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Further Information: Meeting with the Local Government Commission

Good morning,

1. We refer to our meeting with you on Tuesday, 14 October, and appreciate your willingness to engage with us on our concerns regarding the draft Code of Conduct you have recently developed. We now write to address several matters we agreed to follow up on after our discussion.
2. First, you have requested we provide a summary of the survey of local councillors that informed our submission. We emailed our survey to 887 elected members, and we received 86 responses (~10%). Receiving a limited number of responses does not mean there is no issue. Many important social and policy developments begin with the experiences of small groups whose perspectives reveal broader systemic concerns. The fact that only a subset of councillors felt comfortable participating may itself indicate the sensitivity of the topic and the presence of self-censorship within local government culture. Those who did respond consistently raised concerns about ambiguity in behavioural standards, the potential for political misuse of complaints, and the chilling effect this has on open debate within councils. A full summary of the data can be found here: https://www.surveymonkey.com/results/SM-ubK0iMcJOAiFUhmaBOeiEg_3D_3D/
3. We acknowledge that councillor–staff relationships can at times be challenging, and that a key motivation behind the development of the draft Code of Conduct is to address instances of unacceptable behaviour by councillors towards staff. We share the view that the Code should protect staff from genuine mistreatment without being used to suppress legitimate disagreement. To achieve this balance, behavioural standards should be expressed in clear, objective terms. We believe there is a workable middle ground that avoids reliance on subjective language such as “respectful,” “inclusive,” or “not derogatory,” while still capturing the types of behaviour that are of genuine concern.
4. To this end, we suggest that Clause 11 be revised to read along the following lines:

Standards of Behaviour

“Members must treat staff, other members, and the public in a manner that is free from abuse, intimidation, or personal denigration. Members must not engage in behaviour that a reasonable person would regard as

bullying, harassment, or a personal attack. This does not preclude criticism of advice, performance, or policy made in good faith and in the public interest.”

5. This language targets conduct rather than tone or viewpoint, protecting staff from genuine mistreatment while preserving councillors’ ability to speak freely and hold officials to account.

How a Panel Process Could Operate

6. We agree that not every dispute should proceed directly to an investigator or panel. Early, informal resolution often produces better outcomes for relationships and workplace culture. We propose a two-stage process that combines early mediation with a nationally coordinated investigation panel model:
 - a. **Early mediation:** The Mayor or Chair, supported by a neutral facilitator, should seek to resolve issues informally where appropriate. Many low-level conflicts can be addressed through dialogue, preventing unnecessary escalation.
 - b. **Independent investigation panel:** Where matters remain unresolved or are of a serious nature, a panel drawn from a national pool of trained investigators should consider the complaint. Each panel could comprise two professionals (with expertise in law, governance, or human resources) and one lay member, appointed by an independent coordinating body such as LGNZ and Taituarā, under ministerial oversight.
 - c. **Appeal process:** Decisions of the panel should be subject to a limited right of appeal on procedural or substantive grounds. An appeal mechanism is an essential element of natural justice, ensuring accountability, consistency, and confidence in the integrity of the process.

Whether Councillors Should Be Required to Sign the Code

7. While signing the Code has limited legal effect, since compliance is already required under Schedule 7, section 15(4) of the Local Government Act, it can still serve an important symbolic purpose when a new council takes office. A brief signing or collective affirmation at the inaugural meeting of a newly elected Council can reinforce expectations of professionalism, integrity, and good faith.
8. Alternatively, councils could adopt a short, plain-language statement setting out how members and staff will work together. Each incoming council could then review and re-affirm this statement to ensure continued relevance and shared ownership. Approaches of this kind are more likely to foster genuine commitment and collegial culture than mandatory individual signatures.

Identifying and Managing Vexatious Complaints

9. A complaint may be considered vexatious where one or more of the following criteria apply:
 - a. It is repetitive or duplicative, raising substantially the same issue as a previous complaint that has already been resolved.
 - b. It is trivial or frivolous, lacking any apparent material impact or evidence of a breach.

- c. It appears to be motivated primarily by personal animosity or political advantage, rather than a genuine concern about conduct.
- d. It is based solely on disagreement, offence, or tone, without alleging specific, objective behaviour contrary to the Code.
- e. It forms part of a pattern of harassment or serial complaints targeting the same individual.

10. A potentially vexatious complaint could be managed in the following 3 stages:

- a. **Preliminary triage:** Before an investigator or panel is appointed, the Mayor or Chair, together with the Chief Executive (or an independent governance lead), jointly assess whether the complaint meets the basic threshold for investigation.
- b. **Threshold determination:** Where a complaint appears vexatious, the reviewer should prepare a brief written note recording the reasons for non-acceptance. This should be communicated to both parties to ensure transparency.
- c. **Right of review:** The complainant should have a limited right to request an independent review by the national panel coordinator. This safeguard helps prevent any perception of political suppression while maintaining efficiency and fairness.

