

Bay of Plenty Regional Council Toi Moana Code of Conduct

The Bay of Plenty Regional Council Toi Moana Code of Conduct has been adopted in accordance with the requirements of the Clause 15, Schedule 7 of the LGA 2002, which requires every local authority to adopt a code of conduct for members of the local authority.

Members' commitment

These commitments apply when conducting the business of the local authority as its representative or the representative of an electorate, and communicating with other members, the media, the public, or staff. By adopting the Code of Conduct members agree that they will:

1. treat all people fairly,
2. treat all other members, staff, and members of the public, with respect,
3. share with the local authority any information received that is pertinent to the ability of the local authority to properly perform its statutory duties,
4. operate in a manner that demonstrates an intent to evolve alongside the principles of Te Tiriti o Waitangi/The Treaty of Waitangi as they evolve,
5. make it clear, when speaking publicly, that statements reflect their personal view, unless otherwise authorised to speak on behalf of the local authority,
6. take all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of a member,
7. not bully, harass, or discriminate unlawfully against any person,
8. not bring the local authority into disrepute,
9. not use their position to improperly advantage themselves or anyone else or disadvantage another person,
10. not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority,
11. not disclose information acquired, or given, in confidence, which they believe is of a confidential nature.

The Code of Conduct sets standards for the behaviour of members towards other members, staff, the public, and the media. It is also concerned with the disclosure of information that members receive in their capacity as members. Members of the Bay of Plenty Regional Council must comply with the Code of Conduct.

A copy of clause 15 of Schedule 7 of the LGA, which sets out the requirements for a code of conduct, is contained in Appendix 2.

1. Definitions

Member means an elected or appointed member of:

- the governing body of the Regional Council; and
- any committee or sub-committee of the Regional Council.

Council and Regional Council mean the Bay of Plenty Regional Council Toi Moana.

2. Working with Māori

The Bay of Plenty Regional Council Toi Moana commits to operating consistently with the Toi Moana Bay of Plenty Council organisational values, which include Manaakitanga (trust, respect, nurture and support), Kotahitanga (unity, inclusivity, collaboration and ownership), and Whanaungatanga (relationships, networks and support for one and other).

3. Methods of working

Members recognise the importance of the following in contributing to good governance.

- **Public interest:** members should act solely in the public interest.
- **Integrity:** members should not act or take decisions to gain financial or other benefits for themselves, their family, or their friends, or place themselves under any obligation to people or organisations that might inappropriately influence them in their work.
- **Stewardship:** members should use long-term perspective when making decisions. Decisions, which impact on past, current and future generations, also affect collective well-being.
- **Accountability:** members will be accountable to the public for their decisions and actions and will submit themselves to the scrutiny necessary to ensure this.
- **Openness:** members should act and take decisions in an open and transparent manner and not withhold information from the public unless there are clear and lawful reasons for so doing.
- **Honesty:** members should be truthful and not misleading.
- **Leadership:** members should not only exhibit these principles in their own behaviour but also be willing to challenge poor behaviour in others, wherever it occurs.
- **Lawfulness:** members will comply with all legislative requirements applying to their role.
- **Natural Justice:** the principle of natural justice underpins all Council decision-making, and specifically in making decisions, members agree to act with
 - **Objectivity:** members should act and take decisions impartially, fairly, and on merit, using the best evidence and without discrimination or bias
 - **Fairness:** Decision-making processes must provide those affected by the outcome/decision an opportunity to be heard.

4. Role and responsibilities

The Code of Conduct is designed to strengthen good governance of the region. Good governance requires that the complementary roles of the Regional Council and the administration are understood and respected. These roles involve:

4.1 Members

The role of the Council includes:

- Representing the interests of the people of the Bay of Plenty Toi Moana;
- Developing and adopting plans, policies and budgets;
- Monitoring the performance of the Council against stated goals and objectives set out in its Long Term Plan;
- Providing prudent stewardship of the Council's resources;
- Employing and monitoring the performance of the Chief Executive; and
- 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 Role of Chairperson

The Chairperson is elected by the elected members of Council at the first meeting following each triennial election. As one of the elected members, the Chairperson shares the same responsibilities as other elected members of Council.

In addition to this, the Chairperson has the following roles:

- The Chairperson is the presiding elected member at Council meetings and is responsible for ensuring the orderly conduct of business during meetings (as determined in Standing Orders);
- As an advocate for Council's policies, the Chairperson is expected to undertake high level engagement and leadership of discussions with leaders of other authorities, organisations and community groups. The Chairperson cannot commit the Council to any formal position that the Council has yet to decide on;
- The Chairperson is the formal spokesperson for Council and is the first point of contact for media;
- The Chairperson may at times be an advocate on behalf of the regional community, which may involve promoting the community and representing its interests through stakeholder engagement activities; and
- The Chairperson is the ceremonial head of Council, and also provides leadership and guidance to other elected members.

