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Committee Secretariat  
Local Government Commission  
Wellington

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## **SUBMISSION ON THE LOCAL GOVERNMENT COMMISSION DRAFT STANDARDISED CODE OF CONDUCT**

Tēnā koe,

1. Dunedin City Council (DCC) welcomes the opportunity to provide feedback on the Local Government Commission's Draft Standardised Code of Conduct (Draft Code) having a history of practical experience in applying DCC's current Code.
2. With the release of the Draft Code for consultation, DCC staff carried out an initial analysis of its provisions against both the current DCC Code of Conduct and the wider legislative framework. This work considered how the Draft Code would operate in practice, areas of alignment, and potential points of tension with existing statutory obligations.
3. The analysis was then presented to elected members in a workshop, where members reflected on how DCC's current Code has been applied, discussed the likely impacts of the Draft Code, and identified matters requiring clarification or improvement. This submission therefore reflects both the operational insights of staff and the governance perspectives of elected members.
4. Overall, DCC supports the intent of a consistent national framework for a Code of Conduct. However, we have identified several areas where clarification, refinement, or adjustment is needed to ensure the Draft Code strengthens governance while remaining workable, sustainable, and fair.
5. DCC has also had the benefit of reviewing the submission made by Taituarā on the Draft Code and supports that submission.

### **The function and direction of the draft code**

6. Within the framework of the Local Government Act (LGA), codes of conduct are intended to reinforce good governance by setting out agreed expectations of behaviour. Their 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.
7. 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.

8. A stronger approach would be to articulate a small number of overarching principles — such as trust, respect, accountability, and integrity — supported by examples of what these mean in practice. This would provide both clarity and flexibility, ensuring members understand the standards expected of them without creating unnecessary ambiguity or opportunities for technical complaints.
9. The Code should also be supported through training and development. Expectations alone will not change behaviour unless members are given opportunities to learn how to apply them in practice. Professional development, particularly at induction and reinforced throughout the triennium, is essential for the Code to succeed in building a constructive governance culture.
10. Sanctions remain important, but their role should be to reinforce expectations rather than define them. The real measure of success is whether the Code helps members to work together more effectively and strengthens the trust of their communities.

***Recommendation 1: That the Draft Code be reframed to place greater weight on the expectations of conduct for elected members, expressed as clear principles with practical examples, and that it also specifies whether and how these expectations will be supported through professional development and resources.***

#### **Clarifying when member is acting in their capacity as a member**

11. Although the Local Government Act 2002, provides that the code of conduct will apply to members while acting in their capacity as members only, situations may arise where it is not clear whether the conduct to be complained about has occurred in the member's official capacity or as a private individual, which falls outside the ambit of the Code. For example, if a member were to make defamatory, racist or discriminatory remarks on their personal social media account or at a social occasion, such as the 'pub', while not performing any council business, it remains uncertain whether this conduct could be sanctionable under the Code, if the conduct complained about could bring the council or board into disrepute, such that the public may be offended or lose confidence in the body. Alternatively, if the member were to be convicted of a criminal offence while in office, say punishable by a term of imprisonment, which may also bring the council into disrepute, can the member also be subject to a code complaint?

***Recommendation 2: That the Commission clarify when a member's actions will be deemed to have occurred when the member's capacity as an elected member and will fall within the ambit of the Code.***

#### **Conflicts of interest**

12. The Draft Code includes provisions relating to conflicts of interest (Part 4). However, clarification is needed to ensure these provisions are workable, fair, and aligned with existing legislation.
13. Currently, the Draft Code provides that conflicts are declared by the member, but also allows for the Chief Executive to determine that a conflict exists. This creates challenges for the relationship between the Chief Executive and elected members, given the Chief Executive is

directly accountable to the Council. It also risks undermining trust and may place the Chief Executive in an untenable position of making judgments on the behaviour of those who are, in effect, their employer.

14. There are also implications for the Local Authorities (Members' Interests) Act 1968 (LAMIA). Conflicts of interest in local government are governed by both statutory and non-statutory frameworks. If the Draft Code establishes a parallel mechanism where the Chief Executive can direct or declare conflicts, this may cause confusion, overlap, or inconsistency with the statutory regime.
15. Both LGNZ and Taituarā note the importance of distinguishing financial conflicts (covered by LAMIA) from non-financial conflicts, such as perceived bias or loyalty conflicts, which may arise in governance settings. Greater clarity is needed on the scope of conflicts of interest covered by the Draft Code, and how these should be addressed in practice.
16. Examples of non-financial conflicts that should be clarified include:
  - a. Family or close personal relationships (e.g., where a member participates in a decision affecting a close relative or associate).
  - b. Governance overlaps (e.g., where a member is also on the board of a community organisation receiving council funding).
  - c. Personal loyalties or enmities (e.g., where prior disputes or alliances could reasonably give rise to perceptions of bias).

