

27 August 2020

Dear [REDACTED],

**Request for Information – Local Government Official Information and Meetings Act 1987**

We refer to your official information request dated 31 July 2020 for information regarding Code of Conduct.

The information you have requested is enclosed:

Code of Conduct for members

1. Does your Council have a code of conduct for members?
2. Are council staff subject to a code of conduct?
2. What are the consequences if a member breaches the code of conduct?
3. Who can make a complaint against a member's behaviour if that person considers a member has breached the code of conduct?
4. What is the disciplinary process to investigate the member's behaviour?
  - Please see attached "Code of Conduct for Elected Members 2016 – 2019" document for answers to the above questions.

Code of Conduct for staff

5. What are the consequences if a staff member breaches the code of conduct (please specify different levels from GM to operational staff)?
6. Who can make a complaint against a staff member's behaviour if that person considers a staff member has breached the code of conduct?
7. What is the disciplinary process to investigate the staff member's behaviour?
  - Please see attached "HR-POL-005 - Code of Conduct" and "HR-POL-013 - Managing Misconduct Policy" for answers to the above questions.

Review of Code of Conduct

8. When was the code of conducts and/or policies described in the answers above developed, implemented and reviewed?
  - The Managing Misconduct Policy was published in August 2008 and is in the process of being reviewed and updated.
  - The Code of Conduct was updated in May 2019.

9. Is a child protection policy included in the code of conduct? If not or your council does not have a code of conduct, are councillors subject to a child protection policy? If so, what are the consequences for breaching that policy and what is the disciplinary process to investigate a breach of that policy?

- Hutt City Council has a Child Protection Policy for staff.

10. If you have a code of conduct, is appropriate behaviour with constituents included in the code of conduct (sexual harassment and bullying)? If not or your council does not have a code of conduct, are councillors subject to a policy in relation to appropriate behaviour with constituents e.g sexual harassment and bullying policy? If so, what are the consequences for breaching that policy and what is the disciplinary process to investigate a breach of that policy?

- Please see attached documents for answers to these questions.

Behaviour in the past five years

11. In the past five years, have you had any complaints on a member's or a staff member's behaviour in relation to inappropriate behaviour with youth (under 25s), or bullying, harassment or sexual harassment?

- We have had 10 over the past five years

12. How many complaints resulted in an investigation process?

- Four were investigated (as a number opted for informal action/intervention to resolve the issues)

13. How many complaints resulted in disciplinary action? If so, what was that disciplinary action?

- The outcome for two of the complaints were written warnings

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

If you wish to discuss this decision with us, please feel free to contact [details of contact person].

Yours sincerely



Kelly Alkema

**Chief People Officer**

Encl List documents enclosed



# CODE OF CONDUCT FOR ELECTED MEMBERS

2016-2019

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## 1. INTRODUCTION

This Code of Conduct (the Code) sets out the standards of behaviour expected from elected members in the exercise of their duties. Its purpose is to:

- enhance the effectiveness of the local authority and the provision of good local government of the community, city, district or region;
- promote effective decision-making and community engagement;
- enhance the credibility and accountability of the local authority to its communities; and
- develop a culture of mutual trust, respect and tolerance between the members of the local authority and between the members and management.

This purpose is given effect through the values, roles, responsibilities and specific behaviours agreed in this Code.

## 2. SCOPE

The Code has been adopted in accordance with clause 15 of Schedule 7 of the Local Government Act 2002 (LGA 2002) and applies to all members, including the members of any community boards that have agreed to adopt it. The Code is designed to deal with the behaviour of members towards:

- each other;
- the chief executive and staff;
- the media; and
- the general public.

It is also concerned with the disclosure of information that members receive in their capacity as elected members and information which impacts on the ability of the local authority to give effect to its statutory responsibilities

This Code can only be amended (or substituted by a replacement Code) by a vote of at least 75 per cent of members present at a meeting when amendment to the Code is being considered. The Code should be read in conjunction with the council's Standing Orders.

## 3. VALUES

The Code is designed to give effect to the following values:

### 3.1 PUBLIC INTEREST

Members will serve the best interests of the people within their community, district or region and discharge their duties conscientiously, to the best of their ability.

### 3.2 PUBLIC TRUST

Members, in order to foster community confidence and trust in their Council, will work together constructively and uphold the values of honesty, integrity, accountability and transparency.

### 3.3 ETHICAL BEHAVIOUR

Members will not place themselves in situations where their honesty and integrity may be questioned, will not behave improperly and will avoid the appearance of any such behaviour.

### 3.4 OBJECTIVITY

Members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.

### 3.5 RESPECT FOR OTHERS

Members will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability. Members will respect the impartiality and integrity of officials.

### 3.6 DUTY TO UPHOLD THE LAW

Members will comply with all legislative requirements applying to their role, abide by this Code of Conduct, and act in accordance with the trust placed in them by the public.