If a complaint is made in relation to the Chairperson, then the Deputy Chairperson will determine the process and all relevant actions normally undertaken by the Chairperson will be undertaken by the Deputy Chairperson.

4.3 Role of Deputy Chairperson

The Deputy Chairperson must be elected by the elected members of Council, at the first meeting of the Council following the triennial election. The Deputy Chairperson exercises the same roles as other elected members, and if the Chairperson is absent or incapacitated, the Deputy Chairperson must perform all of the responsibilities and duties, and may exercise the powers of the Chairperson as outlined above.

4.4 Role of Committee Chairperson

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 Committee's Terms of Reference. Committee Chairpersons may be called on to act as an official spokesperson for the Council on a particular issue related to the business of the Committee. The Committee Chairperson cannot commit the Council to any formal position that the Council has yet to decide on.

4.5 Chief Executive

The role of the Chief Executive includes:

- Implementing the decisions of the Council;
- Ensuring that all responsibilities delegated to the Chief Executive are properly performed or exercised;
- Ensuring the effective and efficient management of the activities of the local authority;
- 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 Council; and
- Employing, on behalf of the Council, the staff of the local authority, (including negotiation of the terms of employment for those staff).

The Chief Executive is the only person *directly* employed by the Council itself (s42 LGA 2002). All concerns about the performance of an individual member of staff must be referred to the Chief Executive.

5. Behaviours

To promote good governance and build trust between the Regional Council, its members, and citizens, members agree to the following standards of conduct when they are:

- conducting the business of the local authority,
- acting as a representative of the local authority,
- acting as a representative of their electorate,
- communicating with other members, the media, the public and staff, and
- using social media and other communication channels.

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

5.1 Respect

Members will treat all other members, staff, and members of the public, with respect.

Respect means politeness and courtesy in behaviour, speech, and writing. Debate and differences are all part of a healthy democracy. A member of a local authority can challenge, criticise and disagree

with views, ideas, opinions and policies in a robust but civil manner. A member must not, however, subject individuals, groups of people or organisations to personal attack.

In contact with the public, members should treat them politely and courteously. Offensive behaviour lowers the public's expectations of, and confidence in, their local authority. In return, members have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening, members are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police.

5.2 Bullying, harassment, and discrimination

Members will treat all people fairly and will not:

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

For the purpose of the Code of Conduct, bullying is offensive, intimidating, malicious, or insulting behaviour. It represents an abuse of power through means that undermine, humiliate, denigrate, or injure another person. It may be:

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

Harassment means 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 occurs when a person is treated unfairly, or less favourably, than another person because of any of the following¹:

- age
- colour
- race
- disability, includes illness
- employment status
- ethical belief
- ethnic or national origin
- family status

¹ See Human Rights Commission <https://www.govt.nz/browse/law-crime-and-justice/human-rights-in-nz/human-rights-and-freedoms/>

- marital status
- political opinion
- religious belief
- gender identity
- sex
- sexual orientation.

5.3 *Sharing information*

Members will share with the Council any information received that is pertinent to the ability of the local authority to properly perform its statutory duties.

Occasionally members will receive information in their capacity as members of the governing body, which is pertinent to the ability of their Council to properly perform its statutory duties. Where this occurs members will disclose any such information to other members and, where appropriate, the Chief Executive. Members who are offered information on the condition that it remains confidential will inform the person making the offer that they are under a duty to disclose such information, for example, to a governing body meeting in public exclusion.

5.4 *Expressing personal views publicly*

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

The media play an important role in the operation and efficacy of our local democracy and need accurate and timely information about the affairs of the Regional Council to fulfil that role. Members are free to express a personal view to the media and in other public channels at any time, provided the following rules are observed:

- they do not purport to talk on behalf of the Council, if permission to speak on its behalf has not been given to them
- their comments must not be inconsistent with the Code, for example, they should not disclose confidential information or criticise individual members or members of staff, and
- their comments must not purposefully misrepresent the views of the local authority or other members.

The Council Chairperson generally speaks on behalf of the Regional Council and can make statements that accurately report Council decisions;

Committee Chairpersons can make statements that accurately report their committee's decisions or factual statements about their committee decisions.

Members will abide by the social media protocols described in Attachment Two.

5.5 *Provide equitable contribution*

Members will take all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of them.

