

Nelson City Council

Members' Code of Conduct

Anga Tikanga Whanonga

Adopted 14 September 2023

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PART ONE - INTRODUCTION

Overview

The Nelson City Council Members' Code of Conduct has been adopted in accordance with the requirements of the Clause 15, Schedule 7 of the LGA 2002, which requires every council to adopt a code of conduct for its members. The Code of Conduct is an agreement of elected members that sets standards for the behaviour of members towards other members, staff, the public, and the media. It is also concerned with the disclosure of information that members receive in their capacity as members. Members of a council must comply with the Code of Conduct of that council. Complaints of breach of the Code of Conduct will be dealt with in accordance with the principles and process included in the Code.

This Code of Conduct document is divided into four parts, with an appendix.

This Introduction (Part One) provides an overview of codes of conduct, and how this Code will be applied.

Part Two provides information on values and principles that members agree underpin the Code.

Part Three contains details of the agreement made by members regarding the expected standards of behaviour and how they will conduct themselves while acting in their capacity as members. If a member is alleged to have breached one or more of these standards, a complaint may be made using the process outlined in Part Four.

Part Four contains information about how complaints of breach of the Code will be dealt with.

The appendix contains an overview of legislation that is applicable to members.

Application

This Code applies in full to elected members and to members appointed under the Local Government Act 2002 to Council's committees, subcommittees, and other subsidiary decision-making bodies.

The standards of conduct within Part Three of the Code apply to external participants of taskforces and working groups/ parties, but the process for making and investigating complaints under Part Four does not. Complaints about an external taskforce participant's behaviour will be dealt with under the terms of any agreements regarding their participation on the taskforce.

For ease, the term 'member' is used throughout the remainder of the document to apply to both elected and appointed members.

PART TWO - OVERARCHING PRINCIPLES AND VALUES

Nelson City Council values

Nelson City Council has established the following values:

Whakautetanga: respect

Kōrero Pono: integrity

Māiatanga: courage

Whakamanatanga: effectiveness

Whakamōwaitanga: humility

Kaitiakitanga: stewardship

Manaakitanga: generosity of spirit

These values complement, and work in conjunction with, the principles of section 14 of the Local Government Act 2002 and the governance principles of section 39 of the LGA 2002. Council's values give effect to its ways of working together for the good governance of Nelson.

Te Tiriti o Waitangi

Te Tiriti o Waitangi is one of the founding documents of Aotearoa New Zealand. Council acknowledges a requirement to help the Crown meet its relationship obligations as specified in the Local Government Act 2002. The distinct identity iwi have within the Whakatū region, and the wealth of knowledge they contribute about the cultural, natural, physical and social landscape, is recognised.

In their role as governors of Council, members contribute to building and maintaining partnerships with Ngā Iwi e Waru o Te Taihū.

Members are committed to strengthening partnerships with iwi of Te Taihū, including with Iwi Entities, and building relationships with te hāpori Māori to support their aspirations and participation in local government decision-making processes. Members value the opportunities to develop understanding of te reo me ōnā tikanga provided by Council and will participate in these.

Principles of good governance

Members recognise the importance of the following principles of good governance:

- **Public interest:** members should act solely in the public interest.
- **Integrity:** members should not act or make decisions to gain financial or other benefits for themselves, their family, or their friends, or place themselves under any obligation to people or organisations that might inappropriately influence them in their work.
- **Stewardship:** members should use a long-term perspective when making decisions. Decisions, which impact on past, current and future generations, also affect collective well-being.
- **Objectivity:** members should act and take decisions impartially, fairly, and on merit, using the best evidence and without discrimination or bias.
- **Accountability:** members will be accountable to the public for their decisions and actions and will submit themselves to the scrutiny necessary to ensure this.
- **Openness:** members should take decisions in an open and transparent manner and not withhold information from the public unless there are clear and lawful reasons for so doing.
- **Honesty:** members should be truthful and not misleading.
- **Leadership:** members should not only exhibit these principles in their own behaviour but also be willing to challenge poor behaviour in others, wherever it occurs.

Members acknowledge the importance of the rights recognised in the International Covenant on Civil and Political Rights and the rights affirmed in the New Zealand Bill of Rights Act 1990, in particular the protected right of freedom of expression.

