

# CODE OF CONDUCT 2023

Adopted 30 May 2023

## 1. Introduction

This Code of Conduct (the Code) sets out the standards of behavior expected from:

- Her Worship the Mayor and Councillors at Waipa District Council (Council), and
- Any Council-appointed members of the following Council Committees:
  - Strategic Planning and Policy Committee,
  - Service Delivery Committee,
  - Finance and Corporate Committee,
  - Regulatory Committee, and
  - Audit and Risk Committee

(together referred to as “Members” and individually “Member”) in the exercise of their duties.

Its purpose is to:

- enhance the effectiveness of Council and the provision of good local government of the community, and district;
- promote effective decision-making and community engagement;
- enhance the credibility and accountability of Council to its communities; and
- develop a culture of mutual trust, respect and tolerance between the Members and between the Members and management.

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

## 2. Scope

The Code has been adopted in accordance with clause 15(1) of Schedule 7 of the Local Government Act 2002 (LGA 2002) and applies to all Councillors and Her Worship the Mayor. It also applies to any appointed members of the following Council committees in relation to their role on the committee: Strategic Planning and Policy Committee, Service Delivery Committee, Finance and Corporate Committee, Regulatory Committee and Audit and Risk Committee. The Code is designed to deal with the behaviour of Members towards:

- each other;
- the Chief Executive and staff;
- the media; and
- the general public.

It is also concerned with the disclosure of information that Members receive in their capacity as

Members and information which impacts on the ability of Council to give effect to its statutory responsibilities.

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 Council's Standing Orders.

### 3. Values

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

1. **Public interest:** Members will serve the best interests of the people within their community, district or region and discharge their duties conscientiously, to the best of their ability.
2. **Public trust:** Members, in order to foster community confidence and trust in their Council, will work together constructively in an accountable and transparent manner.
3. **Ethical behaviour:** Members will act with honesty and integrity at all times and respect the impartiality and integrity of officials.
4. **Objectivity:** Members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.
5. **Respect for others:** will treat people, including other Members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability.
6. **Duty to uphold the law:** Members will comply with all legislative requirements applying to their role, abide by this Code of Conduct, and act in accordance with the trust placed in them by the public.
7. **Equitable contribution:** Members will take all reasonable steps to fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars.
8. **Leadership:** Members will actively promote and support these principles and ensure they are reflected in the way in which the Council operates, including a regular review and assessment of the Council's collective performance.

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

## 4. Role and responsibilities

This Code of Conduct is designed to strengthen the good governance of our District. Good governance requires that the complementary roles of the governing body and the administration are understood and respected. These roles involve:

### 4.1 Members

The role of the governing body includes:

- representing the interests of the people of the district;
- developing and adopting plans, policies and budgets;
- monitoring the performance of Council against stated goals and objectives set out in its long term plan;
- providing prudent stewardship of Council's resources;
- employing and monitoring the performance of the Chief Executive; and
- ensuring Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

### 4.2 Chief Executive

The role of the Chief Executive includes:

- implementing the decisions of 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 Council;
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of Council;
- providing leadership for the staff of Council; and
- employing on behalf of 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 Council itself (s.42 LGA 2002). All concerns about the performance of an individual member of staff must, in the first instance, be referred to the Chief Executive.

## 5. Behaviours

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

- conducting the business of Council,
- acting as a representative of Council,
- acting as a representative of their electorate,
- communicating with other Members, community board 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 investigating and ruling on alleged breaches of the Code of Conduct".

### 5.1 Respect

Members will treat all other Members, community board 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. As a Member of a local authority you can challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You must not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Offensive behaviour lowers the public's expectations of, and confidence in, your local authority. In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening, you are entitled to stop any conversation or interaction in person or online and report them to the Council, 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 following<sup>1</sup>:

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

### 5.3 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 you by your community to act on their behalf. To fulfil the expectations of your constituents and contribute to the good governance of your area it is important that you make all reasonable efforts to attend meetings and workshops, prepare for meetings, attend civic events, and participate in relevant training

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

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.

#### **5.4 Disrepute**

Members will not bring the 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 local authority 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 local authority and fellow Members to account or constructively challenge and express concerns about decisions and processes undertaken by their local authority.

#### **5.5 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.

#### **5.6 Impartiality**

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

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 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 you have concerns about the behaviour of an official, whether permanent or contracted, you should raise your concerns with the Council’s Chief Executive, or, if the concerns are to do with the Chief Executive, raise them with the Mayor, or Chief Executive Performance Committee.

