

**Submission**

**By**

**THE  
NEW ZEALAND  
INITIATIVE**

To the

**Local Government Commission**

on the

**Draft Standardised Code of Conduct for Local Authorities**

26 September 2025

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# **SUBMISSION BY THE NEW ZEALAND INITIATIVE ON THE DRAFT STANDARDISED CODE OF CONDUCT FOR LOCAL AUTHORITIES**

## **1. INTRODUCTION**

- 1.1 This submission on the draft Standardised Code of Conduct for Local Authorities (“the draft Code”) is made by The New Zealand Initiative (the Initiative).
- 1.2 The Initiative is a Wellington-based think tank supported primarily by major New Zealand businesses. We undertake research that contributes to the development of sound public policies in New Zealand, and we advocate for the creation of a competitive, open, and dynamic economy and a free, prosperous, fair, and cohesive society.
- 1.3 A well-functioning local government system is vital for democratic accountability, fiscal prudence, and sustainable economic growth. The Initiative has published extensively on these issues, most recently in *Making Local Government Work* (December 2024) and in our submission on the Local Government (Systems Improvements) Amendment Bill (August 2025).<sup>12</sup>
- 1.4 *Making Local Government Work* highlighted persistent problems with council codes of conduct, particularly their misuse to silence elected members, limit access to information, and sideline them under expansive conflicts of interest rules. These practices have undermined democratic accountability and shifted power towards unelected officials.
- 1.5 Against this background, we welcome the Local Government Commission’s work to develop a standardised Code of Conduct, referenced in legislation. Done well, a consistent framework can provide clarity, fairness, and guard against misuse. However, we are concerned that in its current form, the draft Code risks entrenching the very problems it is intended to address.

## **2. SUMMARY AND RECOMMENDATIONS**

- 2.1 We support the principle of a standardised Code, but the draft for consultation requires significant revision to align with the government’s intent and to protect democratic accountability.
- 2.2 Our recommendations are as follows:
  - a) Insert a purpose clause requiring the Code to be interpreted and applied to promote elected members’ freedom of expression and their representative function. Any limit on expression must be demonstrably reasonable and proportionate under section 5 of the New Zealand Bill of Rights Act, read with section 14. The Code must also uphold democratic decision-making and effective conflict management as directed by the Minister’s terms-of-reference.

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<sup>1</sup> The New Zealand Initiative, *Making Local Government Work*, December 2024, <https://www.nzinitiative.org.nz/reports-and-media/reports/making-local-government-work/>

<sup>2</sup> The New Zealand Initiative, *Submission on the Local Government (Systems Improvements) Amendment Bill*, August 2025, <https://www.nzinitiative.org.nz/reports-and-media/submissions/submission-local-government-systems-improvements-amendment-bill/>

- b) Amend clause 21 to read: “A breach is material only if, on objective evidence, it causes or is likely to cause significant and demonstrable harm to the local authority’s ability to perform its functions, the rights of others, or compliance with law. Reputational embarrassment, disagreement, or robust political criticism is not material. Any assessment must apply proportionately and consider the enhanced protection of political expression”.
- c) Delete the last bullet point in clause 23 and replace it with: “Members must not harass, threaten, or unlawfully disclose confidential information about staff. Members may criticise policy, advice, performance, or conduct where done without intimidation and with appropriate regard to confidentiality and due process. Operational concerns about individual staff should ordinarily be raised with the Chief Executive first”.
- d) Replace clause 47 with wording that would allow a short form right of appeal to an independent standards panel limited to process error, proportionality, or manifest error of fact.
- e) Remove Clause 18’s extension of the Code to members’ interactions with staff in their personal capacity.
- f) Limit sanctions to proportionate measures (e.g. censure, committee suspension). Exclude compelled speech sanctions such as forced apologies or mandatory training.
- g) Reform conflict-of-interest provisions by distinguishing clearly between financial and non-financial interests. Financial conflicts should mandate recusal under statute. Non-financial conflicts should be managed through disclosure, proportionality, and transparent dispensations, not automatic exclusion.
- h) Strengthen access-to-information provisions by affirming a presumption of openness; require information to be provided ‘as soon as practicable’, no later than 10 working days, extendable with reasons; and requiring monthly reporting on elected member information requests and compliance.
- i) Prohibit use of alternative human resources or grievance processes to bypass the Code. All conduct issues must be addressed through the Code framework.