Nothing in this Code is intended to limit robust debate within the Council as long as it is conducted in a respectful manner.

PART THREE – STANDARDS OF CONDUCT

To promote good governance and build trust between members, the media, public, and staff, members commit to the following standards of conduct when they are:

- Conducting the business of the Council
- Acting as a representative of the Council
- Acting as a representative of Nelson, and
- Communicating with people in their capacity as a member, including while using social media and other communication channels.

Where a member's conduct falls short of these standards, members accept that they may be subject to a complaint made under the Code of Conduct.

1 Respect

Members will treat all people with respect.

Respect means politeness and courtesy in behaviour, speech, and writing. Debate and differences are all part of a healthy democracy. Members recognise that, as members of a council they can challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner, but must not subject individuals, groups of people or organisations to personal attack.

Relationships between members

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

- Maintains public confidence
- Is open, honest and courteous, and
- Is focused on issues rather than personalities.

Relationships with staff

An important element of good governance involves the relationship between a council, its Chief Executive, and its staff. Members will respect arrangements put in place to facilitate this relationship, 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 or the chairperson of the Chief Executive Employment Committee (however described)
- Make themselves aware of the obligations that the Council and the Chief Executive have as employers and always uphold these requirements

- Treat all employees, officers and contracted officials with courtesy and respect
- Maintain awareness of the imbalance of power that exists between members and employees, officers or contracted officials, and
- Observe any protocols put in place by the Chief Executive concerning contact between members and employees, officers or contracted officials.

Relationship with the public

When in contact with the public, members should treat them politely and courteously. Offensive behaviour lowers the public's expectations of and confidence in Council.

To facilitate trust and respect in Council, members will:

- Ensure their interactions with the public are fair, honest and respectful
- Be available to listen and respond openly and honestly to concerns of members of the public
- Represent the views of citizens and organisations accurately, regardless of the member's own opinions of the matters raised, and
- Ensure their interactions with the public uphold the reputation of Council, including online interactions via social media and other channels.

In return, members have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening, members are entitled to stop any conversation or interaction in person or online and report them to Council, the relevant social media provider or the police.

2 Bullying, harassment, and discrimination

Members will treat all people fairly and will not:

- bully any person
- harass any person, or
- discriminate unlawfully against any person.

Bullying is repeated (that is, it occurs more than once) and unreasonable behaviour directed towards a person or group that can cause physical or mental harm. Bullying can be by an individual or by a group (sometimes referred to as 'mobbing'). Bullying can be physical, verbal, psychological or social. It may include victimising, isolating, humiliating, intimidating or threatening a person. It represents an abuse of power through means that undermine, humiliate, denigrate, or injure another person. It may:

- occur face-to-face, on social media, in emails or phone calls, or at Council-related events, and
- may not always be obvious or noticed by others.

Harassment may take various forms.

The Human Rights Act 1993 defines sexual harassment as ‘any unwelcome or offensive sexual behaviour that is repeated or is serious enough to have a harmful effect’.

Racial harassment means using language (written or spoken), visual material, or physical behaviour that:

- directly or indirectly expresses hostility against someone, or brings them into contempt or ridicule because of their race, colour, or ethnic or national origins, and
- is hurtful or offensive to the person, and
- is so significant or repeated that it has a negative effect on their employment or has a detrimental effect on them.

Harassment may also include any unwanted and unjustified behaviour which another person finds offensive or humiliating and which has a negative effect on them.

Unlawful discrimination occurs when a person is treated unfairly, or less favourably, than another person in one of the circumstances outlined in sections 21 to 74 of the Human Rights Act because of any of the following¹:

Sex	Colour	Age
Marital status	Race	Political opinion
Religious belief	Ethnic or national origins	Employment status
Ethical belief	Disability, including illness	Family status
Sexual orientation		

¹ See <https://www.govt.nz/browse/law-crime-and-justice/human-rights-in-nz/human-rights-and-freedoms/> and <https://tikatangata.org.nz/human-rights-in-aotearoa/what-is-unlawful-discrimination>

3 Sharing information

Occasionally members will receive information in their capacity as members which is pertinent to the ability of Council to properly perform its functions. Where this occurs members will share any such information with the Council through other members and or the Chief Executive².