## **6. Contact with the media**

The media play an important role in the operation and efficacy of our local democracy. In order to fulfil this role the media needs access to accurate and timely information about the affairs of Council. Any failure by a Member to comply with the provisions of this section can represent a breach of this Code.

From time to time individual Members will be approached to comment on a particular issue either on behalf of Council, or as a Member in their own right. When responding to requests for comment Members must be mindful that operational questions should be referred to the Chief Executive and policy-related questions referred to the Mayor, or the Member with the appropriate delegated authority.

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

### **6.1 Media contact on behalf of Council**

- the Mayor is the first point of contact for an official view on any issue, unless delegations



state otherwise. Where the Mayor is absent requests for comment will be referred to the Deputy Mayor or relevant committee chairperson or portfolio holder;

- the Mayor may refer any matter to the relevant committee chairperson or to the Chief Executive for their comment; and
- no other Member may comment on behalf of Council without having first obtained the written approval of the Mayor or Deputy Mayor.

## 6.2 Media/Social media comment on a Member's own behalf

- Members are free to express a personal view in the media or social media, at any time, provided the following rules are observed
- Members must make it clear that any comments made reflect a personal view and do not represent the views of Council;
- comments which are contrary to a Council decision or policy must clearly state that they do not represent the views of the majority of Members;
- comments must observe the other requirements of the Code; for example, comments should not disclose confidential information, criticise, or compromise the impartiality or integrity of staff;
- comments must not be misleading and should be fair and accurate within the bounds of reasonableness;
- social media pages managed by Members and used for making observations relevant to their role as Members should be open and transparent and observe the requirements of the code; and
- social media posts about others, Council staff or the public must be consistent with section five of this code (See Appendix A for guidelines on the personal use of social media).

These rules should also be applied with letters to the Editor.

## 7. Information

Access to information is critical to the trust in which a local authority is held and its overall performance. A failure to comply with the provisions below can represent a breach of the Code.

### 7.1 Confidential information

In the course of their duties Members will receive information, whether in reports or through debate, that is confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation. Accordingly, Members agree not to use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the Member. This includes business conducted in Public Excluded meetings and workshops, until any such business is made public.

## 7.2 Information received in capacity as a Member

Members will disclose to other Members and, where appropriate the Chief Executive, any information received in their capacity as a Member that concerns Council's ability to give effect to its responsibilities.

Members who are offered information on the condition that it remains confidential will inform the provider of the information that it is their duty to disclose the information and will decline the offer if that duty is likely to be compromised.

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

## 8. Conflicts of Interest

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

Members will not participate in any Council discussion or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. This rule also applies where the Member's spouse/partner has a pecuniary interest, such as through a contract with Council. Members shall make a declaration of interest as soon as practicable after becoming aware of any such interests. There are also Guidelines available from the Office of the Auditor General to assist Members and staff in relation to conflicts and interests (see [www.oag.govt.nz](http://www.oag.govt.nz)).

If a Member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the Member should seek guidance from the Chief Executive immediately. Members may also contact the Office of the Auditor General for guidance as to whether they have a pecuniary interest, and if so, may seek an exemption to allow that Member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote.

**Please note:** Failure to observe the requirements of the LAMIA could potentially invalidate the decision made, or the action taken, by Council. Failure to observe these requirements could also leave the Member open to prosecution (see Appendix B). In the event of a conviction, Members can be ousted from office.

## 9. Register of Interests

Members shall, at least annually, make a declaration of interest. The elected member declarations are recorded in a public Register of Interests maintained by 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/partner for profit or gain;
- b) any company, trust, partnership etc for which the Member or their spouse/partner is a director, business partner or trustee;
- c) a description of any land in which the Member has a beneficial interest within the jurisdiction of Council; and
- d) a description of any land owned by Council in which the Member or their spouse/partner is:
  - a tenant; or
  - the land is tenanted by a firm in which the Member or spouse/partner is a business partner, a company of which the Member or spouse/partner is a director, or a trust of which the Member or spouse/partner 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.

## 10. Ethical behavior

Members will seek to promote the highest standards of ethical conduct. Accordingly Members will:

- claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of Council developed in accordance with that determination;
- not influence, or attempt to influence, any Council employee, officer or Member in order to benefit their own, or families personal or business interests;
- only use Council 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.

