



## SUBMISSION OF THE FREE SPEECH UNION ON THE LOCAL GOVERNMENT COMMISSION'S DRAFT CODE OF CONDUCT

### INTRODUCTION

1. The Free Speech Union (FSU) 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 envision a flourishing New Zealand civil society that values and protects vigorous debate and the expression of dissenting ideas.
2. This submission sets out the FSU's substantive concerns with the Local Government Commission's (LGC) Draft Code of Conduct. In our view, the draft Code requires fundamental reconsideration. As currently framed, it risks undermining freedom of expression, chilling legitimate political speech, and weakening the ability of elected representatives to hold officials to account.
3. Freedom of expression is not a peripheral right but a cornerstone of democratic life. Councillors, as elected representatives, must enjoy the strongest possible protection of this freedom if they are to fulfil their role as the voices of their communities.

### SUMMARY OF SUBMISSION

4. Our submission is summarised as follows:
  - The draft Code relies on vague civility standards ("*respect*," "*inclusive*," "*not derogatory*"), inviting subjective enforcement and self-censorship.
  - Criticism of staff is automatically treated as a serious breach, shielding unelected officials from scrutiny and silencing councillors.
  - "*Reputational harm*" and "*disrepute*" are classed as "*serious harm*," collapsing accountability into reputation management and punishing robust criticism.
  - The Freedom of Expression section acknowledges rights but then undermines them with vague caveats ("*used responsibly*"), offering no genuine NZBORA protection.
  - Clause 8 introduces undefined Treaty concepts as disciplinary standards, turning live political issues into conduct rules and chilling debate.
  - Councillors may be disciplined for breaching external policies (e.g. media or social media guidelines) that have not been tested against NZBORA.
  - A broad "*materiality*" test allows complaints for conduct that merely causes "*disrepute*" or "*reflects adversely*," capturing ordinary disagreement and dissent.
  - A single investigator has unchecked power over materiality, intent, and sanctions, with no right of appeal.

- Investigators can impose training or mentorship without challenge, creating scope for ideological re-education.
  - The Code applies to councillors’ private interactions with staff, policing personal speech beyond official duties.
  - Forced apologies, retractions, or corrections amount to compelled speech, even for non-serious complaints.
  - Mandated courses to “*increase understanding*” risk ideological remediation, punishing councillors for unpopular views.
  - Sanctions can include restricting staff or office access, a practical gag that sidelines dissenters and weakens representation.
  - The Code risks normalising misuse of legal tools (Harmful Digital Communications Act takedowns, defamation threats) to suppress lawful criticism.
  - Statutes are listed without thresholds, creating the impression that lawful speech may breach the Code, and encouraging over-compliance.
5. The FSU has serious concerns with the draft in its current form. We urge the LGC to withdraw it, or at minimum to undertake substantial revision, if it is to avoid compounding the very risks of weaponisation and suppression of democratic debate that the LGC itself has previously recognised.

## BACKGROUND

6. In July 2024, the FSU surveyed local councillors to assess how free they feel to speak in their roles.<sup>1</sup> The results were dismal. On a scale of 1–10, councillors rated their freedom to publicly challenge colleagues at an average of just 4.3. More than half (52.88%) reported that Codes of Conduct are used to silence councillors - occasionally (27.59%), frequently (18.39%), or constantly (6.9%). These findings reveal an environment in which councillors feel constrained from challenging ideas or engaging in open debate, striking at the heart of democratic accountability.
7. The FSU has long engaged with cases where local governments have undermined the free speech rights of elected councillors and the public. Recent examples include:
- a. **Codes of Conduct as gag orders:** In May 2025, Environment Canterbury councillors rejected a proposed Code of Conduct and Public Statement Policy, aimed at “*enabling behaviours that balanced openness with safety.*” Councillors warned the policy was “*too risk averse,*”, that “*the ability to challenge others in the organisation is [their] prerogative,*” and that it “*feels a bit like a gag order.*”<sup>2</sup>

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<sup>1</sup> Free Speech Union. (2024). Local democracy under threat: Councillors’ free speech in question. Free Speech Union. <https://www.fsu.nz/blog/local-democracy-under-threat-councillors-free-speech-in-question>.