Being a member is a position of considerable trust, given to members by the community to act on their behalf. To fulfil the expectations of constituents and contribute to the good governance of the Bay of Plenty area it is important that all reasonable efforts are made to attend meetings and workshops, prepare for meetings, attend civic events, and participate in relevant training seminars.

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

5.6 *Disrepute*

Members will not bring the Regional Council into disrepute.

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

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

5.7 *Use of position for personal advantage*

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

Being a member of a local authority comes with certain opportunities and privileges, including the power to make choices that can impact on others. Members must not take advantage of such opportunities to further their own or others' private interests or to disadvantage anyone unfairly. A member found to have personally benefited by information gained as an elected member may be subject to the provisions of the Secret Commissions Act 2010.

5.8 *Ethical conduct*

Members will seek to promote the highest standards of ethical conduct and therefore:

- Claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of the Council developed in accordance with that determination;
- Only use the Council's resources (such as facilities, staff, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests; and

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

5.9 Impartiality

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

Officers work for the Council as a whole and must be politically neutral (unless they are political assistants). They must not be coerced or persuaded to act in a way that would undermine their neutrality. Members can question officers to gain understanding of their thinking and decision-making, however, they must not seek to influence officials to change their advice or alter the content of a report, other than in a meeting or workshop, if doing so would prejudice their professional integrity. Members should:

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

If a member has concerns about the behaviour of an official, whether permanent or contracted, they should raise their concerns with the Chief Executive, or, if the concerns are to do with the Chief Executive, raise them with the council Chairperson, or the Chief Executive employment committee.

5.10 Maintaining confidentiality

Members will not disclose information acquired, or given, in confidence, which they believe is of a confidential nature, unless.

1. they have the consent of a person authorised to give it,
2. they are required by law to do so,
3. 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
4. the disclosure is reasonable and in the public interest, is made in good faith, and in compliance with the reasonable requirements of the Council.

Investigating and ruling on alleged breaches of the Bay of Plenty Regional Council Toi Moana Code of Conduct

In this process Chairperson means in conjunction with the Deputy Chair.

1 Principles

It is the Council's desire that each member commit to building strong proactive relationships between themselves and with the Chief Executive and work together as a team. To this end where disputes, disagreements or miscommunication occur every effort is to be made to reach a conciliatory outcome through informal means.

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

- Where possible complaints will be resolved using an informal, conciliatory method for resolution as the first preference
- The complaints process will be impartial and respect members' privacy.
- Members will be given due notice that an investigation is underway and will be provided with an opportunity to be heard.
- Members will have a right to seek independent advice, be represented, and, if they choose, be accompanied by a support person throughout the process.
- Complainants, and members subject to a complaint, will have access to advice and support for the time it takes to find a resolution.

2 Who can make a complaint?

The Code of Conduct is designed to be a self-regulatory instrument and complaints regarding a breach of the Code can only be made by members themselves, or the Chief Executive, who can make a complaint on behalf of their staff. On receipt of a complaint, the Chief Executive must forward the complaint to the Council Chairperson for an initial assessment.

3 Role of the initial assessment

On receipt of a complaint the Chairperson will undertake an assessment to determine the relative merit and seriousness of the complaint, and the nature of the subsequent process that will be followed. The complaint may be dismissed if the initial assessment finds the complaint to be trivial, vexatious, frivolous, or politically motivated.

Where a complaint is not dismissed, the Chairperson may meet with the parties involved and be regarded as sufficient to resolve the complaint.

Where there is merit the Chairperson may consider:

- That the member attends a relevant training course.
- That the member work with a mentor for a period.
- That the member tenders an apology.

These will not be reported to the Regional Council.

3.1 Mediation

If the complaint concerns a dispute between two members, or between a member and another party, the Chairperson may recommend mediation. If mediation is agreed by both parties, then its completion will represent the end of the complaints process. The outcomes of any mediation will be confidential.

3.2 Refer to an independent investigator

Where the Chairperson finds that the complaint is serious or no resolution can be reached and/or mediation is refused, the Chairperson will refer the complaint to an independent investigator. The independent investigator will be selected from the Regional Council's independent investigators' panel assembled by the Chief Executive, or an independent investigator service that is contracted to the Council. Complaints that involve the Chairperson or Chief Executive will be referred directly to the independent investigator.

Complaints that are dismissed, referred to the Chairperson, or resolved by mediation, will not be reported to the Regional Council.

4 Role of the independent investigator

The independent investigator will:

- determine whether a breach has occurred,
- if so, determine the seriousness of the breach, and
- determine actions that the Council should take in response to the breach.

Any recommended actions made in response to a complaint that has been upheld are not binding on the Regional Council.

