



Guide for appointed members of Waikato Regional Council committees and subcommittees

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Introduction

Congratulations on being appointed as a member of a Waikato Regional Council committee or subcommittee.

This *Guide* is designed to assist appointed members to meet all legal requirements and the highest degree of integrity when undertaking governance activities, while also providing a safe and rewarding environment in which all members can thrive. It supports:

- a. good governance;
- b. effective decision-making and community engagement;
- c. the credibility and accountability of Waikato Regional Council to its communities; and
- d. a culture of mutual trust and respect between members, and with staff.

1. Commitments

In the conduct of the business of a Waikato Regional Council committee or subcommittee, appointed members must be committed to:¹

- a. treating all people fairly;
- b. treating other members, staff and members of the public with respect;
- c. sharing with the committee or subcommittee chair any information received that is pertinent to Waikato Regional Council's ability to properly perform its statutory duties;
- d. operating in a manner that recognises and respects the significance of the principles of *Te Tiriti o Waitangi*;
- e. making it clear, when speaking publicly, that statements reflect their personal view, unless otherwise authorised to speak on behalf of committee or subcommittee;
- f. taking all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of a member;
- g. not bullying, harassing, or discriminating unlawfully against any person;
- h. not bringing the committee, subcommittee, or Waikato Regional Council into disrepute;
- i. not using their position to improperly advantage themselves or anyone else, or disadvantage another person;
- j. not compromising, or attempting to compromise, the impartiality of anyone who works for, or on behalf of, Waikato Regional Council;
- k. not disclosing information acquired, or given, in confidence, which they believe is of a confidential nature.

¹ Local Government Act 2002, Local Government Official Information and Meeting Act 1987, Health and Safety at Work Act 2015, Local Authorities (Members' Interests) Act 1968.

2. Te Tiriti o Waitangi

The *Local Government Act 2002* requires that Waikato Regional Council's committees and subcommittees operate in a manner that recognises and respects the significance of the principles of *Te Tiriti o Waitangi*. Section 81 states that Waikato Regional Council must:

- a. establish and maintain processes to provide opportunities for Māori to contribute to decision-making processes;
- b. consider ways in which it may foster the development of Māori capacity to contribute to decision-making processes; and
- c. provide relevant information to Māori for the purposes of contributing to, and building capacity to contribute to, the local authority's decision-making processes.

3. Principles of good governance

Waikato Regional Council's committees and subcommittees are part of its governance structure. The principles of good governance are as follows.

- a. **Public interest:** members must act solely in the public interest.
- b. **Integrity:** members must not act or take decisions to gain financial or other benefits for themselves, their family, or their friends, or place themselves under any obligation to people or organisations that might inappropriately influence them in their work.
- c. **Stewardship:** members must use long-term perspective when making decisions. Decisions, which impact on past, current and future generations, also affect collective well-being.
- d. **Objectivity:** members must act and take decisions impartially, fairly, and on merit, using the best evidence and without discrimination or bias.
- e. **Accountability:** members are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- f. **Openness:** members must act and make decisions in an open and transparent manner and not withhold information from the public unless there are clear and lawful reasons.
- g. **Honesty:** members must be truthful and not misleading.
- h. **Leadership:** members must not only exhibit these principles in their own behaviour but also be willing to challenge poor behaviour in others, wherever it occurs.

4. Behaviours

To promote good governance and build trust between a local authority, its members, and citizens, members must meet the following standards of conduct when they are:

- a. conducting the business of the local authority;
- b. acting as a representative of the local authority;
- c. communicating with other members, the media, the public and staff; and
- d. using social media and other communication channels.

Respect

Members must treat all other members, staff, and members of the public, with respect.

Respect means politeness and courtesy in behaviour, speech, and writing. Debate and differences are all part of a healthy democracy. Members can challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. Members must not, however, subject individuals, groups of people or organisations to personal attack, bullying or harassment.

Members must treat the public politely and courteously. Offensive behaviour lowers the public's expectations of, and confidence in, Waikato Regional Council. If members of the public are being abusive, intimidatory or threatening, a member may stop the conversation or interaction in person or online and report them to the committee or subcommittee chair, the relevant social media provider, or the police.

Bullying, harassment, and discrimination

Members must treat all people fairly and must not:

- a. bully any person,
- b. harass any person, or
- c. discriminate unlawfully against any person.

