

7. CODE OF CONDUCT

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The purpose of this report is to recommend the adoption of a Code of Conduct by the Council as required by the Local Government Act 2002.

STATUTORY FRAMEWORK

Under the Local Government Act 2002 every local authority **must** adopt a code of conduct.

Clause 15 of Schedule 7 of the Local Government Act 2002 provides in part:

- “(2) The code of conduct must set out—*
- (a) understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members, including—*
 - (i) behaviour toward one another, staff, and the public; and*
 - (ii) disclosure of information, including (but not limited to) the provision of any document, to elected members that—*
 - (A) is received by, or is in the possession of, an elected member in his or her capacity as an elected member; and*
 - (B) relates to the ability of the local authority to give effect to any provision of this Act; and*
 - (b) a general explanation of—*
 - (i) the Local Government Official Information and Meetings Act 1987; and*
 - (ii) any other enactment or rule of law applicable to members.*
- (3) A local authority may amend or replace its code of conduct, but may not revoke it without replacement.*
- (4) A member of a local authority must comply with the code of conduct of that local authority.*
- (5) 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.*
- (6) After the adoption of the first code of conduct, an amendment of the code of conduct or the adoption of a new code of conduct requires, in every case, a vote in support of the amendment of not less than 75% of the members present.*
- (7) To avoid doubt, a breach of the code of conduct does not constitute an offence under this Act.”*

As can be seen from Clause 15 the code of conduct is a document which sets out the standards of behaviour that are expected from individual elected members in the exercise of their duties.

In its Knowhow programme Local Government New Zealand said:

“Codes of conduct promote effective working relationships within the local authority and between the local authority and its community. A code of conduct should promote free and frank debate, which should in turn promote good decision-making. Codes of conduct should not be used in a way that stifles debate.

*Provided elected members do not try to present personal views as anything other than that, then they have the right to express their views. Codes of conduct should provide rules of conduct that promote debate and make it clear that personal views, and the rights of **all** members to express personal views, must be respected.*

A code of conduct sets boundaries on standards of behaviour in expressing and promoting views, and provides means of resolving situations when elected members breach those standards.”

RELATIONSHIP OF CODE TO STANDING ORDERS

The code of conduct is not the same as a set of standing orders. Standing orders are a set of procedures and other rules for the conduct of meetings. A code of conduct covers every aspect of an elected member's duties. There are links between the two documents in that standing orders contain provisions for conduct at meetings. The code is intended primarily for situations outside the formal meeting process.

The code is wider than standing orders and sets out relationships not only between elected members, but also between members and staff and members and the public.

ADOPTION AND VARIATION OF THE CODE

In the Local Government Act 2002 the legal requirement to adopt a code of conduct applies only to Councillors, and not to community board members. Although there is no requirement for a community board to adopt such a code, there is nothing to prevent them from doing so and the Christchurch community boards may do so. It will be a matter for each community board whether it wishes to adopt a code of conduct.

Those community boards that do adopt a code of conduct need not adopt the code adopted by the Council, although there may be advantages in them doing so.

The Council is not required to consult the public on the contents of a code of conduct. The only procedural requirement is that the code of conduct must be "adopted" by the Council i.e. adopted by a simple majority resolution of a council meeting.

CONTENT OF THE CODE

As can be seen from Clause 15 above, the Act is not very specific on the contents of a code of conduct. The only requirement is a general statement that the code of conduct must—

"...set out understandings and expectations agreed among members about the manner in which they may conduct themselves while acting in their capacities as members, including behaviour towards one another, staff and the public."

One other requirement is that the local authority must specifically consider whether or not to require, in its code of conduct, that elected members who are undischarged bankrupts declare that fact.

On this issue of bankruptcy Local Government New Zealand advises in its Knowhow programme:

"As a general rule, bankruptcy is a legal state that does raise valid questions about a person's financial management skills and/or judgement, which is information that the council should know when considering whether for example, someone should serve on a Finance Committee or act as a director of a council-controlled organisation. For this reason, requiring members who are declared bankrupt to declare that fact to the council is strongly recommended. (This does not mean that undischarged bankrupts are ineligible to serve as elected members. They are. It may however be that the local authority may wish to limit their duties)."

The Subcommittee recommends that the draft code (separately circulated) includes a bankruptcy requirement.

BREACHES OF THE CODE

Clause 15(4) provides:

"(4) A member of a local authority must comply with the code of conduct of that local authority."

Although there is an obligation on members to comply with the code the Act does not provide any specific statutory authority for sanctions for breach of the code.

