

# ***Elected Members Code of Conduct***

**Adopted 29 June 2017**

## Contents

<b>INTRODUCTION .....</b>	<b>3</b>
Objectives.....	3
Outline.....	3
Ashburton District Council Principles of Good Governance: .....	5
<b>PART ONE: ROLES AND RESPONSIBILITIES .....</b>	<b>6</b>
1.1 Elected Members .....	6
1.2 Mayor.....	6
1.3 Deputy Mayor.....	6
1.4 Committee Chairman .....	6
1.5 Chief Executive.....	6
<b>PART TWO: RELATIONSHIPS AND BEHAVIOURS.....</b>	<b>7</b>
2.1 Relationships with Other Elected Members.....	7
2.2 Relationships with Staff.....	7
2.3 Relationships with the Community.....	8
2.4 Contact with the Media.....	8
2.5 Confidential Information .....	9
2.6 Conflicts of Interest.....	9
2.7 Standing Orders .....	11
2.8 Remuneration, Expenses and Gifts .....	11
2.9 Disqualification of Members from Office .....	12
2.10 Bankruptcy.....	12
<b>PART THREE: COMPLIANCE AND REVIEW .....</b>	<b>12</b>
3.1 Compliance .....	12
3.2 Breaches of the Code .....	12
3.3 Process for Alleged Code of Conduct Breaches .....	14
3.4 Responses to Breaches of the Code of Conduct .....	14
3.5 Review .....	15
<b>APPENDIX 1: LEGISLATION RELEVANT TO THE ROLE AND CONDUCT OF ELECTED MEMBERS .....</b>	<b>16</b>
Local Authority (Members' Interests) Act 1968 .....	16
Local Government Official Information and Meetings Act 1987.....	16
Secret Commissions Act 1910.....	16
Crimes Act 1961 .....	17
Financial Markets Conduct Act .....	17
Health & Safety at Work Act .....	17
Local Government Act 2002.....	18

## INTRODUCTION

The Ashburton District Council Code of Conduct for Elected Members is a requirement of the Local Government Act 2002. Once adopted, all elected members are required to comply with the Code of Conduct.

This Code of Conduct provides guidance on the standards of behaviour that are expected from the Mayor and the elected members of Ashburton District Council. It applies to elected members in their dealings with:

- Other elected members
- The Chief Executive
- All Council staff
- Media
- The general public

This 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.

## Objectives

The objectives of the Ashburton District Council Code of Conduct for Elected Members are to:

- Enhance the effectiveness of the Council as the autonomous local authority with statutory responsibilities for the good local government of the Ashburton District
- promote effective decision-making and community engagement;
- Enhance the credibility and accountability of the Council within its community
- Promote mutual trust, respect and tolerance between the elected members as a group and between the elected members and management
- Ensure elected members undertake their role in ways that minimise any potential for risk or loss to Council.

Elected members are reminded of the declaration that they make at the first meeting following the elections every three years. That declaration is important in directing members to act in the best interests of the district according to relevant legislation. The declaration is:

Declaration by mayor or chairperson or member

“I, AB, declare that I will faithfully and impartially, and according to the best of my skill and judgment, execute and perform, in the best interests of [region or district], the powers, authorities, and duties vested in, or imposed upon, me as [mayor or chairperson or member] of the [local authority] by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act

Dated at: [place, date]

Signature:

Signed in the presence of:

CD, [mayor or chairperson or member or chief executive of local authority]”.

## Outline

The Ashburton District Council Code of Conduct for Elected Members contains the following sections:

- **Part One - Roles and Responsibilities**  
Describes the roles and responsibilities of elected members, the Deputy Mayor, the Mayor and the Chief Executive.

- **Part Two - Relationships and Behaviours**

Sets out guidelines for relationships between elected members and other members, staff and the community. Conflicts of interest, media relations and the management of confidential information are also outlined in this section of the Code of Conduct.

- **Part Three – Compliance and Review**

Outlines how alleged breaches of the Code of Conduct are managed, how the document is reviewed, and potential consequences for breaching the Code.