<sup>2</sup> C. Lynch. (2025). *ECan councillors reject social media policy accused of trying to ‘gag’ elected members.* Chris Lynch Media. <https://www.chrislynchmedia.com/news-items/ecan-councillors-reject-social-media-policy-accused-of-trying-to-gag-elected-members/>

- b. **Filtering public submissions:** In February 2023, Rotorua Lakes Council adopted a policy to exclude public submissions deemed “*offensive,*” “*discriminatory,*” or “*irrelevant,*” without consulting either the public or elected representatives. This effectively empowered unelected officials to silence constituents’ voices before they could be heard.<sup>3</sup>
  - c. **Denying venues based on viewpoint:** In June 2024, Marlborough District Council refused Let Kids Be Kids access to a public library meeting room on the grounds that the group did not align with the council’s ‘inclusive’ policies. This amounted to denying a community organisation use of public facilities solely because of its views.<sup>4</sup>
  - d. **Censoring media and online speech:** In November 2024, a Rotorua Lakes councillor was ordered to remove an online video containing publicly available clips of council meetings, on dubious copyright grounds.<sup>5</sup> However, the clips that he included are publicly available, and so the accusation of breaching copyright appears nonsensical. In March 2025, Far North District Council announced it would delete and block social media comments it considered “*racist or rude,*” with Mayor Moko Tepania stating: “*We’re not going to stand for it ... you’re going to be blocked and your comments are going to be deleted.*” These actions demonstrate the growing use of censorship mechanisms to control how councils are discussed.<sup>6</sup>
8. The development of this draft standardised Code of Conduct followed direction from the Minister of Local Government, who asked the LGC to address concerns that existing codes are poorly understood and that the legislative provisions governing them are vague and difficult to interpret.<sup>7</sup>
  9. The LGC itself has acknowledged that Codes of Conduct have been weaponised against elected members.<sup>8</sup> Yet the present draft risks entrenching the very problems identified. By mandating its application across all councils, it would broaden the scope for misuse and magnify the chilling effect on councillors’ ability to speak freely.
  10. In the development of a draft, the LGC consulted a range of stakeholders, including the FSU. Two members of our team met with the LGC in June and offered practical recommendations to ensure free

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<sup>3</sup> Free Speech Union. (2025). *Rotorua Lakes Council votes to silence submitters with censorious submissions policy*. Free Speech Union. <https://www.fsu.nz/blog/rotorua-lakes-council-votes-to-silence-submitters-with-censorious-submissions-policy>.

<sup>4</sup> Free Speech Union. (2025). *We’re holding Marlborough Council accountable*. Free Speech Union. <https://www.fsu.nz/blog/were-holding-marlborough-council-accountable>.

<sup>5</sup> Free Speech Union. (2024). *Rotorua Lakes Council uses copyright conditions to silence elected councillor*. Free Speech Union. <https://www.fsu.nz/blog/rotorua-lakes-council-uses-copyright-conditions-to-silence-elected-councillor>.

<sup>6</sup> Free Speech Union. (2025). *Far North District Council’s approach to social media content moderation: Request for transparency*. Free Speech Union. <https://www.fsu.nz/blog/far-north-district-councils-approach-to-social-media-content-moderation-request-for-transparency>.

<sup>7</sup> New Zealand Gazette. (2025). *Terms of Reference for the Local Government Commission to produce Standardised Code of Conduct for Local Authorities*. <https://gazette.govt.nz/notice/id/2025-go725/pdf>.

<sup>8</sup> Local Government Commission. (2021). *Local Government Codes of Conduct: Report to the Minister of Local Government*. Local Government Commission. <https://www.lgc.govt.nz/assets/Good-practice-files/Codes-of-Conduct/LGC-report-to-MoLG-Local-government-codes-of-conduct-Sept-2021.pdf>.

speech protections were built into the Code. Those recommendations are largely absent from the draft now presented.