4.1 Determining the significance of an alleged breach

The independent investigator may take whatever actions they need to determine the significance of a complaint, within the budgetary constraints set down, including re-assessing the complaint.

The independent investigator will undertake an investigation appropriate to the scale of the breach, which may include interviews with other affected parties, and prepare a report for the Chief Executive which will set out the rationale for their findings and may include recommendations for resolving the breach and appropriate penalties.

When considering the issue of significance, the independent investigator will need to consider a range of factors before deciding, such as:

- Was the breach intentional or unintentional?
- Did it occur once or is there a pattern of recurring behaviour?
- Does the breach have legal or financial ramifications for the Council?
- What is the impact of the breach on other elected members, on officials and on the community in general?

4.2 Independent investigator

On completing their investigation, an independent investigator may dismiss a complaint or make a recommendation for the Regional Council to consider. The independent investigator's ruling will be contained in a report to the Council Chief Executive which will form the basis of a consequent report to the governing body to inform them of the decision and the actions they may consider taking.

Please note: All actions taken in the implementation of a policy must be consistent with the Bill of Rights Act 1990. No appeal right is included in the Code of Conduct. Members who are unhappy with an independent investigator's decision have access to judicial review and/or the Ombudsman's Office.

5 Costs and support

Council must ensure that members who make a complaint are not left to meet any costs created by doing so. Members, those who make complaints, and those who are subject to a complaint, should be given appropriate and reasonable support.

The costs of assessment and investigatory services will be met by the Regional Council.

Attachment 1: Process for determining and investigating written complaints

In this process Chairperson means in conjunction with the Deputy Chair.

Step 1: Chief Executive receives complaint

All complaints made under this Code of Conduct must be made in writing and forwarded to the Chief Executive who will refer the complaint to the Chairperson. The Chief Executive will also:

- inform the complainant that the complaint has been referred to the Chairperson and refer them to the process for dealing with complaints as set out in the Code of Conduct; and
- inform the respondent that a complaint has been made against them and refer them to the policy for dealing with complaints as set out in the Code of Conduct.

Step 2: Initial assessment made and arranges mediation

1. The Chairperson will undertake an assessment of the merits of the complaint. If they consider it is not valid, the complaint will be dismissed. The complainant will have no recourse or appeal. Grounds for concluding that a complaint has no merit include that it is trivial, vexatious, frivolous, or politically motivated.
2. If deemed to have merit, the Chairperson will contact the parties to seek their agreement to independently facilitated mediation. If the parties agree and the issue is resolved by mediation the matter will be closed and no further action is required.
3. If the parties do not agree to mediation, or mediation is unsuccessful in resolving the matter, the Chairperson will refer the complaint to an independent investigator selected from a panel established by the Chief Executive at the start of the triennium, or service contracted to the local authority. The complainant and the respondent will be informed that the complaint has been referred to the independent investigator and the name of the independent investigator.

Step 3: Independent investigator to inquire and conclude on the matter

If the complaint is found to be a breach of the Code of Conduct the independent investigator will inform the Chairperson, who will inform the complainant and respondent. The independent investigator will then assess the nature and effect of the breach and prepare a report for the Council on the seriousness of the breach and recommend actions commensurate with that breach. In preparing that report the independent 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.

At any stage in their inquiry the independent investigator may find that a breach has not occurred, or the matter should be referred to a relevant agency. If this is the case the independent investigator will inform the Council Chairperson who will inform the complainant and respondent that the complaint is dismissed or has been referred to a relevant named agency.

On receipt of the independent investigator's report the Chief Executive will prepare a report for the Council, which will meet to consider the findings and recommended actions. The report will include the full report prepared by the investigator.

Step 4: Process for considering the investigator's report

The policy for determining and investigating complaints gives an independent investigator the power to make recommendations to Council:

- the Chief Executive's report, containing the independent investigator's recommendations and report, will be presented to the Council,
- The Council will ensure that members with an interest in the complaint are not present during the discussion on the independent investigator's recommendations.
- The report will be received in public meeting unless grounds, such as s.48 LGOIMA, exist for the exclusion of the public.
- The Chief Executive's report may also outline the plan for the report's public release if appropriate, for the Council's information and comment.
- The Council may accept the investigator's recommendations or, if they believe it is justified, amend the independent investigator's recommendations. As part of these considerations the complainant may be asked to appear before the Council to answer questions from members.
- The penalty or sanction that might be applied will depend on the seriousness of the breach and may include actions set out in Attachment 2.

Attachment 2: Actions that may be applied when a breach has been confirmed

Where a complaint that the Code of Conduct was breached has been upheld, any actions taken against the member found to be in breach should be consistent with the following principles.

