



19 September 2025

Brendan J Duffy
Chair of Local Government Commission
info@lgc.govt.nz

cc: Hon Simon Watts
Minister for Local Government
S.Watts@ministers.govt.nz

Local Government Commission fails elected members with draft Code of Conduct

Good afternoon,

1. The Free Speech Union is a registered trade union with a mission to fight for, protect, and expand New Zealanders' rights to freedom of speech, conscience, and intellectual inquiry. We believe that freedom of speech is not only a legal principle, but a social good that allows for people in modern liberal democracies to peacefully, freely advocate for the causes they care about without risking unjust retribution.
2. We write to express serious concerns regarding the Local Government Commission's draft Code of Conduct currently available for public consultation.
3. In your September 2021 report to the Minister of Local Government, the Commission rightly observed a growing tendency for code of conduct complaints to be used for political gain, with unclear materiality and inconsistent processes enabling weaponisation. The report recommended reforms to provide clarity (including a definition of materiality), proportionality, and an explicit explanation of freedom of expression under the New Zealand Bill of Rights Act (NZBORA) and its limits.
4. It is therefore deeply disappointing that the draft Code produced by the Commission repeats precisely the problems your own report identified. It is vague, inconsistent, and wide open to abuse. Rather than solving the problem of weaponisation, it risks entrenching it.
5. We will be submitting a detailed response to the draft Code, however, we wish to highlight our key free speech concerns:
 - a. **Vague and overbroad standards.** The Code requires members (any elected member of a local authority e.g., mayors, councillors, or of a local board or community board) to be "*respectful,*" "*inclusive,*" and "*not derogatory.*" These indefinite terms invite subjective enforcement and will inevitably be applied in line with prevailing ideologies. Councillors will self-censor rather than risk sanction for robust or unpopular speech.

- b. **Punishment for criticising staff.** The Code makes it a “*material breach*” to publicly criticise staff or question their professionalism. This shields unelected officials from legitimate scrutiny and undermines the democratic role of councillors as watchdogs on behalf of ratepayers.
 - c. **Reputational harm as “serious harm.”** Treating reputational damage as “*serious harm*” collapses accountability into image management. It allows strong but lawful criticism to be penalised, chilling the very political expression that NZBORA s 14 is designed to protect.
 - d. **Freedom of expression provisions that cancel themselves.** The “*Freedom of Expression*” section acknowledges rights only to caveat them with vague requirements to “*use responsibly*” and not be “*derogatory*.” This renders the protection meaningless in practice.
 - e. **Overreach into private life.** The Code applies to members in their “*personal capacity*” when interacting with staff. This policing of private speech goes beyond what is reasonable or lawful in a democracy.
 - f. **Compelled speech and ideological training.** The Code empowers investigators to force apologies, retractions, or attendance at “*courses to increase understanding*.” This amounts to compelled speech and ideological conditioning, incompatible with freedom of thought and conscience.
 - g. **Excessive investigator power with no appeal.** A single investigator determines intent, seriousness, and sanctions, with no right of review or appeal. This centralisation of power is inconsistent with natural justice and guarantees overreach.
6. The Commission’s 2021 report acknowledged the risks of weaponisation. Yet the draft Code you have now prepared amplifies those very risks and stands to embed them throughout local authorities nationally. Far from protecting freedom of expression and democratic accountability, it entrenches vague standards, hands sweeping power to investigators, and undermines the ability of councillors to speak openly on behalf of their constituents. The latter is especially concerning, given that this is the democratic function of local government.
7. We urge the Commission to immediately withdraw or substantially revise this draft Code. At a minimum, it must:
 - a. Replace vague civility standards with clear, conduct-based rules (threats, harassment, doxxing).
 - b. Protect the right of councillors to criticise staff and hold officials to account.
 - c. Define “*serious harm*” narrowly, excluding reputational embarrassment.
 - d. Embed NZBORA proportionality analysis directly into the Freedom of Expression section.
 - e. Ensure due process safeguards, including appeal rights and limits on investigator power.
8. New Zealanders deserve local government codes of conduct that protect democratic debate, not suppress it. We would welcome the opportunity to meet with the Commission to discuss how these issues can be addressed.

Yours faithfully,
Free Speech Union (New Zealand) Inc.



Jillaine Heather
Chief Executive
0225146075