Bullying is offensive, intimidating, malicious, or insulting behaviour. It represents an abuse of power through means that undermine, humiliate, denigrate, or injure another person. It may be:

- a. a regular pattern of behaviour, or a one-off incident,
- b. occur face-to-face, on social media, in emails or phone calls, and
- c. may not always be obvious or noticed by others.

Harassment means conduct that causes alarm or distress, or puts people in fear of violence, and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact in a manner that could be expected to cause distress or fear.

Unlawful discrimination occurs when a person is treated unfairly, or less favourably, than another person because of any of the following²:

age	skin, hair, or eye colour	race
disability	employment status	ethical belief
ethnic or national origin	family status	marital status
political opinion	religious belief	gender identity
sex	sexual orientation.	

² See Human Rights Commission <https://www.govt.nz/browse/law-crime-and-justice/human-rights-in-nz/human-rights-and-freedoms/>

Sharing information

Members must share with the chair of the committee or subcommittee any information received that is pertinent to its ability to properly perform its statutory duties. Where information is confidential, this must be communicated to the chair who must ensure that appropriate steps are taken to protect the information whilst sharing as necessary.

Expressing personal views publicly

Members, except when expressly authorised to speak on behalf of the committee, subcommittee or Waikato Regional Council, will make it clear, when speaking to the media, on social media, or in hui and presentations, that statements reflect their personal view.

The media play an important role in the operation and efficacy of local democracy and need accurate and timely information about the affairs of the committee or subcommittee to fulfil that role. Members are free to express a personal view to the media and in other public channels at any time, provided the following rules are observed:

- a. they do not purport to talk on behalf of the committee or subcommittee or Waikato Regional Council generally, if permission to speak on behalf has not been given to them;
- b. their comments must not be inconsistent with the requirements set out in this *Guide*, for example, they must not disclose confidential information or criticise individual members of staff; and
- c. their comments must not purposefully misrepresent the views of the committee or subcommittee or Waikato Regional Council or other members.

Provide equitable contribution

Members must take all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of them. Being a member is a position of considerable trust. To contribute to good governance, it is important members make all reasonable efforts to prepare for and attend meetings. It is important that every member contributes. At times this requires members to work as a team and avoid situations where the majority of the work falls on the shoulders of a small number of members.

Disrepute

Members must not bring the committee, subcommittee or Waikato Regional Council into disrepute.

Members are trusted to make decisions on behalf of their communities and as such their actions and behaviours are subject to greater scrutiny than other citizens. Members' actions also reflect on Waikato Regional Council as well as themselves and can serve to either boost or erode public confidence in both.

Behaviours that might bring a member, committee, subcommittee or Waikato Regional Council into disrepute, include behaviours that are dishonest or deceitful. Members may, appropriately, hold the committee, subcommittee, or fellow members to account, or constructively challenge and express concerns about decisions and processes undertaken by Waikato Regional Council. This must not be used as an excuse to participate in bullying or harassment.

Use of position for personal advantage

Members must not use, or attempt to use, their position to improperly advantage themselves or anyone else, or disadvantage another person.

Being a member comes with certain opportunities and privileges, including the power to make choices that can impact on others. Members must not take advantage of such opportunities to further their own or others' private interests or to disadvantage anyone unfairly. A member found to have personally benefited from information gained as a member may be subject to the provisions of the *Secret Commissions Act 1910*.

Impartiality

Members must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of Waikato Regional Council.

Officers work for Waikato Regional Council as a whole and must be politically neutral. They must not be coerced or persuaded to act in a way that would undermine their neutrality. Members can respectfully question officers to gain understanding of their thinking and decision-making, however, they must not seek to influence officials to change their advice or alter the content of a report, other than in a meeting, if doing so would prejudice their professional integrity. Members must:

- a. make themselves aware of the obligations that Waikato Regional Council and the Chief Executive have as employers and always observe those requirements, such as the obligation to be a good employer, and
- b. observe any protocols put in place by the Chief Executive concerning contact between members and employees, and not publicly criticise staff.

If a member has concerns about the behaviour of an official, they should raise this with the Chief Executive, or, if the concerns are to do with the Chief Executive, with the Waikato Regional Council chair.

