



Local Government
Commission

Mana Kāwanatanga ā Rohe

Local Government Codes of Conduct

*Ngā tikanga whanonga Kāwanatanga ā-
Rohe*

Report to the Minister of Local
Government

*Pūrongo ki te Minita Kāwanatanga ā-
Rohe*

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Executive Summary / He Whakarāpopototanga

1. The visibility of elected member conduct issues within local government and the difficulties in dealing with them has increased. The Commission has looked at the role of codes of conduct in local government, undertaking comprehensive engagement with the sector and stakeholders. It has heard from every council and many of the country's community boards through various avenues. This report discusses the main issues with codes and recommends ways to address them. The Commission considers there may be a timely connection between its recommendations and the work of the Future for Local Government review panel.
2. It is clear that codes of conduct sit firmly within a wider context as part of a suite of governance tools that need to be considered holistically. Through this engagement the Commission has identified a range of sector and legislative measures that could work together to support improvements to both conduct and codes.
3. Codes can only be effective in determining and addressing poor conduct if they are balanced with the opportunity to understand what constitutes good governance behaviour. Within the wider suite of governance tools then, there is a need to bolster the kind of governance skills that allow mayors and chairs to build and lead teams, and members to work effectively with each other and with council staff. The Commission recommends exploring a sector specific education framework for members and council staff, starting at the pre-candidacy stage and continuing through on-going professional development.
4. There is wide variation in how councils approach the more complex areas of codes like materiality, the complaints process, penalties, compliance, staff interactions, and social media. This frequently results in inconsistent processes and little effect on conduct. The Commission recommends these aspects of the code be standardised to be referenced in legislation in such a way that retains the scope for individual councils to agree their own shared values and principles within their code. The latter is key to embedding members' understanding of their commitments under the code.
5. Practices around informing newly elected members of the code and re-adopting codes each triennium also varies widely, despite general agreement that awareness of conduct expectations early in the triennium is fundamental to good governance. Similar considerations arose for community boards which currently are not required to adopt a code. This has informed the Commission's recommendation for legislative requirements to include codes in the statutory briefing at inaugural council meetings and in member inductions. The Commission also recommends councils be required to re-adopt their code early in the triennium, and that community boards be required to adopt their parent body's code.

6. The sector expressed the most frustration around the inability to deal effectively with grievous or repeated breaches. Many called for an ability to remove or suspend members in this situation. Unsurprisingly, there are strong feelings both for and against this notion, not least because of the risks it poses to democratic principles. Nonetheless it is a topic that generated significant discussion during this engagement. The Commission believes it warrants further exploration, enabling the complexities and risks of such a mechanism to be openly discussed and considered.
7. Given the level of engagement this work has achieved, the Commission is confident that the recommendations in this report reflect the key issues with codes of conduct in the sector. It is important to note that the individual recommendations are unlikely to work in isolation. Ultimately, the recommended legislative requirements must work in tandem with the recommended actions to support good governance behaviour.

Purpose / Te aronga

8. The Commission is an independent statutory body with three core functions:
 - Promoting good local government in New Zealand through promoting good practice in local government and providing information about local government •
 - Reorganisation of local authorities
 - Representation reviews.
9. As part of its focus on good governance in local government, the Commission is interested in addressing governance issues across the sector. Recently, media coverage of conduct issues within the sector has greatly increased. Comment from the sector and in the media has highlighted the difficulties the sector faces in dealing with these issues. The situation is exacerbated by a growing tendency for code of conduct complaints to be used for political gain. Ultimately, this undermines public confidence in local government and hampers councils' ability to work effectively. This has led the Commission to identify the purpose, use and effectiveness of codes of conduct as an area of concern for the sector.
10. This report outlines the Commission's engagement with the sector on the role of codes of conduct. It then makes recommendations for improving codes of conduct and other tools that support good governance practice in local government. The Commission notes the Review into the Future for Local Government (FFLG) is currently underway and is likely to result in changes to legislation. The Commission's intention is that this report may help inform those changes.

Background/ He whakamārama

Local Government codes of conduct / Ngā tikanga whanonga Kāwanatanga āRohe

11. Local government codes of conduct are one of a suite of governance tools aimed at encouraging good governance behaviour. As such, codes are intended to help councils put into practice the governance principles in the Local Government Act 2002 (the LGA), which require them to ensure that:
 - the role of democratic governance, and the expected conduct of members, is clear and understood by members and the community;
 - governance structures and processes are effective, open, and transparent;
 - they operate as a good employer; and
 - the relationship between members and management is effective and understood.¹
12. Codes of conduct were first required of councils when the LGA was enacted in 2002.² The LGA sets out what councils must cover in their codes including how members are expected to behave with each other, council staff and the public; disclosure of information; and specific legislation applicable to them in their governance roles. The latter includes the Local Authorities (Members' Interests) Act 1968 (LAMIA).
13. The LGA does not specify any penalties for local government members³ if they breach their council's code of conduct. In fact, the LGA states that "to avoid doubt, a breach of the code of conduct does not constitute an offence under this Act". LAMIA is often referred to in codes and it does provide for penalties in regard to members' participation when they have a pecuniary interest.⁴
14. The LGA is silent on the process for dealing with a complaint against a code of conduct.
15. The LGA requires local boards to adopt the parent body's code of conduct but does not require community boards to do so.
16. The Commission first sought information from councils on their codes in mid-2020. At that time, 24 of 78 councils reported receiving a total of 45 complaints against their

¹ Section 39, Local Government Act 2002

² Clause 15, Schedule 7, Local Government Act 2002

³ For ease of reference hereon, *member* has the same meaning as in the LGA (Section 5) and refers to a member of a governing body of a local authority, local board, or community board ⁴ Section 7 Local Authorities (Members' Interests) Act 1968

code since the 2019 election. Subsequent conversations with the sector suggest that the nature of conduct issues varies widely.

