



TAURANGA CITY COUNCIL ELECTED MEMBERS' CODE OF CONDUCT

Tauranga City

2016 - 2019

PART ONE: INTRODUCTION

Schedule 7 of the Local Government Act 2002 (the Act) requires each local authority to adopt a code of conduct. Once adopted, all elected members are required to comply with the code.

Governance principles

The Local Government Act 2002 (Section 39) defines governance principles relating to local authorities. The following governance principles are relevant to a Code of Conduct:

- a) a local authority should ensure that the role of democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community;
- b) a local authority should ensure that the relationship between elected members and management of the local authority is effective and understood.

This code of conduct provides guidance on the standards of behaviour that are expected from the Mayor and elected members of the Tauranga City Council. The code applies to elected members and those appointed to the governance structure of Council in their dealings with:

- each other
- the Chief Executive
- all staff employed by the Chief Executive on behalf of the Council
- the public.

The objective of the code is to enhance:

- the effectiveness of the Council in meeting its statutory responsibilities for good local government of Tauranga City
- the credibility and accountability of the Council within its community
- mutual trust, respect and tolerance between all elected members and between elected members and management
- engagement with the community in a professional and respectful manner.

This code of conduct seeks to achieve its objectives by recording:

- an agreed statement of roles and responsibilities (recorded in Part Two of the code)
- agreed general principles of conduct (recorded in Part Three of the code)
- specific codes of conduct applying to particular circumstances or matters (also recorded in Part Three of the code).

Elected members are primarily accountable to the community of Tauranga City through the democratic process. However, members must note that the Auditor-General may hold them to account for unlawful actions or expenditure or for breaches of the Local Authorities (Members' Interests) Act 1968.

The code of conduct that follows is based on the following general principles of good governance:

- **Public interest.** Members have a duty to make decisions in the public interest. Members should serve only the interests of the city as a whole and should never improperly confer an advantage or disadvantage on any one person or group. Members must declare any private interests or personal benefits relating to their public duties and take steps to resolve any conflicts of interest in such a way that protects the public interest. This means fully disclosing actual or potential conflicts of interest; avoiding any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.
- **Honesty and integrity.** Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
- **Objectivity.** Members should make decisions on merit including making appointments, awarding contracts, or recommending individuals for rewards or benefits. This means fairness to all and impartial assessment. Elected members should also note that, once elected, their primary duty is to the interests of the entire city, not the ward that elected them
- **Accountability.** Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with the scrutiny appropriate to their particular office.
- **Openness.** Members should be as open as possible about their actions and those of the Council, and should be prepared to justify their actions.
- **Personal judgment.** Members can and will take account of the views of others, but should reach their own conclusions on the issues before them, and act in accordance with those conclusions.
- **Respect for others.** Members should promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation, or disability. They should respect the impartiality and integrity of the Council staff.
- **Duty to uphold the law.** Members should uphold the law, and on all occasions, act in accordance with the trust the public places in them.

- **Stewardship.** Members must ensure that the Council uses resources prudently and for lawful purposes, and that the Council maintains sufficient resources to meet its statutory obligations.
- **Leadership.** Members should promote and support these proposals by example, and should always endeavour to act in the best interests of the community.

PART TWO: ROLES AND RESPONSIBILITIES

This part of the code describes the roles and responsibilities of elected members, the additional roles of the Mayor and Deputy Mayor, and the role of the Chief Executive.

Elected Members

Elected members, acting as the Council, are responsible for:

- the development and adoption of Council policy
- monitoring the performance of the Council against its stated objectives and policies
- prudent stewardship of Council resources
- employment of the Chief Executive
- representing the interests of the residents and ratepayers of the Tauranga City Council. (On election, the members' first responsibility is to the city as a whole.)

Unless otherwise provided in the Local Government Act 2002 or in standing orders, the Council can only act by majority decisions at meetings. Each member has one vote. Any individual member (including the Mayor) has no authority to act on behalf of the Council unless the Council has expressly delegated such authority.

