



Local Government Commission

Mana Kāwanatanga ā Rohe

Standard Code of Conduct for Local Authorities

**Tikanga Whanonga Aro Whānui mā
ngā Mana 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 Local Government Commission was required by the Minister of Local Government to develop a standard code of conduct for members of local authorities.
2. In doing so the Commission was required to consider a range of issues, and the standard code was required to be underpinned by a standardised process for making, triaging, and investigating code of conduct complaints.
3. A legislative requirement for a standard code is proposed to be enacted by the Local Government (System Improvements) Amendment Bill which also provides for a standardised set of standing orders for all local authorities, new governance principles and clarification of members' rights to access council information.
4. During consultation on a standard code, the Commission received a variety of views on what a code of conduct should contain and the degree to which codes should regulate members' behaviour and actions.
5. The Commission's standard code attempts to balance two priorities: promoting aspirational behaviours and ensuring a fair, transparent and defined complaints process. It emphasises informal resolution and flexible preliminary assessments, while maintaining a robust investigation process for serious matters.
6. A standard code alone cannot sustain a strong governance culture. The Commission therefore reiterates its previous recommendation to establish a governance education framework, implementing training programmes, and establishing a system for sharing good practice on conduct issues.
7. This report also recommends the establishment of a nation-wide pool of investigators to better utilise skills and knowledge, develop experience and provide consistency in the way complaints are dealt with.

Background / He whakamārama

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. Section 31(2) of the Local Government Act 2002 also provides that the Commission must consider, report on, and make recommendations to the Minister of Local Government on matters relating to a local authority or local government that are referred to the Commission by the Minister.

10. On 13 February 2025 the Minister requested the Commission under section 31(2) to develop a standardised code of conduct for local authorities. Specifically, the terms of reference¹ provided by the Minister to the Commission requested that the standardised code include 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.

11. To support the code of conduct the Minister also requested that the Commission 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.

¹ The full terms of reference can be found here [Terms of Reference for the Local Government Commission to Produce Standardised Code of Conduct for Local Authorities - 2025-go725- New Zealand Gazette](#)

- 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.
12. The terms of reference excluded the following issues from the Commission's consideration:
- Control over staff behaviour.
 - Disqualification from office as a potential penalty.
 - Creation of offences.

Consultation requirements

13. In carrying out this work the Commission was required to 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 was also required to seek the views of Department of Internal Affairs officials during the development of the standardised code.
14. This report outlines the Commission's process for developing a standardised code of conduct and the issues considered by it in doing so.

Current context / Te horopaki o nāianeī

15. Local authorities are required to adopt a code of conduct by clause 15 of Schedule 7 of the Local Government Act. This has been a requirement since 2002. Although LGNZ has developed a Code of Conduct template there is variation in how it is used, while some local authorities have developed their own, bespoke codes.
16. The Minister's reasoning for requesting the Commission to develop a standardised code of conduct were described in the terms of reference. These were that:
- *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 left up to the sector to interpret*
 - *The Minister's priorities in developing a standardised code of conduct include highlighting freedom of speech for elected members, democratic decision-making, and conflict managing 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.*
17. To a degree this follows on from the Commission's 2021 report *Local Government Codes of Conduct*. Amongst other things that report observed that:
- 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.
18. In July 2025 the Minister introduced to Parliament the Local Government (System Improvements) Amendment Bill. Amongst other things the Bill included a set of amendments intended to increase local authority transparency and accountability. These were:
- empowering the Secretary for Local Government to issue a standardised code of conduct and set of standing orders, both of which would be binding on all councils; and
 - requiring councils to include the standardised code of conduct in statutory briefings of newly elected members (and extending the code's application to community board members); and
 - requiring chief executives of local authorities to facilitate information sharing between councils and elected members (and creating a regulation-making power for prescribing some of the processes associated with information requests); and
 - emphasising, in the local governance principles, freedom of expression and the responsibility of elected members to work collaboratively to set the direction of their respective councils.
19. The Commission made a submission on the Bill, intended to help ensure that the requirement for a standardised code of conduct worked optimally should it be enacted. The submission proposed that:
- The term "standard code of conduct" be used in place of "code of conduct"
 - Local authority chief executives be required to brief members, in a public meeting, on any amended or replacement code (in addition to briefing members at the inaugural meeting of a new triennium)
 - The code apply to people appointed to committees and subcommittees who are not elected members, as well as elected members.
20. The terms of reference provided by the Minister of Local Government required the Commission to consider who a standard code of conduct should apply to. Therefore, in addition to making a submission on the Bill on this matter the Commission has considered the matter when developing the standardised code of conduct.