Initial investigation / Tūhuratanga tuatahi

17. To better understand and respond to the conduct issues the sector is experiencing, the Commission began looking into council codes of conduct in 2020. It reviewed media reporting⁴, engaged with Local Government New Zealand (LGNZ) and Taituarā (Local Government Professionals Aotearoa)⁶, and looked at what had been reported on before, including a 2006 report on codes by the Office of the Auditor-General (OAG)⁵. The Commission identified conclusions in the OAG report (2006), many of which have since been incorporated into good practice guidelines. However, they have not been strengthened any further and therefore still appear relevant, in particular:
 - Consider whether the LGA should be amended to require community boards to adopt a code of conduct
 - Consider whether the LGA should be amended to specify codes of conduct as one of the matters that must be covered in the briefing to members at inaugural meetings or as part of induction
 - Councils should re-adopt their codes at the start of each triennium to ensure buy-in and give the opportunity for rules and principles to be reconsidered and debated
 - Use of independent external people rather than members for investigating complaints
18. The OAG also touched on the lack of majority view regarding the value of developing enforcement processes and remedies or penalties for breaching the code, for incorporating into legislation. The Commission felt that this warranted further exploration.
19. The Commission also asked councils directly for information about their code content, adoption practices, and complaints since the 2019 election.
20. From this work it seems that while practices varied across councils, issues with conduct and complaints remain consistent. In December 2020, the Commission provided an interim report to the Minister of Local Government summarising its work

⁴ The Commission particularly noted the reporting on Massey University's research into anti-conflict and antimedia clauses in codes of conduct and notes that such clauses are concerning, however as of 2021 most councils have removed these from their codes. See *Local authority codes of conduct: anti-conflict and antimedia?* Strong, C. 2016

https://www.academia.edu/33725075/Local_authority_codes_of_conduct_anti_conflict_and_anti_media⁶

Formerly known as the NZ Society of Local Government Managers (SOLGM).

⁵ *Good practice guide: Local Authority codes of conduct*. Office of the Auditor-General. June 2006.

<https://oag.parliament.nz/2006/conduct/docs/conduct.pdf>

so far⁶. The report noted that the Commission intended further engagement with the sector to better understand code of conduct issues before it could consider making recommendations to the Minister of Local Government.

Further sector engagement / Te whai wāhi tonu ki te rāngai

21. Over the first half of 2021, the Commission undertook five streams of further engagement:
 - a. A request for information from chief executives on use of the LGNZ code of conduct template and any edits made, and the use of codes by any community boards.
 - b. An online qualitative survey of council chief executives and members (mayors and chairs, councillors and community/local board members). This generated 216 responses, from 54 different local authorities (including regional, district, city and unitary councils) and 24 community and local boards⁹. The overall response rate was 12.8% of members and chief executives.
 - c. An initial round of face to face discussions with mayors and chairs, and chief executives at five regional mayoral forums (Otago/Southland, Waikato, Bay of Plenty and Wellington) and the LGNZ regional sector meeting (with representatives from the five unitary authorities).
 - d. Discussions with other key sector stakeholders: The Office of the Auditor General, the Ombudsman, LGNZ and Taituarā.
 - e. A second round of face to face discussions with mayors and chairs, and chief executives at five regional mayoral forums (West Coast, Hawkes Bay, Northland, Manawatū-Whanganui and Taranaki); with members of Auckland Council's governing body; and with Auckland local board chairs.
22. The key points the Commission consulted on were:
 - Should codes of conduct be included in legislation as one of the matters to be covered in the briefing to members at inaugural meetings or as part of induction?
 - Is there value in codes being readopted at the start of each triennium?
 - Is there value in developing penalties for breaching the code for inclusion in legislation?
 - Is there a role for the Commission in the code of conduct system?
23. While the above points were a foundation for discussion, the Commission let the conversations flow naturally to get a sense of all key issues with the code of conduct

⁶ *Codes of Conduct Interim report to the Minister for Local Government*, Local Government Commission, December 2020

system. Similarly, the online survey asked whether there was anything else the respondent thought could improve codes of conduct.

24. Two sector bodies had limited or no participation in the face to face engagement, although all of them had the opportunity to respond to the surveys and requests for

⁹ 41 respondents chose not to identify their governing body, so coverage may be even broader.

further information. Of the two, the Commission discussed its codes of conduct work at the 2021 Community Board Conference but did not speak individually with the sector's 110 community boards for reasons of time and resource. Due to timing, the Commission also did not speak directly with the Canterbury Mayoral Forum although their survey responses inform this report. Should this report result in changes to legislation or actions by the sector, both parties will have further opportunities to participate.

25. The Commission has shared a draft of this report with sector stakeholders including the Office of the Auditor General, the Ombudsman, Taituarā, LGNZ, and the Department of Internal Affairs.

Engagement with Māori / Te Whai Wāhi ki te Māori

26. In preparing its recommendations to the Minister, the Commission acknowledges the Crown's responsibilities under the Treaty Article 1 Kawanatanga (Governance by the Crown), which requires policy advice informed by Māori perspectives.
27. Any work undertaken as a result of the recommendations in this report must include early and ongoing engagement with Māori in line with the Māori Crown Relations: Te Arawhiti engagement framework.

Discussion / He Kōrerorero

28. From the Commission's engagement with the sector, it seems that issues relating to codes of conduct fall into two broad categories. One relates to the wider context of supporting good governance behaviour, and one is specific to codes of conduct.

The wider context of good governance behaviour / Te horopaki whānui o ngā whanonga mana whakahaere pai

29. It became clear during discussions with the sector that codes of conduct sit firmly within a wider context, as one part of a suite of governance tools that need to be considered holistically. It also became clear that there can be a lack of confidence amongst the leadership of councils to moderate behaviour before it escalates to a code of conduct process.

30. It is fair and reasonable that any process to determine and penalise poor conduct should be balanced by providing members with the opportunity to develop a sound understanding of the behaviours expected of them. When other tools for supporting good governance behaviour are inconsistent, there is a tendency for codes of conduct to become the sole tool for managing governance behaviour. Investigations and penalties under the code do little to address the cause of that behaviour.

Furthermore, code of conduct issues can be highly visible and reflect poorly on the sector.

31. This report identifies a need for greater focus on governance skills for members and a stronger emphasis on the leadership role of mayors and chairs in supporting good conduct before behaviour deteriorates. It is likely that strengthening these broader governance tools will better support natural justice and help reduce conduct issues.

