



Timaru District Council

Code of Conduct

Final

(Adopted Council: 27 October 2022)

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Code of Conduct

1. Introduction

This Code of Conduct (Code) sets out the standards of behaviour expected from elected members in the exercise of their duties. Its purpose is to:

- (i) enhance the effectiveness of the local authority and the provision of good local government of the community, district or region;
- (ii) promote effective decision-making and community engagement;
- (iii) enhance the credibility and accountability of the local authority to its communities; and
- (iv) develop a culture of mutual trust, respect and tolerance between the members of the local authority and between the members and management and employees.

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

2. Scope

The Code is adopted in accordance with clause 15(1) of Schedule 7 of the Local Government Act 2002 (LGA 2002) and applies to all members, including the members of any community boards that have agreed to adopt it. The Code is designed to deal with the behaviours of members towards:

- (i) each other;
- (ii) the chief executive and employees;
- (iii) the media; and
- (iv) the general public.

It is also concerned with the disclosure of information that members receive in their capacity as elected members and information which impacts on the ability of the local authority 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 the Council's Standing Orders.

3. Values

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

- (i) **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.
- (ii) **Public trust:** members, in order to foster community confidence and trust in their Council, will work together constructively and uphold the values of honesty, integrity, accountability and transparency.
- (iii) **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 behaviour.

- (iv) Objectivity: members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.
- (v) 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 officials.
- (vi) Duty to uphold the law: members will comply with all legislative requirements applying to their role, abide by this Code of Conduct, and act in accordance with the trust placed in them by the public.
- (vii) 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.
- (viii) Leadership: members will actively promote and support these principles and ensure they are reflected in the way in which the Council operates, including a regular review and assessment of the Council's collective performance.

These values complement, and work in conjunction with, the principles of section 14 of the LGA 2002 and the governance principles of section 39 of the LGA 2002.

4. Role and Responsibilities

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

4.1 Members (Councillors)

The role of the governing body includes:

- (i) representing the interests of the people of the district;
- (ii) developing and adopting plans, policies and budgets;
- (iii) monitoring the performance of the Council against stated goals and objectives set out in its Long Term Plan;
- (iv) providing prudent stewardship of the Council's resources;
- (v) employing and monitoring the performance of the Chief Executive; and
- (vi) ensuring the Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

4.2 Chief Executive

The role of the Chief Executive includes:

- (i) implementing the decisions of the Council;
- (ii) ensuring that all responsibilities delegated to the Chief Executive are properly performed or exercised;
- (iii) ensuring the effective and efficient management of the activities of the local authority;
- (iv) maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority;
- (v) providing leadership for the employees of the Council; and

- (vi) employing all officers on behalf of the Council (including negotiation of the terms of employment for those employees).

Under section 42 of the LGA 2002 the chief executive is the only person *directly* employed by the Council itself. All concerns about the performance of an individual employee must, in the first instance, be referred to the Chief Executive.

5. Relationships

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

5.1 Relationship 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:

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

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

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

5.2 Relationships with Employees

An important element of good governance involves the relationship between the Council and its Chief Executive. Members will respect arrangements put in place to facilitate this relationship, and:

- (i) raise any concerns about employees, officers or contracted officials with the Chief Executive;
- (ii) raise any concerns about the performance or behaviour of the Chief Executive with the Mayor/Chair or the Chairperson of the Chief Executive Performance Review Committee (however described);
- (iii) make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe those requirements at all times, such as the duty to be a good employer;
- (iv) treat all employees with courtesy and respect, including the avoidance of aggressive, offensive or abusive conduct towards employees;
- (v) avoid publicly criticising any employee in any way, but especially in ways that reflect on the competence and integrity of the employee;
- (vi) observe any protocols put in place by the Chief Executive concerning contact between members and employees; and
- (vii) 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 this Code.

Please note: Elected members should be aware that failure to observe this portion of the Code may compromise the Council's obligations to be a good employer and consequently expose the Council to civil litigation or affect the risk assessment of Council's management and governance control processes undertaken as part of the Council's audit.