Mayor

The Mayor is elected by the city as a whole and as one of the elected members shares the same responsibilities as other members of Council. The Mayor:

- chairs the Council meetings. The Mayor is responsible for ensuring the orderly conduct of business during meetings (as determined in standing orders);
- *leads the development of Council plans, policies and budgets;
- *appoints the deputy mayor;
- *establishes Council committees; and
- *appoints chairpersons to those committees;*
- advocates on behalf of the community. This role may involve promoting the community and representing its interests. Such advocacy will be most effective where it is carried out with the knowledge and support of the Council;
- is the ceremonial head of Council;
- provides leadership and feedback to other elected members on teamwork and chairmanship of committees; and
- is a Justice of the Peace (while the Mayor holds office).

The Mayor must follow the same rules as other elected members about making public statements and committing the Council to a particular course of action, unless acting in accordance with the rules for media contact on behalf of the Council under a delegation of authority from the Council.

* Section 41A of the Local Government Act 2002 Amendments Act 2012. The use of these powers is discretionary.

Deputy Mayor

The Deputy Mayor may be appointed by the Mayor, (or by Council where the Mayor does not choose to appoint the Deputy Mayor) at the first meeting of the Council. The Deputy Mayor exercises the same roles as other elected members, and if the Mayor is absent or incapacitated, the Deputy Mayor must perform all of the responsibilities and duties, and may exercise the powers, of the Mayor (as summarised above). The Deputy Mayor may be removed from office by resolution of Council.

Committee Chairpersons

The Council may create one or more committees of Council. A committee chairperson presides over all meetings of the committee, ensuring that the committee acts within the powers delegated by Council, and as set out in the Council's *Governance Structure Terms of Reference Manual*. Committee chairpersons may be called on to act as an official spokesperson on a particular issue. They may be removed from office by the Mayor or by resolution of Council.

Committee Deputy Chairpersons

A deputy committee chairperson's role is to act as, and take on the full responsibilities of, the chair in the absence of the chairperson.

Chief Executive

The Chief Executive is appointed by the Council in accordance with sections 42 of the Local Government Act 2002. The Chief Executive is responsible for implementing and managing the Council's policies and objectives within the budgetary constraints established by the Council. In terms of section 42 of the Act, the responsibilities of the Chief Executive are:

- implementing the decisions of the Council
- providing advice to the Council
- ensuring that all responsibilities, duties and powers delegated to the Chief Executive or to any person employed by the Chief Executive, or imposed or conferred by any Act, regulation or bylaw are properly performed or exercised
- managing the activities of the local authority effectively and efficiently
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority
- providing leadership for the staff of the local authority
- employing staff on behalf of the local authority (including negotiation of the terms of employment for the staff of the local authority).

Under section 42 of the Local Government Act 2002 the Chief Executive employs all other staff on behalf of the local authority.

PART THREE: RELATIONSHIPS AND BEHAVIOURS

This part of the code sets out the Council's agreed standards of behaviour. Some of the matters described in this part of the code reflect other legislation such as the Local Authorities (Members' Interests) Act 1968. The majority of the code is material that the Council has decided to include of its own initiative.

In the performance of their official duties and with all relationships, members should refrain from any form of conduct which may cause any reasonable person unwarranted offence or embarrassment.

Relationships with Other Members

Working together in a constructive style is a critical element to the success of any democratically elected organisation. No Council will be effective unless mutual respect exists between members. With this in mind elected members will conduct their dealings with each other in ways that:

- maintain public confidence in the office to which they have been elected
- are open and honest
- focus on the issues rather than personalities
- avoid aggressive, offensive or abusive conduct including intimidation and/or bullying
- shall maintain the respect and dignity of their office in their dealings with each other, Council officers, and the public
- will act in good faith (i.e., honestly, for the proper purpose, and without exceeding their powers) in the interests of the Council and the community
- members will make no allegations regarding other members or Council officers which are improper or derogatory.

Relationships with Staff

The effective performance of Council also requires a high level of cooperation and mutual respect between elected members and staff. To ensure that level of cooperation and trust is maintained, elected members will:

- recognise that the Chief Executive is the employer (on behalf of Council) of all Council employees, and as such only the Chief Executive may hire, dismiss or instruct or censure an employee
- make themselves aware of the obligations that the Council and the Chief Executive have as employers
- treat all employees with courtesy and respect
- not do anything which compromises, or could be seen as compromising, the impartiality of an employee
- avoid publicly criticising any employee directly especially in ways that reflect on the competence and integrity of the employee
- raise concerns about employees only with the Chief Executive, and concerns about the Chief Executive only with the Mayor or the Chief Executive Performance Review Process.