### 3. PRINCIPLES FOR A STANDARDISED CODE

- 3.1 The Minister of Local Government has directed that a standardised code of conduct should *highlight freedom of speech for elected members, democratic decision-making, and conflict management principles, while not restricting council decision-making*.<sup>3</sup>

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<sup>3</sup> Local Government Commission, *Terms of Reference for the Local Government Commission to Produce Standardised Code of Conduct for Local Authorities*, August 2025, <https://www.lgc.govt.nz/our-work/good-practice/codes-of-conduct/#:~:text=The%20Local%20Government%20Commission%20has%20developed%20a%20draft,Please%20send%20your%20feedback%20via%20email%20to%20lgc%40lgc.govt.nz>

- 3.2 The Local Government (Systems Improvements) Amendment Bill, currently before Parliament, seeks to operationalise this direction by empowering a standardised Code and ensuring it cannot be used to gag elected members.
- 3.3 The purpose of a national Code should therefore be to:
- Enable elected members to fulfil their core duties by explicitly affirming their right to free expression.
  - Provide clarity and consistency across councils.
  - Prevent trivial or politically motivated complaints.
  - Protect elected members' rights to access information and represent their communities.
  - Ensure proportionality, fairness, and respect for natural justice.
- 3.4 We recommend the insertion of a purpose clause requiring the Code to be *“interpreted and applied to promote elected members’ freedom of expression and their representative function. Any limit on expression must be demonstrably reasonable and proportionate under section 5 of the New Zealand Bill of Rights Act, read with section 14. The Code must also uphold democratic decision-making and effective conflict management as directed by the Minister’s terms-of-reference.”*

#### **4. PROBLEMS WITH THE CURRENT SYSTEM (WEAPONISATION OF CODES)**

- 4.1 In *Making Local Government Work*, we documented cases where codes of conduct were weaponised against elected members for engaging in legitimate political speech. Councillors and mayors in Wellington, Carterton, Waitomo, and Gore were subjected to code complaints for criticising staff performance, disclosing information, or dissenting from council majorities.
- 4.2 Codes are used not only to shield chief executives and staff from scrutiny but also as political weapons between elected members. In some councils, complaints have been lodged against dissenting elected members to undermine their legitimacy or silence opposition. This distorts democratic processes and risks reducing codes to tools of factional politics.
- 4.3 Such misuse has a chilling effect: elected members hesitate to speak openly, fearing complaints, investigations, or sanctions. This shifts power away from individual elected members and towards unelected staff and politically dominant factions. Dysfunctional councils harm the local economic and business environment.
- 4.4 Most councils have historically adopted the Local Government New Zealand model code of conduct as a starting point. However, a Local Government Commission report found that 'no two codes are exactly the same,' with councils routinely adding, omitting, or altering provisions. For example, they have introduced bans on staff criticism, bespoke social media rules, and varying penalty provisions. This patchwork approach has created significant inconsistency, with rules applied differently across the country. The Commission noted this undermines public confidence, creates uncertainty for elected

members, and increases the risk of codes being applied unevenly or in ways open to political misuse.<sup>4</sup>

