

17 February 2025

Hon Simon Watts  
Minister of Local Government  
Parliament  
New Zealand

## Code of Conduct for Local Government Elected Representatives

Dear Minister,

We note from your 3 February 2025 Proactive release of Cabinet material about Local Government System Improvements, Cabinet Policy decisions on 13 November 2024, on Local Government System Improvements, and the intention to introduce a Local Government System Improvements bill which will , inter alia,

*“improve systems for managing conflict between elected members, by enabling a standardised code of conduct to be issued”.*

The paper also notes your observations that:

*“[para 36]The governance framework for councils includes governance principles and requirements around codes of conduct, standing orders, and conflicts of interest. This framework has not been reviewed or updated in decades. The lack of direction from previous governments has left a vacuum that has been filled by the elected member advocacy group Local Government New Zealand, which has developed various templates for councils to adopt.*

*[Para 37] My observation is that council governance tools are vague and open to interpretation. We see costly code of conduct complaints being made against elected members, often by their colleagues. At the other end of the spectrum, codes of conduct have been used in some instances by council staff to prevent elected members from accessing information.*

*[Para38] I propose a legislative change so that the Secretary for Local Government can approve and issue a standardised code of conduct that councils will be required to follow.”*

This initiative is to be commended, but we hope to encourage you and your officials advising you on this to look beyond the idea of just standardising a code for Territorial Authorities (TAs) to address current deficiencies. Our experience with the (extensive) Auckland Council (AC) Code of Conduct for elected members shows the lack of any

formal process for management of complaints about members conduct that meets currently accepted standards of administrative law and natural justice.

Furthermore there are no sanctions prescribed for breaches nor any fair and reasonable process for deciding on sanctions when breaches have been established. There is no published process, it lacks any transparency, and decisions are left to the internal judgement of typically conflicted staff or members (notably subject to the "what if it was me?" or "what happens to me if I find against a colleague?" effects).

The Local Government Act has no penalties for breaches of the Act by Local Authorities (relying as it does on action either by the Minister, or under other legislation (fraud, financial conflicts etc.) requiring criminal or civil action - often beyond the financial resources of affected parties.

[It's really a separate issue, but the concept of having something like an Independent Services Performance Auditor to review fitness for purpose (as recommended by the Auckland Royal Commission) and would improve TA performance, was never actioned. Alternatively Recall Elections (which we and others champion for democratic accountability and to support longer terms) would also improve TA governance. The current LGA leaves it solely to you (as Local Government Minister) to intervene when TAs misbehave, and this is not a power you would exercise for Code breaches that are not otherwise unlawful.]

In the same vein, the LGA has a requirement to establish a Code, but is silent on what if any processes TAs may set for how they handle breaches or complaints; and what if any penalties apply for poor and inappropriate behaviours that constitute conduct breaches but are not unlawful.

Regrettably this means that the Code is effectively a nullity, as most TA's decline to impose any sanctions on their own members under the Code for breaches, unless the conduct is unlawful under other legislation (in which case they need to act anyway). Even then, most TAs will equivocate about whether a particular conduct is unlawful (worrying about liability) and leave it entirely up to the complainant to take any action.

Auckland Council, in its last review of its Code, eliminated an independent Commissioner to hear disputed decisions about complaints against elected members, and substituted its own internal review process, run by staff, with consideration of complaints against elected members heard by staff responsible for the conduct of the staff who advise and guide those same elected members. AC is a closed shop that successfully defends the interests of its staff and elected members (who ultimately employ the staff) against any complainants who accuse elected members of breaches of the Code.

The two main pillars of the Code – Trust and Respect – are "more honoured in the breach more than in the observance". (A meeting of the Governing Body last year, where members of the Joint Governance Working Party proposed a motion regarding a

Reorganisation Review, then voted against their own motion, was a particularly low point in that regard.)

We have an outstanding referral to the Ombudsman against a decision of AC about a relatively minor complaint of breach by an elected representative. As the Ombudsman is short of staff to deal with referrals this has not been heard. The matter is not of general interest because of the breach, but because it serves as an opportunity to review the complaints management process of AC against standards adopted by other professional bodies and organisations with administrative decision making responsibility.

For example, just one issue which you should at least address in the draft bill, for transparency, is the failure to give full reasons for a decision, including reasonable responses to reasons provided by a complainant for alleging a breach. Frequently the decision is communicated with nothing more than a comment that everything has been considered and a decision made.

For your information (and for officials) I attach (separately) a letter we emailed to the Ombudsman dated 20 April last year - setting out our concerns. It may be of assistance. It includes comments related to the Ombudsman's "Open for Business" report and AC's response.

Auckland Council has taken on board some of the points we have been making and is slowly addressing issues like making their complaints process public and making committee workshops and meetings more publicly accessible, but the organisational culture has not yet changed.

We would be happy to be contacted by your officials involved in drafting any proposals for the Bill regarding a TAs Code of Conduct, and assist if we can.

Kind Regards



William Foster  
Chairman



**The Northern Action  
Group  
Incorporated**

T: 09 422 6347

W: [www.nag.org.nz](http://www.nag.org.nz)

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[Attachment: "Further comments for Ombudsman review.docx": File]