5.3 Relationship with the Public

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

- (i) Interact with members of the public in a fair, respectful, equitable and honest manner;
- (ii) be available to listen and respond openly and honestly to citizens' concerns;
- (iii) represent the views of citizens and organisations accurately, regardless of the member's own opinions of the matters raised;
- (iv) consider all points of view or interests when participating in debate and making decisions;
- (v) treat members of the public in a courteous manner; and
- (vi) act in a way that upholds the reputation of the local authority.

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

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.

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. When responding to the media, members must be mindful that operational questions should be referred to the Chief Executive and policy-related questions referred to the Mayor or the member with the appropriate delegated authority.

When speaking to the media more generally members will abide by the following provisions:

6.1 Media contact on behalf of the Council

- (i) The Mayor or Chairperson is the first point of contact for an official view on any issue, unless delegations state otherwise. Where the Mayor/Chair is absent requests for comment will be referred to the Deputy Mayor/Chair or relevant committee chairperson or portfolio holder;
- (ii) the Mayor/Chair may refer any matter to the relevant committee chairperson or to the Chief Executive for their comment; and
- (iii) no other member may comment on behalf of the Council without having first obtained the approval of the Mayor/Chair.

6.2 Media comment on Member's own behalf

Elected members are free to express a *personal view* in the media, including social media, at any time, provided the following rules are observed:

- (i) Media comments must not state or imply that they represent the views of the Council;
- (ii) media comments which are contrary to a Council decision or policy must clearly state that they do not represent the views of the majority of members;
- (iii) media comments must observe the other requirements of the Code; for example, comments should not disclose confidential information, criticise, or compromise the impartiality or integrity of employees; and
- (iv) Media comments must not be misleading and should be accurate within the bounds of reasonableness.

Any failure by members to meet the standards set out above represents a breach of this Code.

7. Information

Access to information is critical to the effective performance of a local authority and the level of public trust felt by the public.

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 is personal to a particular individual or organisation. Accordingly, members agree not to 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 an Elected Member

Members will disclose to other members and, where appropriate the Chief Executive, any information received in their capacity as an elected member that concerns the 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 this Code.

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

8. Conflicts of Interest

Elected members will maintain a clear separation between their personal interests and their duties as elected members in order to ensure that they are free from bias (whether real or perceived). Members therefore must familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 (LAMIA) and Local Government (Pecuniary Interests) Amendment Act 2022 (LGPIA).

Members will not participate 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. This rule also applies where the member's spouse contracts with the Council or has a pecuniary interest. Members shall make a declaration of interest as soon as practicable after becoming aware of any such interests.

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 guidance from the Chief Executive *immediately*. 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 they may have a pecuniary interest. The latter must be done before the discussion or vote.

Please note: Failure to observe the requirements of the LAMIA could potentially invalidate the decision made, or the action taken, by the council. Failure to observe these requirements could also leave the elected member open to prosecution (see Appendix A). In the event of a conviction, elected members can be ousted from office.

9. Register of Interests

Members shall make a declaration of interest annually under the provisions of the Acts listed above. These declarations are recorded in a public Register of Interests maintained by the Council, a summary of which is required to be publicly available. The declaration must include information on the nature and extent of any interest, including:

- (i) any employment, trade or profession carried on by the member or the members' spouse/partner for profit or gain;
- (ii) any company, trust, partnership etc. for which the member or their spouse/partner is a director, partner or trustee;
- (iii) the address of any land in which the member has a beneficial interest within the jurisdiction of the local authority;
- (iv) the address of any land owned by the local authority which the member or their spouse is:
 - a tenant; or
 - the land is tenanted by a firm in which the member or spouse is a partner, a company of which the member or spouse is a director, or a trust of which the member or spouse is a trustee; and
- (v) any other matters which the public might reasonably regard as likely to influence the member's actions during the course of their duties as a member (if the member is in any doubt on this, the member should seek guidance from the Chief Executive).