### 3.7 EQUITABLE CONTRIBUTION

Members will take all reasonable steps to ensure they fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars.

### 3.8 LEADERSHIP

Members will actively promote and support these principles and ensure they are reflected in the way in which the Council operates, including a regular review and assessment of the Council's collective performance.

These values complement, and work in conjunction with, the principles of s.14 of the LGA 2002 and the governance principles of s.39 of the LGA 2002.

## 4. ROLE AND RESPONSIBILITIES

Good governance requires clarity of roles and respect between those charged with responsibility for the leadership of the council and those responsible for advice and the implementation of council decisions. The key roles are:

### 4.1 MEMBERS

The role of the governing body includes:

- representing the interests of the people of the city, district or region;
- developing and adopting plans, policies and budgets;
- monitoring the performance of the council against stated goals and objectives set out in its long term plan;
- providing prudent stewardship of the council's resources;
- employing and monitoring the performance of the chief executive; and
- ensuring the council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

## 4.2 CHIEF EXECUTIVE

The role of the chief executive includes:

- implementing the decisions of the council;
- ensuring that all responsibilities delegated to the chief executive are properly performed or exercised;
- ensuring the effective and efficient management of the activities of the local authority;
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority;
- providing leadership for the staff of the council; and
- employing staff on behalf of the council (including negotiation of the terms of employment for those staff).

Under s.42 of the LGA 2002 the chief executive is the only person directly employed by the council itself. All concerns about the performance of an individual member of staff must, in the first instance, be referred to the chief executive.

## 5. RELATIONSHIPS

This section of the Code sets out agreed standards of behaviour between members; members and staff; and members and the public.

### 5.1 RELATIONSHIPS BETWEEN MEMBERS

Given the importance of relationships to the effective performance of the council, members will conduct their dealings with each other in a manner that:

- maintains public confidence;
- is open and honest;
- is courteous;
- is focused on issues rather than personalities;
- avoids abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order; and
- avoids aggressive, offensive or abusive conduct, including the use of disrespectful or malicious language.

Any failure by members to act in the manner described in s.5.1 represents a breach of this Code.

Please note that nothing in this section of the Code is intended to limit robust debate within the council as long as it is conducted in a respectful and insightful manner.

### 5.2 RELATIONSHIPS WITH STAFF

An important element of good governance involves the relationship between the council and its chief executive. Members will respect arrangements put in place to facilitate this relationship, and:

- raise any concerns about employees, officers or contracted officials with the chief executive;
- raise any concerns about the performance or behaviour of the chief executive with the mayor;
- make themselves aware of the obligations that the council and the chief executive have as employers and observe those requirements at all times, such as the duty to be a good employer;
- treat all employees with courtesy and respect and avoid publicly criticising any employee;



- observe any protocols put in place by the chief executive concerning contact between members and employees;
- avoid doing anything which might compromise, or could be seen as compromising, the impartiality of an employee.

Any failure by members to act in the manner described above represents a breach of this Code.

**Please note:** Elected members should be aware that failure to observe this portion of the Code may compromise the council's obligations to be a good employer and consequently expose the council to civil litigation or affect the risk assessment of council's management and governance control processes undertaken as part of the council's audit.

### 5.3 RELATIONSHIP WITH THE PUBLIC

Given that the performance of the council requires the trust and respect of individual citizens, members will:

- interact with members of the public in a fair, respectful, equitable and honest manner;
- be available to listen and respond openly and honestly to community concerns;
- consider all points of view or interests when participating in debate and making decisions;
- treat members of the public in a courteous manner; and
- act in a way that upholds the reputation of the local authority.

Any failure by members to act in the manner described above represents a breach of this Code.

## 6. CONTACT WITH THE MEDIA (INCORPORATES SOCIAL MEDIA SUCH AS FACEBOOK, TWITTER)

The media play an important part in the operation and efficacy of local democracy. In order to fulfil this role the media needs access to accurate and timely information about the affairs of council.

From time to time individual members will be approached to comment on a particular issue either on behalf of the council, or as an elected member in their own right. When responding to the media members must be mindful that operational questions should be referred to the chief executive and policy-related questions referred to the mayor or the member with the appropriate delegated authority.

When speaking to the media more generally members will abide by the following provisions:

### 6.1 MEDIA CONTACT ON BEHALF OF THE COUNCIL

- the mayor is the first point of contact for an official view on any issue, unless delegations state otherwise. Where the mayor is absent requests for comment will be referred to the deputy mayor or relevant committee chair or portfolio holder;
- the mayor may refer any matter to the relevant committee chair or to the chief executive for their comment; and
- no other member may comment on behalf of the council without having first obtained the approval of the mayor.