4 Expressing personal views publicly

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

The media play an important role in the operation and efficacy of local democracy and need accurate and timely information about the affairs of Council to fulfil that role.

Members are free to express a personal view to the media and in other public channels at any time, provided the following rules are observed:

- they do not purport to talk on behalf of Council, if permission to speak on behalf of Council has not been given to them
- their comments are not inconsistent with this Code
- their comments must not misrepresent the views of Council or other members.

Members will abide by the social media protocols described in LGNZ's Good Governance Guide, available at <https://www.lgnz.co.nz/assets/Induction/The-Good-Governance-Guide.pdf>

5 Provide equitable contribution

Members will take all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of them. Members recognise that they hold a position of considerable trust, given by the community to act on their behalf. To fulfil the expectations of the community and contribute to the good governance of Nelson it is important that members make all reasonable efforts to attend meetings and workshops, prepare for meetings, attend civic events, and participate in relevant training seminars.

The local government workload can be substantial, and members recognise it is important that they all contribute appropriately. This requires members to often work as a team and avoid situations where the majority of the work falls on the shoulders of a small number of members.

² Guidance note: Members who are offered information on the condition that it remains confidential are encouraged to inform the person making the offer that the member must disclose any information received that is pertinent to the ability of Council to properly perform its functions, for example, to the Chief Executive and or a governing body meeting in public exclusion.

6 Disrepute

Members will not bring the Council into disrepute.

Members are trusted to make decisions on behalf of Nelson and as such their actions and behaviours are subject to greater scrutiny than others in the community. Members' actions also reflect on Council as well as themselves and can serve to either boost or erode public confidence in both.

Behaviours that might bring Council into disrepute, and diminish its ability to fulfil its functions, include behaviours that are dishonest and/or deceitful. Adhering to this Code does not in any way limit a member's ability to hold the Council and fellow members to account or constructively challenge and express concerns about decisions and processes undertaken by Council.

7 Use of position for personal advantage

Members will not use, or attempt to use, their position to improperly advantage themselves or anyone else, or disadvantage another person.

Members recognise that being a member of Council comes with certain opportunities and privileges, including the power to make decisions that can impact on others. Members must not take advantage of such opportunities to further their own or others' private interests or to disadvantage anyone unfairly. Information on key legislation impacting members and consequences of using the position as a council member to further private interests is shown in the appendix.

8 Impartiality

Members will not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, Council.

Employees, officers and contracted officials work for the Council as a whole and must be politically neutral (unless they are political assistants). They must not be coerced or persuaded to act in a way that would undermine their neutrality.

Members can question employees and officers to gain understanding of their thinking and decision-making, however, they must not seek to influence them to change their advice or alter the content of a report, other than in a meeting or workshop. Members should:

- make themselves aware of the obligations that the Council and Chief Executive have as employers and always observe these requirements, such as the obligation to be a good employer,
- observe any protocols put in place by the Chief Executive concerning contact between members and employees, officers or contracted officials, and
- not publicly criticise individuals.

If a member has any concerns about the behaviour of an employee, officer or contracted official they should raise their concerns with the Chief Executive, or, if the concerns are to do with the Chief Executive, with the Mayor or Chief Executive Employment Committee (however described).

9 Maintaining confidentiality

Members will receive confidential information in the course of their duties.

Confidential information is information that staff consider should not be publicly available for any one or more of the reasons set out in sections 6 and 7 of the Local Government Information and Meetings Act 1987³. The information will be clearly identified as being confidential.

Members must not disclose or use confidential information for any purpose other than the purpose for which the information was supplied to them unless the disclosure is:

- consented to by a person authorised to do so
- required by law
- made under the Protected Disclosures (Protection of Whistleblowers) Act 2022, following Council's policy and process for such disclosures, or
- to a lawyer for the purpose of the member obtaining personal legal advice, and the lawyer agrees to maintain confidentiality of the disclosed information.

This includes information that has been or will be presented to a meeting from which members of the public are excluded or are proposed to be excluded. Disclosure of confidential information may constitute a breach of this Code. Such failure will impede the performance of the Council by inhibiting information flows and undermining public confidence in the organisation, and may also expose the Council to legal risk.