## Ashburton District Council Principles of Good Governance:

- **Public interest** Elected members should serve the interests of the district as a whole and should never improperly confer an advantage or disadvantage on any one person or group.
- **Honesty and integrity** Elected members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
- **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.
- **Objectivity** Elected members should make decisions on merit including making appointments, awarding contracts, or recommending individuals for rewards or benefits. Elected members should also note that, once elected, their primary duty is to the interests of the entire district, not the ward that elected them.
- **Accountability** Elected members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with the scrutiny appropriate to their particular office.
- **Openness** Elected members should be as open as possible about their actions and those of the Council, and should be prepared to justify their actions.
- **Personal judgment** Elected members should take account of the views of others, but should reach their own conclusions on the issues before them, and act in accordance with those conclusions.
- **Respect for others** Elected members should promote equality by not discriminating against any person or group and treat people with respect, regardless of their race, age, religion, gender, sexual orientation, or disability. Elected members should respect the impartiality and integrity of Council staff.
- **Lawfulness** Elected members should uphold the law, and on all occasions, act in accordance with the trust the public places in them.
- **Stewardship** Elected members must ensure that the Council uses resources prudently and for lawful purposes, and that the Council maintains sufficient resources to meet its statutory obligations.
- **Leadership** Elected members should promote and support these principles by example, and should always endeavour to act in the best interests of the community.
- **Democratic Process** Elected members must uphold the democratic process. This includes elections, consultation, majority decision-making and collective responsibility for the decisions Council makes for its communities.

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

## **PART ONE: ROLES AND RESPONSIBILITIES**

### **1.1 Elected Members**

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

- The development and adoption of Council policy, plans and budgets
- Monitoring the performance of the Council against its stated objectives and policies
- Prudent stewardship of Council resources
- Employment of the Chief Executive
- Representing the interests of the residents and ratepayers of the Ashburton District. (On election, an elected member's first responsibility is to the district as a whole.)
- Ensuring the Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

Unless otherwise provided in the Local Government Act 2002 or in standing orders, Council can only act by majority decisions at meetings. Each member has one vote.

An individual member, including the Mayor, has no authority to act on behalf of the Council unless the Council has expressly delegated such authority.

### **1.2 Mayor**

The Mayor is elected by the district as a whole and as an elected member shares the same responsibilities as other members of Council. The Mayor also has the following roles as:

- The presiding member at Council meetings. The Mayor is responsible for ensuring the orderly conduct of business during meetings (in accordance with standing orders)
- An advocate on behalf of the community. This role may involve promoting the community and representing its interests. Such advocacy will be most effective where it is carried out with the knowledge and support of the Council
- The ceremonial head of Council
- Providing leadership and feedback to other elected members
- Promoting teamwork and effective committee membership and chairmanship
- Justice of the Peace (while the Mayor holds office).

### **1.3 Deputy Mayor**

The Deputy Mayor is either appointed by the Mayor or elected by the members of Council, at the first meeting of Council. The Deputy Mayor exercises the same roles as other elected members, and if the Mayor is absent or incapacitated, the Deputy Mayor must perform all of the responsibility and duties, and may exercise the powers, of the Mayor.

### **1.4 Committee Chairpersons**

The Mayor or Council may create one or more Committees of Council. A Committee Chairperson, appointed by the Mayor or the Council, presides over all meetings of their appointed Committee, ensuring that the Committee acts in accordance with standing orders, within the powers delegated by Council, and as set out in the Council's Delegations Manual. A Committee Chairperson may be called on to act as an official spokesperson on a particular issue. A Committee Chairperson may be removed from office by resolution of Council. A Deputy Chairperson is also appointed by Council for each Committee.

### **1.5 Chief Executive**

The Chief Executive is appointed by Council in accordance with Section 42 of the Local Government Act 2002. The Chief Executive is responsible for implementing and managing the Council's policies and objectives within the budgetary constraints established by the Council.

The responsibilities of the Chief Executive are:

- Implementing the decisions of Council
- Providing advice to Council and the Methven Community Board
- Ensuring that all responsibilities, duties and powers delegated to the Chief Executive or to any person employed by the Chief Executive, or imposed or conferred by any Act, regulation or bylaw are properly performed or exercised
- Managing the activities of the local authority effectively and efficiently
- Maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority
- Providing leadership for the staff of the local authority
- Employing staff on behalf of the local authority (including negotiation of the terms of employment for the staff of the local authority).