Elected members should be aware that failure to observe this portion of the code of conduct may compromise the Council's obligations to act as a good employer and may expose the Council to civil litigation and audit sanctions.

Relationships with the Community

Effective Council decision-making depends on productive relationships between elected members and the community at large.

Members should act in a manner that encourages and values community involvement in local democracy.

Members should not make any commitment to the community on behalf of the collective Council without the consent of all members.

Members should treat members of the community with courtesy and respect at all times.

Contact with the Media

The media plays an important part in local democracy. In order to fulfil this role, the media needs access to accurate, timely information about the affairs of the Council. From time to time, individual members will be approached to comment on a particular issue either on behalf of the Council, or as an elected member in their own right. This part of the Code deals with the rights and duties of elected members when speaking to the media on behalf of the Council, or in their own right.

The following rules apply for media contact on behalf of the Council:

- the Mayor is the first point of contact for the official view of the Council on any issue. Where the Mayor is absent any matters will be referred to the Deputy Mayor or relevant committee chairperson;
- the Mayor may refer any matter to the relevant committee chairperson or to the relevant chairperson(s);
- the chairperson may comment on behalf of the committee in relation to matters where decision making, public consultation or advocacy is a responsibility of the committee;
- no other member may comment on behalf of the Council without having first obtained the approval of the Mayor, or on behalf of a committee without first having obtained the approval of the committee chairperson.
- Individual elected members may respond to enquiries from the media and when doing so, must ensure it is clear whether they express their own personal view or the official view of Council.

Elected members are free to express a personal view in the media, at any time. When doing so, they should observe the following:

- media comments must not state or imply that they represent the views of the Council;
- where an elected member is making a statement that is contrary to the Council decision or policy, the member must not state or imply that his or her statements represent a majority view;
- media comments must observe the other requirements of the code of conduct, e.g. not disclose confidential information, or compromise the impartiality or integrity of staff or be derogatory in respect of another elected member.

Elected members who have a concern about any communication they receive or are aware of should raise the matter with:

- the Mayor if it relates to a communication from an elected member;
- the Chief Executive if it relates to a communication from a staff member.

Use of Social Media

Electronic communications are public information. Emails are archived, easily recovered and may be requested by the public and media under the provisions of the Local Government Official Information and Meetings Act 1987.

Elected members will not send, or attempt to send electronic communication to others that:

- may be viewed as harassment (unwelcome or unreciprocated behaviour)
- includes potentially offensive or discriminatory material;
- that may bring the Council into disrepute e.g. sending derogatory remarks about people or organisations.

Social media is the term for internet based tools used for publishing, sharing and discussing information. This includes blogs, wikis and social networking sites such as Facebook, Twitter or LinkedIn.

All communication through social media platforms is in the public domain. Whether talking to the media, speaking in public or using social media, the protocols outlined below apply; namely:

- show respect and avoid offensive or abusive language;
- make it clear you are expressing a personal opinion;
- do not disclose confidential information;
- do not impugn the integrity or impartiality of fellow elected members or staff;
- do not undermine Council policy or bring the Council into disrepute.

Confidential Information

In the course of their duties members will receive information that may need to be treated as confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation.

Elected members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the elected member.

Elected members should be aware that failure to observe these provisions will impede the performance of Council by inhibiting information flows and undermining public confidence in the Council. Failure to observe these provisions may also expose Council to prosecution under the Privacy Act 1993 and/or civil litigation.

Conflicts of Interest

Elected members must be careful that they maintain a clear separation between their personal interests and their duties as an elected member. This is to ensure that people who fill positions of authority carry on their duties free from bias (whether real or perceived). Members therefore need to familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 which concerns financial interests, and with other legal requirements concerning non-financial conflicts of interest.

The Act provides that an elected member is disqualified from office, or from election to office, if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year.