***Recommendation 3: That the Draft Code clarify the treatment of conflicts of interest, including:***

- i. That the primary responsibility for declaring a conflict rests with the member;***
- ii. That the Chief Executive should not be placed in a position of having to determine conflicts for elected members; and***
- iii. That the Draft Code align with LAMIA, while also addressing non-financial conflicts and perceptions of bias.***

## **Complaints from members of the public**

17. The Draft Code introduces a new provision that allows members of the public to lodge complaints directly against elected members (clause 14). This represents a change from current practice, where complaints are limited to elected members or the Chief Executive.
18. While the intention of opening the process to the public is to enhance accountability, in practice this change raises serious concerns. Councils already receive a high volume of complaints and correspondence on a wide range of issues. If these are formalised as Code complaints, councils may be overwhelmed, diverting significant time and resources away from core functions.
19. The Draft Code requires that all complaints, including those from the public, must be referred by the Chief Executive to an independent investigator (clause 24). Only then does a preliminary assessment occur. This means there is no ability to filter or dismiss complaints before they are

escalated, so every complaint — regardless of merit — risks triggering the cost and complexity of appointing an investigator.

20. The absence of front-end screening also increases the risk that complaints could be lodged for tactical reasons, such as political point-scoring, harassment, or disruption of council business. This kind of ‘weaponisation’ undermines confidence in the Code and places additional financial and reputational burdens on councils.
21. Where a complaint is made by the public, it may not be feasible for them to make any attempt to resolve the alleged breach prior to lodging a complaint as anticipated at clause 16 (point 3). The Draft Code should provide that this requirement is only to apply to elected members or staff, as necessary.

***Recommendation 4: That the Commission reconsider conferring standing on members of the public to lodge complaints under the Draft Code, given the risks of excessive demand, high cost, and misuse.***

## Materiality

22. Clause 23 provides a list of conduct which an investigator must accept as material. We submit that, any member who fails to comply with an earlier imposed Code of Conduct sanction, displays a contemptuous attitude towards the Code and their role as an elected official.
23. While caution should be applied to any list which is exhaustive, if this were a finite list, then it is recommended, that where a member fails to abide by any early penalty or sanction, imposed by an earlier determination, this behaviour should also be considered material.

## Appointment of investigators

24. The Draft Code provides that, upon receipt of a complaint, the Chief Executive must refer the matter to an investigator (clause 24). The investigator is then responsible for making a preliminary assessment and, if necessary, conducting a full investigation (clauses 25–41).
25. Clause 25 provides a list of circumstances which an investigation will consider when making their preliminary assessment. We submit that a range of options should be available to an investigator at this assessment point and this list should not be exhaustive. The current list of considerations appears to prevent an investigator referring the matter to an external enforcement agency for investigation, such as the Police, Serious Fraud Office, or DIA if possible criminal offences may appear to have been committed.
26. Further, the Draft Code is silent on how investigators are to be appointed or from where they may be selected. Without such guidance, there is a risk that appointments could become contested, giving rise to perceptions of bias, disputes about legitimacy, or inconsistent practice across councils. These risks are especially significant given the broad discretion investigators

hold, including the authority to dismiss complaints, determine materiality, and impose sanctions (clauses 42–47).

27. The credibility of the complaints process rests heavily on the quality and impartiality of investigators. As the Draft Code currently contains no criteria for appointment, there is a risk that natural justice for respondents and public confidence in outcomes could be compromised.
28. Further guidance is therefore needed on the skills, attributes, and independence expected of investigators. Investigators should be of good character, possess investigative and evaluative skills, and have experience in mediation and conflict resolution. Consideration should also be given to the degree of independence required — for example, whether former elected members or individuals closely associated with a council should be eligible, given the potential for perceptions of bias.

***Recommendation 5: That the Draft Code provide clear guidance on the appointment, skills, and independence of investigators, and ensure the preliminary assessment stage includes flexible options, including referral to external enforcement agencies where appropriate.***

### **Role of investigator's report**

29. Under the Draft Code, the independent investigator is empowered to make the final determination on complaints, including whether to dismiss a complaint, uphold it in whole or in part, and impose sanctions (clauses 42–47). These determinations are binding and are not subject to any right of appeal and give rise to two principal concerns:

#### **i. Dual role of investigator**

30. When the same individual is responsible for both investigating a complaint and determining the matter, including imposing penalties, there is a risk that this may create a conflict of roles. Such a process risks actual bias or the appearance of bias, which may undermine the integrity of the decision-making process. The principle of natural justice requires that decision-makers act impartially, and even the perception of bias can render a decision procedurally unfair.
31. Further, some of the sanctions proposed by the Draft Code cannot be imposed by an investigator. For example, suspension from committees or removal from chairing roles, is a sanction which can only be exercised by the governing body or the mayor. The Draft Code should be amended to reflect these limits and to ensure that disciplinary authority remains grounded in established governance responsibilities.