21. The Bill was reported back to Parliament by the Governance and Administration Committee on 24 November 2025. The Committee agreed with each of the Commission's recommendations for the Bill listed above.

What the Commission did / Ngā mahi nā te Kōmihana i mahi

22. In developing a standard code in line with the terms of reference, the Commission:
- met with the organisations specified in the terms of reference to receive their views on codes of conduct and associated issues. These organisations were:
 - Local Government New Zealand
 - Taituarā, the sector body representing local government managers
 - the Free Speech Union
 - the Taxpayers' Union
 - sector stakeholders
 - identified and met with the following sector stakeholders:
 - Office of the Privacy Commissioner (to seek views on specific aspects)
 - Office of the Ombudsman (to seek views on specific aspects)
 - Office of the Auditor General (to seek views on specific aspects)
 - Institute of Directors
 - Public Service Association
 - Te Maruata, LGNZ's Māori advisory group
 - conducted a survey of council chief executives and elected members
 - met regularly with the Department of Internal Affairs to seek its views on the code and share information
 - based on the above, developed a draft standardised code of conduct which was circulated for comment
 - received feedback on the draft code from local authorities and members of the public.
23. The Commission also attempted to engage with ratepayer groups nationwide to meet the consultation requirements set out in the terms of reference. Only one ratepayer organisation based New Plymouth responded. At a later stage in the process feedback on the draft code was received from some organisations representing ratepayers, including Federated Farmers.

The standard code / Te tikanga aro whānui

24. The standard code developed by the Commission accompanies this report. It has been developed as result of information gained through the engagement process outlined above, and an examination of the current practices of a number of local authorities and other organisations.
25. Drawing on this information, the Commission identified key issues to address in developing a standard code. It assessed feedback from all parties listed in the previous section to determine a code that best balanced their concerns and inputs. These issues and the Commission's considerations are discussed below.

Purpose and style of code / Te take me te āhua o te tikanga

26. Feedback from the local government sector generally supported a standardised code. One response suggested that a standardised code of conduct would "enhance consistency, transparency, and accountability across local authorities, and provide clearer expectations for elected members. A uniform approach will reduce confusion and help councils manage conduct issues more effectively".
27. Much of the Commission's engagement and feedback in this review strongly supported clearer processes and the emphasis of the draft code reflects this. The Minister's terms of reference specifically required the Commission to recommend a standardised process for making, triaging and investigating complaints.
28. There was also, however, considerable comment about the nature, and structure of the code. For example, one submission on the draft code stated:

[A code's] purpose is to establish the standards that enable elected members to work together constructively, maintain respectful relationships, and provide a foundation for effective decision-making on behalf of their communities.

The Draft code does not yet strike the right balance. It is framed largely around the management of complaints, while the greater emphasis should be on defining what good governance behaviour looks like. A code should be a framework members can aspire to, not only a mechanism for dealing with disputes.

29. The Commission accepts this sentiment and has therefore structured the final version of the standardised code in a way that promotes positive behaviour. The code therefore begins with:
 - A positive purpose statement (clause 4)
 - A set of sections setting out:

- general expectations of members and their obligations (clauses 8-9)
 - the rights of members, including their right of access to information (clauses 10-11)
 - how local authorities' obligations under legislation to the Treaty of Waitangi should be approached (clause 12-13)
 - Separately a section on the behaviours expected of members. (clauses 14-19)
30. That part of the code dealing with complaints is contained in a later part of the code (clauses 22-74).
 31. One element of this approach is an expectation that Mayors and Chairpersons take a lead in developing and strengthening a constructive culture amongst members, and an expectation that members generally contribute to good culture. These expectations are not new; they reflect current expectations of members. However, the Commission considers it important to state these expectations in the code and have done so at clause 8.
 32. The first draft code circulated by the Commission included an expectation that members operate and make decisions in a manner that recognises and respects the significance of the Treaty of Waitangi taking into account the listed principles. This attracted a significant amount of feedback from outside the local government sector arguing that it placed an obligation on members that does not exist in law.
 33. Feedback from the local government sector supported inclusion in the code of a reference to the Treaty of Waitangi. However, it was also suggested that it should be focused on the specific obligations relating to the Treaty placed by legislation on local authorities, this reflecting the current legislative situation. We have adopted the approach suggested by the local government sector as it relates to statutory obligations and because those obligations often require members to approach issues which are outside their normal framework and mindset. The expectation is a signal for things members should think about when approaching their work.
 34. We consider that the revised structure and purpose statement will help address concerns such as those expressed in paragraph 28 above.