## **PART TWO: RELATIONSHIPS AND BEHAVIOURS**

This part of the Code of Conduct sets out Council's agreed standards of behaviour. Some of the matters described in this part reflect legislation such as the Local Authorities (Members Interests) Act 1968. The majority of the Code of Conduct has been developed by Council.

### **2.1 Relationships with Other Elected Members**

Successful teamwork is a critical element in the success of any democratically elected organisation. No team will be effective unless mutual respect exists between members.

With this in mind elected members will conduct their dealings with each other in ways that:

- Maintain public confidence in the office to which they have been elected
- Are open and honest
- Focus on issues rather than personalities
- Avoid aggressive, offensive or abusive conduct including the use of disrespectful or malicious language.
- Avoids abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order.

### **2.2 Relationships with Staff**

The effective performance of Council also requires a high level of cooperation and mutual respect between elected members and staff.

To ensure that the desired level of cooperation and trust is maintained, elected members will:

- Recognise that the Chief Executive is the employer (on behalf of Council) of all Council employees, and as such only the Chief Executive may hire, dismiss, instruct or censure an employee
- Make themselves aware of the obligations that Council and the Chief Executive have as employers and observe those requirements at all times
- Treat all employees with courtesy and respect
- Observe any guidelines that the Chief Executive puts in place regarding contact with employees.

Elected members will not:

- Compromise, or be seen as compromising, the impartiality of an employee
- Publicly criticise any employee in any way.

Any concerns or complaints about the conduct or performance of a staff member or the Chief Executive are treated seriously and should not be brought lightly or without appropriate supporting evidence.

If an elected member has concerns about an employee's conduct or performance, these concerns are to be directed to the Chief Executive, who will investigate as appropriate. If an elected member has concerns about the conduct or performance of the Chief Executive, these concerns are to be directed to the Mayor.

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.

### **2.3 Relationships with the Community**

Effective Council decision-making depends on quality relationships between elected members and the community.

Elected members should ensure that residents are treated with respect in their dealings with the Council, have their concerns listened to, and deliberated on, in accordance with legislative requirements. Elected members should act in a manner that encourages and values community involvement in local democracy.

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

- interact with members of the public in a fair, respectful, equitable and honest manner;
- be available to listen and respond openly and honestly to community concerns;
- consider all points of view or interests when participating in debate and making decisions;
- treat members of the public in a courteous manner; and
- 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.

Any comments made in the public arena should be considered in the same light as comments made to the media and the guidelines detailed in Part 2.4 should be applied when speaking to community groups, at public meetings and in other situations.

Elected members should be aware that failure to observe Parts 2.2 and 2.3 may expose the Council and/or elected members (collectively or individually) to civil litigation and/or audit sanctions.

### **2.4 Contact with the Media**

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

From time to time, individual members will be approached to comment on a particular issue either on behalf of Council, or as an elected member in their own right.

- The Mayor is generally the first point of contact regarding Council policy or community advocacy issues. If the Mayor is unavailable, matters will be referred to the Deputy Mayor or Chief Executive.
- The Mayor may refer any matter to the relevant Committee Chairman or to the Chief Executive for comment
- No other elected member may comment *on behalf of Council* without having first obtained the approval of the Mayor.
- The Chief Executive is generally the first point of contact regarding operational issues. The Chief Executive may refer the matter to an appropriate staff member.



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

- Media comments must not state or imply that they represent the majority view of Council and care should be taken to ensure the credibility and reputation of Council as an entity is not compromised.
- This is particularly crucial when an elected member is making a statement that is contrary to a Council decision or Council policy.
- Media comments must observe all other requirements of the Code of Conduct, particularly regarding confidential information and relationships with staff.
- Media comments must not be misleading and should be accurate within the bounds of reasonableness.

Further guidelines for dealing with the media can be found in the *Ashburton District Council Media Relations Policy*.

## **2.5 Confidential Information**

Elected members may receive or be privy to information that needs to be treated as confidential. Sources of confidential information are:

- ‘In-committee’ agenda items at Council and committee meetings
- Information made available in the course of Council duties that is commercially sensitive or is personal to a particular individual or organisation.

