

Terms of Reference for the Local Government Commission to Produce Standardised Code of Conduct for Local Authorities

Pursuant to section 31(2) of the Local Government Act 2002, the Minister of Local Government refers the following matters to the Local Government Commission to consider, report on, and make recommendations.

Proposal

The Local Government Commission (“Commission”) is required to lead the development of a standardised code of conduct. The Commission should report back to the Minister of Local Government by 20 December 2025.

Background

Council codes of conduct are poorly understood by elected members and council staff.

The legislative provisions set out in the Local Government Act 2002 are vague and are left up to the sector to interpret. Currently the sector representative group for elected members, Local Government New Zealand, provides a template code of conduct that is in use by most councils today.

This work follows on from the Commission’s 2021 report *Local Government Codes of Conduct – Report to the Minister of Local Government*.¹

The Commission’s work took a wide sector consultation approach and gathered feedback from throughout the local government system, across a range of local government elected members, sector groups, and central government agencies with responsibilities relating to local government.

When the Commission reported back in September 2021, the former Minister of Local Government accepted the recommendation to carry out further work on a sector specific education framework, but put the remainder of the recommendations on hold while the Future for Local Government Review was underway. The Future for Local Government work has now concluded, with no recommendations taken forward by the Government.² This provides an opportunity to return to the Commission’s report and its recommendations.

It is now an opportune time to build on this work to develop a standardised code of conduct that councils will be required to adhere to. The standardised code of conduct will be referenced in legislation.

Context

The Minister of Local Government’s System Improvements work programme aims to refocus councils on providing quality services to residents as efficiently as possible. This includes ensuring elected members have the tools they need to succeed.

The Minister’s priorities in developing a standardised code of conduct include highlighting freedom of speech for elected members, democratic decision making, and conflict management principles, while not restricting council decision-making.

The purpose of developing the model code of conduct is to provide consistency and certainty to the sector about their roles, responsibilities, and professional standards.

Requirements to fulfil these terms of reference:

- Deliver a standardised code of conduct that meets the following criteria to the Minister of Local Government by 20 December 2025.

Following on from the Commission’s 2021 report, the development of a standardised code to be referenced in legislation which includes sections as follows:

1. explicit confidentiality requirements for all parties to a complaint as part of a standardised complaints process
2. a process for the proactive release of investigation outcomes to the public informed by focused discussions with the Privacy Commissioner and the Ombudsman
3. 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
4. a detailed definition of materiality in the context of local government codes of conduct, including both examples and key features of material breaches
5. 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.

The model code of conduct should also include:

- A clear outline of elected members' rights with regard to:
 - their rights and obligations as elected members under key local government legislation including but not limited to the Local Government Official Information and Meetings Act 1987, Local Authorities (Members' Interests) Act 1968, and Local Government Act 2002
 - access to information as part of their role as elected members and associated confidentiality obligations.
- An explanation of who is covered by the code of conduct and in what circumstances, e.g. community board members, members that have been appointed to committees, and excludes council staff.

Consideration should also be given to customising the model code based on council size.

To support the code of conduct please also provide:

- Recommendations for governance education tools to support implementation of the standardised code, which may include training for elected members, provision of guidance materials, etc.
- Recommendations for a standardised process for making, triaging and investigating code of conduct complaints.
- Recommendations for any other guidance, material or tools to support the implementation of a standardised code of conduct.

The following topics are excluded:

- Control over staff behaviour.
- Disqualification from office as a potential penalty.
- Creation of offences.

Consultation

In carrying out this work the Commission should have regard to community expectations of their councils and consult with a wide range of groups, including Local Government New Zealand; Taituarā, the sector body representing local government managers; ratepayer groups; the Free Speech Union and the Taxpayer's Union, as well as consultation with councils and sector stakeholders.

The Commission should seek the views of Department of Internal Affairs officials during the development of the standardised code.

Endnotes

1. <http://www.lgc.govt.nz/assets/Good-practice-files/Codes-of-Conduct/LGC-report-to-MoLG-Local-government-codes-of-conduct-Sept-2021.pdf>

2. <http://www.beehive.govt.nz/release/minister-concludes-local-government-review>