Expected behaviours of members / Ngā whanonga kawatau a ngā mema

35. The behaviours expected of members was a topic that caused considerable debate in the feedback and submissions we received. A variety of points of view were expressed some of which, at first glance at least, sought different objectives. These included:
 - Behaviours should be more positively expressed and principles-focused

- Behaviours should be more specifically described to help members understand what behaviours may trigger a complaint
 - Any ambiguity in behaviours should be addressed through supporting guidelines
 - Concerns that the wording of expected behaviours may enable the complaints process to be weaponised
 - Behaviours should be described at a level that captures genuinely poor behaviour without enabling the complaints process to be weaponised
36. The set of behaviours developed for Part 3 of the code are grouped under two over-arching behaviours – trust and respect. The detail of the behaviours included have been written in a positive aspirational style.
37. It is hoped that these behaviours are written specifically enough to give members guidance about what is expected. The Commission has not found it practicable to precisely define each behaviour to the degree of listing exactly what is acceptable and what is not. Elaboration on what behaviours mean should be contained in guidance supporting the code. Beyond that, the Commission expects that participants will apply common sense in their behaviour and in how they use the code, and, failing that, the tests in the process for determining how far complaints should proceed will winnow out complaints with no substance.
38. An expectation has been included in the code that members consider applying the following concepts from Te Ao Māori – manaakitanga, whanaungatanga and kotahitanga. This recognises that these concepts are increasingly well known and used in New Zealand and that many local authorities apply elements of tikanga in their practices.

A standardised process for making, triaging and investigating complaints / Tētahi tukanga aro whānui mō te tuku, te whakaraupapa me te tūhura i ngā amuamu

39. The process attracted considerable interest from each of the organisations we engaged with.
40. The Commission’s 2021 report on codes of conduct stated that “much of the sector’s disenchantment with codes relates to inconsistency in both processes and penalties”. It went on to say that “while some codes specify processes for making, triaging and investigating complaints ... many provide for those 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 complaint itself can be addressed. Such ad hoc processes are less likely to reflect good practice and can open the way for political interference.”

41. In the current review there was support for opportunities for early and informal resolution of complaints, and where such resolution is not possible, a standard, clearer process. A common view was that while the use of independent investigators is often necessary it is an expensive option and a sometimes legalistic way of dealing with complaints. The ability to deal with complaints before formal investigations are required should therefore be maximised.
42. A number of organisations, and some local authority chief executives, expressed concern about the involvement of chief executives and other staff in determining complaints (and therefore supported the use of independent investigators). The principal concern was about chief executives having to determine complaints about their employers and the damage it might have to relationships. Another concern expressed was that chief executives may side with the Mayor and Chairperson, and a majority group of members. We have not determined the veracity of either concern but can see how such perceptions might develop.
43. Concerns were also expressed about elected members investigating complaints about their peers. There were concerns about risks to relationships between members and to effective decision-making when members are required to investigate and potentially uphold a complaint against another member.
44. The process we have developed takes the above views into account along with the requirement to develop a standardised process for making triaging and investigating complaints. In summary the process is as follows:
 - Preliminary assessment of complaints by an assessor to determine whether they should proceed further or whether they should be dismissed² (clauses 34-43)
 - Where possible, opportunity for informal resolution to be provided, with the options being:
 - An informal facilitated discussion between complainant and respondent (clause 44)
 - Referral to Mayor or Chairperson for identification of a constructive resolution (clauses 45-48)
 - Referral to formal mediation (clauses 49-51)
 - Formal investigation where a complaint cannot be resolved through an informal process (clauses 53-61)
 - The investigator to determine whether a complaint should be upheld, and if upheld to recommend a sanction (clauses 62-66)
 - The local authority to determine the sanction, but if varying the sanction recommended by the investigator to provide a detailed reason for doing so (clauses 67-70)

² The code proposes significant flexibility in who can be appointed an assessor.