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

In determining a response to a breach of the Code of Conduct, one or more of the following could be selected:

1. That no action is required.
2. That the member meets with the Chair for advice.
3. That the member attends a relevant training course.
4. That the member agrees to cease the behaviour.
5. That the member work with a mentor for a period.
6. That the member tenders an apology.
7. That the member participates in voluntary mediation (if the complaint involves a conflict between two members).
8. That the local authority sends a letter of censure to the member.
9. That the local authority passes a vote of no confidence in the member.
10. That the member loses certain Council-funded privileges (such as attendance at conferences).
11. That the member loses specific responsibilities, such as committee chair, deputy committee chair or portfolio holder.
12. That the member be subject to restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed).
13. That the member be subject to limitations on their dealings with Council staff, other than the Chief Executive or identified senior manager.
14. That the member be suspended from committees or other bodies to which the member has been appointed.
15. That the member be invited to consider resigning from the council.

Please note: Actions 1-6 will typically not be reported to the local authority. Actions 7-15, which have a high degree of public interest, namely democratic representation, should be considered in an open meeting, unless there are grounds, such as those set out in LGOIMA, for not doing so.

Responses to statutory breaches

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

- Breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under LAMIA).
- 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 section 44 LGA 2002 which may result in the member having to make good the loss or damage).
- 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).

Attachment 3: Legislation which sets standards for ethical behaviour

Clause 15 of Schedule 7 of the Local Government Act (the Act) 2002, requires that the Code of Conduct provides members with a general explanation of the Local Government Official Information and Meetings Act 1987, and any other enactment or rule of law that affects members.

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

The Local Government Act 2002

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

1. implementing the decisions of the local authority,
2. providing advice to members of the local authority and to its community boards, if any and
3. ensuring that all responsibilities, duties, and powers delegated to him or her or to any person employed by the local authority, or imposed or conferred by an Act, regulation, or bylaw, are properly performed, or exercised,
4. ensuring the effective and efficient management of the activities of the local authority,
5. facilitating and fostering representative and substantial elector participation in elections and polls held under the Local Electoral Act 2001,
6. maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority,
7. providing leadership for the staff of the local authority,
8. employing, on behalf of the local authority, the staff of the local authority (in accordance with any remuneration and employment policy), and
9. negotiating the terms of employment of the staff of the local authority (in accordance with any remuneration and employment policy).

The Local Government Official Information and Meetings Act 1987

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

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

Conclusive reasons for withholding – if making the information available would likely:

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

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

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

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

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

The role of the Ombudsman

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

Anyone who has a complaint of that nature about a local authority may ask an Ombudsman to investigate that complaint. Investigations are conducted in private. The Ombudsman may obtain

whatever information is considered necessary, whether from the complainant, the Chief Executive of the local body involved, or any other party. The Ombudsman's decision is provided in writing to both parties.

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

The Local Authorities (Members' Interests) Act 1968

Pecuniary interests

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

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

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

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

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

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

Non-pecuniary conflicts of interest

In addition to the issue of pecuniary interests, which are addressed through the LAMIA, there are also legal rules about conflicts of interest more generally. These are rules that apply to non-pecuniary conflicts of interest and include the common law rule about bias. To determine if bias exists, consider

this question: Is there a real danger of bias on the part of the member of the decision-making body, in the sense that he or she might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?

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

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

Seeking exemption from the Auditor-General

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

1. Section 6(3)(f) allows the Auditor-General to grant an exemption if, in their opinion, a member’s interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor when voting or taking part in the discussion.
2. Section 6(4) allows the Auditor-General to grant a declaration enabling a member to participate if they are satisfied that:
 - a. the application of the rule would impede the transaction of business by the council; or
 - b. it would be in the interests of the electors or residents of the district/region that the rule should not apply.

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

Protected Disclosures (Protection of Whistleblowers) Act 2022

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

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

- an offence

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

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

The Serious Fraud Office Act 1990

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

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

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

The Local Government (Pecuniary Interests Register) Act 2022

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

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

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

The Health and Safety Act at Work Act 2015

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

- stepping up and being accountable,
- identifying and managing risks,
- making health and safety part of the organisation’s culture, and
- getting workers involved.

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

- adopting a charter setting out the elected members’ role in leading health and safety – with the Chief Executive,
- publishing a safety vision and beliefs statement,
- establishing health and safety targets for the organisation with the Chief Executive,

- ensuring there is an effective linkage between health and safety goals and the actions and priorities of the Chief Executive and their senior management, or
- having effective implementation of a fit-for-purpose health and safety management system.

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

The Harmful Digital Communications Act 2015

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

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

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