## SUBMISSION

### *Key Freedom of Expression Risks*

11. The Code refers to numerous vague and overbroad standards such as “*respect*”, a requirement to interact with other elected members, staff and the public in a way that is “*inclusive*” and “*not derogatory*”.<sup>9</sup> Freedom of expression is acknowledged but caveated that it “*should be used responsibly*”.<sup>10</sup> These undefined standards invite subjective, ideology-driven enforcement against tone or viewpoint rather than unlawful conduct. The predictable impact is self-censorship by councillors, narrowing the range of ideas available to voters and chilling robust debate.
12. A list of behaviours that are deemed material (serious) breaches of the Code are set out and include “*criticising staff or calling into question their professionalism or integrity*”.<sup>11</sup> If a councillor publicly questions the conduct of the chief executive, or any staff member, that is automatically treated as a material breach of the Code. There is no balancing test and no assessment of seriousness. Treating criticism of staff as a per-se “*material*” breach shields unelected officials from scrutiny and flips accountability on its head. Councillors will avoid raising legitimate concerns in public, weakening oversight and denying ratepayers the information they need.
13. The investigator of the complaint will take into account numerous factors when assessing the materiality of the alleged breach including whether the conduct caused “*serious harm, such as reputational harm for an individual or organisation, bringing the organisation into disrepute.*” Labelling “*reputational harm*” and “*bringing into disrepute*” as “*serious harm*” collapses reputation management into discipline for speech. That elasticity allows punishment of sharp but lawful criticism, chilling core political expression.
14. The Freedom of Expression section in Part 6 is weak and self-defeating. As mentioned above, it acknowledges the right to freedom of expression but immediately undercuts it by stipulating it should be “*used responsibly*” and “*not derogatory*” - thereby acknowledging rights only to subordinate them to vague civility riders, with no NZBORA-style necessity/proportionality test. In practice, that makes protection illusory and allows sanctions on controversial or minority viewpoints.

### **Recommendations:**

- Replace vague civility rules with objective, conduct-based limits (threats, doxxing, unlawful harassment).

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<sup>9</sup> Clauses 10 and 11.

<sup>10</sup> Clause 63.

<sup>11</sup> Clause 23.

- Insert an explicit safe harbour: *“Robust criticism of ideas, policies, staff performance in their public roles, and institutional culture is protected political speech.”*
- Remove the per-se breach for *“criticising staff”*. If retained, limit to knowingly false factual allegations or targeted harassment.
- Define *“serious harm”* narrowly (safety, unlawful harassment, discrimination), excluding reputational discomfort or offence.
- Revise Part 6 to align with NZBORA s 14 and s 5 proportionality: restrictions must be necessary, for a pressing objective, and the least-restrictive means.

### *Democratic Accountability Concerns*

15. Clause 8 contains vague Te Tiriti language such as *“mana motuhake,” “mana whenua partners,”* and *“equitable delivery”*, with no definitions. Notwithstanding, this section functions as governance policy, not enforceable conduct, and conflicts with other provisions of the Code, including that members will *“make decisions on their merits, in the interests of the public”*.<sup>12</sup> Embedding undefined Treaty concepts as conduct rules converts live policy questions into disciplinary litmus tests. Dissenting views about interpretation or application will be chilled, undermining democratic deliberation and the duty to decide *“on the merits.”*
16. Members are deemed to have breached the Code if they have breached any external policies listed in clause 12 e.g., Media Protocols, Social media guidelines.<sup>13</sup> Effectively, local authorities can import policies as Code obligations without review for consistency with the New Zealand Bill of Rights Act. Members face uncertainty and over-compliance, suppressing lawful expression that conflicts with untested internal rules.
17. The test for whether an alleged breach is material is broad. An investigator can treat conduct as material if it *“brings a member or the authority into disrepute”* or *“reflects adversely on another member.”*<sup>14</sup> These conditions are ‘catch-alls’ that can be stretched to capture ordinary political disagreement. This empowers sanctions against intra-council dissent and discourages candid speech on institutional failings: undermining crucial accountability mechanisms.

### **Recommendations:**

- Move Clause 8 (Te Tiriti obligations) to non-disciplinary guidance. If retained, define terms and tie to statutory duties.
- Require that any external policies incorporated into the Code are published, reviewed for NZBORA consistency, and limited to lawful, content-neutral obligations.

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<sup>12</sup> Clause 10.

<sup>13</sup> Clause 13.

<sup>14</sup> Clause 21.

- Narrow the “materiality” test to objective and serious harms. Delete “disrepute” and “reflects adversely” as free-standing grounds.
- Affirm members’ right to dissent from council positions and to question staff/CE performance in public, subject only to the narrow conduct limits.
- Require councils to publish anonymised annual data on Code complaints, outcomes, and sanctions.