- After a complaint has been dealt with, expectations that members should reflect on how to rebuild relationships, and chief executives consider whether there are any actions that could be taken to make the cause of the complaint less likely to occur in the future (clause 73).
45. The code has been drafted to include checks and expectations to signal that complaints should be dealt with appropriately. For example, the code includes requirements that:
- Complaints provide evidence of attempts to resolve breaches before a complaint is made (clause 25)
 - The assessment and investigation processes are proportionate to the apparent seriousness, nature and complexity of alleged breaches (clause 28)
 - Best efforts are made to resolve complaints at the lowest level of resolution possible (clause 28).
46. This section of the standard code is quite detailed, and probably more detailed than most existing codes. The Commission's thinking here is as follows.
47. Firstly, it is reasonable to expect that, from a natural justice point of view, a process resulting in potential sanctions and penalties should follow a clear and detailed pathway, not one where process is developed or elaborated on after a complaint has been made. While the Commission supports some flexibility in the way complaints can be resolved that flexibility should exist in a framework.
48. Secondly, the Commission has observed that, under existing arrangements, the way in which some complaints have been dealt with has required vagueness and gaps in the process to be dealt with as the process is underway. While it may be difficult to write a process that deals with every eventuality the process should provide for the issues likely to be encountered. This contributes to certainty in the process and may help ensure that the consideration of complaints does not become drawn out.

Customising the code based on council size / Te whakahāngai i te tikanga e ai ki te rahi o te kaunihera

49. The terms of reference require the Commission to consider whether the code should be customised based on council size.
50. The Commission considered this matter but concluded that a single code should apply to all local authorities. In particular it considered that there was no reason to vary the expectations and behaviours of members. Essentially, good behaviour will be the same regardless of the size of the local authority it occurs in. Likewise, the Commission considered that if a complaint requires an investigation to be carried out the same process should apply throughout New Zealand.

51. The Commission recognises that councils across the country have varying levels of resource to manage conduct issues, and that the main cost driver in addressing complaints is the investigation process. The code includes flexible elements so that the resources required to resolve a complaint can be scaled to suit the size and capacity of each council. For example, the range of people who may be appointed as assessors and the set of informal resolution processes.

Confidentiality requirements and proactive release / Ngā here matatapu me te tukunga hohe

52. Stakeholders' views on these two matters largely favoured a regime where the process for dealing with complaints is confidential (to assist the constructive resolution of complaints) and decisions of full investigations carried out are released (in the interests of public accountability).
53. Subsequent discussions with officials from the Office of the Ombudsman and the Office of the Privacy Commissioner covered the competing requirements of the Local Government Official Information and Meetings Act 1987 (LGOIMA) and the Privacy Act 2020, and how they relate to a complaints process. This could be summed up by saying that many aspects of a complaint and a decision on it would be protected by the Privacy Act but that could be overridden by the requirement in LGOIMA to take into account public interest.
54. Several issues must be balanced in considering confidentiality of the process and public release of decisions, including:
 - A need to meet the needs of natural justice (e.g. in enabling a member to properly defend themselves against a complaint) versus the need to ensure the safety of complainants
 - A tension between the need to satisfy public interest (as recognised in LGOIMA) and the accountability of elected members, versus the right to privacy under the Privacy Act
55. The standard code attempts to deal with all these issues within the broad framework set out above. Inevitably, much is left to the discretion of investigators in specific cases.
56. In addition, the code contains requirements at various points that the information privacy principles of the Privacy Act be applied to information obtained during the complaints process.

Freedom of expression/ Te mana whakapuaki

57. The terms of reference required the Commission to provide 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 the Bill of Rights and other statutes such as the incitement provisions of the Human

Rights Act 1993. An explanation is included in Appendix 2 of the standard code. This was developed with input from the Human Rights Commission and the Ministry of Justice.

Materiality / Te hiranga

58. The terms of reference require the Commission to include in the standard code a detailed definition of materiality as it relates to complaints and breaches, including both examples and key features of material breaches.

59. Many existing codes of conduct do not define materiality. Those that do mostly contain a comparatively brief definition similar to the introductory part of the materiality definition contained in the standard code. That is:

An alleged breach under this Code is material if, in the opinion of an investigator, it would if proven, bring a member or the local authority into disrepute or, if not addressed, reflect adversely on another member of the local authority.