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

It is the responsibility of elected members to remain aware of which information is to be treated as confidential and of their responsibilities for managing this information. A register of items that remain ‘in-committee’ is kept by the Committee Secretary and available for elected members’ information.

Elected members should be aware that failure to observe these provisions may:

- Impede the performance of Council
- Undermine public confidence in Council
- Expose Council to prosecution under the Privacy Act 1993 and/or civil litigation.

## **2.6 Conflicts of Interest**

Elected members must be careful that they maintain an appropriate separation between their personal interests and their duties as an elected member. This is to ensure that elected members carry out their duties free from bias (real or perceived).

### **Financial conflicts of interest**

The Local Authorities (Members’ Interests) Act 1968 provides that an elected member is disqualified from office, or from election to office, if that member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year, unless prior approval has been sought from the Office of the Auditor General.

If, during the Council term, a tender is to be entered into, or contractual payment is to be made which might exceed the \$25,000 limit referred to above, the Chief Executive must seek approval from the Office of the Auditor General.

Additionally, elected members are prohibited from participating in any Council discussion or vote on any matter in which they have a financial interest greater than that of the general public.

The same rules also apply where an elected member's spouse or close family member contracts with the authority or has a financial interest. Members must declare their interests at Council meetings where matters in which they have a financial interest arise.

Elected members are asked to make a general declaration of interests annually, which is recorded in a register of interests maintained by the Chief Executive. Having made a declaration, elected members should keep this register updated with any other interests as soon as practicable after becoming aware of them. Elected members have the onus to identify and declare potential financial interests.

Declarations of financial interest must detail for Council the nature and extent of any interest potentially related to Council business, including:

- Any employment, trade or profession undertaken by the elected member or the elected member's spouse for profit or gain
- Any company, trust, partnership or similar structure for which the elected member or their spouse is a director, partner, trustee or beneficiary
- The address of any land in which the elected member has a beneficial interest and which is in the Ashburton District
- The address of any land where the landlord is the Ashburton District Council and:
  - the elected member or their spouse is a tenant, or
  - the land is tenanted by a firm in which the elected member or spouse is a partner, or a company of which the member or spouse is a director, or a trust of which the member or spouse is a trustee or beneficiary
- Any other matters which the public might reasonably regard as likely to influence the elected member's actions during the course of their duties as an elected member.

If an elected member is in any doubt as to whether a particular course of action by him/herself or another elected member (including a decision to take no action) would be in breach of these conditions, then the elected member should seek guidance immediately, from the Chief Executive or other appropriate person. An elected member may also contact the Office of the Auditor General for guidance as to whether there is a financial interest.

If there is a financial interest, elected members may seek an exemption from the Office of the Auditor General to be allowed to participate or vote on a particular issue. This must occur before the discussion or vote takes place.

Failure to observe the requirements of the Local Authorities (Members' Interests) Act 1968 could potentially invalidate a decision made, or action taken, by Council.

Failure to observe these requirements could open the elected member to prosecution under the Local Authorities (Members' Interests) Act 1968. If convicted, elected members can be ousted from office.

### **Non-financial conflicts of interest**

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

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

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

The elected member may:

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

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

## **2.7 Standing Orders**

Elected members must adhere to the Ashburton District Council Standing Orders, adopted by Council under the Local Government Act 2002 (Schedule 7, clause 27(1)).

These standing orders are subject to the same legal requirements as a Code of Conduct with regard to their adoption and amendment.

## **2.8 Remuneration, Expenses and Gifts**

Members must abide by the *Elected Members Remuneration and Expenses Policy*. This policy contains details of remuneration, allowances and expense rules for elected members.

In addition, Councillors must:

- Not solicit, demand, or request any gift, reward or benefit by virtue of their position
- Notify the Chief Executive if any gifts with a value of over \$50 are accepted and recorded in a gifts register
- Immediately disclose any gifts with a value of over \$50 which are *offered* to the elected member, to the Chief Executive. This will be included in the publicly available register of interests.

Members shall annually make a declaration of interest. These declarations are recorded in a Register of Interests maintained by the Council. The declaration must include information on the nature and extent of any interest, including:

- a) Any employment, trade or profession carried on by the member or the members' spouse for profit or gain;
- b) Any company, trust, partnership etc. for which the member or their spouse is a director, partner or trustee;
- c) The address of any land in which the member has a beneficial interest within the jurisdiction of the local authority; and
- d) The address of any land owned by the local authority in 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;
- e) 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 they must ensure that the Register of Interests is updated as soon as practicable.