Governance skills and education / Ngā pūkenga me te mātauranga mana whakahaere

32. To govern responsibly, members need a sound understanding of their governance role and how it differs from other roles they may have held, whether in business, cultural or community groups. There is a statutory requirement for local authorities to exercise their powers for the benefit of their district or region⁷ and to comply with specific requirements when making decisions.⁸ Members are subject to further statutory requirements in the LGA and other laws such as the Local Government Official Information and Meetings Act 1987 (LGOIMA), the Local Authorities (Members' Interests) Act 1968, the Crimes Act 1961, the Secret Commissions Act 1910, and the Financial Markets Conduct Act 2013.
33. Members must be briefed on these requirements at the inaugural meeting of a council.⁹ However, a briefing does not necessarily embed an understanding of how these statutory requirements apply in practice. Such an understanding is essential to good governance.
34. The sector expressed a strong desire for encouraging good governance skills. During engagement, there was a general consensus that a code of conduct is necessary to address repeated or extreme instances of poor behaviour. However, the sector emphasised that more should be done by way of early intervention to address poor behaviours and prevent them escalating to divisive, expensive and lengthy code of conduct processes. Codes of conduct themselves could be useful tools in supporting good governance skills as is discussed later in this report, at paragraphs 47-51. At the wider governance level, early and ongoing education for members both newly elected and re-elected, is seen as key.

⁷ LGA 2002, Section 12

⁸ LGA 2002, Section 77

⁹ LGA 2002, Schedule 7, clause 21 (5(c))

35. The Commission suggests governance education and professional development can be a key tool for removing barriers to democratic participation. It should support robust democratic debate that also enables members to both express and respect a wide range of views. Importantly, governance education would also support members to engage effectively with their electors and council staff.
36. Given that there is some resistance to current training offerings, the Commission has considered the sector's views on whether governance education should be either required or incentivised. Discussions with the sector suggest that mandating governance education could be perceived as an undemocratic barrier and unnecessarily prescriptive. However, any optional governance education should be consistent across the sector if it is to support a consistent, nationwide standard of governance behaviour.
37. Governance education could be helpful for potential candidates who may be deterred by a lack of prior governance knowledge. The only legal requirement for candidates is that they are a New Zealand citizen listed on the electoral roll.¹⁰ The Commission observes that around the country there is considerable inconsistency in the information available to help candidates understand the governance role. Making optional, accessible, consistent, basic governance education available at this stage could ensure candidates have an adequate awareness of the legal and governance requirements of the position they are seeking.
38. Governance education for council candidates would reflect the fact that, when acting as a council, members are exercising public powers and must understand how to do so in accordance with the law. It could also help strengthen the governance capability of newly elected councils. A potential model for this may be the JP training process, whereby all provisional JPs are required to complete an additional step of training before they can practice.¹¹
39. More consistent, accessible governance education could also be useful for newly elected members. Sector feedback suggests some members may not understand the most effective ways to bring issues to the council table, or they may enter their new role with no formal framework for making sound governance decisions. Members also have a responsibility to their electors to work effectively, as a group and individuals, with other members regardless of political differences. Auckland Council's governance capability programme may offer a useful model for member education.
40. For experienced members, ongoing governance education would offer targeted professional development for members as they take on more senior or complex governance roles. It should serve to both refresh and deepen the existing governance

¹⁰ Section 25, Local Electoral Act 2001

¹¹ *Becoming a JP*. Royal Federation of NZ Justices' Associations.
<https://justiceofthepeace.org.nz/Page/Landing/Becoming-a-JP>

knowledge of local government decision makers, who face increasingly complex and challenging decisions for their communities.

41. A possible model for this is the process for RMA Commissioners, which provides for initial training, followed by ongoing training every three to five years. The aim of the training is to improve the knowledge of decision-makers tasked with making difficult decisions that have significant impacts on their communities.¹²
42. A separate stream of governance education for staff who support members in their governance role would ensure both parties have a shared understanding of the governance function and the nature of their roles within it. There are a range of staff at different levels of council that support members at the various stages of their governance development. As a result, governance education for staff would need to reflect this variety. Auckland Council's governance capability programme may offer a useful model for staff education.
43. The Commission is aware that LGNZ is considering a new governance training offering with a certification mark for members. This would serve to professionalise governance practice as a tangible, transferrable skill. The Commission suggests it is worth expanding on this concept to include all stakeholders in developing an improved governance education framework specific to local government, which includes staff. The aim should be to develop accessible programmes that support sector-wide consistency and good governance practice. For improved effectiveness and independence, consideration should be given to ensuring the programmes are delivered by an educator.
44. Conversations with the sector also traversed the leadership role of mayors and chairs, and committee chairs in fostering effective working relationships among their elected teams. Many mayors and chairs spoke about the value of early, informal intervention when councillors appeared frustrated or disruptive. Not all mayors and chairs have practiced or confident leadership skills to draw on however, a situation that can be exacerbated by the pressures of settling into a new role.
45. Many in the sector also agreed that while not all breaches occurred around the council table, disruptive behaviour in meetings can derail democratic debate. Poor behaviour in meetings is specifically addressed by standing orders, essentially a set of rules that require members to maintain certain standards of behaviour while also allowing for dissent and democratic debate. Rather than being a code of conduct issue, meeting behaviour should be managed by a confident, skilled chair and supporting staff with a sound understanding of standing orders.