#### **ii. Right of appeal**

32. The explicit removal of an appeal pathway is a significant concern and is incorrect. Natural justice requires that those subject to determinations of this kind have some form of recourse, whether through a right of review by the governing body or access to a simple judicial process. Without such safeguards, there is a risk that decisions may be seen as final but not necessarily fair, particularly given the broad discretion granted to investigators.

33. Despite the expressed lack of appeal, the respondent will always retain their right of appeal by way of judicial review of any decision to the High Court, which will be a costly and time-consuming exercise for all parties. While it is acknowledged that with this proposal the Commission is attempting to remove the relitigation of matters dealt with by the investigator by the Mayor and Council, the Commission should consider an alternative appeal pathway for matters which have been determined by the investigator. Restoring an appeal or review mechanism would preserve natural justice and strengthen confidence in the integrity of the process.
34. At a minimum, final determinations should be provided to Council for noting. This would ensure that elected members retain oversight of outcomes and that there is a clear record of accountability within the democratic process.
35. DCC also suggests that the complaints process would benefit from several targeted improvements to enhance fairness, efficiency, and transparency:
- a) **Respondent's initial position:** After the preliminary assessment, the Draft Code should include a requirement for the respondent to state agreement or disagreement with the alleged breach. This would clarify the scope of the dispute at an early stage and may create opportunities for early resolution, such as mediation or apology, before escalation to a full investigation.
  - b) **Transparency of outcomes:** Outcomes should be communicated with the public (subject to privacy obligations), rather than remaining entirely confidential between parties. Public reporting of determinations will support transparency, reinforce community confidence in the process, and ensure accountability of elected members.

***Recommendation 6: That the Draft Code separate the roles of investigation and decision-making, with investigators limited to making findings and recommendations, and final sanctions — particularly those requiring governance authority — determined by Council or the mayor.***

***Recommendation 7: That the Draft Code be amended to provide a right of appeal against determinations of the investigator, either through review by the governing body or by access to a simple judicial process.***

## Sanctions and penalties

36. The sanctions provided in the Draft Code replicate those found in existing council codes and therefore represent little improvement in terms of accountability or enforcement. The current set of sanctions may not be sufficient to encourage behaviour change or to resolve underlying issues.
37. DCC acknowledges that the Local Government Commission has noted the limits of the current framework and that penalties and sanctions may be subject to further legislative clarification by the Department of Internal Affairs. Nevertheless, the Draft Code should provide clearer guidance

on the intent, scope, and enforceability of sanctions to ensure councils can apply them with confidence in the meantime.

***Recommendation 8: That the Draft Code provide clearer guidance on the scope, enforceability, and purpose of sanctions, and that it notes explicitly how these provisions will interact with any future legislative changes led by the Department of Internal Affairs.***

## Confidentiality and Referenced Policies

38. Clause 12 of the Draft Code relies on councils adopting separate policies to cover key behavioural standards. Without templates or guidance, this creates inconsistency: some councils may not have the resources to develop the policies, important expectations such as confidentiality or distinguishing personal from council views may be left out, and there is no assurance that policies will be consistent with the Code itself.
39. Upholding confidentiality should be a basic conduct requirement within the Code itself. Confidentiality underpins effective governance by enabling open discussion, protecting sensitive information, and maintaining trust between members, staff, and the community. The Code should clearly require members not to disclose information acquired in confidence unless lawfully authorised.

***Recommendation 9: That the Draft Code include confidentiality as a core conduct obligation and ensure key standards are set directly in the Code, rather than being dependent on separate policies.***

## Conclusion

40. DCC supports the principle of a standardised Code of Conduct as a tool to strengthen governance across the local government sector. However, in its current form, the Draft Code raises significant concerns. These include the potential for excessive and unregulated complaints, lack of clarity around investigator appointment and authority, the absence of appeal or review mechanisms, sanctions that are limited in scope and uncertain in enforceability, and an overall lack of legal robustness.
41. We acknowledge that the Commission has noted the limits of the current legislative framework and that some matters, particularly sanctions and penalties, may be clarified through future amendments led by the Department of Internal Affairs. In the meantime, it remains important that the Code itself provides clearer guidance to ensure fair, consistent, and workable processes for councils and elected members.

42. DCC welcomes the opportunity to engage further with the Local Government Commission, and can provide real examples of where we can see issues or scenarios that would contribute to ensuring that the final Code reflects both democratic principles and the operational realities faced by councils across Aotearoa New Zealand.

Ngā mihi nui,



Sandy Graham  
**CHIEF EXECUTIVE**