10 Privacy

Members must uphold Council's obligations as an agency under the Privacy Act. Personal information must be treated in accordance with the Privacy Act, Council's privacy policy and any directives of the Privacy Officer. Failure to care for personal information as required may create harm to individuals and expose the Council to censure from the Privacy Commissioner and or legal risk.

³ <https://www.legislation.govt.nz/act/public/1987/0174/latest/DLM122242.html>

PART FOUR – INVESTIGATING AND RULING ON ALLEGED BREACHES OF THE STANDARDS OF CONDUCT OUTLINED IN PART THREE

Principles

The following principles will guide the investigation into, and assessment of, complaints made against a member for breaching the Code of Conduct:

- Parties are encouraged to address minor issues informally amongst themselves. The formal complaint process should only be used for matters that cannot be informally resolved.
- Complaints will be resolved at the lowest level of resolution as possible, with priority given to finding a mediated settlement.
- The complaints process will be advanced in a timely way, with a view to prompt resolution.
- The complaints process will be independent, impartial, and respect the privacy of parties involved.
- Parties will be given due notice that an investigation is underway and will be provided with an opportunity to be heard and to be represented.

Confidentiality

All Code of Conduct processes which are not referred to an Independent Investigator will remain confidential to the directly affected parties and those required to facilitate the *Process for determining and investigating complaints (refer below for process)*.

Where a matter is referred to an Independent Investigator, the ensuing report will be received in public meeting unless grounds under the Local Government Official Information and Meetings Act 1987 (LGOIMA) exist for the exclusion of the public. Discussions and resolution on any actions to be undertaken will also take place in public meeting unless LGOIMA reasons for confidentiality apply.

Note: Where any preceding information to the report is not documented in the report or appendices to the report, it will remain confidential.

Who can make a complaint?

The Code of Conduct is designed to be a self-regulatory instrument and complaints regarding a breach of the Code can only be made by members themselves, or the Chief Executive, who can make a complaint on behalf of themselves or their staff.

All complaints made under the Code must be made in writing and forwarded to the process Administrator (*refer below for roles and responsibilities*).