¹² 'Making Good Decisions' The Training Assessment and Certification Programme for RMA Decision Makers. Marian Hobbs, 2004. <https://www.beehive.govt.nz/speech/%E2%80%98making-good-decisions%E2%80%99-training-assessment-and-certification-programme-rma-decision-makers>

46. Despite this, there is limited local government-specific leadership education that is consistently available to the sector. Most mayors and chairs report receiving only informal training on entering their role, in the form of learning on the job and through advice from other mayors and chairs and experienced chief executives. Similarly, as noted earlier there is a lack of ongoing education for members as they move into more senior roles such as committee chairs.
47. The Commission suggests that education in leadership skills and meeting management for mayors and chairs is a crucial gap to fill if councils are to achieve and maintain good governance practice. The ideal solution would be leadership modules incorporated into a programme of governance education developed in collaboration with the sector and provided by an educator.
48. Finally, an integral part of the discussions on encouraging good governance behaviour has been the question of resourcing. Most councils say they do not have sufficient resource in the form of expertise or budget to deliver ongoing education. The Commission notes that there are approximately 1600¹³¹⁴ local authority members in New Zealand. This is comparable to a number of government departments and provides a useful yardstick for estimating the resource required. Ultimately, the Commission suggests that committing resource to governance education will help reduce costs of the type recently committed to independent commissioners and observers for councils with entrenched governance and/or leadership issues. The question of resourcing education therefore needs further consideration by the sector and other stakeholders, including central government.
49. As an incentive for candidates and members to take up governance education, the concept of a publicly available training register held by councils may improve transparency of members' professional development and support public accountability. This would need to take account of privacy and LGOIMA requirements.
50. In summary the Commission suggests that, given the benefits of governance education at all stages of a member's development an optional, robust, sector specific education programme with high uptake is an important area of focus for the future performance of the sector.

Governance structures and support / Ngā anga me ngā tautoko mana whakahaere

51. The Commission has also heard that poor behaviour can often stem from members' frustration with the systems their council has for working together to make decisions. As councils themselves decide their decision-making structures, members should have an informed basis on which to make this decision. LGNZ has draft guidance available

¹³ Includes mayors, councillors, local board and community board members. *Local Authority Election Statistics*

¹⁴ . Department of Internal Affairs. <https://www.dia.govt.nz/Services-Local-Elections-Local-AuthorityElection-Statistics-2019>

on decision-making structures.¹⁵ It would be useful if this was incorporated into the governance education for members discussed above.

52. The sector commented that there is often also a lack of support available to members in undertaking their governance role. This can become overwhelming and lead to difficult behaviour throughout the decision-making process. The Commission is aware that councils often provide group briefings for members to assist understanding of complex issues. It may be beneficial to explore options for a more individualised level of support in understanding the intricacies of issues before making decisions. As a possible model for the sector, it would be helpful to understand whether any councils have provided such support to members, how successful it was, and how it was resourced. If this was to be explored further, it would be wise to consider the associated risks related to expectations of openness and transparency, accurate record keeping, and LGOIMA requirements.

Issues specific to codes of conduct / Ngā take hāngai ki ngā tikanga whanonga

53. More specifically in relation to codes of conduct, the Commission found that at the time of the initial survey (July 2020), 55 councils had adopted their codes since the 2019 election. Twenty-four councils had received complaints since October 2019; of which 15 had just one complaint.
54. However, discussions with the sector reveal that in many cases, a code of conduct complaint is not raised for behaviour that may in fact constitute a breach. The reasons for this include that the code is perceived to be ineffective; it is a costly resource-intensive, disruptive and time-consuming process for little meaningful outcome. There is also a strong desire to avoid the media attention and reputational damage which is often out of proportion to the issue at hand. This overshadows public awareness of councils' positive role in the community.
55. As well as the wider governance context discussed earlier in this report, the sector has highlighted several key areas of codes of conduct to address.

Legislative requirements to address the code early in the triennium / Ngā herenga ā-ture hei urupare wawe i ngā tikanga whanonga o te wā toru tau

56. In general, the sector supports legislative requirements to readopt the code at the beginning of the triennium. The sector also supports including the code in the general explanation to members required under the LGA to take place at the inaugural meeting.¹⁶ Almost 86% of survey respondents said legislation should be explicit about telling members about the council's code of conduct either at the inaugural council

¹⁵ *Guide for designing decision-making structures*. LGNZ. <https://www.lgnz.co.nz/our-work/our-policypriorities/governance/>

¹⁶ LGA 2002, Schedule 7, clause 5(c)

meetings or during the member induction if the council provides one. Just over 80% said legislation should require councils to readopt their code of conduct at the start of each triennium. They felt this would serve to benchmark, remind, and raise awareness of the behaviour expected of members at the very beginning of the triennium.

57. For those who did not support such legislative requirements, many felt that covering codes of conduct early in a term was basic good governance and should happen regardless. Some commented that briefings on a pre-existing code and/or a vote to readopt it would not necessarily address the issue of members' understanding of their commitments under the code. The latter point is important to the overarching goal of supporting good governance behaviour. For a change in legislation to have the desired effect on governance practice, it must be accompanied by appropriate education at the beginning of the triennium in the conduct expected of members.
58. Some councils report using the code as a prompt for governance training at the beginning of a triennium. Workshops to agree the shared values, behaviours and principles can be a powerful way to instil member understanding and establish a positive culture from the outset. The Commission suggests all councils would benefit from undertaking such an exercise during induction and using the outcomes to populate the relevant section of their code before re-adopting it. Currently practice around member inductions varies widely across the sector, with some councils offering comprehensive induction and some offering none. Accordingly, skills in running effective inductions should form part of the governance education offered to staff responsible for organising them.
59. The Commission also canvassed whether the declaration made by incoming members should include a reference to their council's code of conduct. Discussion on this question highlighted the symbolic value of physically signing up to a code of conduct. There was also a suggestion that providing for members to formally disagree with the code's content via a "no" vote at adoption sets a basis for future non-compliance (currently only 75% of council is required to vote for re-adoption). It is thought that including the code in the declaration would offset this. As noted earlier however, acknowledging a code of conduct whether via a briefing or a declaration does not necessarily embed understanding. Moreover, members have a democratic right to disagree with a majority decision while also being required to abide by that decision, and the Commission considers it important to preserve this.
60. Of the mechanisms discussed above, the Commission supports the sector's desire for legislative requirements to include codes of conduct in the statutory briefing at inaugural council meetings, and in member inductions. The legislation should also require councils to re-adopt their code near the beginning of a triennium but only after a suitable process for agreeing shared values and principles has been completed.