Please note: Where a member's circumstances change, are in error or has been omitted they must ensure that the Register of Interests is updated as soon as practicable through advising the Registrar.

10. Ethical Behaviour

Members will seek to promote exemplary standards of ethical conduct. Accordingly members will:

- (i) claim only for legitimate expenses as determined by the Remuneration Authority and any remuneration or reimbursement policy of the Council developed in accordance with that determination;
- (ii) not influence, or attempt to influence, any Council employee, officer or member in order to benefit their own, or families' personal or business interests;
- (iii) only use the Council resources (such as officers' advice, facilities, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests;
- (iv) 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. Where a gift to the value of \$50 or more is accepted by a member, that member must immediately disclose this to the Chief Executive for inclusion in the publicly available Register of Interests; and
- (v) in the event of being (as a newly elected member) or becoming an "undischarged bankrupt" and in accordance with clause 15(5) of Schedule 7 (LGA 2002), 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.

Any failure by members to comply with the provisions set out in this section represents a breach of this Code of Conduct and potentially the Local Government (Pecuniary Interests) Amendment Act 2022 (LGPIA).

11. Creating a Supporting 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:

- (i) Attending post-election induction programmes organised by the Council for the purpose of facilitating agreement on the Council's vision, goals and objectives and the manner and operating style by which members will work.
- (ii) Taking part in any assessment of the Council's overall performance and operating style during the triennium.
- (iii) Taking all reasonable steps to ensure they possess the skills and knowledge to effectively fulfil their Declaration of Office (the Oath) and contribute to the good governance of the district or region.

12. Breaches of the Code

Members must comply with the provisions of this Code (LGA 2002, Schedule 7, section 15(4)). Any member of the public, elected 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.

12.1 Principles

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

- (i) that the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the breach complained about;
- (ii) that the roles of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and
- (iii) that the concepts of natural justice and fairness will apply in the determination of any complaints made under this 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.

12.2 Complaints

Before making a complaint, members are encouraged to resolve the matter by discussion with the member alleged to have committed the breach.

All complaints under this Code must be made in a timely manner and in writing to the following recipients:

- (i) If made by a member against another member - to the mayor or, if the mayor is the subject of the complaint (or is the complainant) to the deputy mayor;
- (ii) If made by a member against an employee - to the chief executive;
- (iii) If made by the chief executive, and/or on behalf of an employee, against a member - to the mayor or, if the mayor is the subject of the complaint, to the deputy mayor.

A complaint made by a member of the public will be treated as if it were a complaint made by a member (the Mayor or Deputy Mayor) against another member.

On receipt of a complaint, the Chief Executive must forward that complaint to an independent investigator for a preliminary assessment to determine whether the issue is sufficiently serious to warrant a full investigation.

12.3 Investigation, advice and decision

The process, following receipt of a complaint, will follow the steps outlined in Appendix C.

12.4 Materiality

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

13. Penalties and Actions

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

13.1 Material breaches

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

- (i) a letter of censure to the member;
- (ii) a request (made either privately or publicly) for an apology;
- (iii) a vote of no confidence in the member;
- (iv) removal of certain Council-funded privileges (such as attendance at conferences);
- (v) removal of responsibilities, such as committee chair, deputy committee chair or portfolio holder;
- (vi) restricted entry to Council offices, such as no access to employees areas (where restrictions may not previously have existed);
- (vii) limitation on any dealings with Council employees so that they are confined to the Chief Executive only;
- (viii) suspension from committees or other bodies to which the member has been appointed; or
- (ix) an invitation for the member to consider resigning from the Council.

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

- (i) attending a relevant training course; and/or
- (ii) working with a mentor for a period of time; and/or
- (iii) participating in voluntary mediation (if the complaint involves a conflict between two members); and/or
- (iv) tendering 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.

13.2 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:

- (i) breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under the LAMIA);
- (ii) 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 s30 of the LGA 2002, which may result in the member having to make good the loss or damage); or
- (iii) 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).

14. 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 require a resolution supported by 75 per cent of the members of the 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 the Council in regard to potential changes for improving the Code.