### *Due Process Deficits*

18. The single investigator decides materiality, intent, and sanctions. There is no right of appeal.<sup>15</sup> Concentrating fact-finding, judgment, and sanction in a single investigator with no appeal is inconsistent with the principles of natural justice. Knowing one person’s subjective view is final, members will over-self-censor, and public confidence in outcomes will erode.
19. The investigator can require a member to “seek guidance from the chairperson or a mentor” or “undertake specified training or personal development”.<sup>16</sup> There is no right to challenge these sanctions or the substance of the material, training or development. Unchallengeable mandates to seek “guidance” or attend “training” risk morphing into ideological re-education. That is compelled participation affecting freedom of thought and deterring members from expressing views that diverge from the prevailing or officially endorsed viewpoint.
20. The Code applies to members’ conduct in their personal capacity whenever they are interacting with local authority staff.<sup>17</sup> Extending the Code to personal capacity interactions with staff polices private speech beyond official duties. Members will feel permanently “on code,” curbing their participation in normal civic discourse.

### **Recommendations:**

- Require independent investigators drawn from a pre-approved panel with conflict checks. For serious sanctions, use a panel rather than a single individual.
- Set the standard of proof: balance of probabilities, with “clear and convincing” evidence for serious sanctions.
- Guarantee disclosure of complaints and evidence, allow representation, and set fair response timelines.
- Provide a right of review/appeal: internally (excluding conflicted members) and externally on points of process/natural justice.
- Limit Code jurisdiction over “personal capacity” speech to cases with a clear, serious nexus to official duties.

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<sup>15</sup> Clause 47.

<sup>16</sup> Clause 43.

<sup>17</sup> Clause 18.

- Insert whistleblower protection: good-faith disclosures of waste, bias, or wrongdoing cannot be treated as Code breaches.

### *Compelled Speech and Sanctions*

21. The investigator can require a member to apologise, withdraw remarks, or make a public statement correcting or clarifying previous remarks.<sup>18</sup> A member may be instructed to apologise to the complainant even if the complaint is found to be non-material (not serious).<sup>19</sup> Forced apologies, withdrawals, or “*corrections*”, even where a complaint is non-material, amount to compelled speech. Coerced recantations chill future speech and render democratic disagreement performatively unsafe.
22. With respect to non-material complaints, the investigator can also recommend that actions are undertaken by the member, which may include attending “*appropriate courses or programmes to increase their knowledge and understanding of the matters resulting in the complaint*”.<sup>20</sup> Ordering attendance at courses to “*increase...understanding*” functions as viewpoint-conditioning. It punishes expression by requiring ideological remediation, reducing diversity of thought on contested issues.
23. Sanctions for material complaints can also include restricting the member’s access to staff/local authority offices.<sup>21</sup> Restricting access to staff or offices is a practical gag that impedes a member’s ability to investigate, question, and speak effectively. Used against dissenters, it sidelines their voice and weakens their representation of constituents.

#### **Recommendations:**

- Prohibit compelled apologies or corrections unless correcting a proven factual falsehood. Apologies must be voluntary.
- Reform training remedies: make them optional, skills-based, and non-ideological. Prohibit compelled affirmation of beliefs.
- Create a proportional sanctions ladder: start with guidance/warnings and escalate only where lesser measures are inadequate.
- Limit access restrictions to staff/offices to exceptional cases where necessary, proportionate, and time-limited, ensuring statutory participation is not impeded.
- Prohibit sanctions based solely on speech unless the legal threshold for unlawful conduct (e.g., harassment, incitement) is met.

### *Safeguards Against Misuse of Law*

24. The Code risks encouraging councillors and staff to use private legal tools such as orders under the Harmful Digital Communications Act, defamation threats) to suppress lawful speech.

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<sup>18</sup> Clause 43.

<sup>19</sup> Clause 33.

<sup>20</sup> Clause 33.

<sup>21</sup> Clause 43.

25. Legislation is listed in Part 6 without reference to their relevant thresholds. Listing statutes without their thresholds implies any speech touching those areas is presumptively risky. Members will avoid lawful, high-value speech out of precaution, shrinking democratic discourse to the bland and uncontroversial.

**Recommendations:**

- Insert an anti-weaponisation clause: members must not threaten or initiate HDCA or defamation processes to suppress lawful criticism. Vexatious use may itself be a breach.
- Require that any statute listed in the Code be accompanied by plain-English thresholds, making clear that only speech meeting those legal tests can be a breach.
- Mandate pre-action review before councils initiate HDCA/defamation proceedings, requiring legal sign-off and chair/CE approval.
- Provide SLAPP guardrails: early dismissal of complaints aimed at silencing democratic participation. Include costs/penalties for abusive complaints.
- Include a practical, NZBORA-aligned freedom of expression guide with examples of protected vs. unprotected conduct.