### 6.2 MEDIA COMMENT ON A MEMBER'S OWN BEHALF

Elected members are free to express a personal view in the media, at any time, provided the following rules are observed:

- media comments must not state or imply that they represent the views of the council;

- media comments which are contrary to a council decision or policy must clearly state that they do not represent the views of the majority of members;
- media comments must observe the other requirements of the Code; for example, comments should not disclose confidential information, criticise, or compromise the impartiality or integrity of staff; and
- media comments must not be misleading and should be accurate within the bounds of reasonableness.

Any failure by members to meet the standards set out above represents a breach of this Code.

## 7. INFORMATION

Access to information is critical to the effective performance of a local authority and the level of public trust felt by the public.

### 7.1 CONFIDENTIAL INFORMATION

In the course of their duties members will occasionally receive information that is confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation. Accordingly, members agree not to use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member.

### 7.2 INFORMATION RECEIVED IN CAPACITY AS AN ELECTED MEMBER

Members will disclose to other members and, where appropriate the chief executive, any information received in their capacity as an elected member that concerns the council's ability to give effect to its responsibilities.

Members who are offered information on the condition that it remains confidential will inform the provider of the information that it is their duty to disclose the information and will decline the offer if that duty is likely to be compromised.

Any failure by members to act in the manner described above represents a breach of this Code.

**Please note:** failure to observe these provisions may impede the performance of the council by inhibiting information flows and undermining public confidence. It may also expose the council to prosecution under the Privacy Act and/or civil litigation.

## 8. CONFLICTS OF INTEREST

Elected members will maintain a clear separation between their personal interests and their duties as elected members in order to ensure that they are free from bias (whether real or perceived). Members therefore must familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 (LAMIA).

Members will not participate in any council discussion or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. This rule also applies where the member's spouse contracts with the authority or has a pecuniary interest. Members shall make a declaration of interest as soon as practicable after becoming aware of any such interests.

If a member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should seek guidance from the chief

executive immediately. Members may also contact the Office of the Auditor General for guidance as to whether they have a pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote.

**Please note:** Failure to observe the requirements of the LAMIA could potentially invalidate the decision made, or the action taken, by the council. Failure to observe these requirements could also leave the elected member open to prosecution (see Appendix A). In the event of a conviction, elected members can be ousted from office.

## 9. REGISTER OF INTERESTS

Members shall annually make a declaration of interest. These declarations are recorded in a Register of Interests maintained by the council. The declaration must include information on the nature and extent of any interest, including:

- a) any employment, trade or profession carried on by the member or the members' spouse for profit or gain;
- b) any company, trust, partnership etc for which the member or their spouse is a director, partner or trustee;
- c) the address of any land in which the member has a beneficial interest within the jurisdiction of the local authority; and
- d) the address of any land owned by the local authority in which the member or their spouse is:
  - a tenant; or
  - the land is tenanted by a firm in which the member or spouse is a partner, a company of which the member or spouse is a director, or a trust of which the member or spouse is a trustee;
- e) any other matters which the public might reasonably regard as likely to influence the member's actions during the course of their duties as a member (if the member is in any doubt on this, the member should seek guidance from the chief executive)

**Please note:** Where a member's circumstances change they must ensure that the Register of Interests is updated as soon as practicable.

## 10. ETHICAL BEHAVIOUR

Members will seek to promote the highest standards of ethical conduct. Accordingly members will:

- claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of the council developed in accordance with that determination;
- not influence, or attempt to influence, any council employee, officer or member in order to benefit their own, or families personal or business interests;
- only use the council resources (such as facilities, staff, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests; and
- not solicit, demand, or request any gift, reward or benefit by virtue of their position and notify the chief executive if any such gifts are accepted. Where a gift to the value of \$100 or more is accepted by a member, that member must immediately disclose this to the chief executive for inclusion in the publicly available register of interests.

Any failure by members to comply with the provisions set out in this section represents a breach of this Code.

### 10.1 UNDISCHARGED BANKRUPT

In accordance with clause 15(5) of Schedule 7 (LGA 2002) any member who is an “undischarged bankrupt” will notify the chief executive prior to the inaugural meeting or as soon as practicable after being declared bankrupt. The member will also provide the chief executive with a brief explanatory statement of the circumstances surrounding the member’s adjudication and the likely outcome of the bankruptcy.

## 11. CREATING A SUPPORTIVE AND INCLUSIVE ENVIRONMENT

In accordance with the purpose of the Code, members agree to take all reasonable steps in order to participate in activities scheduled to promote a culture of mutual trust, respect and tolerance. These include:

- Attending post-election induction programmes organised by the council for the purpose of facilitating agreement on the council’s vision, goals and objectives and the manner and operating style by which members will work.
- Taking part in any assessment of the council’s overall performance and operating style during the triennium.<sup>1</sup>
- Taking all reasonable steps to ensure they possess the skills and knowledge to effectively fulfil their Declaration of Office and contribute to the good governance of the city, district or region.