- 4.5 As we argued in 2024, and some elected members have themselves observed (for example, in responses to a 2024 Free Speech Union survey<sup>5</sup>), “codes have increasingly been used as control mechanisms rather than safeguards of good governance. Instead of enabling open democratic contestation, they are often invoked to silence dissent and protect bureaucracies from scrutiny”.<sup>6</sup> Too often, codes impede the ability of elected members to effectively govern and make decisions, causing a ‘democratic void’.<sup>7</sup>
- 4.6 The draft Code does not resolve this. To the contrary, by defining reputational harm as a ground for serious breach (clause 21), prohibiting staff criticism (clause 23), and leaving investigators’ decisions without appeal (clause 47), the draft Code risks embedding weaponisation into law. The draft even categorises certain jokes or insults as ‘harassment’ (clause 23). This contradicts the government’s direction that codes should *protect free expression and democratic debate*. Recommendations on addressing these problematic clauses follow:
- 4.7 Regarding materiality, we recommend an amendment to clause 21 to read: “*A breach is material only if, on objective evidence, it causes or is likely to cause significant and demonstrable harm to the local authority’s ability to perform its functions, the rights of others, or compliance with law. Reputational embarrassment, disagreement, or robust political criticism is not material. Any assessment must apply proportionately and consider the enhanced protection of political expression*”.
- 4.8 Regarding staff criticism, dignity and safety is important but a bright-line ban on criticism is neither necessary nor proportionate. Therefore, we recommend deleting the last bullet point in clause 23 and replacing it with: “*Members must not harass, threaten, or unlawfully disclose confidential information about staff. Members may criticise policy, advice, performance, or conduct where done without intimidation and with appropriate regard to confidentiality and due process. Operational concerns about individual staff should ordinarily be raised with the Chief Executive first*”.
- 4.9 Regarding appeals (clause 47), recommend replacing the current text with wording that would allow a short form right of appeal to an independent standards panel limited to process error, proportionality, or manifest error of fact. This would address natural justice concerns without inviting litigation. This should be anchored to the terms-of-reference’s emphasis on materiality and the Bill of Rights’ principle of proportionality.

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<sup>4</sup> Local Government Commission, *Local Government Codes of Conduct: Report to the Minister of Local Government*, September 2021, <https://www.lgc.govt.nz/assets/Good-practice-files/Codes-of-Conduct/LGC-report-to-MoLG-Local-government-codes-of-conduct-Sept-2021.pdf>

<sup>5</sup> Free Speech Union, *Local democracy under threat: Councillors’ free speech in question*, July 2024, <https://www.fsu.nz/blog/local-democracy-under-threat-councillors-free-speech-in-question#:~:text=The%20results%20of%20a%20recent%20Free%20Speech%20Union,council%20staff%20publicly%2C%20on%20average%2C%20a%20paltry%204.3>

<sup>6</sup> *Making Local Government Work*, Op cit.

<sup>7</sup> Peter Mair, *Ruling the Void: The Hollowing of Western Democracy*, Verso Books, 2013 (reissued 2023), [https://www.google.co.nz/books/edition/Ruling\\_The\\_Void/bblvDwAAQBAJ?hl=en&gbpv=0](https://www.google.co.nz/books/edition/Ruling_The_Void/bblvDwAAQBAJ?hl=en&gbpv=0). This is where “political elites remodel themselves as a homogeneous professional class, withdrawing into state institutions that offer relative stability in a world of fickle voters”.

- 4.10 Clause 18 makes it clear that the draft standardised Code would apply to any interaction between an elected member and a council employee, including when the member is acting in a personal capacity. We are concerned that this personal capacity extension would police private speech outside official duties, and as such would be an ‘over-reach’. We recommend it be deleted.

## **5. CONFLICTS OF INTEREST**

- 5.1 Conflicts of interest are an important safeguard. Financial conflicts, where an elected member stands to gain or lose directly from a decision, must be taken seriously, and the Local Authorities (Members’ Interests) Act 1968 provides an appropriate framework for managing these.
- 5.2 However, *Making Local Government Work* showed that non-financial conflicts of interest (e.g. allegations of ‘bias’ because an elected member has expressed a view or is linked to a community group) are often applied too broadly. Members have been excluded from debates simply for taking reasonable political positions or advocating for constituents. This undermines democracy, as members are elected precisely to represent their communities and advance policy positions.
- 5.3 The draft Code introduces improvements by requiring members to seek advice on conflicts and ensuring that advice is shared with the member and the council (clauses 51–55). This should enhance transparency.
- 5.4 However, it does not go far enough to operationalise the government’s reforms. Without a clearer distinction between financial and non-financial conflicts and without safeguards against overzealous application of bias rules, elected members will continue to be sidelined unnecessarily.
- 5.5 We recommend refining the Code to distinguish clearly between financial conflicts and non-financial conflicts. For financial conflicts there should be mandatory recusal under the Local Authorities (Members’ Interests) Act. There should be disclosure for non-financial interests, but participation should be allowed unless a reasonable observer would see likely prejudice. A dispensation mechanism should allow participation where exclusion would unduly impair democratic representation.