60. The standard code has been drafted to include a detailed list of situations that would make a potential breach material (clauses 57-58).

61. Submissions from local authorities about the materiality provisions in the Commission's draft code were generally supportive but also sought clarification where the materiality test in the draft code provided that a certain type of behaviour would always be considered material. For example:

- What does "publicly criticising staff or calling into question their professionalism or integrity" cover and is disagreeing with staff advice captured by this?
- In relation to the disclosure of confidential information, is there a hard line on such a release, or are there levels of degree depending on the type of information released?
- What does undermining the role of other members cover? Does it relate to integrity or reputation?
- The threshold of reflecting adversely on another member is too low. Political debate involves disagreement. The threshold should be unreasonable harm.

62. Submissions from non-local government organisations on the draft code included concerns that the materiality definition:

- automatically made certain types of behaviour a breach without any assessment taking place
- restricted freedom of expression, especially in relation to comment about local authority staff
- risked making minor disagreements breaches

63. The Commission has addressed these concerns by:

- Making the types of conduct listed in the definition of materiality subject to an assessment process rather than automatically being deemed material
- Making the overall test for materiality succinct and focused on disrepute and unreasonable harm, with the listed actions and behaviours to be taken into account when assessing materiality or identifying aggravating factors
- clarifying that disagreeing is not necessarily a breach, with the test being the way in which disagreement is conveyed
- reinforcing that robust political debate and comment between members is expected, with the test being the way in which that debate is conducted.

64. The code includes these tests at clauses 54-59.

Conflicts of interest / Ngā pānga taupatupatu

65. The Commission's 2021 report discussed the difficulties posed by potential and actual conflicts of interest for members (and by implication local authorities). The report suggested more could be done to support members regarding their interests and to improve transparency. A possible mechanism identified was to provide a specific process where a conduct complaint relates to an alleged conflict of interest. The 2021 report suggested 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 would not compel a member to withdraw, it might offer a level of confidence and transparency around their decision to participate or withdraw. The Auckland Council's code was identified as providing for this and considered a useful starting point for incorporating into a standardised code.
66. The standard code attempts to deal with conflicts before they get to the stage of being the subject of a complaint. It sets out a series of expectations for members about what they should be aware of when managing and identifying conflicts of interest. It then goes on to provide that if a member is uncertain about whether they have a conflict of interest they must seek advice from the chief executive or another appropriate member of staff, or where circumstances require an independent and neutral advisor identified by staff (clauses 20-21). This recognises that many conflicts of interest issues can be resolved quite simply and uncontroversially through internal advice but recognises that in some cases it may be necessary to resolve matters with the assistance of an independent external advisor.
67. Separately the code provides, as a behaviour, that members must declare conflicts of interest, and that not doing so may create a breach of the code (clause 17).
68. Guidance published by the Office of the Auditor General on conflicts of interest provides useful guidance for local authority members and staff. In

addition to that guidance *the Commission recommends that additional guidance on conflicts of interest be developed by the issuing authority, specific to conflicts of interest in the context of codes of conduct.*

Members' access to information held by the local authority / Te tomo o ngā mema ki te pārongo e puritia ana e te mana ā-rohe

69. Since the Minister provided the Commission its terms of reference, the Local Government (System Improvements) Amendment Bill³ was introduced. It proposes that members are entitled to have access to documents held by the local authority that are reasonably necessary to enable members to effectively perform their duties. Requests for access to documents are to be made to the chief executive.
70. We have included in the standard code a reference to this new requirement and consider this sufficient for the purposes of the terms of reference (clause 11). We note that the process for dealing with members' requests for access to information has been elaborated on by the Bill as reported from the Governance and Administration Committee.

Who is covered by the Code of Conduct / Te hunga e hāngai ana te Tikanga Whanonga ki a rātou

71. The Local Government Act 2002 currently provides that the code applies to members of a local authorities and local boards. The Local Government (System Improvements) Amendment Bill proposes to extend coverage of the code to members of community boards.
72. The Commission's view, included in its submission to the Bill, is that appointees to committees, broadly speaking, have the same decision-making powers and obligations as elected members and the same type of interactions with other members, local authority staff, and members of the public as members currently covered by the code. Therefore the code's coverage should be extended to include them (clause 6(d)). This is reflected in the changes recommended by the select committee in its report back to Parliament on 24 November 2025.
73. During engagement on the draft code submissions were received advising that some councils appointed reserve boards and hall committees as subcommittees under the Local Government Act. Such committees typically comprise voluntary, unpaid members representing and doing work on behalf of their communities. Concern was expressed that application of the proposed

³ Proposed section 26A, contained in clause 25(9), Local Government (System Improvements) Amendment Bill.

code to such committees might discourage community participation and introduce disproportionate cost and complexity in managing breaches. It was suggested that a simplified version of the code could apply to such committees.