## 12. BREACHES OF THE CODE

Members must comply with the provisions of this Code (LGA 2002, schedule 7, s. 15(4)). Any member, or the chief executive, who believes that the Code has been breached by the behaviour of a member, may make a complaint to that effect. All complaints will be considered in a manner that is consistent with the following principles.

### 12.1 PRINCIPLES

The following principles will guide any processes for investigating and determining whether or not a breach under this Code has occurred:

- that the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the breach complained about;
- that the roles of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and
- that the concepts of natural justice and fairness will apply in the determination of any complaints made under this Code. This requires, conditional on the nature of an alleged breach, that affected parties:
  - have a right to know that an investigation process is underway;

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<sup>1</sup> A self-assessment template is provided in the Guidance to this Code.

- are given due notice and are provided with an opportunity to be heard;
- have a right to seek appropriate advice and be represented; and
- have their privacy respected.

## 12.2 COMPLAINTS

All complaints made under this Code must be made in writing and forwarded to the Mayor, unless the Mayor is a party to the complaint. On receipt of a complaint, the Mayor will attempt to resolve the complaint through informal dispute resolution.

If the Mayor is a party to a complaint, or fails to resolve the complaint to the satisfaction of the complainant within a reasonable time, the complainant has the right to forward the complaint to the chief executive.

The Mayor and Chief Executive, acting jointly, have the power to dismiss a complaint prior to the preliminary assessment stage if they are of the view that the complaint does not have a reasonable prospect of being declared substantial or material.

If the Mayor is a party to the complaint, a Committee consisting of the current Chairpersons of Council standing committees have the power to dismiss a complaint prior to the preliminary assessment stage if they are of the view that the complaint does not have a reasonable prospect of being declared substantial or material.

A complaint and all information relating to its resolution are strictly confidential up to and including the preliminary investigation stage. This is to allow the equivalent of 'without prejudice' discussions, with a view to the early resolution of complaints, where possible.

On receipt of a complaint, the chief executive must forward that complaint to an independent investigator for a preliminary assessment to determine whether the issue is sufficiently serious to warrant a full investigation.<sup>2</sup>

Only members may make a complaint under this Code.

For clarity, a complaint under this Code can be made by a member in reliance on information or evidence provided by the public or an organisation.

If a complaint from the public or an organisation, touching on matters dealt with by the Code, is received by Council staff, it will be forwarded to the Mayor. The Mayor will assess the complaint (in consultation with staff, if necessary) and may make a complaint under the Code or forward the complaint to a particular member. If a complaint from the public or an organisation of this nature is dismissed, the complainant will be advised in writing.

## 12.3 FORM OF COMPLAINTS

Before making a complaint under this Code, a complainant should first make all reasonable attempts to resolve the matter, if appropriate.

A complaint must contain the following:

- a. The nature of the complaint, including the parts of the Code that are alleged to have been breached.

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<sup>2</sup> On behalf of the Council the Chief Executive will, shortly after the start of a triennium, prepare, in consultation with the Mayor, a list of investigators for this purpose of undertaking a preliminary assessment. The Chief Executive may prepare a list specifically for his council, prepare a list jointly with neighbouring councils or contract with an agency capable of providing appropriate investigators.

- b. How the breach, if proven, would bring a member or Council into disrepute, or, if not addressed, reflect adversely on another member of Council.
- c. What steps the complainant has already taken to resolve the complaint.
- d. Include all the information and evidence relied on to substantiate the breach.

A complaint could be rejected at any stage as incomplete, if it did not contain these details.

The requirements to provide all information and evidence relied on also apply to a member defending a complaint.

#### 12.4 INVESTIGATION, ADVICE AND DECISION

The process, following receipt of a complaint, will follow the steps outlined in Appendix B.

#### 12.5 MATERIAL OR SUBSTANTIAL BREACH

An alleged breach under this Code is material if, in the opinion of the independent investigator, it would, if proven, bring a member or the council into disrepute or, if not addressed, reflect adversely on another member of the council.

An alleged breach under this Code is substantial if, in the opinion of the independent investigator, it is less than material but more than minor or trivial.

## 13. PENALTIES AND ACTIONS

Where a complaint is determined to be substantial or material and referred to the council the nature of any penalty or action will depend on the seriousness of the breach.

#### 13.1 SUBSTANTIAL OR MATERIAL BREACHES

In the case of substantial or material breaches of this Code the council, or a committee with delegated authority, may require one of the following:

1. a letter of censure to the member;
2. a request (made either privately or publicly) for an apology;
3. a vote of no confidence in the member;
4. removal of certain council-funded privileges (such as attendance at conferences);
5. restricted entry to council offices, such as no access to staff areas (where restrictions may not previously have existed);
6. limitation on any dealings with council staff so that they are confined to the chief executive only;
7. suspension from committees or other bodies; or
8. an invitation for the member to consider resigning from the council.
9. reimbursement of all or a portion of Council's external costs, including meeting payments to external committee members, incurred in investigating the matter.