Appendix A

Legislation bearing on the role and conduct of elected members

1. 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 Council.

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 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

Elected 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." (OAG, 2001)

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 apply to me?
- Could I apply to the Auditor-General for approval to participate?

Members may seek assistance from the Mayor/Chair or other person 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 the 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 the 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 you are 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 you.

The Auditor-General can give prior approval, and in limited cases, retrospective approval for contracts that would otherwise disqualify you under the Act. It is an offence under the Act for a person to act as a member of the council (or committee of the council) 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:¹

"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. Whether or not members believe they are not biased is irrelevant.

Members should focus be 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:

- members' 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 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).

2. Local Government Official Information and Meetings Act 1987

The Local Government Official Information and Meetings Act 1987 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 elected members is the fact that the chairperson 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; or
- use offensive language about the council, other members, any employee of the council or any member of the public.

See Standing Orders for more detail.

3. 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 two years, and/or fines up to \$1000. A conviction would therefore trigger the ouster provisions of the LGA 2002 and result in the removal of the member from office.

4. 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; 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. Elected members convicted of these offences will automatically cease to be members.

5. Financial Markets Conduct Act 2013

Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places elected members in the same position as company directors whenever Council offers stock to the public. Elected 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.

6. The Local Government Act 2002

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

Personal liability of members

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

- (i) money belonging to, or administered by, a local authority has been unlawfully

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

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:

- (i) without the member's knowledge;
- (ii) with the member's knowledge but against the member's protest made at or before the time when the loss occurred;
- (iii) contrary to the manner in which the member voted on the issue; and
- (iv) 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 employees or external experts on the matters.

In certain situation members will also be responsible for paying the costs of proceedings (s47 LGA 2002).

7. Local Government (Pecuniary Interests Register) Amendment Act 2022

Following passage of the Local Government (Pecuniary Interests Register) Amendment Bill in 2022, a local authority must now keep a register of the pecuniary interests of their members, including community and local board members. This Act will come into force on 20 November 2022 and inserts a new set of requirements and obligations into the Local Government Act 2002, all of which relate to members' pecuniary interests.

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 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 the member and a description of the main business activities of those employers
- the name of each trust in which the member has a beneficial interest
- the name of any organisation or trust and a description of the main activities of that organisation or trust if the member is a member of the organisation, a member of the governing body of the organisation, or a trustee of the trust, and the organisation or trust receives funding from the local authority, local board, or community board to which the 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 7 years.

Key obligations for Council are:

- (i) to maintain a register of pecuniary interests (the Register)
- (ii) appoint a Registrar, who will compile and maintain the Register for the council
- (iii) make a summary of the information contained in the Register publicly available; and
- (iv) ensure that information contained in the Register is:
 - (a) only used or disclosed in accordance with the purpose of the Register, and
 - (b) retained for 7 years after the date on which a member provides the information, and is then removed from the Register.

Key obligations for Members (Council and Community Board Members) are to:

- (i) make annual returns that contain information on certain pecuniary interests to the Registrar, within the statutory timeframe;
- (ii) ensure that the information contained in their returns is accurate; and
- (iii) in the event of becoming aware of an error or omission in their returns, advise the Registrar of that as soon as practicable.

If a member does not comply with these obligations, they will commit an offence, which is punishable by a fine of up to \$5,000.

8. Health and Safety at Work Act 2015

Elected members have a role to play in making sure the Council operates in a safe and healthy environment. The well-being of other members and Council employees must be a primary concern.

Appendix B

Guidelines on the personal use of social media¹

Social media are internet-based tools that help members engage with each other and citizens, and they are also increasingly used as a way for citizens to engage with elected members themselves. Common social media platforms include Facebook, Twitter, YouTube, Instagram, LinkedIn, Neighbourly, TikTok, Messenger and Snapchat.

While social media can be a powerful tool for engaging with and informing the communities elected members serve, providing constituents with greater access to local government decision-making, they can also be misused to spread misinformation and abuse, which threatens the ability of people to take part in the democratic process.