Disclosure of interests and gifts

The common law requires that members disclose and manage interests that could conflict, or could be perceived to conflict, with their duties as a member. This includes being in a contract with Waikato Regional Council or interested in a contract as a spouse or partner, director, shareholder, trustee, beneficiary, or membership. It includes the receipt of a gift, a personal or professional relationship or the ownership of real or personal property. Interests including receipt of gifts will be maintained in a register to ensure transparency and strengthen public trust and confidence in local government processes and decision-making. Registers comprise the following:

1. The name of each company of which the member is a director or holds or controls more than 10% of the voting rights and a description of the main business activities of each of those companies.
2. The name of every other company or business entity in which the member has a pecuniary interest, other than as an investor in a managed investment scheme, and a description of the main business activities of each of those companies or business entities.
3. If the member is employed, the name of each employer and a description of the main business activities of those employers.
4. The name of each trust in which the member has a beneficial interest.

5. The name of any organisation or trust and a description of the main activities of that organisation or trust if the member is a member of the organisation, a member of the governing body of the organisation, or a trustee of the trust, and the organisation or trust receives funding from the local authority.
6. The title and description of any organisation in which the member holds an appointment by virtue of being a member.
7. The general location of real property in which the member has a legal interest, other than an interest as a trustee, and a description of the nature of the real property.
8. the general location of real property, and a description of the nature of the real property, held by a trust if the member is a beneficiary of the trust and it is not a unit trust, or a retirement scheme whose membership is open to the public.

Members must also be aware of their responsibilities under the *Local Authorities (Members' Interests) Act 1968* set out below.

Where a member's interest conflicts with an item on an agenda of a meeting, or could be perceived to, the member is encouraged to remove themselves from discussion and voting on the item and to have this recorded in the minutes. If in doubt, the member should not participate.

Maintaining confidentiality

Members must not disclose information acquired, or given, in confidence, which they believe is of a confidential nature, unless:

- a. they have the consent of a person authorised to give it,
- b. they are required by law to do so,
- c. the disclosure is to a third party to obtain professional legal advice, and that the third party agrees not to disclose the information to any other person, or
- d. the disclosure is reasonable and in the public interest, is made in good faith, and in compliance with Waikato Regional Council's requirements.

5. Key legislation relevant to appointed members

The key statutes relevant to appointed members are the *Local Government Act 2002* (LGA), *Local Government Official Information Act 1987* (LGOIMA), the *Local Authorities (Members' Interests) Act 1968* (LAMIA), the *Protected Disclosures (Protection of Whistleblowers) Act 2022*, the *Serious Fraud Office Act 1990*, the *Health and Safety at Work Act 2015*, and the *Harmful Digital Communications Act 2015*.

The Local Government Act 2002

The LGA is local government's empowering statute. It establishes the system of local government and sets out the rules by which it operates. Those rules include the principles underpinning local authority decision-making, governance principles, *Te Tiriti* obligations as set by the Crown, and the role of the Chief Executive which is:

1. implementing the decisions of the local authority;
2. providing advice to members;

3. ensuring that all responsibilities, duties, and powers delegated to them or to any person employed by the local authority, or imposed or conferred by an Act, regulation, or bylaw, are properly performed, or exercised;
4. ensuring the effective and efficient management of the activities of the local authority;
5. facilitating and fostering representative and substantial elector participation in elections and polls held under the *Local Electoral Act 2001*;
6. maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority;
7. providing leadership for the staff of the local authority;
8. employing, on behalf of the local authority, the staff;
9. negotiating the terms of employment of the staff of the local authority (in accordance with any remuneration and employment policy).

The Local Government Official Information and Meetings Act 1987

The LGOIMA sets rules for ensuring the public are able to access official information unless there is a valid reason for withholding it. All information should be considered public and released accordingly unless there is a compelling case for confidentiality. Even where information has been classified as confidential, best practice is for it to be proactively released as soon as the grounds for confidentiality have passed.

There are both conclusive and other reasons for withholding information set out in sections 6 and 7 of the LGOIMA, which include:

Conclusive reasons for withholding – if making the information available would likely:

1. prejudice the maintenance of the law, including the prevention, investigation and detection of offences, and the right to a fair trial; or
2. endanger the safety of any person.

Other reasons for withholding – withholding the information is necessary to:

1. protect the privacy of natural persons, including that of deceased natural persons;
2. protect information where it would disclose a trade secret or would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information;
3. in the case of an application for resource consents or certain orders under the *Resource Management Act 1991*, to avoid serious offence to tikanga Māori, or to avoid the disclosure of the location of waahi tapu;
4. protect information the subject of an obligation of confidence, where making that information available would prejudice the supply of similar information (and it is in the public interest for this to continue), or would be likely otherwise to damage the public interest;
5. avoid prejudice to measures protecting the health or safety of members of the public;
6. avoid prejudice to measures that prevent or mitigate material loss to members of the public;
7. maintain legal professional privilege;
8. enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or
9. prevent the disclosure or use of official information for improper gain or improper advantage.