Any failure by Members to comply with the provisions set out in this section represents a breach of this Code.

### 10.1 Undischarged bankrupt

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.

## 11. Creating a supportive and inclusive environment

In accordance with the purpose of the Code, Members agree to take all reasonable steps in order to participate in activities scheduled to promote a culture of mutual trust, respect and tolerance.

These include:

- Attending post-election induction programmes organised by Council for the purpose of facilitating agreement on Council’s vision, goals and objectives and the manner and operating style by which Members will work.
- Taking part in any assessment or evaluation of Council’s performance and operating style

during the triennium.<sup>1</sup>

- Elected members taking all reasonable steps to acquire the required skills and knowledge to effectively fulfill their Declaration of Office (the Oath) and contribute to the good governance of the district.

## **12. Breaches of the Code**

Breaches of this code will be dealt with in accordance with the Waipa District Council Policy for investigating and ruling on alleged breaches of the Code of Conduct.

## **13. Review**

Once adopted, a Code of Conduct continues in force until amended by Council. The Code can be amended at any time but cannot be revoked unless Council replaces it with another Code. Amendments to the Code require a resolution supported by 75 per cent of the members of Council present at a Council meeting where the amendment is considered.

Councils are encouraged to formally review their existing Code and either amend or re-adopt it as soon as practicable after the beginning of each triennium in order to ensure that all elected members have the opportunity to provide their views on the Code's provisions.

## Appendix A: Guidelines on the personal use of social media

There's a big difference in speaking "on behalf of Council" and speaking "about" the Council. While your rights to free speech are respected, please remember that citizens and colleagues have access to what you post. The following principles are designed to help you when engaging in personal or unofficial online communications that may also refer to your Council.

1. Adhere to the Code of Conduct and other applicable policies. Council policies and legislation, such as LGOIMA and the Privacy Act 1993, apply in any public setting where you may be making reference to the Council or its activities, including the disclosure of any information online.
2. You are responsible for your actions. Anything you post that can potentially damage the Council's image will ultimately be your responsibility. You are encouraged to participate in the social media but in so doing you must exercise sound judgment and common sense.
3. Be an "advocate" for compliments and criticism. Even if you are not an official online spokesperson for the Council, you are one of its most important advocates for monitoring the social media landscape. If you come across positive or negative remarks about the Council or its activities online that you believe are important you are encouraged to share them with the governing body.
4. Let the subject matter experts respond to negative posts. Should you come across negative or critical posts about the Council or its activities you should consider referring the posts to the Council's authorised spokesperson, unless that is a role you hold, in which case consider liaising with your communications staff before responding.
5. Take care mixing your political (Council) and personal lives. Members need to take extra care when participating in social media. The public may find it difficult to separate personal and Council personas. Commenting online in any forum, particularly if your opinion is at odds with what Council is doing, can bring you into conflict with the Code should it not be clear that they are your personal views.
6. Never post sensitive and confidential information provided by the Council, such as confidential items, public excluded reports and/or commercially sensitive information. Such disclosure will contravene the requirements of the Code.
7. Elected members' social media pages should be open and transparent. When commenting on matters related to Council no Members should represent themselves falsely via aliases or differing account names or block. Elected members should not block any post on any form of

social media that they have control over unless there is clear evidence that the posts are actively abusive. Blocking constructive debate or feedback can be seen as bringing the whole Council into disrepute.



## Appendix B: Legislation bearing on the role and conduct of Members

This is a summary of the legislative requirements that have some bearing on the duties and conduct of elected members. The full statutes can be found at [www.legislation.govt.nz](http://www.legislation.govt.nz).

### The Local Authorities (Members' Interests) Act 1968

The Local Authorities (Members' Interests) Act 1968 (LAMIA) provides rules about Members discussing and voting on matters in which they have a pecuniary interest and about contracts between Members and Council.

A pecuniary interest is likely to exist if a matter under consideration could reasonably give rise to an expectation of a gain or loss of money for a Member personally (or for their spouse/partner or a company in which they have an interest). In relation to pecuniary interests the LAMIA applies to both contracting and participating in decision-making processes.

With regard to pecuniary or financial interests a person is deemed to be "concerned or interested" in a contract or interested "directly or indirectly" in a decision when:

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

There can also be additional situations where a person is potentially "concerned or interested" in a contract or have a pecuniary interest in a decision, such as where a contract is between an elected members' family trust and the Council.