The Local Government New Zealand Knowhow programme comments:

"The code of conduct reflects an agreement between elected members as to what they expect from one another. It therefore relies heavily on individual goodwill and the ability of the council to act as a collective to exert moral suasion to deter individual members from behaviour that might breach the code. The local authority and its community monitor compliance with the non-statutory provisions of the code. In practice, elected members themselves are likely to play a major role in monitoring the actions of other members."

Where the breaches of the code also involve a breach of a statutory provision e.g. the Local Authorities (Members' Interests) Act 1968, Crimes Act 1961, then external enforcement agencies will be involved in dealing with these breaches.

Where a breach is alleged which does not involve a statutory provision then if a system is established questions arise as to:

- (a) who monitors, investigates and decides on a breach of the non-statutory provisions; and
- (b) what responses are available if a breach is established.

In establishing an Ethics Subcommittee, the Council will need to comply with the rules of natural justice in the implementation of such a system, given that a person's reputation will be involved with regard to the findings of the body established to rule on a complaint the code has been breached. For this reason draft Guidelines have been prepared for the operation of the Subcommittee.

These rules would include:

- Specific allegations of a breach as to when and where a particular provision of the code was breached and that information being available to the person complained of;
- All parties having a right to be heard on reasonable notice;
- Parties having the right to be represented by a lawyer;
- An opportunity for a person to make submissions before an adverse finding is made.

DEVELOPMENT OF CITY COUNCIL CODE

A Council seminar on the proposed code of conduct was held on 10 July 2003, and at its July meeting, the Council appointed a Code of Conduct Subcommittee to review the code of conduct and to report back to the Council through the Strategy and Finance Committee.

The Code of Conduct Subcommittee has met twice to discuss the draft code and, following those meetings, recommends the draft code to the Council for adoption.

The Subcommittee reached the view that it was more appropriate for the code to have a process whereby complaints regarding alleged breaches of the code could be dealt with. It was considered that that process should be using an internal model of a subcommittee of the Council, consisting of three to five persons including a non-elected member as the Convener of the Subcommittee.

The Subcommittee recommends that the Council establish an Ethics Subcommittee as a Subcommittee of the Council to monitor compliance with the code. The draft code provides that that Subcommittee would be authorised to investigate alleged breaches of the code only after informal efforts to resolve an issue had been attempted.

A feature of the Subcommittee is that the Convener would act as a filter for matters to be referred to the Subcommittee in a similar manner as the Speaker in Parliament. The Subcommittee also recommends that the Convener be a non-councillor and have voting rights. The Local Government Act 2002 permits the appointment of a non-elected member to the Subcommittee if, in the Council's opinion, that person has the skills, attributes or knowledge that will assist the work of the Subcommittee.

It is proposed that public nominations not be sought but that a short list of candidates for the position of Convener be submitted to the Council with a preferred candidate to be recommended by the Strategy and Finance Committee. The Committee would also recommend Councillors to be appointed to the Subcommittee.

It was also agreed that reference of matters to the Subcommittee should only be considered after there had been informal efforts to resolve the particular matter, and that these informal efforts should be assisted by the Convener of the Subcommittee.

Only if informal efforts to resolve the matter have not been successful, then a Councillor is able to refer a matter to the Convener of the Subcommittee. Even then, the Convener of the Subcommittee has the ability to decide that a particular matter should not be referred to the Subcommittee on the grounds that the matter is technical or trivial, and does not warrant the fuller attention of the Subcommittee.

The actions that the Council may take, upon receipt of a report by the Ethics Subcommittee, are set out as requiring an apology to be made, censuring a Councillor, and/or removal from a Council committee or outside appointment. The Local Government Act 2002 does not give any specific power to the Council to take any steps other than these.

Also separately circulated are draft Guidelines to the operation of the Subcommittee. These have been modelled on the processes used by the Privileges Committee of Parliament, based on experience of that Committee over the years. They are not intended to be a formal part of the code of conduct, but are included so as to inform Councillors as to some of the procedural issues that can arise in the conduct of the Subcommittee, should a hearing be necessary.

If the Council agrees to the appointment of the Ethics Subcommittee a draft resolution could be:

- “1. That the Council appoint an Ethics Subcommittee as a Subcommittee of the Council.
2. That Councillors (*names*) and (*outside person*) be appointed as members of the Subcommittee.
3. That the Subcommittee be authorised to exercise the powers conferred on it in Section 3 of the Council's Code of Conduct.”

**Recommendation
of the Code of Conduct
Subcommittee:**

That the attached draft Code of Conduct be adopted by the Council.