Abusive online interactions can also negatively affect the wellbeing of people who are targeted. Online abuse targeted at elected members or employees may undermine their ability to serve the community effectively. These guidelines are designed to protect members of the public, elected members and employees while interacting with others online in relation to council issues.

Dealing with online abuse and harm

The role of an elected member is public facing and criticism is highly likely. Interactions will inevitably be robust, but they must be respectful. Policy differences are acceptable, personal attacks and abuse are not. Intimidation, abuse, bullying, threats or violence against elected members or employees should not be tolerated in any space including digital spaces and platforms.

Online harm and bullying

Harmful online content includes cyberbullying and inappropriate material, such as violent and sexual material that can cause emotional and physiological distress. Online bullying or cyberbullying is when digital technology and/or social media is used to send, post or publish content intended to cause harm to another person. It can include:

- abusive and hurtful messages, images or videos
- repeated unwanted messages
- spreading gossip and lies
- fake accounts used to humiliate or harass someone
- excluding others online
- embarrassing pictures, videos, websites, or fake profiles
- sharing personal or identifying information about someone without their consent (doxxing)

Distressing content

Netsafe describes distressing content as content that is hateful content, sexual material or illegal material (like age-restricted material or extreme violence). Offensive or illegal content could include topics, images or other information that could be prohibited in New Zealand. It is illegal for anyone to send or publish threatening, offensive, or sensitive material and damaging rumours.

¹ Based on the Auckland Council Code of Conduct.

Action should be taken against online harm and harmful digital communications.

Abuse comes in different forms and levels of severity, so some judgment is required when determining an appropriate response.

Under the Harmful Digital Communications Act 2015 (HDCA), it is a criminal offence to cause serious emotional distress by posting a 'digital communication' intended to cause harm. The HDCA also sets out ten communication principles (couched in terms of what a communication should not do) and complaints about breaches of the principles can be referred to Netsafe.

Where possible, take a screenshot of the abuse and record the URL of the web page where it appears. Elected members may consider whether any of the following responses are appropriate when responding to abuse online:

- Call out inappropriate comments, making it clear that the language being used is unacceptable and inappropriate. Publicly challenging inappropriate behaviour can be a powerful tool in stopping it.
- Be firm, factual and polite to avoid escalation and retaliatory comments.
- De-escalate negative situations by acknowledging a person's frustrations, assuring them that they have been heard, and committing to follow up where appropriate.
- Report abusive comments using the social media platform's reporting functions, and mute or block repeat offenders.
- Let the social media team know of any false claims being spread online, so that they can counter misinformation with facts.
- Refuse to engage with aggressive comments by either not replying or by hiding the comments.
- An elected member who receives an immediate physical threat should contact Police first and the CEO or responsible officer at their council.
- Report threatening or offensive material to NetSafe.
- Record all instances of threatening or offensive communications to the appropriate official in your council.

Reporting misinformation

You can report to Netsafe any online harms including bullying and harassment, misinformation and hate speech/extremism: Report harmful content to netsafe.org.nz. There are 3 kinds of misinformation:

- Misinformation is information that is false, but not created with the intention of causing harm.
- Dis-information is information that is false and was created to harm a person, social group, organisation or country.
- Mal-information is information that is based on reality, used to inflict harm on a person, organisation or country.

Misinformation can be stopped by reporting fake accounts, pages and domains that post or share misinformation. Most misinformation is legal and people have the right to express their views or opinions. However, if you see content on social media that you believe to be false or misleading, you can report it to the hosting social media platform:

- How do I mark a Facebook post as false news? — <https://www.facebook.com/help>
- Report inappropriate content — [YouTube.com](https://www.youtube.com)

- Report a tweet, list or direct message — [Twitter.com](https://twitter.com)
- Reduce the spread of false information — [Instagram.com](https://www.instagram.com)
- Staying safe on Whatsapp — [WhatsApp.com](https://www.whatsapp.com)
- Report a problem — [TikTok.com](https://www.tiktok.com)

Misinformation, including leaflets and scams, can also be reported to CERT NZ.