Regarding these 'other' reasons, a public interest balancing test applies. In these cases, it must be considered whether the withholding of that information is outweighed by other considerations that render it desirable, in the public interest, to make that information available. Decisions about the release of information under the LGOIMA need to be made by the appropriately authorised people, and elected members must work within the rules adopted the local authority.

The LGOIMA also sets the rules that govern public access to meetings and the grounds on which that access can be restricted, which occurs when meetings consider matters that are confidential.

The role of the Ombudsman

An Ombudsman is an Officer of Parliament appointed by the Governor-General on the recommendation of Parliament. An Ombudsman's primary role under the *Ombudsmen Act 1975* is to independently investigate administrative acts and decisions of central and local government departments and organisations that affect someone in a personal capacity. Ombudsmen investigate complaints made under the LGOIMA.

Anyone who has a complaint of that nature about a local authority may ask an Ombudsman to investigate that complaint. Investigations are conducted in private. The Ombudsman may obtain whatever information is considered necessary, whether from the complainant, the chief executive of the local authority involved, or any other party. The Ombudsman's decision is provided in writing to both parties.

If a complaint is sustained, the Ombudsman may recommend the local authority takes whatever action the Ombudsman considers would be an appropriate remedy. Any such recommendation is, however, not binding. Recommendations made to the local authority under this Act will, in general, become binding unless the local authority resolves otherwise. However, any such resolution must be recorded in writing and be made within 20 working days of the date of the recommendation.

The Local Authorities (Members' Interests) Act 1968

Pecuniary interests

The LAMIA provides rules about members discussing or voting on matters in governance meetings in which they have a pecuniary interest; and about contracts between members and the local authority. The LAMIA has two main rules, referred to here as the contracting rule (in section 3 of the LAMIA) and the participation rule (in section 6 of the LAMIA).

1. The **contracting rule** prevents a member from having interests in contracts with the local authority that are worth more than \$25,000 (GST inclusive) in total in any financial year, unless the Auditor-General gives prior approval. Breach of the rule results in automatic disqualification from office.
2. The **participation rule** prevents a member in a governance meeting from voting or taking part in the discussion of any matter in which they have a financial interest, other than an interest in common with the public. The Auditor-General can approve meeting participation in advance in limited circumstances. Breach of the rule is a criminal offence, and conviction results in automatic disqualification from office.

Both rules have a complex series of subsidiary rules about their scope and exceptions.

The LAMIA does not define when a person is “concerned or interested” in a contract (for the purposes of section 3) or when they are interested “directly or indirectly” in a decision (for the purposes of section 6). However, it does set out two situations where this occurs. These are broadly where:

1. a person’s spouse or partner is “concerned or interested” in the contract or where they have a pecuniary interest in the decision; or
2. a person or their spouse or partner is involved in a company that is “concerned or interested” in the contract or where the company has a pecuniary interest in the decision.

However, in some situations outside the two listed in the Act a person can be “concerned or interested” in a contract or have a pecuniary interest in a decision, for example, where a contract is between the member’s family trust and the local authority.

Non-pecuniary conflicts of interest

In addition to the issue of pecuniary interests, which are addressed through the LAMIA, there are also legal rules about conflicts of interest more generally. These are rules that apply to non-pecuniary conflicts of interest and include the common law rule about bias. To determine if bias exists, consider this question: Is there a real danger of bias on the part of the member of the decision-making body, in the sense that they might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?

The question is not limited to actual bias but relates to the appearance or possibility of bias. This is in line with the principle that justice should not only be done but should be seen to be done. Whether the member believes they are not biased is irrelevant. The focus is on the nature of any conflicting interest or relationship, and the risk it could pose for the decision-making process undertaken in governance meetings. The most common risks of non-pecuniary bias are where:

1. statements or conduct indicate that a member has predetermined the decision before hearing all relevant information (that is, they have a “closed mind”), or
2. a member has a close relationship or involvement with an individual or organisation affected by the decision.

Seeking exemption from the Auditor-General

Members may apply to the Auditor-General for exemption from the contracting and participation rules. Democracy Services can assist.