The timing of re-adoption of the code could efficiently be aligned to the requirement to provide a governance statement within six months of a triennial general election.¹⁷

Inconsistent processes / Ngā tukanga hārakiraki

61. Much of the sector's disenchantment with codes relates to inconsistency in both processes and penalties. There have been concerted efforts in the sector, particularly in LGNZ's development of a fulsome code of conduct template, to address this. However, there is no statutory requirement for standardisation of the content of codes of conduct. The effect is that while some codes specify processes for making, triaging and investigating complaints as recommended by LGNZ, many provide for these only in general terms, or as something to be established on a case by case basis. This can mean an unwieldy and time-consuming up-front exercise before the complaint itself can be addressed. Such ad hoc processes are less likely to reflect good practice and can open the way for political influence.
62. The Commission acknowledges the rationale that individual councils should be able to decide how they will manage their own behaviour. This is aligned with the tenet that codes of conduct should be based on shared values and principles that have been agreed by each councillor. Certainly, as is provided for by the LGNZ code of conduct template, codes should be flexible enough to incorporate such elements that are specific to individual councils.
63. Establishing processes aligned to good practice though, is a significant undertaking for individual councils particularly when there are gaps in staff and members' governance knowledge as discussed earlier. It seems inefficient to repeat this exercise throughout the sector at the individual council level, with variable outcomes.
64. Instead, the Commission suggests removing the need for councils to decide on the processes for making, triaging and investigating code of conduct complaints. These processes should be standardised across the sector and incorporated into legislation, ideally as a set of regulations. Setting out standardised processes would remove the inconsistency and potential for political influence that currently frustrate much of the sector. The shared values and principles, and some other parts of the code should remain for each council to agree as discussed at paragraph 53.

Independent investigations / Ngā tūhuratanga motuhake

65. During engagement, the sector repeatedly expressed a desire for independent investigations into code of conduct complaints. Key reasons for this were the issues of neutrality and employee wellbeing that arise when members are required to investigate and penalise their peers (and sometimes political opponents), or when a chief executive is required to investigate a complaint against their employer.

¹⁷ LGA 2002, section 40

66. The Commission has considered two models for bringing an element of independence to codes of conduct processes, one based on independent investigators from outside the sector and one drawing on members external to a council but from within the same region. Each has different levels of cost and independence.
67. Some codes provide for independent investigations. There is also a guideline process for this in the LGNZ code template. Conversely many codes rely on internal investigations by staff and/or a code of conduct panel of members. Some of these councils expressed reluctance to allocate budget for independent investigators, citing the expense of previous experiences where lawyers have become involved. It is also possible that councils with smaller districts may struggle to find appropriately qualified, neutral parties to act in an independent role.
68. However, the Commission suggests that where council leaders cannot resolve conduct issues early and informally, an independent investigation process is helpful to ensure the principles of natural justice are upheld, to prevent undue pressure on the chief executive, and to avoid political bias.
69. There are a number of models for conduct investigations, particularly those set out for school Boards of Trustees in the Education and Training Act 2020,¹⁸ and in the Auckland Council code of conduct. They include, variously, the process for making a complaint, steps for triage, referral to mediation or investigation, and deciding appropriate penalties or recommending penalties if a council decision is required to implement a penalty, such as demotion. They also provide for a report back to the governing body, usually for information only, and guidance around releasing the outcome to the public. Aspects of both models provide useful options for a strengthened, standardised code of conduct investigation process involving independent parties and appropriate levels of transparency.
70. Aspects of the New South Wales Local Government model code of conduct¹⁹ and the Victoria local government councillor conduct framework²⁰ may also be worth considering. Both of the latter processes were prescribed by regulation in 2020 and, while the Australian government structure differs from New Zealand in key ways, the rationale for a more prescriptive approach to codes may be worth considering for the New Zealand context.
71. While this option provides a high level of independence, it is potentially the most expensive. It is relevant here that the resource consumed by conduct complaints is a concern for councils. One chief executive of a provincial council recently tracked over

¹⁸ See Part 3, Subpart 9

¹⁹ New South Wales Office of Local Government.

<https://www.olg.nsw.gov.au/councils/governance/modelcode-of-conduct/>

²⁰ Local Government Victoria. <https://www.localgovernment.vic.gov.au/council-governance/councillorconduct-framework-and-councillor-conduct-panels>

160 staff hours committed to the conduct of one member over one triennium. Also concerning is the cost to councils when lawyers are involved in conduct issues, often amounting to tens of thousands of dollars. With that in mind, a cost-effective funding approach for councils could include requiring councils to set aside a specific budget each triennium to cover any complaints dealt with by an independent person or panel, on an as-needed basis.

Regionalised hubs / Ngā peka ā-rohe

72. Importantly, the models noted above depend on an established pool of independent mediators, conduct commissioners or referees. Although this was a strong preference of most councils, it may not be feasible for many. For this reason, the Commission is interested in the option of a regionalised complaints mechanism that draws on a pool of appropriately trained members from councils on a regional basis. Again, the new Boards of Trustees model provides a useful starting point for how a regionalised hub might work.
73. The Commission suggests that regionalisation potentially offers a resource that may not otherwise be available to individual councils, while minimising costs. It also minimises the risk of political bias although to a lesser extent than the independent investigation option discussed above. If this option is implemented, transparency is paramount to address any negative public perception associated with the sector moderating itself. It would also provide much needed consistency for the sector in addressing serious conduct issues.

Public interest vs natural justice / Ngā hiahia o te iwi ki te tika māori

74. There is a widely held view in the sector about the need to uphold the principles of natural justice and privacy equivalently with the accountability of members. In particular this relates to information about whether complaints have been made and the outcome of those complaints.
75. Publicity around code of conduct issues is problematic for the sector from a number of angles. Media interest can make code of conduct complaints a publicity opportunity for members who have campaigned on an anti-council rhetoric. It can also facilitate weaponisation of the code against individual members by other individuals or groups, whereby complaints about minor breaches are leveraged to deliberately disadvantage a member for political benefit. Although most councils do their best to avoid public comment on active conduct investigations, the same is not always true of individual councillors. The Commission suggests that this is an area where codes should set out more explicit confidentiality requirements that fulfil the principles of natural justice for all parties to a complaint, as part of a standardised complaints process.
76. Given that the public does have an interest in the accountability of members however, it is important that the result of an investigation is made public except where there is good reason not to. Although some have argued that members are held accountable

every three years at election, the Commission suggests the public has a right to greater transparency from their elected representatives.