A council or committee may decide that a penalty will not be imposed where a respondent agrees to one or more of the following:

- attend a relevant training course; and/or

- work with a mentor for a period of time; and/or
- participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- tender an apology.

The process at this stage is based on the presumption that the outcome of a complaints process will be made public unless there are grounds, such as those set out in the Local Government Official Information and Meetings Act 1987 (LGOIMA), for not doing so.

## 13.2 STATUTORY BREACHES

In cases where a breach of the Code is found to involve regulatory or legislative requirements, the complaint will be referred to the relevant agency. For example:

- breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under the LAMIA);
- breaches which result in the council suffering financial loss or damage (where the Auditor-General may make a report on the loss or damage under s.30 of the LGA 2002 which may result in the member having to make good the loss or damage); or
- breaches relating to the commission of a criminal offence which will be referred to the Police (which may leave the elected member liable for criminal prosecution).

## 14. REVIEW

Once adopted, a Code of Conduct continues in force until amended by the council. The Code can be amended at any time but cannot be revoked unless the council replaces it with another Code. Once adopted, amendments to the Code require a resolution supported by 75 per cent of the members of the council present at a council meeting where the amendment is considered.

Council may formally review the Code as soon as practicable after the beginning of each triennium. The results of that review will be considered by the council in regard to potential changes for improving the Code.

## APPENDIX A: LEGISLATION BEARING ON THE ROLE AND CONDUCT OF ELECTED MEMBERS

This is a summary of the legislative requirements that have some bearing on the duties and conduct of elected members. The full statutes can be found at [www.legislation.govt.nz](http://www.legislation.govt.nz).

### THE LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968

The Local Authorities (Members' Interests) Act 1968 (LAMIA) provides rules about members discussing and voting on matters in which they have a pecuniary interest and about contracts between members and the council.

A pecuniary interest is likely to exist if a matter under consideration could reasonably give rise to an expectation of a gain or loss of money for a member personally (or for their spouse or a company in which they have an interest). In relation to pecuniary interests the LAMIA applies to both contracting and participating in decision-making processes.

With regard to pecuniary or financial interests a person is deemed to be "concerned or interested" in a contract or interested "directly or indirectly" in a decision when:

- a person, or spouse or partner, is "concerned or interested" in the contract or where they have a pecuniary interest in the decision; or
- 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.

There can also be additional situations where a person is potentially "concerned or interested" in a contract or have a pecuniary interest in a decision, such as where a contract is between an elected members' family trust and the council.

### DETERMINING WHETHER A PECUNIARY INTEREST EXISTS

Elected members are often faced with the question of whether or not they have a pecuniary interest in a decision and if so whether they should participate in discussion on that decision and vote. When determining if this is the case or not the following test is applied:

*"...whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned." (OAG, 2001)*

In deciding whether you have a pecuniary interest, members should consider the following factors.

- What is the nature of the decision being made?
- Do I have a financial interest in that decision - do I have a reasonable expectation of gain or loss of money by making that decision?
- Is my financial interest one that is in common with the public?
- Do any of the exceptions in the LAMIA apply to me?
- Could I apply to the Auditor-General for approval to participate?

Members may seek assistance from the mayor or other person to determine if they should discuss or vote on an issue but ultimately it is their own judgment as to whether or not they have pecuniary interest in the decision. Any member who is uncertain as to whether they have a pecuniary interest is advised to seek legal advice. Where uncertainty exists members may adopt a least-risk approach which is to not participate in discussions or vote on any decisions.



Members who do have a pecuniary interest will declare the pecuniary interest to the meeting and not participate in the discussion or voting. The declaration and abstention needs to be recorded in the meeting minutes. (Further requirements are set out in the council's Standing Orders.)

## THE CONTRACTING RULE

A member is disqualified from office if he or she is “concerned or interested” in contracts with their council if the total payments made, or to be made, by or on behalf of the council exceed \$25,000 in any financial year. The \$25,000 limit includes GST. The limit relates to the value of all payments made for all contracts in which you are interested during the financial year. It does not apply separately to each contract, nor is it just the amount of the profit the contractor expects to make or the portion of the payments to be personally received by you.

The Auditor-General can give prior approval, and in limited cases, retrospective approval for contracts that would otherwise disqualify you under the Act. It is an offence under the Act for a person to act as a member of the council (or committee of the council) while disqualified.

## NON-PECUNIARY CONFLICTS OF INTEREST

In addition to the issue of pecuniary interests, rules and common law govern conflicts of interest more generally. These rules apply to non-pecuniary conflicts of interest, including common law rules about bias. In order to determine if bias exists or not members need to ask:

*“Is there a real danger of bias on the part of the member of the decision-making body, in the sense that he or she 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 reflecting the principle that justice should not only be done, but should be seen to be done. Whether or not members believe they are not biased is irrelevant.