Additionally, elected members are prohibited from participating in any Council discussion or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. The same rules also apply where the

member's spouse contracts with the authority or has a pecuniary interest. Members must declare their interests at Council meetings where matters in which they have a pecuniary interest arise.

If the 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 guidance from the Chief Executive *immediately*.

Members may also contact the Audit Office for guidance as to whether that member has a pecuniary interest. If there is a pecuniary interest, the member may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote. The Chief Executive must also seek approval from the Audit Office for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

Failure to observe the requirements of the Local Authorities (Members' Interests) Act 1968 could potentially invalidate the particular decision made, or the action taken, by Council. Failure to observe these requirements could also leave the elected member open to prosecution under the Local Authorities (Members' Interests) Act 1968. In the event of a conviction elected members can be ousted from office.

Non-financial conflicts of interest

Non-financial conflicts of interest, or the perception of a conflict of interest, may impair (or be seen to impair) an elected members' ability to act faithfully, impartially and in the best interests of Tauranga City.

Potential conflicts of interest are to be declared at the beginning of any Council meeting, or at the first opportunity in a decision-making process. The onus is on individual elected members to identify and declare potential conflicts of interest.

Elected members must declare any non-financial interests they may have in any matters before Council. Open declaration of any potential conflict of interest, actual or perceived, promotes greater transparency in Council decision-making. The elected member may:

- Exclude themselves from the vote and/or discussion; or
- Provide clear reasons why they do not believe exclusion is appropriate; or
- Explain the circumstances of the potential conflict of interest and ask that Council resolve whether a conflict exists.

In certain circumstances, Council may choose to allow an elected member with a conflict of interest to remain present for, and/or contribute to the discussion of the matter. This may occur when it is considered that the contribution of knowledge or experience from the elected member in question would promote more informed or better quality decision-making by the other members of Council. However, it is expected under Standing Orders that an Elected Member will leave the room where a matter is being discussed as a public excluded item.

An elected member who is in any doubt as to whether a conflict of interest exists should approach the Chief Executive for advice.

Ethics

Tauranga City Council seeks to promote the highest standards of ethical conduct amongst its elected members. A person in a position of trust, such as a Councillor, should not make a profit through his or her office. Accordingly, elected members will:

- claim only for legitimate expenses as laid down by the Elected Members Expenses / Resources Policy as approved by the Remuneration Authority
- not influence, or attempt to influence, any Council employee to take actions that may benefit the elected member, or the elected member's family or business interests
- Only use Council resources (including facilities, staff, equipment and supplies) effectively and economically in the course of their duties, and within other guidelines, and not in connection with any election campaign or other personal business
- not solicit, demand, or request any gift, reward or benefit by virtue of their position
- notify the Chief Executive if any gifts over \$100.00 are accepted and record in a gift register
- where a gift to the value of \$100.00 excluding GST or more is offered to an elected member, immediately disclose this to the Chief Executive for inclusion in the publicly available register of interests.

Acceptance of substantial gifts, favours or hospitality may be construed as a bribe or perceived as undue influence. Working meals and social occasions should be undertaken in an appropriate manner.

Members are to ensure that information relating to their interests are declared and shown as up to date on the Members' Interest Register.

Dress Code

It is expected that members will dress in a manner that does not bring discredit to the Council.

Meeting Attendance

The Remuneration Authority deems members' positions to be close to full time. Elected members are expected to fulfil their obligations as members of the Council by preparing for meetings, attending and taking part in discussion in meetings of which they are a member. It is recognised that despite best endeavours there are occasionally times when other commitments prevent attendance. Nevertheless, persistent non-attendance at meetings by a member can be raised by the Mayor or a committee chairperson as a breach of the Code of Conduct.

Standing Orders

Elected members must adhere to any standing orders adopted by Council under the Local Government Act 2002. These standing orders are subject to the same legal requirements as a code of conduct with regard to their adoption and amendment.

Pre-Election Period

During the three months prior to polling date for local authority elections, Council resources should not be used in any way that could be deemed to give any sitting member an electoral advantage. During this period elected members will:

- not use Council stationery, email, postage or fax/phone facilities or any other Council resource explicitly for campaign purposes

- not attempt to make any use of Council communications that could be construed as giving that member an unfair electoral advantage by raising their profile
- Abide by any Council policies adopted by the Governing Body relating to conduct during the pre-election period.