77. To this end, codes should specifically provide for the proactive release of investigation outcomes to the public in a timely manner and consistent fashion, in line with the requirements of LGOIMA. The Commission suggests this requires assistance and guidance from the Privacy Commissioner and the Ombudsman to inform guidelines that are robust and well-canvassed across sector stakeholders.

Penalties and democratic principles / Ngā hāmene me ngā mātāpono manapori

78. Some frustration emerged in discussions about penalties for breaches of the code. In the experience of many councils, penalties for proven breaches are inconsistent, difficult to enforce, and do not support behaviour change.
79. There is a desire to strike a balance between penalties that address poor governance behaviour and preserving democratic participation, particularly if penalties are legislated or made binding. In this regard, there is a sense that penalties need to balance the general principle of freedom of expression guaranteed under New Zealand law. For clarity, it would be useful for a standardised code to include a brief outline of how freedom of expression as guaranteed by the New Zealand Bill of Rights Act 1990 applies in Aotearoa,²¹ including the limits placed on this by other statutes such as the incitement provisions of the Human Rights Act 1993.
80. There is general consensus, and the Commission agrees, that any penalty should be relative to the specific breach in both nature and scale. At the minor end of the scale, the sector has suggested verbal or written warnings and/or a requirement for verbal or written apologies. Most thought that more serious breaches warrant temporary or permanent demotion, e.g. loss of position as Chair or Deputy Chair of council committee, or suspension from committees with an associated reduction in pay. This seems a reasonable and relative scale of penalties. The Commission suggests that it should be developed further in consultation with stakeholders and applied consistently across the sector in a standardised code to add a much-needed element of certainty to the outcomes of code of conduct processes. To ensure good practice, the scale of penalties should be periodically reviewed.
81. The question of financial penalties in the form of fines or cost recovery was also raised during engagement. There are several issues with this type of penalty. Members' pay varies hugely across the sector. Fines or orders to pay investigation costs may be a deterrent but could also be unduly harsh given the limits on some members' ability to pay. Financial penalties may also act as leverage in the undesirable situation of members targeting each other for political rather than conduct reasons. Financial penalties can also be difficult to enforce, creating additional work for a council and

²¹ Section 14, New Zealand Bill of Rights Act 1990

doing little to improve governance behaviour. The Commission does not consider financial penalties to be a workable option.

82. Bearing in mind the intent to promote good governance practice and the principles of natural justice, the Commission considers any penalties should also include a mechanism to improve future behaviour. This aligns with the sector's suggestions that members in breach be required to undertake personal or professional development related to the behaviour change required, e.g. governance skills, social media training, or an anger management course. A restorative justice process guided by a trained facilitator is also an appropriate option. Whatever the method, the desired outcome is that all parties emerge from the process with their mana intact.
83. It is perhaps a measure of the frustration around conduct that many in the sector suggested the most grievous or repeated breaches should be met with suspension or removal of a member from office.
84. While the LGA does provide for removal or suspension of a member, the criteria are very specific and not related to governance misconduct.²² Further, many feel this conflicts with the principle that members are elected democratically and therefore should only be removed by the same mechanism. Instead it is hoped that improving governance behaviour by addressing governance skills and conduct issues early will significantly improve behaviour and reduce the number and seriousness of breaches.
85. The Commission acknowledges one possible avenue is exploring the appropriateness of legislative change to include repeated misconduct as grounds for removal or suspension of a member, if their ongoing conduct is such that they are no longer able to democratically represent their electors. Such a step carries significant risk and must be approached with great caution. Members are answerable to their community and it is crucial that any process to remove a member preserves this line of accountability as far as possible.
86. The Commission suggests that this avenue be investigated further. Given the complexity and risk of such a mechanism, the investigation would need to consider specific criteria for what constitutes an inability to democratically represent electors, who would have the power to remove a member, and by what process. A core aim of the investigation must be to identify the inherent risks to democratic principles and governance and how to safeguard against them. To support robustness and transparency the investigation should be done in consultation with the sector and stakeholders.

Role of the Local Government Commission / Te Mahi a te Mana Kāwanatanga ā-Rohe

87. When asked about independent investigations, many of the sector's comments identified the Commission as potentially replacing the chief executive's role in a code

²² Schedule 7, Part 1 LGA

of conduct process. However, given that the Commission has a statutory role in promoting good governance practice across the sector, in general it should remain arms-length from individual conduct complaints and investigations.

88. That said, the Commission is an independent body with both a statutory role in promoting good governance in the sector, and an understanding of how codes apply in the daily life of councils. This means it is well placed to undertake a number of supporting functions for council codes of conduct. If a standardised code of conduct investigation process is legislated, whether by amendment or regulation, the Commission could appropriately identify and administer a list of suitable mediators and investigators to act as independent parties in code of conduct issues. The Commission's statutory status make it the appropriate body to administer such a list if independent processes are formalised. The Commission's role could include connecting individuals from the list with specific complaints to manage availability and ensure councils' needs are met in a timely way.
89. The Commission may also have a role in the provision of an independent quality assurance for codes. One of the most frequently requested roles for the Commission was advice regarding codes and breaches. In terms of the consistency of codes and providing a level of confidence for councils, a requirement for an independent assessment of codes that deviate from a standardised model would be useful. It is important to note that the Commission may hold this role but even if it assesses a code, any individual complaint and investigation process remains subject to investigations by the Ombudsman and the Auditor General.
90. While it may be inappropriate for the Commission to have a role in conduct investigations at the level of an individual complaint, its independence and mandate to promote good governance gives it a unique position in the sector. If after further exploration, the sector supports a stepped process leading to the possible removal of a member by the Minister as discussed above, it may be appropriate for the Commission to act as the independent body in that process.

Enforcement / Te uruhi

91. Penalties under codes of conduct are usually non-binding. If a member found in breach refuses to action a penalty, such as an apology, there is little a council can do. It is not uncommon for councillors to be elected on an anti-council rhetoric which can be bolstered by media coverage of code of conduct complaints. In that situation, complaints can become a "badge of honour" for some and poor behaviour is reinforced. It can be an expensive process (especially for smaller councils) to investigate and resolve a complaint when penalties rarely support the desired behaviour change. al damage is also an issue for some councils particularly when individual members repeatedly breach the code, and this becomes the focus of any media coverage relating to the council.