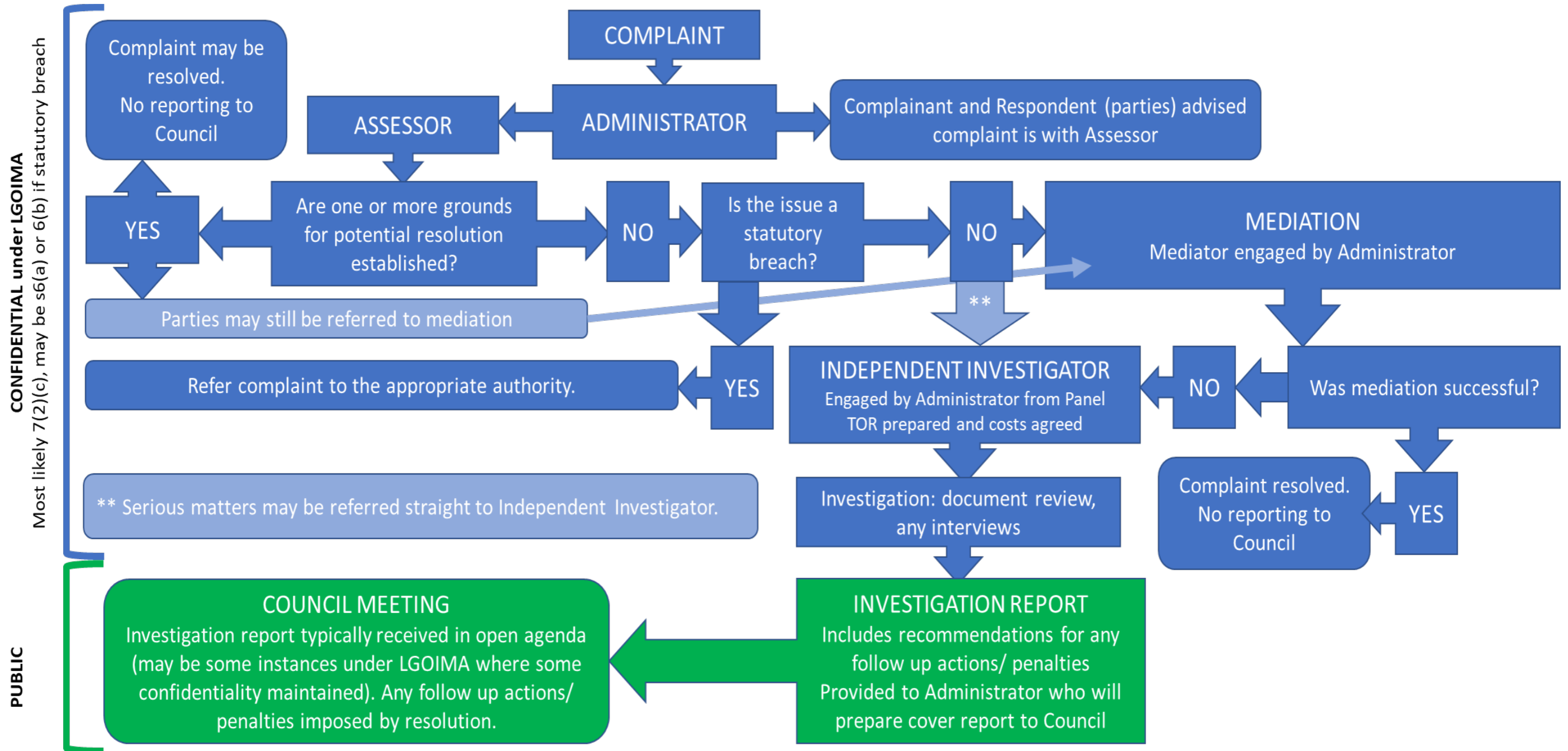
Costs and support

The costs of assessment, mediation and investigatory services (where used) will be met by Council.

Members, those who make complaints and those who are subject to a complaint, should be given appropriate and reasonable support.

- Members will have a right to be accompanied by a support person throughout the process if they choose.
- There may be instances where member/s who are party to a complaint may feel they would benefit from professional counselling support and or independent legal advice and representation during the complaints process.
- Where counselling support, legal advice or representation are sought by a member, the member should discuss this with the Administrator prior to approaching any providers. Where a reasonable case is made, incurred costs may then be met by Council as follows:
 - A maximum of three counselling sessions from an approved provider
 - A maximum amount of \$5,000 plus GST per member per complaint process for legal advice and or representation.

Process for determining and investigating complaints



Responsibilities within the complaints process

Administrator

Who

- Chief Executive, unless a party to complaint
- Deputy Chief Executive, if Chief Executive is a party to complaint⁴

Powers/ Responsibilities

- Receives the written complaint and provides to Assessor
- Notifies the complainant and respondent of each stage in the process the complaint has progressed to
- Engages an external mediator if instructed by the Assessor
- Refers the matter to the appropriate agency if notified by the Assessor the matter is a statutory breach
- Engages an Independent Investigator⁵ from the established panel if instructed by the Assessor, including preparing a Terms of Reference and supporting information, providing this to the Independent Investigator, and agreeing costs.
- Prepares a cover report to Council for the Investigation report if required. This report should include the Investigator's report (with any appendices) and recommendations

⁴ There may be the instance where the Chief Executive is the complainant and the nature of the complaint creates a conflict of interest for all Group Managers. In this instance Council's Manager Governance and Support Services will engage an Independent from Council's panel of investigators to administer the complaints process.

⁵ On behalf of Council the Chief Executive will prepare and maintain, in consultation with the Mayor, a list of investigators for this purpose. The Chief Executive may prepare a list specifically for Nelson City Council or prepare a list jointly with neighbouring councils.

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 Council. The Administrator needs to ensure that investigations are undertaken within budgetary limits negotiated in advance.