Note: Complaints in regard to any matter relating to the conduct of the elections are to be made through the Electoral Officer. If any complaint involves the use of Council resources the Electoral Officer will bring the complaint to the attention of the Chief Executive.

Bankruptcy

Elected members who are declared bankrupt shall notify the Chief Executive as soon as practicable after being declared bankrupt.

Disqualification of Members from Office

Elected members are automatically disqualified from office if they are convicted of a criminal offence punishable by two or more years' imprisonment, or if they cease to be or lose their status as an elector or of certain breaches of the Local Authorities (Members' Interests) Act 1968.

PART FOUR: COMPLIANCE AND REVIEW

This part deals with ensuring that elected members adhere to the code of conduct and mechanisms for the review of the code of conduct.

Compliance

Elected members must note that they are bound to comply with the provisions of this code of conduct (Local Government Act 2002, Schedule 7, section 15(4)).

Members are also bound by the Local Government Act 2002, the Local Authorities (Members' Interests) Act 1968, the Local Government Official Information and Meetings Act 1987, the Secret Commissions Act 1910, the Crimes Act 1961 and the Securities Act 1978. The Chief Executive will ensure that an explanation of these Acts is made at the first meeting after each triennial election and that copies of these Acts are freely available to elected members. Short explanations of the obligations that each of these has with respect to conduct of elected members is attached in the Appendix to this code.

Compliance will be monitored by the full Council with issues not able to be resolved and referred to an independent advisor.

Material breaches of confidentiality are of a serious nature under this code.

Alleged breaches of this Code during meetings

It is expected that compliance with the provisions of this Code during a meeting shall be dealt with by the Chairperson of that meeting within Standing Orders at the time the breach arises. Members should raise alleged breaches of the Code with the Chairperson at the time. If a member believes that an alleged breach of the Code has not been dealt with adequately by the Chairperson at a meeting, that member may initiate the procedures set out below.

Alleged breaches of this Code at other times

If a member believes that this Code has been breached, that member must first endeavour to resolve the matter informally by discussion with the member alleged to have breached the Code.

Investigation, advice and decision

The process, following receipt of a complaint, will follow the steps outlined below.

Lodging of Code of Conduct Complaints

A complaint in relation to another member must be addressed to the Mayor.

Any allegation of a breach of the Code must be in writing, make a specific allegation of a breach of the Code and provide corroborating evidence.

Complaints alleging a breach of the Code of Conduct may be made by any elected member or by the Chief Executive acting on behalf of staff or on behalf of a complaint from a CCO conveyed through that CCOs chief executive.

Process for the determination and investigation of complaints

Step 1: Chief executive receives complaint

On receipt of a complaint under this Code the chief executive will refer the complaint to an investigator selected from a panel agreed at the start of the triennium. The chief executive will also:

- inform the complainant that the complaint has been referred to the independent investigator and the name of the investigator, and refer them to the process for dealing with complaints as set out in the Code; and
- inform the respondent that a complaint has been made against them, the name of the investigator and refer them to 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 assess whether:

1. the complaint is frivolous or without substance and should be dismissed;
2. the complaint is outside the scope of the Code and should be redirected to another agency or process;
3. the complaint is non-material; and
4. the complaint is material and a full investigation is required.

In making the assessment the investigator may make whatever initial inquiry is necessary to determine the appropriate course of action. The investigator has full discretion to dismiss any complaint which, in their view, fails to meet the test of materiality.

On receiving the investigator's preliminary assessment, the chief executive will:

1. where an investigator determines that a complaint is frivolous or without substance, inform the complainant and respondent directly and inform other members (if there are no grounds for confidentiality) of the investigator's decision;
2. in cases where the investigator finds that the complaint involves a potential legislative breach and outside the scope of the Code, forward the complaint to the relevant agency and inform both the complainant and respondent of the action.

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

If the subject of a complaint is found to be non-material 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 seek guidance from the Chairperson or Mayor;
- that the respondent attends appropriate courses or programmes to increase their knowledge and understanding of the matters leading to 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 the 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 the council on the seriousness of the breach.