92. The difficulty of enforcing penalties prompted the survey question about whether legislation should include penalties for breaches of the code. The Commission also canvassed this in face to face discussions. 68% of survey respondents supported legislated penalties to help ensure greater adherence to the code, and to provide a deterrent. Of the 32% who did not support legislated penalties, many felt penalties should be determined at the local level, or that it would further open the code up to weaponisation. Others felt it may disincentivise potential candidates or make members afraid to speak up.
93. The Commission suggests the sector's reasons for wanting penalties included in legislation illustrate a strong desire to strengthen the code. Certainly the Commission agrees that standardised penalties are necessary but suggests these should be incorporated into a standardised code of conduct template rather than legislation. This would allow for periodic review of standardised penalties, and flexibility in recommending a penalty appropriate to the misconduct and the behaviour change required. It should therefore be for sector stakeholders to work collaboratively to develop and periodically review a standardised scale of penalties available to councils.
94. In terms of legislative change, it would be of greater benefit to set out a standardised complaints and investigation process in legislation as discussed earlier in this report. When the requirement for codes was first set in legislation, it was considered that specifying penalties could be problematic in terms of members' accountability to the electorate and members deciding penalties for other members²³. However the LGA includes a statutory provision for members to comply with the code²⁴. It would be consistent with this requirement for the legislation to also require members to comply with penalties under the code. This may help address the difficulties councils currently have with compliance.

Materiality / Ngā tikanga tātari

95. During engagement, the Commission repeatedly heard that a lack of distinction between minor and serious breaches creates the potential for codes to be weaponised. The potential for complaints about minor breaches to be leveraged for political benefit is exacerbated by the fact that *materiality* is a key aspect of determining the scale of a breach, yet it is not clearly defined anywhere. This opens the way for abuse and weaponisation of codes against individual members.
96. The risk of weaponization is of particular concern because codes of conduct do not usually include the ability to appeal a decision on a complaint. The only avenues for review are a complaint to the Ombudsman or a judicial review, which are usually confined to matters of procedure. The risks of weaponization becomes even more pronounced if penalties are binding. However, another key concern for the sector is

²³ *Good practice guide: Local Authority codes of conduct*. Office of the Auditor-General. June 2006.

<https://oag.parliament.nz/2006/conduct/docs/conduct.pdf>

²⁴ Clause 15, Schedule 7, Local Government Act 2002

the reputational damage and drain on resources that lengthy code of conduct processes entail. Adding an appeal process to codes of conduct risks exacerbating this by creating ongoing opportunities for re-litigation of the same issue.

97. Instead of an appeal mechanism, the Commission suggests a more specific definition of materiality together with independent investigations and standardised penalties should significantly reduce the potential for weaponisation of the code. Such a definition should be developed in consultation with sector stakeholders, should address materiality in the context of local government codes of conduct and include not just examples but key features of material breaches.
98. The ability to complain to the Ombudsman or seek a judicial review of a code of conduct decision on procedural grounds remains available to all parties to a complaint.

Content gaps / Ngā āputa ihirangi

99. Our initial survey of council chief executives sought information on use of the LGNZ code of conduct template. Sixty six of 78 local authorities use part or all of the LGNZ template. Most (50) have made some edits and described these in the survey. These findings together with more in depth face to face discussions, have highlighted areas of the code that need updating or expanding.

Health, safety and wellbeing / Hauora, haumaru me te oranga

100. The sector is concerned about increasingly poor behaviour towards council staff and increasing pressure on them by members. Indeed, the member-staff relationship is a high-risk area for councils given their obligations to be a good employer. Specific statutory requirements for local authorities to be good employers are set out in the LGA. Local authorities are also subject to the requirements of the Employment Relations Act 2000 and the Health and Safety at Work Act 2015, both in the employment of a chief executive and in the chief executive's employment of staff.
101. The power imbalance and the requirement for staff to remain politically neutral in their roles means they are often unable to defend themselves, or to respond to public commentary members make about them. The forums also repeatedly highlighted the difficult position of a chief executive who must ensure the wellbeing of their staff as a good employer while maintaining an effective relationship with the governors.
102. Again, the Commission notes the sector has made considerable efforts to guide the behaviour of members towards staff. LGNZ's template code provides a good starting point for councils and highlights the legal risks to council of poor behaviour by members towards staff. In particular the template code provides for the chief executive to establish protocols for member-staff interactions. The Commission considers there is a need to bolster good practice guidelines in this area including specific features of appropriate and inappropriate behaviour, for inclusion in a

standardised code. This is also an important element of governance education for both staff and members.

Social media use / Te whakamahi pae pāhopori

103. A significant area of concern is the lack of adequate guidance for members' behaviour on social media. Freedom of expression is an important pillar of democratic debate. It is also important to highlight that members are subject to the Harmful Digital Communications Act 2015, and to statutory restrictions on what information they can share under legislation, such as LGOIMA and the Privacy Act 2020. Further, members are public figures and as such, need to recognise that the public will not necessarily distinguish between their governance and personal communications.
104. While the LGNZ template provides sound guidance on social media use, the Commission suggests there is a need to establish more detailed good practice guidelines for members specific to social media. These should make it clear that members' behaviour online is governed by the code to the same extent as it is in offline interactions. Guidelines should also provide specific examples of ways members can make the distinction between their governance and personal capacities clear for their audience. Again, this guidance should form part of governance education for members and staff and ideally, be incorporated in a standardised code or in each council's media policy appended to the code.

Greater clarity around pecuniary and non-pecuniary interests / He māramatanga kehokeho ake o ngā take moni, moni-kore rānei

105. There are two main issues with conduct around interests. The first issue is that of member understanding. Most codes cover pecuniary interests and the associated legal requirements in some detail. However, there is typically much less clarity around real or perceived non-pecuniary interests. This may be because more general interests are a nuanced and often subjective area. And while it is for the member themselves to identify and declare their own interests, it can be difficult for less experienced members to understand where a non-pecuniary interest comes into play. The Commission suggests that codes need greater explanatory detail and examples of non-pecuniary interests.
106. Secondly, even when members are perceived or known to have a financial interest, councils cannot compel them to withdraw from participating. This is because under LAMIA only the member themselves can identify their interests. While it is an offence for members to participate in decisions where they have a financial interest, the same does not apply for non-pecuniary interests. As the OAG has pointed out, this can mean members put the council's decision-making at risk of judicial review by assuming they can safely participate even when they have a non-pecuniary (or less often, a

pecuniary) interest.²⁵ The concept of interests is another important element of governance education.