Protected Disclosures (Protection of Whistleblowers) Act 2022

The *Protected Disclosures (Protection of Whistleblowers) Act 2022* is designed to facilitate the disclosure and investigation of serious wrongdoing in the workplace, and to provide protection for employees and other workers who report concerns. A protected disclosure occurs when the discloser believes, on reasonable grounds, that there is, or has been, **serious wrongdoing** in or by their organisation, they disclose in accordance with the Act, and they do not disclose in bad faith.

A discloser is a person who has an work related relationship with the organisation they are disclosing about and includes current and former employees, homeworkers, secondees, contractors, volunteers, and board members. Serious wrongdoing includes:

1. an offence;
2. a serious risk to public health, or public safety, or the health or safety of any individual, or to the environment;
3. a serious risk to the maintenance of the law including the prevention, investigation and detection of offences or the right to a fair trial;
4. an unlawful, corrupt, or irregular use of public funds or public resources;
5. behaviour that is oppressive, unlawfully discriminatory, or grossly negligent or that is gross mismanagement by a public sector employee or a person performing a function or duty or exercising a power on behalf of a public sector organisation or the Government.

Local authorities have appropriate internal procedures that identify who in the organisation a protected disclosure may be made to, describe the protections available under the Act, and explain how the organisation will provide practical assistance and advice to disclosers. A discloser does not have to go through their organisation first. An appropriate authority can include the head of any public sector organisation and any officer of Parliament, such as the Ombudsman and Controller and Auditor-General. Ombudsmen are also an “appropriate authority” under the Act.

The Serious Fraud Office Act 1990

The Serious Fraud Office (SFO) is the lead law enforcement agency for investigating and prosecuting serious financial crime, including bribery and corruption. The SFO has an increasing focus on prevention by building awareness and understanding of the risks of corruption – noting that the extent of corruption is influenced by organisational frameworks and support given to staff. The SFO encourages organisations to adopt appropriate checks and balances and build a culture based on ethics and integrity.

The four basic elements of best practice organisational control promoted by the SFO involve:

1. Operations people with the right skills and experience in the relevant areas, with clear accountability lines.
2. Risk mitigation to manage risks that can't be eliminated through segregation, discretion reduction, delegations, management oversight, and audit.
3. Basic standards of behaviour moderated by conduct requirements, ongoing interests and gift processes (not simply annual declaration), plenty of opportunities and ways to speak up, disciplinary options, training and support.
4. Design and oversight based on a clear understanding of operational realities (design, governance, management, audit, investigation, business improvement, and legal).

The Health and Safety at Work Act 2015

Under the *Health and Safety at Work Act 2015* a local authority is termed a Person Conducting a Business or Undertaking (PCBU) - all involved in work, including members have a statutory duty of care. Appointed members are “officers” under the Act and officers are required to exercise due diligence to ensure that the PCBU complies with its duties. However, certain officers, such as members, cannot be prosecuted if they fail in their due diligence duty. Despite this, as officers, the key matters to be mindful of are:

1. Stepping up and being accountable;
2. Identifying and managing risk;
3. Making health and safety part of organisational culture;

4. Getting workers involved.

Members, through the chief executive need to ensure their organisations have sufficient personnel with the right skill mix and support, to meet health and safety requirements. This includes making sure that funding is sufficient to effectively implement and maintain the system and its improvement programmes.

The Harmful Digital Communications Act 2015

The *Harmful Digital Communications Act 2015* (HDCA) was passed to help people dealing with serious or repeated harmful digital communications. The Act covers any harmful digital communications (like text, emails, or social media content) which can include racist, sexist, and religiously intolerant comments – plus those about disabilities or sexual orientation and sets out 10 communication principles for guiding communication online. Under the Act a digital communication should not:

1. disclose sensitive personal facts about an individual;
2. be threatening, intimidating, or menacing;
3. be grossly offensive to a reasonable person in the position of the affected individual;
4. be indecent or obscene;
5. be used to harass an individual;
6. make a false allegation;
7. contain a matter that is published in breach of confidence;
8. incite or encourage anyone to send a message to an individual for the purpose of causing harm to the individual;
9. incite or encourage an individual to commit suicide;
10. denigrate an individual by reason of colour, race, ethnic or national origins, religion, gender, sexual orientation, or disability.

More information about the Act can be found at [Netsafe](#).