Preventing Vexatious Complaints

- 11. Vexatious complaints are best prevented through clear guidance and sound process design. The Code should set explicit thresholds for what constitutes a breach, provide illustrative examples of what does not (such as lawful disagreement or robust debate), and incorporate a two-stage triage process: first a preliminary review for sufficiency at the local level, followed by independent oversight through the national panel coordinator, to ensure that only substantive complaints are referred for investigation.
- 12. Publishing anonymised data on dismissed complaints, as well as educating councillors and staff on the proper scope and intent of the Code, would further deter misuse and promote a culture of proportionate, good-faith engagement.

Building Culture Beyond Codes of Conduct

- 13. As we discussed in our meeting, a Code can set minimum behavioural standards, but it cannot by itself build a positive culture. At best, it discourages adverse behaviour; it does little to actively incentivise professionalism, trust, or collaboration. In our view, lasting cultural change depends on leadership, clear expectations, and systems that make constructive conduct the norm rather than a rule to be enforced.
- 14. Here are some key principles we think could help councils put that approach into practice:
 - **Leadership and tone:** Mayors, Chairs, and Chief Executives should model calm, resilient, open debate, manage meetings firmly, and intervene early to prevent personal attacks or escalation.

- **Practical training:** At the start of each term, councils should hold short, skills-based workshops for councillors and senior staff on governance roles, effective communication, and how to question and disagree constructively.
- **Early resolution:** Mediation or facilitated discussion should be available to resolve issues before they become formal complaints.
- **Transparency:** Councils should maintain open communication and publish anonymised summaries of Code complaints to demonstrate that the process is fair and not political.
- **Accountability for real misconduct:** Bullying, harassment, or threats must be addressed promptly and decisively, while preserving space for robust debate and legitimate criticism.

15. As we noted in our discussion, culture improves when people understand how to work together and see accountability applied fairly, not when they are policed through vague behavioural codes.

16. One further way to strengthen a constructive culture within local government is through clear, principled statements that affirm the value of open debate. As we discussed with the Commission, fostering a culture of mutual respect and robust exchange requires more than procedural safeguards, it also depends on shared commitments to freedom of expression as a core democratic value.

17. Universities throughout New Zealand are currently developing Freedom of Expression Statements and Policies, in anticipation of the forthcoming requirement under the Education and Training Amendment Bill (No 2) 2025, which is progressing through Parliament. These initiatives provide a useful indication of what a Freedom of Expression Statement might look like for the Commission or for local authorities more broadly.

18. Two examples that we generally endorse are:

- **Draft Freedom of Expression Statement – University of Auckland ([found here](#)).** This draft, that has recently been under consultation, stands out for its clarity, succinctness, and recognition of the positive value of freedom of expression and academic freedom, including through viewpoint diversity and debate. It commits to institutional neutrality and ties clearly to the legislative framework underpinning universities’ responsibilities. Equally important is what it omits: vague or subjective terms such as “*respectful*,” “*harmful*,” or “*negatively impact wellbeing/reputation*.”
- **Statement on Free Speech – University of Otago ([found here](#)).** This statement clearly articulates the positive contribution of open debate and questioning to learning and growth. It recognises the university’s core role as enabling discussion rather than restricting it, with formulations such as “*The University affirms that it will not restrict debate simply because...*” and “*The University accepts no duty to...*”. It also situates this principle within the university’s social role: preparing students to navigate conflict and disagreement and providing a space where contrary and unpopular views can be expressed free from political interference.

19. We would welcome the opportunity to continue working with the Commission on developing such a statement. The FSU has supported similar initiatives elsewhere, including with Taupō District Council, and

would be pleased to share our experience in drafting and implementing effective Freedom of Expression Statements.

20. We appreciated the Commission's constructive engagement and the openness of our discussion. We recognise that this is a challenging area of policy, balancing competing interests, and we welcome the thoughtful consideration the Commission is giving to these issues.
21. At the same time, the Commission's recommendations will shape how democratic debate is conducted within local government for years to come. It is therefore essential that the final framework reflects not only procedural fairness but also a genuine commitment to freedom of expression and open debate as the foundation of accountable governance. Codes that are seen to constrain legitimate criticism or dissent will not build trust, they will erode it.
22. We have provided this further information to assist the Commission in refining its proposals in a way that protects both staff wellbeing and the democratic integrity of councils. We look forward to seeing how these principles are reflected in the next iteration of the draft Code and remain available to contribute further as the work progresses.

Yours faithfully,

Free Speech Union (New Zealand) Inc.



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