74. The Commission has decided that, for the sake of simplicity, these types of committees should not be subject to the code (clause 6). Instead, it would be expected that appointing local authorities deal directly with unacceptable behaviour.

Capacity as a member / Te āheinga hei mema

75. Clause 15(2)(a), Schedule 7 of the Local Government Act provides that the code of conduct must set out “understandings and expectations ... about the manner in which members may conduct themselves while acting in their capacity as members”.
76. Use of the term ‘capacity as members’ in the draft code resulted in a number of submissions from the local government sector seeking guidance on this matter. One specific issue raised was the situation of members acting in a personal capacity with local authority employees, and whether such situations are subject to the code.
77. We sought advice on these issues. A summary of that advice is that:
- It is not possible to attempt a precise definition of capacity because whether a member is acting in a member’s capacity will depend on all the relevant circumstances
 - The code should not deem all interactions between members and staff to be in a member’s capacity, but any behaviour by a member that has the effect of bringing the local authority into disrepute should likely be covered by the code.
78. Accompanying the advice on these matters was a set of principles and factors which could be used to guide whether a member is acting in that capacity. This is attached as Appendix A and could be used as the basis of guidance on this matter for local authorities.

Bankruptcy/ Te pēkerapu

79. Currently, clause 15(5) of Schedule 7 of the Local Government Act 2002 states that:

A local authority must, when adopting a code of conduct, consider whether it must require a member or newly elected member to declare whether or not the member or newly elected member is an undischarged bankrupt.

80. This provision is proposed to be repealed under the Local Government (System Improvements) Amendment Bill.
81. Some existing codes of conduct do include such a requirement. For example, the Hamilton City Council's code states:
- Elected Members who are declared an undischarged bankrupt shall notify the Chief Executive when elected or as soon as practicable after being so declared. The member will provide the Chief Executive with a brief explanatory statement of the circumstances surrounding the bankruptcy, including its likely outcome. This must be recorded in the Register of Interests.
82. Feedback from several councils, as well as LGNZ and Taituarā, supports including a disclosure requirement in the code.
83. In the interests of transparency a requirement similar to that quoted above has been included in the standard code (clauses 75-77).

Penalties and sanctions/ Ngā whiunga me ngā ngawhi

84. As noted in paragraph 12 the terms of reference provided by the Minister exclude penalties and offences from the Commission's consideration. The Department of Internal Affairs subsequently clarified that it is considering the issues of penalties and offences along with the broader issue of sanctions (that is, consequences less severe than penalties) and will make recommendations to the Minister of Local Government about those. The Commission has not made recommendations relating to offences, penalties or sanctions. As discussed in paragraph 45 above, however, it has proposed where in the process sanctions should be determined, along with related procedural matters.

Governance education and guidance / Te mātauranga me te aratohu mō te mana urungi

85. The terms of reference require the Commission to make "recommendations for governance education tools to support implementation of the standardised code, which may include training for elected members, provision of guidance materials, etc" and to make "recommendations for any other guidance, material or tools to support the implementation of a standardised code of conduct".
86. In its 2021 report on Codes of Conduct the Commission concluded that:

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.

87. Building on the work in the 2021 report the Commission's 2023 report *Governance Education Strategy for Local Government* concluded that:

There are various efforts underway in the [Local Government] sector to improve the level of governance education. However, there is no agreed description of the knowledge skills and behaviours that produce good governance. As part of a sector-specific governance education strategy, a nationally applicable capability framework for members and council officers would address this gap and support sector-wide consistency. rather than duplicating work currently underway, it should be sufficiently broad to provide an overarching framework for that work, ensuring that meets the sector's needs for a cohesive approach.