## **2.9 Disqualification of Members from Office**

Elected members are automatically disqualified from office if they are convicted of a criminal offence punishable by two or more year's imprisonment or of certain breaches of the Local Authorities (Members' Interests) Act 1968. Members are also automatically disqualified from office if they cease to be an elector or become disqualified for registration as an elector.

## **2.10 Bankruptcy**

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

# **PART THREE: COMPLIANCE AND REVIEW**

## **3.1 Compliance**

Elected members are bound to comply with the provisions of this Code of Conduct by the Local Government Act 2002, Schedule 7, clause 15(4).

Members are also bound by the Local Government Act 2002, the Local Authorities (Members' Interests) Act 1968, the Local Government Official Information and Meetings Act 1987, the Secret Commissions Act 1910, the Crimes Act 1961, the Financial Markets Conduct Act 2013, the Health and Safety at Work Act 2015 and all other relevant legislation.

The Chief Executive will ensure that legislative requirements are explained at the first meeting of each triennium, and that copies of these Acts are freely available to elected members. Short explanations of the relevant provisions of the above Acts are attached in Appendix 1.

## **3.2 Breaches of the Code**

Any suspected breaches of the Code of Conduct may first be verbally directed to the Mayor or Chief Executive, who will investigate further and offer advice as to whether a written statement should be made. If a suspected breach involves the Mayor or Chief Executive, then enquiries are to be directed to the Deputy Mayor or Group Manager Business Support.

Following this, any person who considers that the provisions of this Code have been breached by an elected member of Council shall submit a written statement to the Mayor and/or Chief Executive. Written statements detailing the alleged breach of the Code of Conduct must include any corroborating evidence.

The Mayor and/or Chief Executive shall determine whether the matter is appropriately dealt with under the Code of Conduct and if considered appropriate, shall first attempt to resolve the matter through discussion with the relevant parties.

If the matter is resolved by discussion, it is considered that the matter has been successfully concluded upon written notification by both the complainant and respondent. If it is not resolved in this way, the matter will be referred to the Code of Conduct Committee for further consideration.

The Mayor and/or Chief Executive have the discretion to determine whether any report will be initially considered in open or closed meeting of Council. Where the alleged breach could impinge on the privacy of a member of staff or of the general public, or the complaint relates to the misuse of confidential information, the report will be considered in closed meeting.

### **Code of Conduct Committee**

This committee will comprise two elected members and one independent party. A panel of five elected members will be appointed at the beginning of each triennium, from which the two committee members will be selected by Council as and when necessary.