In preparing that report the investigator may:

- consult with the complainant, respondent and any affected parties;
- 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 council or committee with delegated authority, 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 full report prepared by the investigator.

Step 5: Process for considering the investigator's report

Depending upon the nature of the complaint and alleged breach the investigator's report may be considered by the full council, excluding the complainant, respondent and any other 'interested' members, or a committee established for that purpose.

In order to avoid any suggestion of bias, a Code of Conduct Committee may often be the best mechanism for considering and ruling on complaints. Committees should be established at the start of a triennium with a majority of members selected from the community through either an application process or by invitation.

The council or committee will consider the chief executive's report in open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such as the misuse of confidential information or a matter that would otherwise be exempt from public disclosure under s.48 of the LGOIMA, in which case it will be a closed meeting.

Before making any decision in respect of the investigator's report the council or committee will give the member against whom the complaint has been made an opportunity to appear and speak in their own defence. Members with an interest in the proceedings, including the complainant and the respondent, may not take part in these proceedings.

The form of penalty that might be applied will depend on the nature of the breach and may include actions as follows:

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

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

A council or committee may decide that a penalty will not be imposed where a respondent agrees to one or more of the following:

- attend a relevant training course; and/or
- work with a mentor for a period of time; and/or
- 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 Local Government Official Information and Meetings Act 1987 (LGOIMA), for not doing so.

In accordance with this Code, councils will agree to implement the recommendations of a Code of Conduct Committee without debate.

Review

Once adopted, a code of conduct continues in force until amended by the Council. The code can be amended at any time but cannot be revoked unless the Council replaces it with another code. Once adopted, amendments to the code of the conduct require a resolution supported by 75 per cent or more of the members of the Council present.

Council will formally review the code as soon as practicable after the beginning of each triennium. The results of that review will be presented to Council for their consideration and vote.

APPENDIX TO THE CODE: LEGISLATION BEARING ON THE ROLE AND CONDUCT OF ELECTED MEMBERS

This is a summary of the legislation requirements that has some bearing on the duties and conduct of elected members. Copies of these statutes can be found in the Council library or in the office of the Chief Executive.

Local Authority (Members' Interests) Act 1968

This Act* regulates situations where a members' personal interests impinge, or could be seen as impinging on their duties as an elected member.

The Act provides that an elected member is disqualified from office if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year.

Additionally, elected members are prohibited from participating in any Council discussion or voting on any matter in which they have a pecuniary interest, other than an interest in common with the general public. The same rules also apply where the member's spouse contracts with the authority or has a pecuniary interest.

Members may also contact the Audit Office for guidance as to whether that member has a pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote. The Chief Executive must also seek approval from the Audit Office for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

Failure to observe these requirements could also leave the elected member open to prosecution under the Local Authority (Members' Interests) Act 1968. In the event of a conviction elected members can be ousted from office.

Local Government Official Information and Meetings Act 1987 (LGOIMA)

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements. Of particular importance for the roles and conduct of elected members is the fact that the chair has the responsibility to maintain order at meetings, but all elected members should accept a personal responsibility to maintain acceptable standards of address and debate. No elected member should:

- create a disturbance or a distraction while another Councillor is speaking
- be disrespectful when they refer to each other or other people
- use offensive language about the Council, other Councillors, any employee of the Council or any member of the public.

Secret Commissions Act 1910

Under this Act it is unlawful for an elected 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 2 years, or fines up to \$1000, or both. A conviction therefore would trigger the ouster provisions of the Local Government Act 2002 and result in the removal of the member from office.

* The Audit Office publication *Financial Conflicts of Interests of Members of Governing Bodies* (2001) provides further guidance on this Act.

Crimes Act 1961

Under this Act it is unlawful for an elected 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
- 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 7 years or more. Elected members convicted of these offences will also be automatically ousted from office.

Financial Markets Conduct Act 2013

- Council can raise money by issuing bonds to the public
- disclosure document is required
- elected members can be treated as directors under the Act
- penalties apply, and you may be liable to investors, for untrue statements

Local Government Act 2002 (LGA 02)

- Council is required to have a Code of Conduct, which applies to all elected members of the Council

Local Government Act 1974

Common Law Position