88. Many submissions received by the Commission about the draft code highlighted the need for a standard code to be supported by robust governance training and ongoing support, arguing that a standard code by itself would not be sufficient to ensure the improvements in members' conduct desired.
89. The Commission agrees with this and therefore reiterates its earlier recommendations for governance education, including:
- An education programme covering pre-candidacy, candidacy, induction and ongoing professional development for members, mayors and chairs
 - An education programme for staff who support members through the various stages of their governance development
 - The development of cohesive, national level, freely available capability frameworks providing for the above.
90. The Commission's complete recommendations for governance education can be found in its 2021 and 2023 reports.
91. The implementation of a capability framework may take some time to come to fruition. There are, however, some more immediate actions that can be taken. The Local Government (System Improvements) Amendment Bill proposes that the code of conduct be one of the matters that chief executives are required to brief members about at the first meeting of a new triennium, and the Commission has proposed that the Bill be amended to require a briefing to be provided to members if the standard code of conduct is amended or changed part way through a triennium. The Commission notes that this is reflected in the select committee's report back to Parliament on the Bill.

92. Another immediate, and relatively straightforward, step would be to provide information about the code of conduct for candidates for election to local authorities. The information for candidates we have seen mentions codes of conduct in passing but without explanation of what they are and what they require of local authority members. The code, and the expectations underpinning it, is an important part of the governance framework for local authorities. ***We therefore recommend that information for candidates includes an explanation of the code of conduct and the requirements it places on members.***
93. The Department of Internal Affairs being responsible for this is appropriate given that the Secretary for Local Government will approve and issue the standard code once the Local Government (Systems Improvement) Amendment Bill is enacted, and the Department will be in a position to oversee the development of guidelines taking into account the standard standing orders currently in development, the final nature of the Local Government (Systems Improvement) Amendment Bill, and the outcome of its work on penalties and sanctions.
94. Feedback included suggestions for guidelines on a range of issues, including:
- A general guide to the Code of Conduct
 - Guidance about good practice for the assessor and investigation processes
 - Clarification of behaviours referenced in the Code (e.g. bullying) and the application of the materiality test
 - Guidance and examples distinguishing when members are acting in an official versus personal capacity
 - Guidance on the use of social media by members
 - Guidance on the management of conflicts of interest
 - Application of key legislation in the Code context (e.g. Local Government Official Information and Meetings Act, Privacy Act, Protected Disclosures (Whistleblowers Protection) Act, in particular by local authority staff, assessors and investigators
 - Application of the complaints and investigation processes from a Te Ao Māori perspective.
95. ***The Commission recommends that guidelines be prepared by the issuing authority for the matters described above.***

Investigators / Ngā kaitūhura

96. Existing codes provide for a variety of practices for the appointment of investigators, ranging from making no explicit provision to establishing panels of investigators, sometimes on a multi-council basis.

97. Several submissions proposed pools of investigators be a standard practice. A nation-wide pool had some support, with several potential benefits, including:
- a more consistent approach to handling complaints
 - improved sharing of practice
 - more efficient use of a highly limited pool of suitably skilled and independent people
 - the capacity of very small local authorities to identify and appoint a panel of investigators may be limited
98. The Commission agrees with the arguments outlined above and considers there is merit in a nation-wide pool of investigators.
99. There were also suggestions for a better supporting structure for investigators, including:
- A code of ethics or conduct for investigators
 - Defined skills and attributes of an investigator⁴
 - Some form of accreditation and training for investigators, e.g. membership of the Arbitrators' and Mediators' Institute of New Zealand or an equivalent organisation, or legal qualifications or experience in a specific role such as chair of an Audit and Risk Committee
 - Civil liability insurance for investigators
100. A nation-wide pool would require identifying an appropriate organisation to support it. Attributes of an appropriate organisation would include:
- Independence and neutrality, and in particular, not being representative of potential participants in complaint processes
 - Having no incentive to increase the number of investigations undertaken
101. Based on these attributes, the Commission considers the Department of Internal Affairs would be an appropriate organisation to support the pool. It would also have the advantage of, through the Secretary for Local Government, being the organisation authorising the standard code of conduct. It would therefore have the appropriate level of oversight necessary to ensure the overall code of conduct system works effectively.
102. The Commission acknowledges that a nation-wide pool of investigators may take some time and buy-in from affected parties before it could be implemented and would potentially require legislation. In the interim councils could be required to establish a panel of investigators at the beginning of each triennium and encouraged to establish multi-council panels.
103. Considering the above, ***the Commission recommends that a nation-wide pool of investigators be established to be administered as outlined above.***

⁴ One submission suggested that an investigator should be a person of good character, and possess skills in investigation, mediation and conflict resolution.