Elected member conduct on social media: distinguishing between private and official capacities.

Most members already have a separation between their official publicly available postal, email and telephone contact information and their personal addresses. Members could consider using separate social media profiles for public and private roles.

Using separate accounts will help to keep a clear distinction between a member's position as a private citizen and a public official.

Be conscious that information posted online in an elected member's official capacity is subject to the same rules as other public information, and that when an elected member is using social media in their capacity as an elected member they must comply with the Code of Conduct.

Any official information a member shares is subject to official information requests, regardless of whether that information is shared on social media or on other platforms (such as by email or text). Requests for official information must be responded to in the same way as if the request came via any other channel.

Online behaviour: lead by example.

The Code of Conduct applies to your online interactions when acting in your official capacity. Elected members can set the tone by modelling good online behaviour and calling out inappropriate behaviours. Members should moderate comments from the public on their posts.

A good rule of thumb for a member is to only post what the member would be prepared to say in person: making a comment in a social media post that can be viewed by anyone is similar to making a statement in a public gathering and the member should not say anything in the post that they would not say to a public gathering. If in doubt, do not post.

Good facts to remember are:

- Once content is posted online a member loses control of it: it can be copied or shared out of context.
- Focus on the issue rather than the person and encourage others to do the same.
- Counter misinformation with facts.

If a member finds interactions upsetting, they should consider logging off. Your council can provide advice on where to go for any emotional distress associated with online abuse and may also be able to facilitate dispute resolution services if required.

Be security conscious.

Social media profiles are actively targeted by cyber criminals, journalists, foreign intelligence services and others. Maintaining good online security practices can help mitigate the risks involved in using social media. Members should:

- Choose a strong password (preferably a passphrase) and never share it.

- Use two-factor authentication where it is offered.
- Keep operating systems and apps up to date as they will contain the latest security improvements.
- Be careful about locations for accessing social media: public wi-fi networks (such as in cafes, airports, hotels etc) put members at greater risk of being hacked.
- Only install trusted apps and avoid granting them access to contacts, camera, photos, files etc.
- Avoid posting information about their location by disabling location-sharing.

Netsafe has more information, advice and resources about how to stay safe online: netsafe.org.nz.

Employees support

While council employees are unable to support, maintain or create content for personal social media profiles, they may be able to assist members with:

- setting up a public social media profile page for use as an elected member
- providing content where this relates to the role as an elected member
- providing advice on dealing with a request or complaint from a member of the public about a council service
- providing advice on responding to official information requests
- provide training on effective social media best practices
- managing abusive content on any social media pages managed by Timaru District Council by removing the post/comment.
- providing details for the Employee Assistance Programme (EAP), which offers professional counselling at no cost. EAP services are also available to members' immediate family members.

Please note that employees are unable to assist elected members with social media content related to election campaigning.

Appendix C

Investigation and Assessment of Complaints

Process for determination and investigation of complaints

Step 1: Selecting an Independent Investigator

The CE is responsible for identifying a suitable investigator to investigate complaints under this Code.

In selecting an Independent Investigator, a CE may consider:

- the council's legal advisers
- a national service specializing in public sector integrity
- a national service providing assessment and investigation services
- Individual with relevant skills and competencies.

Please note: Given the litigious nature of some Code of Conduct disputes Independent Investigators should have relevant liability insurance, provide on their own behalf or by the local authority. The CEO also needs to ensure that investigations are undertaken within budgetary limits negotiated in advance.

Step 2: Chief Executive receives complaint

On receipt of a complaint under this Code the Chief Executive will refer the complaint to an investigator. 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 3: 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 4: 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 attend 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 5: 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.

If the complaint is material the investigator will contact the parties to seek their agreement to mediation. If the parties agree and the issue is resolved by mediation the matter will be closed and no further action is required.

If the parties do not agree to mediation, or mediation is unsuccessful in resolving the matter, 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 6: 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.

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 s48 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 set out in section 13.1 of this Code.