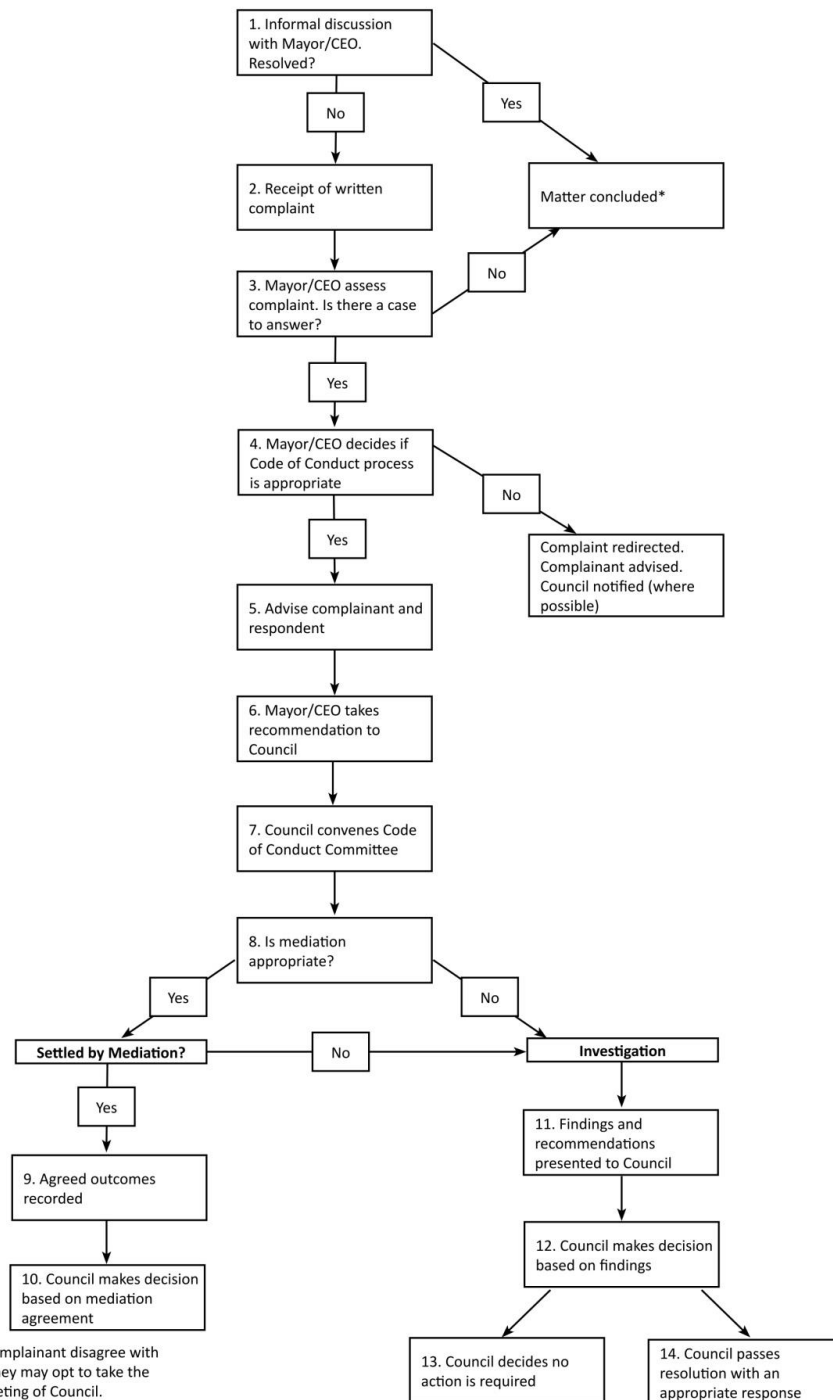
Council will select the independent party as and when necessary. This person may be Council's lawyer, the Mayor or Chief Executive of another local authority, or any other person Council considers appropriate for the individual case.

Committee members should be selected on the basis of their ability to behave impartially and equitably to the persons and matter at hand.

### **Rights of the respondent**

All Code of Conduct investigations are to be conducted with regard to commonly accepted principles of natural justice, which include the right to a fair hearing, privacy, the right to proceedings free from bias and the right to representation. The respondent is also entitled to the presence of a support person at all hearings and discussions.

### 3.3 Process for Alleged Code of Conduct Breaches



### 3.4 Responses to Breaches of the Code of Conduct

#### If there are relevant statutory provisions:

- Breaches relating to members’ interests render members liable for prosecution by the Auditor-General under the Local Authority (Member’s Interests) Act 1968

- Breaches which result in the Council suffering financial loss or damage may be reported on by the Auditor-General under the Local Government Act 2002, which may result in the member having to make good the loss or damage
- Criminal offences may result in liability for criminal prosecution.

Where there are statutory provisions, Council or a member of the public may refer the issue to the most relevant body or authority, or the body or authority may itself take action of its own initiative.

**If there are no relevant statutory provisions:**

Council may take the following action:

- Censure
- Removal of the elected member from Council committees and/or other representative type bodies
- Dismissal of the elected member from a position as Deputy Mayor or Chair of a committee
- a request (made either privately or publicly) for an apology;
- a vote of no confidence in the member;
- removal of certain council-funded privileges (such as attendance at conferences);
- restricted entry to council offices, such as no access to staff areas (where restrictions may not previously have existed);
- limitation on any dealings with council staff so that they are confined to the chief executive only;
- an invitation for the member to consider resigning from the council.

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

- attend a relevant training course; and/or
- work with a mentor for a period of time; and/or
- participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- tender an apology.