Members should focus be on the nature of the conflicting interest or relationship and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

- members' statements or conduct indicate that they have predetermined the decision before hearing all relevant information (that is, members have a “closed mind”); and
- members have a close relationship or involvement with an individual or organisation affected by the decision.

In determining whether or not they might be perceived as biased, members must also take into account the context and circumstance of the issue or question under consideration. For example, if a member has stood on a platform and been voted into office on the promise of implementing that platform then voters would have every expectation that the member would give effect to that promise, however he/she must still be seen to be open to considering new information (this may not apply to decisions made in quasi-judicial settings, such as an RMA hearing).

## LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements that apply to local authorities and local/community boards. Of particular importance for the roles and conduct of elected members is the fact that the chair has the responsibility to maintain order at meetings, but all elected members should accept a personal responsibility to maintain acceptable standards of address and debate. No elected member should:

- create a disturbance or a distraction while another councillor is speaking;
- be disrespectful when they refer to each other or other people; or

- use offensive language about the council, other members, any employee of the council or any member of the public.

See Council's Standing Orders for more detail.

## **SECRET COMMISSIONS ACT 1910**

Under this Act it is unlawful for an elected member (or officer) to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result, or to present false receipts to council.

If convicted of any offence under this Act a person can be imprisoned for up to two years, and/or fines up to \$1000. A conviction would therefore trigger the ouster provisions of the LGA 2002 and result in the removal of the member from office.

## **CRIMES ACT 1961**

Under this Act it is unlawful for an elected member (or officer) to:

- accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of council; and
- use information gained in the course of their duties for their, or another persons, monetary gain or advantage.

These offences are punishable by a term of imprisonment of seven years or more. Elected members convicted of these offences will automatically cease to be members.

## **FINANCIAL MARKETS CONDUCT ACT 2013**

Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places elected members in the same position as company directors whenever council offers stock to the public. Elected members may be personally liable if investment documents such as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

## **THE LOCAL GOVERNMENT ACT 2002**

The Local Government Act 2002 (LGA 2002) sets out the general powers of local government, its purpose and operating principles. Provisions directly relevant to this Code include:

### **Personal liability of members**

Although having qualified privilege, elected members can be held personally accountable for losses incurred by a local authority where, following a report from the Auditor General under s.44 LGA 2002, it is found that one of the following applies:

- a) money belonging to, or administered by, a local authority has been unlawfully expended; or
- b) an asset has been unlawfully sold or otherwise disposed of by the local authority; or
- c) a liability has been unlawfully incurred by the local authority; or
- d) a local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

Members will not be personally liable where they can prove that the act or failure to act resulting in the loss occurred as a result of one of the following:

- a) without the member's knowledge;

- b) with the member's knowledge but against the member's protest made at or before the time when the loss occurred;
- c) contrary to the manner in which the member voted on the issue; and
- d) in circumstances where, although being a party to the act or failure to act, the member acted in good faith and relied on reports, statements, financial data, or other information from professional or expert advisers, namely staff or external experts on the matters.

In certain situation members will also be responsible for paying the costs of proceedings (s.47 LGA 2002).

## **APPENDIX B: PROCESS FOR THE DETERMINATION AND INVESTIGATION OF COMPLAINTS**

### **STEP 1: MAYOR RECEIVES COMPLAINT**

On receipt of a complaint under this Code, the mayor will attempt to resolve the complaint through informal dispute resolution, within a reasonable time.

If the complainant is not satisfied with the proposed resolution or the complaint has not been resolved within a reasonable time, the complainant has the right to forward the complaint to the chief executive.

The Mayor and Chief Executive, acting jointly, have the power to dismiss a complaint prior to the preliminary assessment stage if they are of the view that the complaint does not have a reasonable prospect of being declared substantial or material.

If the Mayor is a party to the complaint, a Committee consisting of the current Chairpersons of Council standing committees have the power to dismiss a complaint prior to the preliminary assessment stage if they are of the majority view that the complaint does not have a reasonable prospect of being declared substantial or material.

### **STEP 2: CHIEF EXECUTIVE RECEIVES COMPLAINT**

On receipt of a complaint under this Code by either the Mayor or a complainant not satisfied with the process or proposed resolution under Step 1, the Chief Executive will refer the complaint to an independent investigator.

The brief to the investigator will make the following clear:

1. The onus is on the complainant and subject of the complaint to provide all the information and evidence relied on, as part of their initial complaint or defence.
2. The expectation is that telephone calls may be made to clarify the information or evidence, but that face-to-face interviews or further investigation of the issues will only be undertaken if the complaint is of a particularly serious nature.
3. The investigation should be proportionate to the potential harm that might result if the breach is proven.