Note: For any complaints from the Chief Executive, it must be reported to the Chair of Audit and Risk and/or the Mayor as appropriate, and handled externally by an independent investigator.

Criteria for assessing the significance of a breach

Factors that might be considered when determining whether a breach has occurred, and the significance of any such breach, include the following.

Bullying, harassment, and discrimination

Bullying involves behaviour that is offensive, intimidating, malicious or insulting. It involves behaviours that are intended to undermine, humiliate, denigrate, injure, or damage another member's reputation. Bullying can be:

- a regular pattern of behaviour
- a one-off incident
- occur face-to-face, on social media, in emails or phone calls,
- happen in the workplace, the community or in social events, and may not always be obvious, or noticed by others.

Harassment involves conduct that causes alarm or distress, or puts people in fear of violence, and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person. Unlawful discrimination is where someone is treated unfairly or less favourably than another person because of any of the following set out in Table 1 (see the Human Rights Commission more information).

Table 1: Discrimination Factors

age	colour	race
disability	employment status	ethical belief
ethnic or national origin	family status	marital status
political opinion	religious belief	gender identity
sex	sexual orientation	

Disrepute

Disrepute involves actions that have an adverse impact on:

- a member and/or their colleagues
- the reputation of the local authority

A possible impact of a behaviour that brings a local authority into disrepute is a loss of public confidence in the local authority. An example would be a member who fails to treat members of the public with respect while exercising their official duties. Other behaviours that can bring a local authority into disrepute include behaviours that are dishonest and/or deceitful.

Use of position for personal advantage

Members should not take advantage of opportunities while elected to further their own or others' private interests or to disadvantage anyone unfairly. A member found to have personally benefited by information gained as an elected member not only contravenes the Code of Conduct but may also be subject to the provisions of the Secret Commissions Act 2010. The Local Authorities' (Members' Interests) Act 1968 sets out rules with regard to financial conflicts of interest.

Other behaviours that may contribute to personal advantage include attempting to avoid disciplinary action being taken under this Code or preventing/disrupting the effective administration of the Code of Conduct.

Impartiality

Officials should not be coerced or persuaded to act in a way that might undermine their political neutrality or their professional integrity. Behaviours to be wary of include:

- Attempting to influence, outside the context of a meeting or workshop, officials to change their advice, or alter the content of a report, other than in a meeting or workshop
- Giving officials gifts in order to encourage them to support a particular policy or measure that a member might be seeking to promote
- Seeking exclusive information from an official about the matters to be included in a report, before that report has been approved by senior management.

Members should observe all protocols put in place by the chief executive that set rules for guiding contact between members and employees, and not publicly criticise individual employees.

Respect

Members are the public face of their local authorities and their behaviour directly influences the way in which communities perceive a local authority.

Respect means politeness and courtesy in behaviour, speech, and in the written word. While debate and the expression of different views constitute a healthy democracy and reflect the pluralism underpinning such a democracy, members should not subject individuals, groups of people, or organisations to personal attacks.

Behaviour towards the public should be polite and courteous.

Confidentiality and information

Members will not disclose information they believe is of a confidential nature, unless:

- they have the consent of a person authorised to give it;
- they are required by law to do so;
- The disclosure is to a third party to obtain professional legal advice, and that the third party agrees not to disclose the information to any other person; or
- The disclosure is reasonable and in the public interest, is made in good faith, and in compliance with the reasonable requirements of the local authority.

Sharing information

If members come into the receipt of information that directly affects the performance of their local authority, they should disclose the information to the chairperson or CEO. If that information is received on the condition that it remains confidential then members should

inform the person making the offer that they are under a duty to disclosure such information, for example, to a governing body meeting in public exclusion.

Equitable contribution

Members will make all reasonable efforts to attend meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars. Factors that might be considered when assessing whether a member is fulfilling their role in an equitable way include:

- Number of meetings and workshops attended
- Amount of time spent at meetings and workshop attended
- Existence of complaints from constituents that the member is inaccessible or unavailable.