(Initial) Assessor

Who

- Mayor, unless a party to complaint
- Deputy Mayor, if Acting Mayor at the time of the complaint
- Chief Executive, if the Mayor is party to a complaint

Powers/ Responsibilities

- Completes an initial assessment of the complaint (through interviewing the complainant to assess the full extent of the complaint, interviewing the member(s) subject to the complaint, and assessing the complaint).
- May resolve the complaint if grounds to do so are established (see paragraph 1 below)
- Will notify the Administrator if the matter is found to be a statutory breach (see paragraph 2 below)
- Will instruct the Administrator to engage a Mediator if there are no grounds for potential resolution or there is anticipated value to mediation regardless of potential resolution grounds existing (see paragraph 3 below)
- Instruct the Administrator to engage an Independent Investigator if any of the grounds in paragraph 4 below apply

1. *Grounds for potential resolution by Assessor*

- The grievance and or its effects are minor and inconsequential (non-material)
 - When considering the issue of materiality, the Assessor will consider a range of factors, such as:
 - Does the breach have legal or financial ramifications for the Council?
 - Will the alleged breach bring Council into disrepute?
 - What is the impact of the breach on other elected members, on staff and on the community in general?
- A genuine apology has already been proffered to the complainant
- There has been fault on both sides
- The complaint is politically motivated

2. *Grounds for referring to another agency (statutory breach)*

- A complaint should be referred to an appropriate other agency where the matter relates to a potential statutory offence, for example:
 - Breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General);
 - Breaches which result in the Council suffering financial loss or damage (where the Auditor-General may make a report on the loss

- or damage under s.44 LGA 2002 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 Police (which may leave the elected member liable for criminal prosecution).
- In this instance the agency the matter has been referred to will undertake any investigation and actions in relation to the complaint

3. Grounds for referral to mediation

- Following assessment, resolution has not been possible and the matter is not a statutory breach
- Following assessment, resolution may be possible, but there is value in the parties undertaking mediation

4. Grounds for referral to Independent Investigator

- Mediation has not been successful
- The matter is assessed as serious, meaning:
 - Conduct appears to be intentional, malicious, motivated by ill-will
 - Conduct caused serious harm, for example reputational harm, or brought the Council into disrepute
 - There is an ongoing pattern of breaches
 - Conduct occurred on only one or two occasions but represents a major departure from expected standards

Mediator

Who

- A person trained in mediation and appointed as a mediator

Powers/ Responsibilities

- To facilitate a formal mediation process between the parties to the complaint

NOTE The outcomes of any successful mediation will be confidential and, other than confidential advice that a complaint has been resolved through mediation, there will be no additional reporting to the council.

Independent Investigator

Who

- A person appointed from the panel of investigators

Powers/ Responsibilities

- Completion of a full investigation into the complaint, within the budgetary constraints set down. This may include:
 - hearing from the relevant parties, and or
 - referring to any relevant documents or information.
- Preparation of a report to the Administrator on the investigation actions, their findings⁶ and any recommended actions^{7, 8}.

⁶ No appeal right on the findings of an Investigator is included in the Code of Conduct.

⁷ Where the Independent Investigator has acted as the Administrator and or Assessor due to the circumstances of the complaint, any initial assessment and or report will be provided to Council's Manager Governance and Support Services.

⁸ The report may include appended relevant information at the discretion of the Investigator.

Council⁹

Powers/ Responsibilities

- Receives the Administrator's report, containing the Investigation report.
 - The report will be received without debate, in open meeting (unless grounds exist for the exclusion of the public under LGOIMA).
 - Members with an interest in the complaint, including the complainant and the respondent, will not be present during the discussion on the independent investigator's recommendations.
 - However, the respondent will have opportunity to be heard at the start of the agenda item.
- Discusses in open meeting (unless grounds exist for the exclusion of the public under LGOIMA) whether any actions are appropriate to be undertaken by the respondent given the findings of the Investigator (included in the Investigation report).
 - Any recommendations made by the Investigator for actions will be considered but are not binding on Council.
 - The action/s that might be undertaken will depend on the seriousness of the breach and may include actions set out below.
 - As part of these considerations the complainant may be asked to appear before the governing body and answer questions from members.
- Formalises by resolution any actions to be undertaken, including any timeframes within which these apply or must be completed by.

⁹ Or committee/sub-committee with delegated authority to consider code of conduct complaints.

Actions that may be undertaken when a breach has been confirmed

Where a complaint that the Code of Conduct was breached has been upheld, any actions that may be undertaken should be consistent with the following principles:

- actions should be commensurate with the seriousness of the breach
- actions should be undertaken in a manner that is culturally appropriate and safe for the members involved, and
- actions should, to the degree practical, contribute to an inclusive culture in the council by focusing on constructive mediation, learning, and member improvement.