A decision to apply one or more of these actions requires a Council resolution to that effect. The Mayor cannot be dismissed from the position of Mayor or any statutory duties and responsibilities of that office by resolution of Council.

### **3.5 Review**

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

Council will formally review the Code of Conduct within the first year of each triennium. The results of that review will be presented to Council for their consideration and vote.

## **APPENDIX 1: LEGISLATION RELEVANT TO THE ROLE AND CONDUCT OF ELECTED MEMBERS**

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

### **Local Authority (Members' Interests) Act 1968**

This Act regulates situations where a member's personal interest/s impinges, or could be seen as impinging on their duties as an elected member.

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

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

Members may also contact the Audit Office for guidance as to whether that member has a financial 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 financial interest. The latter must be done before the discussion or vote.

The Chief Executive must also seek approval from the Audit Office for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

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

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

The Local Government Official Information and Meetings Act 1987 sets out requirements and procedures for local government meetings.

Of particular importance for the roles and conduct of elected members is the fact that the chair has the responsibility to maintain order at meetings, but all elected members should accept a personal responsibility to maintain acceptable standards of address and debate.

No elected member should:

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

### **Secret Commissions Act 1910**

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

If convicted of any offence under this Act a person can be imprisoned for up to 2 years, or fines up to \$1000, or both. A conviction therefore would trigger the ouster provisions of the Local Government Act 2002 and result in the removal of the member from office.



## **Crimes Act 1961**

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

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

These offences are punishable by a term of imprisonment of 7 years or more. Elected members convicted of these offences will also be automatically ousted from office.

## **Financial Markets Conduct Act 2013**

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.

## **Health and Safety at Work Act 2015**

The Health and Safety at Work Act 2015 (HSWA) recognises that a well-functioning health and safety system relies on participation, leadership, and accountability by government, business and workers.

One of the guiding principles of HSWA is that workers and other persons should be given the highest level of protection against harm to their health, safety, and welfare from work risks so far as is reasonably practicable. The main purpose of HSWA is to provide a framework to secure the health and safety of workers and workplaces to:

- Protect workers and other persons against harm to their health, safety and welfare by eliminating or minimising risks arising from work.
- Allows for fair and effective workplace representation, consultation, co-operation, and resolution of issues.
- Encourages unions and employer organisations to take a leading role in promoting improvements in the workplace health and safety practices. It also assists Persons Conducting a Business or Undertaking (PCBU) and workers to achieve a healthier and safer working environment.
- Provides advice, information, education, and training in relation to work health and safety.
- Ensures compliance with the Act through effective and appropriate enforcement measures.
- Ensures the appropriate review of actions taken by persons performing functions or exercising powers under the Act.
- Provides a framework for continuous improvement and progressively higher standards of work health and safety.

There are four types of duty holders that have work health and safety duties:

- persons conducting a business or undertaking (PCBUs) – these may be individuals or organisations
- workers
- officers
- other persons at workplaces.

Duties are not transferable or able to be contracted out of, but reasonable arrangements can be entered to ensure duties are met.

The HSWA creates a positive due diligence duty on an officer. That duty aims to make sure an officer takes appropriate, proactive steps to ensure the PCBU complies with the HSWA. The PCBU has the primary duty of care.

An officer is a person with a specific role in an organisation. They can be:

- a director of a PCBU that is a company
- a partner in a PCBU that is a partnership (in limited partnerships, only general partners are officers)

- a person in any other entity who holds a position similar to a company director (such as a board member).

The only other people with a due diligence duty are those in senior governance roles in an organisation. This means they must be in a role that can significantly influence how the entity is managed (such as a Chief Executive Officer).

The extent of the officer's duty depends on the type of entity and the officer's role and responsibilities. Also acknowledged is the officer's level of influence in, and control over, managing risk.

Any volunteer or paid officer of an organisation must exercise due diligence to make sure that the organisation complies with its health and safety duties. An officer's due diligence depends on the size of the business, and on the type of business operations (including the level of risk).

### **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:

- a) money belonging to, or administered by, a local authority has been unlawfully expended; or
- b) an asset has been unlawfully sold or otherwise disposed of by the local authority; or
- c) a liability has been unlawfully incurred by the local authority; or

a local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

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:

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

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