## **6. ACCESS TO INFORMATION**

- 6.1 Elected members cannot fulfil their democratic function without timely access to information. Our 2024 report found elected members often had requests delayed or denied, leaving them dependent on staff briefings and struggling to obtain timely or sufficient information from officials about council operations. This undermines their ability to question, scrutinise decisions, and make informed policy choices.
- 6.2 The draft Code incorporates proposed section 26A of the Local Government Act (clauses 58–59). This reflects the Local Government (Systems Improvements) Amendment Bill’s intent to strengthen elected members’ rights to information. We cannot overstate the importance of this provision.

- 6.3 However, the draft Code does not fully operationalise the government’s reforms. It lacks a presumption of openness and imposes no timeframe for compliance.
- 6.4 To give effect to the government’s direction, the Code should:
- Affirm presumption of openness.
  - Require information to be provided ‘as soon as practicable’, no later than 10 working days, but extendable with good reason..
  - Require monthly reporting on elected member information requests and compliance.

## **7. BEHAVIOURAL STANDARDS AND MATERIALITY**

- 7.1 Clauses 10–11 set out expectations that elected members must be ‘respectful’, ‘inclusive’, and ‘not derogatory’. While civility is desirable, these standards are vague and subjective. They risk chilling robust debate and invite politicised enforcement.
- 7.2 Clause 21 makes ‘reputational harm’ a basis for serious breaches, which could capture lawful criticism. Clause 23 further prohibits elected members from “publicly criticising staff or calling into question their professionalism or integrity” and (as already mentioned) even includes jokes and insults as ‘harassment’.<sup>8</sup> This is incompatible with elected members’ democratic duty to scrutinise staff performance or engage in robust political debate among themselves.
- 7.3 The Commission should instead adopt an objective standard. Members must not engage in unlawful harassment, threats, doxxing, or disclosing confidential information. However, nothing in the Code should prohibit robust criticism of policy, advice, performance, or the conduct of the local authority or its officers.
- 7.4 Materiality requires objective, evidenced harm and a proportionality analysis. Mere reputational embarrassment or disagreement is not material. Political expression must be presumptively protected.

## **8. COMPLAINTS PROCESS AND SANCTIONS**

- 8.1 Clauses 24–47 vest wide discretion in investigators, whose decisions are final and without appeal. We consider this to be inconsistent with natural justice.
- 8.2 Sanctions include compelled apologies, public statements, or mandated training. These forms of compelled speech are inappropriate in a democratic context.
- 8.3 The Code should make it clear that a complaint is inadmissible if trivial, vexatious, or politically motivated. Findings should be reviewable by an independent standards panel within 10 working days of notification of a decision. Parties should have a right to seek review on process, proportionality, and error.

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<sup>8</sup> Local Government Commission, *Draft Standard Code of Conduct*, August 2025,

<https://www.lgc.govt.nz/our-work/good-practice/codes-of-conduct/#:~:text=The%20Local%20Government%20Commission%20has%20developed%20a%20draft,Please%20send%20your%20feedback%20via%20email%20to%20lgc%40lgc.govt.nz>