The Chief Executive will also:

- inform the complainant that the complaint has been referred to the independent investigator and the name of the investigator, and refer them to the process for dealing with complaints as set out in the Code; and
- inform the respondent that a complaint has been made against them, the name of the investigator and refer them to the process for dealing with complaints as set out in the Code.

### **STEP 3: INVESTIGATOR MAKES PRELIMINARY ASSESSMENT**

On receipt of a complaint the investigator will assess whether:

1. the complaint is frivolous or without substance and should be dismissed;
2. the complaint is outside the scope of the Code and should be redirected to another agency or process;
3. the complaint is non-material; and
4. the complaint is substantial or material and a full investigation is required.

In making the assessment the investigator may make whatever initial inquiry is necessary to determine the appropriate course of action. The investigator has full discretion to dismiss any complaint which, in their view, fails to meet the test of substantial or material.

On receiving the investigator's preliminary assessment the Chief Executive will:

1. where an investigator determines that a complaint is frivolous or without substance, inform the complainant and respondent directly and inform other members (if there are no grounds for confidentiality) of the investigator's decision;
2. in cases where the investigator finds that the complaint involves a potential legislative breach and outside the scope of the Code, forward the complaint to the relevant agency and inform both the complainant and respondent of the action.

#### **STEP 4: ACTIONS WHERE A BREACH IS FOUND TO BE NON-MATERIAL AND NOT SUBSTANTIAL**

If the subject of a complaint is found to be non-material and not substantial the investigator will inform the Chief Executive and, if they choose, recommend a course of action appropriate to the breach, such as;

- that the respondent seek guidance from the Chair or Mayor;
- that the respondent attends appropriate courses or programmes to increase their knowledge and understanding of the matters leading to the complaint.

The Chief Executive will advise both the complainant and the respondent of the investigator's decision and any recommendations, neither of which are open to challenge. Any recommendations made in response to a non-material and not substantial breach are non-binding on the respondent and the council.

#### **STEP 5: ACTIONS WHERE A BREACH IS FOUND TO BE MATERIAL OR SUBSTANTIAL**

If the subject of a complaint is found to be material or substantial the investigator will inform the Chief Executive, who will inform the complainant and respondent. The investigator will then prepare a report for the council on the seriousness of the breach.

In preparing that report the investigator may:

- consult with the complainant, respondent and any affected parties;
- undertake a hearing with relevant parties; and/or
- refer to any relevant documents or information.

On receipt of the investigator's report the Chief Executive will prepare a report for the council or committee with delegated authority, which will meet to consider the findings and determine whether or not a penalty, or some other form of action, will be imposed. The Chief Executive's report will include the full report prepared by the investigator.

#### **STEP 6: PROCESS FOR CONSIDERING THE INVESTIGATOR'S REPORT**

Depending upon the nature of the complaint and alleged breach the investigator's report may be considered by the full council, excluding the complainant, respondent and any other 'interested' members, or a committee established for that purpose.

In order to avoid any suggestion of bias, a Code of Conduct Committee may often be the best mechanism for considering and ruling on complaints. Committees should be established at the start of

a triennium with a majority of members selected from the community through either an application process or by invitation.

The council or committee will consider the chief executive's report in open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such as the misuse of confidential information or a matter that would otherwise be exempt from public disclosure under s.48 of the LGOIMA, in which case it will be a closed meeting.

Before making any decision in respect of the investigator's report the council or committee will give the member against whom the complaint has been made an opportunity to appear and speak in their own defense. Members with an interest in the proceedings, including the complainant and the respondent, may not take part in these proceedings.

The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in section 13.1 of this Code.

In accordance with this Code councils will agree to implement the recommendations of a Code of Conduct Committee without debate.

For more information contact:  
Hutt City Council's General Counsel  
Private Bag 31 912  
30 Laings Road  
Lower Hutt 5040  
Telephone: 04 570 6880  
[www.huttcity.govt.nz](http://www.huttcity.govt.nz)

**Proud**  
I'M PART OF IT

**CODE OF  
CONDUCT**

# CODE OF CONDUCT

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## MESSAGE FROM THE CHIEF EXECUTIVE



As an employee of Hutt City Council, you will play a key role in serving our community to the highest possible professional and ethical standards. As it has been for me over many years of public service I'm sure you will find this to be very satisfying.

Along the way you will need to deal with many varied, new and exciting challenges as we work to advance our city and where possible to improve the outcomes and lives of the people we serve.

One of the key roles of Hutt City Council is to provide key services and perform numerous regulatory functions. Every day you will be required to make decisions and exercise discretion on the part of council. It is important that you maintain the highest standards of integrity, discretion and ethical conduct in relation to your work duties and behaviour. In return council undertakes to act with honesty, fairness, transparency, equality, dignity, and to respect diversity and individual human rights.

