trivial or frivolous, the investigator will inform the Chief Executive and, if they choose, recommend a course of action appropriate to the breach, such as:

- that the respondent is referred to the Mayor for guidance; and/or

- that the respondent completes appropriate training to increase their knowledge and understanding of the matters resulting in the complaint.

The Chief Executive will advise both the complainant and the respondent of the investigator's decision and any recommendations, neither of which are open to challenge. Any recommendations made in response to a non-material breach are non-binding on the respondent and Council.

#### **Step 4: Actions where a breach is found to be material**

If the subject of a complaint is found to be material, the investigator will inform the Chief Executive, who will inform the complainant and respondent. The investigator will then prepare a report for Council on the seriousness of the breach. In preparing that report, the investigator may:

- consult with the complainant, respondent and any directly affected parties; and/or
- undertake a hearing with relevant parties; and/or
- refer to any relevant documents or information.

On receipt of the investigator's report, the Chief Executive will prepare a report for the relevant Council body charged with assessing and ruling on material complaints, which will meet to consider the findings and determine whether or not a penalty, or some other form of action, will be imposed. The Chief Executive's report will include the investigator's full report.

#### **Step 5: Process for considering the investigator's report**

The investigator's report will be considered by Council or the adjudicative body established for considering reports on Code of Conduct complaints, or any other body that the Council may resolve, noting that the process will meet the principles set out in the Code.

The Council, or adjudicative body, will consider the Chief Executive's report in open meeting, except where the alleged breach concerns matters that justify, in accordance with LGOIMA 1987 (s. 7), the exclusion of the public. Before making any decision on a specific complaint, the relevant body will give the respondent an opportunity to appear and speak in their own defence. Members with an interest in the proceedings, including the complainant and the respondent, should not take part in these proceedings in a decision-making capacity.

The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in the Code.

The report, including recommendations from the adjudicative body, should that body have no formal delegations, will be heard and accepted by the Council in open session, unless grounds for excluding the public exist, without debate.