107. While LAMIA rules out the possibility of compelling members to withdraw due to an interest, the Commission suggests more can be done to support members regarding their interests and to improve transparency. A possible mechanism is to allow for a specific process where a conduct complaint relates to an alleged conflict of interest. The process could require members to seek advice from a politically neutral governance specialist identified by staff, which is then shared with the member and the council. While this does not compel a member to withdraw, it offers a level of confidence and transparency around their decision to participate or withdraw. Auckland Council's code provides for this and may be a useful starting point for incorporating into a standardised code.

Community Boards / Ngā Poari ā-Hapori

108. Although the LGA does not require community boards to adopt a code, 34 councils with community boards have had, or intend to have, those community boards adopt their code of conduct. Community boards operate in the space between councils and the community, with some having delegated powers alongside their essential purpose of representing quite specific communities within a district.
109. Although their activities can be less formal than council or committees, they are nonetheless made up of members. The Commission's experience in this area suggests that community board members and their actions would benefit from an understanding of good governance practice and the transparency that a code supports. Accordingly, there is merit in setting a legislative requirement for community boards to adopt their governing body's code of conduct. To support good governance practice it follows that community board members should also have access to the same governance education for new members discussed earlier in this report.

Conclusion and recommendations / Kupu whakakapi me ngā tūtohunga

110. The sector wants to strengthen the presence and effect of codes, but for legislative requirements to support good governance behaviour they must be accompanied by other measures that support good practice.

²⁵ *Local government: Results of the 2016/17 audits*. Office of the Auditor General.
<https://oag.parliament.nz/2018/local-govt/part6.htm>

111. Earlier, this report acknowledged the work of the FFLG review panel. The Commission appreciates that the Minister may wish to link the following recommendations with the work programme for the FFLG review.
112. The individual changes discussed in this report are unlikely to work in isolation. The tools for supporting good governance behaviour act as a suite and must be considered holistically.
113. Accordingly, and noting that this may align with the Future for Local Government panel's work, the Commission recommends that the Minister of Local Government:
 - i. tasks the Local Government Commission to establish and lead a working group to identify a sector specific education framework, giving consideration to:
 - a. membership that includes diverse representation from the sector and stakeholders, either as members or independent observers, including the OAG, the Ombudsman, Taituarā, LGNZ and its Te Maruata committee
 - b. undertaking a needs analysis of the education and professional development of diverse election candidates, first term members, experienced members, mayors and chairs, and the staff who support them
 - c. developing an education programme that covers pre-candidacy, candidacy, induction and ongoing professional development for members, mayors and chairs
 - d. developing an education programme for staff who support members through the various stages of their governance development
 - e. accessible and cost-effective education delivery methods
 - f. options for resourcing the development and delivery of governance education
 - ii. tasks the Local Government Commission to form a working group of sector stakeholders to produce a standardised code to be referenced in legislation which includes sections as follows:
 - a. explicit confidentiality requirements for all parties to a complaint as part of a standardised complaints process
 - b. a process for the proactive release of investigation outcomes to the public informed by focussed discussions with the Privacy Commissioner and the Ombudsman
 - c. an explanation of how freedom of expression as guaranteed by the New Zealand Bill of Rights Act 1990 applies in Aotearoa, including the limits placed on this by other statutes such as the incitement provisions of the Human Rights Act 1993

- d. a reasonable and relative scale of penalties to be applied consistently across the sector, including mechanisms to improve future behaviour such as personal or professional development, the option of a restorative justice process including a periodic review of such penalties and mechanisms
 - e. a detailed definition of materiality in the context of local government codes of conduct, including both examples and key features of material breaches
 - f. further develop good practice guidelines for members' interactions with staff, including specific features of appropriate and inappropriate behaviour
 - g. more detailed good practice guidelines for members specific to social media
 - h. a specific process where a conduct complaint relates to an alleged conflict of interest requiring members to seek advice from a politically neutral governance specialist identified by staff, which is then shared with the member and the council
- iii. includes in legislation a requirement for codes of conduct to form part of the statutory briefing at inaugural council meetings, and member inductions where provided
 - iv. includes in legislation a requirement for councils to re-adopt the code near the beginning of a triennium but only after a suitable exercise for agreeing shared values and principles has been completed, and considers aligning the timing of this with the requirement set out in the Local Government Act 2002 for a governance statement, and tasks the Local Government Commission with providing an assurance assessment of individual councils' codes
 - v. includes in legislation, either by amendment or regulation, standardised processes for making, triaging and investigating code of conduct complaints, including
 - a. explicit confidentiality requirement for all parties to a complaint
 - b. appropriate levels of transparency on conclusion of an investigation, informed by stakeholder engagement
 - c. whether the investigation process included in legislation should involve independent parties or a regionalised pool of members
 - vi. if the investigation process included in legislation involves independent parties:
 - a. requires councils to set aside a specific budget each triennium to cover any complaints dealt with by an independent person or panel on an as-needed basis

- b. mandates the Local Government Commission to identify and administer a list of suitable mediators and investigators to act as independent parties in code of conduct issues
- vii. tasks the Local Government Commission to explore with the sector the appropriateness of legislative change to include repeated misconduct as grounds for removal or suspension of a member where the member is no longer able to democratically represent their electors, noting that such an investigation would consider:
 - a. specific criteria for what constitutes the inability of a member to democratically represent their electors
 - b. the risks to democratic principles and good governance inherent in the removal of a member and how to mitigate them
 - c. who would have the power to remove a member
 - d. possible processes for the removal of a member
- viii. includes in legislation a requirement that members comply with penalties for breaches of their council's code of conduct
- ix. includes in legislation a requirement for community boards to adopt their parent body's code of conduct