### Determining whether a pecuniary interest exists

Members are often faced with the question of whether or not they have a pecuniary interest in a decision and if so whether they should participate in discussion on that decision and vote. When determining if this is the case or not the following test is applied:

*"...whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned."* (OAG, 2001)

In deciding whether you have a pecuniary interest, Members should consider the following factors.

- What is the nature of the decision being made?
- Do I have a financial interest in that decision - do I have a reasonable expectation of gain or loss of money by making that decision?
- Is my financial interest one that is in common with the public?
- Do any of the exceptions in the LAMIA apply to me?
- Could I apply to the Auditor-General for approval to participate?

Members may seek assistance from the Mayor/Chair of the relevant committee or other person to determine if they should discuss or vote on an issue but ultimately it is their own judgment as to whether or not they have pecuniary interest in the decision. Any Member who is uncertain as to whether they have a pecuniary interest is advised to seek legal advice. Where uncertainty exists Members may adopt a least-risk approach which is to not participate in discussions or vote on any decisions.

Members who do have a pecuniary interest will declare the pecuniary interest to the meeting and not participate in the discussion or voting. The declaration and abstention needs to be recorded in the meeting minutes. (Further requirements are set out in Council’s Standing Orders.)

### **The contracting rule**

A Member is disqualified from office if he or she is “concerned or interested” in contracts with their Council if the total payments made, or to be made, by or on behalf of the Council exceed \$25,000 in any financial year. The \$25,000 limit includes GST. The limit relates to the value of all payments made for all contracts in which you are interested during the financial year. It does not apply separately to each contract, nor is it just the amount of the profit the contractor expects to make or the portion of the payments to be personally received by you.

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

### **Non-pecuniary conflicts of interest**

In addition to the issue of pecuniary interests, rules and common law govern conflicts of interest more

generally. These rules apply to non-pecuniary conflicts of interest, including common law rules about bias. In order to determine if bias exists or not Members need to ask:

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

The question is not limited to actual bias, but relates to the appearance or possibility of bias reflecting the principle that justice should not only be done, but should be seen to be done. Whether or not Members believe they are not biased is irrelevant.

Members focus should be on the nature of the conflicting interest or relationship and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

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

In determining whether or not they might be perceived as biased, Members must also take into account the context and circumstance of the issue or question under consideration. For example, if an elected member has stood on a platform and been voted into office on the promise of implementing that platform then voters would have every expectation that the elected member would give effect to that promise, however he/she must still be seen to be open to considering new information (this may not apply to decisions made in quasi-judicial settings, such as an RMA hearing).

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

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements that apply to local authorities and local/community boards. Of particular importance for the roles and conduct of Members is the fact that the chairperson has the responsibility to maintain order at meetings, but all Members should accept a personal responsibility to maintain acceptable standards of address and debate. No Member should:

- create a disturbance or a distraction while another Councillor or His Worship the Mayor is

speaking;

- be disrespectful when they refer to each other or other people; or
- use offensive language about the Council, other members, any employee of Council or any member of the public.

See Standing Orders for more detail.

## **Secret Commissions Act 1910**

Under this Act it is unlawful for a 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 seven years. A conviction would therefore trigger the ouster provisions of the LGA 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; and
- use information gained in the course of their duties for their, or another person's, monetary gain or advantage.

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

## **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.

## 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 and details the personal liability of Members

Although having qualified privilege, elected members can be held personally accountable for losses incurred by Council 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, Council has been unlawfully expended; or
- b) an asset has been unlawfully sold or otherwise disposed of by Council; or
- c) a liability has been unlawfully incurred by Council; or
- d) Council has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

Elected 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 elected member's knowledge;
- b) with the elected member's knowledge but against the elected member's protest made at or before the time when the loss occurred;
- c) contrary to the manner in which the elected member voted on the issue; and
- d) in circumstances where, although being a party to the act or failure to act, the elected 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 situation elected members will also be responsible for paying the costs of proceedings (s.47 LGA 2002).

## 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 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 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 your risks,
- making health and safety part of your organisation’s culture, and
- getting your 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 your chief executive,
- publishing a safety vision and beliefs statement,
- establishing health and safety targets for the organisation with your chief executive,
- ensuring there is an effective linkage between health and safety goals and the actions and priorities of your 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.