Sharing good practice / Te tiri i te tikanga mahi pai

104. It became evident to the Commission in engaging on the standardised code that that the sharing of good practice among local authorities on code of conduct issues is ad hoc at best. Several of the organisations engaged with suggested:

- A mechanism for collecting and sharing of good practice between local authorities
- Compilation of statistical information and summaries of complaints and outcomes to assist understanding of

105. The Commission considers these suggestions have merit. As well as sharing good practice they would benefit any future review of the standard code.

106. If a central organisation is appointed to manage a nationwide pool of investigators, it would be logical for that organisation to also coordinate the sharing of good practice and the collection of statistics. In the absence of such a pool, the Local Government Commission could take on the good practice and data collection role.

Conclusion and recommendations / Kupu whakakapi me ngā tūtohunga

107. The Commission considers that the standard code of conduct attached to this report fulfils the terms of reference provided, achieves a balance of promoting sound behaviour by members of local authorities, and providing a robust process for handling complaints.

108. Accordingly, the Commission recommends:

(1) that the Minister of Local Government

- a. receive the attached standardised code of conduct
- b. in relation to governance education, agree to promote:
 - An education programme covering pre-candidacy, candidacy, induction and ongoing professional development for members, mayors and chairs
 - An education programme for staff who support members through the various stages of their governance development
 - The development of cohesive, national level, freely available capability frameworks providing for the above
- c. In relation to good practice, agree that there be mechanisms:
 - For collecting and sharing of good practice between local authorities
 - The compilation of statistical information and summaries of complaints and outcomes

- (2) That the Minister request the Department of Internal Affairs to:
- a. oversee the development of guidelines taking into account the issues identified at paragraph 95 of this report, standard standing orders currently in development, the final nature of the Local Government (Systems Improvement) Amendment Bill, and the outcome of its work on penalties and sanctions
 - b. establish and administer a nation-wide pool of investigators as discussed in the *Investigators* section of this report.

Appendix A / Āpitihanga A – Guidance on whether a member is acting in that capacity

To be covered by the code of conduct, it is sufficient that the member is acting at least in part as a member, even if they are acting in a private capacity as well. In other words, the act must be exclusively private or non-official, for it to fall outside the code of conduct.

A member will necessarily be acting in an official capacity if they are doing something which only an elected member (as distinct from a member of the public) can do. This includes using internal council processes or getting preferential or “different” (e.g. priority) access to staff. It also includes making use of information, which is provided to them as an elected member, but is not known to the general public.

The code of conduct applies to both the exercise and purported exercise of acts which are in the capacity as a member.

Indications that a member is acting in that (official / elected) capacity include:

- acting with the “colour” or “flavour” of an elected member, either expressly or impliedly. This includes invoking or relying on a perceived “status” associated with that elected role. We consider this is more likely to be established where the member acts in circumstances where it would be reasonable for another person exposed to the member’s behaviour, or who interacts with the member, to assume they are acting as a member;
- what is required to dispel such a colour or flavour will depend on the circumstances. In some situations, it may be implicit. Ideally, if the interaction is with a staff member, they should make their involvement in their private capacity known to the employee before initiating any exchange;
- using the council’s name, branding, communication channels or other resources (including funding). However, using e.g. a private email address would not rule out the possibility the member is nevertheless acting in that capacity, in that instance it is the content of the message that will be determinative;
- communicating using their title of “Mayor” or “Councillor”;
- acting in their representative capacity as a member i.e. acting on behalf of the council or one or more constituents or the community or part of the community; and

- where the activity has been endorsed by the council as part of the member's role as a member e.g. a spokesperson role; a podcast or media column or appearance dealing with council issues.

Other than in the limited situation described in the final sentence of this paragraph, the code of conduct will not apply where an elected member is acting solely in their personal capacity. However, given the above factors, where the interaction is with a council employee (who will presumably know the person is a member), an elected member will have to be very careful to ensure that they are, and that it is understood that they are, acting solely in that personal capacity and not in a way which is inconsistent with that. This position should be subject to some qualification however, as if an act or behaviour by an elected member (including in a personal capacity) had the effect of bringing the Council itself into disrepute, this should likely be covered by the code of conduct.