## 9. INTERNATIONAL APPROACHES

- 9.1 In developing a standardised Code of Conduct, New Zealand can learn from overseas jurisdictions with experience of balancing elected member accountability and democratic freedom. Australia and the United Kingdom offer instructive approaches.
- 9.2 **Australia.** Australian states prescribe model codes of conduct in legislation. Complaints are investigated by independent reviewers or tribunals, with the ability to dismiss trivial or vexatious complaints at an early stage. This triage function is designed to prevent weaponisation of codes through tit-for-tat political complaints. While sanctions can include temporary suspension, recent reforms and guidance emphasise that codes must not chill political debate. New South Wales, for example, has recently issued a *Free Speech in Local Government Guideline* affirming that councillors' freedom to engage in political discourse is central to their role.<sup>9</sup> Australian codes also separate financial conflicts of interest, which are dealt with strictly under statute, from non-financial conflicts, which are managed through disclosure and proportionality. Councillor access to information is operationalised through 'acceptable request guidelines' and statutory CEO duties, with exclusions limited to cases where members have a live pecuniary conflict. Queensland requires requests for information or assistance to be provided within 10 working days or (if not practicable to comply within that period) 20 working days.<sup>10</sup>
- 9.3 **United Kingdom (UK).** The UK system reflects local autonomy and human rights safeguards. In England, the Localism Act 2011 requires each authority to adopt a code of conduct guided by the 'Nolan Principles'.<sup>11</sup> While sanctions are limited (councils cannot suspend members), disclosable pecuniary interests are strictly regulated, and breaches carry criminal penalties. In Wales, Scotland, and Northern Ireland, national statutory codes apply and independent commissions can suspend or disqualify members. Across the UK, Article 10 of the European Convention on Human Rights (ECHR) provides robust protection for political expression: courts have consistently held that councillors' speech on matters of public concern is entitled to enhanced protection, even if offensive or harsh.<sup>12</sup> <sup>11</sup>*Heesom v Public Services Ombudsman for Wales* illustrates both the protection of free speech and the requirement that all complaints be handled through proper standards procedures rather than ad hoc mechanisms.<sup>12</sup> Councillor rights to information are underpinned by statute (e.g. s.100F Local Government Act 1972) and the common law <sup>12</sup>'need to know', with scrutiny members enjoying enhanced powers.
- 9.4 These international experiences point to several lessons for New Zealand:
- **Free expression:** Codes must embed proportionality tests and protect political debate, sanctioning only unlawful harassment or targeted abuse.

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<sup>9</sup> Office of Local Government, New South Wales, *Free Speech in Local Government in NSW Guideline*, Council Circular 25-11, 3 June 2025, A963853, <https://www.olg.nsw.gov.au/https-www-olg-nsw-gov-au-category-https-www-olg-nsw-gov-au-category-council-circulars/governance/council-circular-25-11-free-speech-in-local-government-in-nsw-guideline/>

<sup>10</sup> Committee on Standards in Public Life, *The Seven Principles of Public Life* (also known as 'The Nolan Principles'), 1995, <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>. These are selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

<sup>11</sup> Standards Commission of Scotland, *Advice Note on Application of Article 10 of the ECHR*, August 2017, <https://democracy.darlington.gov.uk/documents/s13190/Appendix%205.pdf>

<sup>12</sup> England and Wales High Court, *Heesom v Public Services Ombudsman for Wales*, EWHC 1504 (Admin), May 2014, <https://www.5rb.com/case/heesom-v-public-services-ombudsman-wales/>



- **Complaints process:** Early triage and independent review are essential to prevent weaponisation.
- **Conflicts of interest:** Financial conflicts should remain tightly regulated; non-financial conflicts require a balanced, transparent approach with scope for dispensations.
- **Access to information:** Rights must be operationalised through explicit processes, timeframes, and reporting obligations.
- **Sanctions:** Proportionate sanctions are needed, but suspension or removal must be limited to serious statutory breaches, with rights of appeal.

9.5 Adopting these features would allow New Zealand to strengthen accountability while protecting elected members' democratic mandate, aligning with the government's intent that codes promote, not suppress, freedom of expression and effective representation.

## 10. POSITIVE ASPECTS

10.1 We acknowledge that the draft Code includes several constructive features:

- Clearer processes for conflicts of interest.
- Proportionality in complaints handling.
- Explicit recognition of elected members' statutory right to information.
- An attempt to articulate freedom of expression within the Code framework.

10.2 However, these improvements are outweighed by provisions that suppress democratic accountability and, as drafted, we believe they contradict the government's stated intent that the Code should *highlight freedom of speech for elected members, democratic decision-making, and conflict management principles, while not restricting council decision-making*.

## 11. CONCLUSION

11.1 The Initiative supports the principle of a legislated, standardised Code of Conduct. Done well, it would reduce weaponisation, improve governance, and strengthen public confidence.

11.2 However, the draft Code does not yet achieve these aims. It retains vague civility standards, prohibits staff criticism, treats reputational harm as serious misconduct, applies conflicts of interest rules too broadly, and denies appeal rights. All risk stifling democratic debate.

11.3 We urge the Commission to revise the draft Code to give practical effect to the Systems Improvements Bill and to the government's clear direction: that codes of conduct must protect freedom of expression and enable elected members to fulfil their democratic mandate.