In determining a response to a breach of the Code of Conduct, one or more of the following could be selected (noting that this list is not exhaustive and other actions not on the list may also be considered):

1. That no action is required
2. That the member meets with the Mayor for advice
3. That the member attends a relevant training course
4. That the member agrees to cease the behaviour
5. That the member work with a mentor for a period
6. That the member tenders an apology
7. That the Council sends a letter of censure to the member
8. That the Council passes a vote of no confidence in the member
9. That the member loses certain Council-funded privileges (such as attendance at conferences)
10. That the member loses specific responsibilities, such as committee chair, deputy committee chair or portfolio holder
11. That the member be subject to increased limitations on their dealings with Council staff, other than the Chief Executive or identified senior manager
12. That the member be suspended from committees or other bodies to which the member has been appointed
13. That the member be invited to consider resigning from the Council

APPENDIX – OVERVIEW OF LEGISLATION APPLICABLE TO MEMBERS

Clause 15 of Schedule 7 of the Local Government Act (the Act) 2002, 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 New Zealand Bill of Rights Act 1990

The New Zealand Bill of Rights Act 1990 protects and promotes human rights and fundamental freedoms in New Zealand. It affirms the civil and political rights contained in the Act. In relation to Council's actions in the performance of public functions, powers or duties conferred or imposed by or pursuant to law, Council may subject the rights and freedoms contained in the Act only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

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.

It provides for councils to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach and includes:

- the purpose of local government
- a framework and powers for councils to decide which activities they undertake and the manner in which they will undertake them, and
- in recognition and respect of the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to council decision-making processes, principles and requirements for councils that are intended to facilitate participation by Māori in council decision-making processes.

<https://www.legislation.govt.nz/act/public/2002/0084/latest/DLM170879.html>

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:

Conclusive reasons 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.

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 council employees in the course of their duty or the protection of such people from improper pressure or harassment;
- maintain legal professional privilege;
- enable any council 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 Chief Executive 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 are operational and need to be made by the appropriately authorised people within each council; 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 on 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 council 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 council takes whatever action the Ombudsman considers would be an appropriate remedy. Any such recommendation is, however, not binding. Recommendations made to a council under this Act will, in general, become binding unless a council 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 Privacy Act 2020

The Privacy Act 2020 outlines Principles that must be followed by any Agency (and by association any representative of that Agency) in relation to personal information. These Principles guide the purpose, source and manner of collecting personal information, the storage and protection of personal information including length of storage, the expectations in relation to accuracy of and corrections to information held, and the limits on use and any disclosure of personal information.

The Act also provides for complaints to be made to the Privacy Commissioner and outlines how these will be addressed, should someone feel these Principles have been breached.

As representatives of Council as an Agency, members must abide by the expectations of the Act in relation to any personal information they are privy to.

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 council 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 member’s family trust and the council.

Non-pecuniary conflicts of interest

In addition to the issue of pecuniary interests, which are addressed through 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 only be done but should be seen to be done. Whether or not a member believes they 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.

1. Section 6(3)(f) allows the Auditor-General to grant an exemption if, in their opinion, a member’s interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor when voting or taking part in the discussion.
2. Section 6(4) allows the Auditor-General to grant a declaration enabling a member to participate if they are satisfied that:
 - a. the application of the rule would impede the transaction of business by the council; or
 - b. 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 councils 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 a specified relationship with the organisation they are disclosing about, including members of boards and governing bodies. 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

Councils need to have appropriate internal procedures that identify who in the organisation a protected disclosure may be made to, describe the protections 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 frameworks 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 Government (Pecuniary Interests Register) Act 2022

Following passage of the Local Government (Pecuniary Interests Register) Amendment Bill in 2022, a council 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 council, local board, or community board to which the member has been elected,
- the title and description of any organisation in which the member holds 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 at Work Act 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, 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 (not appointed) 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 risks,
- making health and safety part of the organisation's culture, and
- getting workers involved.

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

- adopting a charter setting out the members' role in leading health and safety – with the Chief Executive,
- publishing a safety vision and beliefs statement,
- establishing health and safety targets for the organisation with the Chief Executive,
- ensuring there is an effective linkage between health and safety goals and the actions and priorities of the 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

More information about the Act can be found at [Netsafe](#).