All employees are expected to behave honestly, conscientiously, reasonably and in good faith at all times having regard to their responsibilities, the interests of council and the welfare of colleagues and the community.

It is our intention that this code of conduct will influence and guide you in those decisions. It is for this reason that we have outlined the organisation's values and the behaviours that they represent. These are the basis of our organisational culture - the things we value and the way we work together to achieve common goals.

We are committed to working together with you to help you maintain the highest standards of professional and ethical behaviour in the workplace. This is good for our culture and for every aspect of our work.

Ngā mihi nui

Jo Miller

Chief Executive

# PURPOSE, VISION AND VALUES

**Our Purpose** To work as a team, with our communities and partners, to create a better city and stronger community.

**Our Vision**

- A Better City. Every Day.
- Understanding our communities' values
- Building strong partnerships
- Delivering fresh solutions

**Our Values**

- Manaakitanga - Show you care
- Te Hononga - Be connected
- Kia Kaha - Have courage

Staff are expected to display the following behaviours associated with our values:

**Manaakitanga**  
*Show you care*

- Be helpful
- Be compassionate
- Willingly give your attention
- Do good

**Be connected**  
*Te Hononga*

- Seek and appreciate different perspectives
- Communicate effectively
- Share knowledge and skills
- Make valuable contributions colleagues appreciate

**Have courage**  
*Kia Kaha*

- Do the right thing, even if it's hard
- Be ambitious
- Explore new things
- Deal with issues directly and positively



## PURPOSE

The purpose of this Code of Conduct is to have acceptable standards of ethics, behaviour, values and performance expectations that are understood by all employees.

The reputation and standing of Council is determined to a large degree by public perception and the conduct of its employees. This Code of Conduct is based upon the organisational purpose, vision, values and behaviours expected of all employees.

## OBJECTIVE

The Code of Conduct is not intended to be a definitive document that sets out every possible instance that can arise during your employment. The objective of the Code of Conduct is to provide a guide to minimum standards of behaviour expected of all employees.

## COVERAGE

This Code of Conduct will apply to all Hutt City Council employees (including permanent, temporary, casual, fixed term and workers employed on a contract basis through external agencies).

This Code of Conduct will be provided to all new employees and will form part of the terms and conditions of employment and is to be read in conjunction with the employment agreement and existing policies and procedures.

## GOOD EMPLOYER

Hutt City Council is committed to being a good employer and ensuring that all employees are treated fairly and equitably.

Hutt City Council is committed to maintaining an ethical workplace where everyone who works here upholds the principles of honesty, integrity and impartiality, and respects the organisation's values.

## EMPLOYER OBLIGATIONS

### **Hutt City Council in its role as Employer will provide:**

- All employees with clear outline of work duties, job descriptions and expected performance standards.
- Appropriate feedback and communication on work performance including reasonable access to training and development activities.
- Remuneration in line with market rates (in line with employee's skills, responsibilities and performance).
- Freedom from harassment or discrimination in the workplace.
- Appropriate disciplinary and resolution procedures including redress against unfair or unreasonable treatment by the Employer.
- Safe working conditions, promotion of healthy work practices and access to supportive and confidential employee assistance programs.

- Fair and impartial selection and appointment procedures including appointment based on merit.
- An environment where staff are encouraged to perform to their maximum potential and where this performance is recognised and rewarded.

## JOINT EMPLOYEE AND EMPLOYER OBLIGATIONS:

### The Employee and Employer will work together to:

- Develop and maintain a relationship based on mutual respect and trust.
- Increase performance through high standards of service, effective work practices and a commitment to continuous improvement.
- Model expected behaviours and practices and behave in a manner that enables our work to be performed effectively.
- Maintain open and effective communication and harmonious working relationships that encourage partnership, openness, involvement and accountability including recognising and working constructively with employees respective union representatives.
- Create a climate where ideas, creativity and innovation are fostered and the contribution of each staff member is valued.

## EMPLOYEE OBLIGATIONS

### The employee will:

#### Performance of Duties

- Fulfil the obligations and duties to an agreed standard with professionalism and integrity in an honest and efficient manner, respecting the rights of the public, visitors and colleagues avoiding behaviour that will impair our effectiveness.
- Carry out duties competently and efficiently and using their skills and resources to the best of their ability.
- Not to use or allow the use of any property, tools, vehicles or other resources/funds that are entrusted to you for anything other than authorised purposes.
- Not to enter into any contract/agreement on behalf of Council without the Council's proper authorisation.
- Maintain any necessary requirements for a position (e.g. clean criminal record, drivers licence).

#### Respect

- Respect and observe the rights and privacy of the public and colleagues and treat them accordingly in all dealings.
- Be impartial, unbiased, unprejudiced, fair and equitable in all dealings including your personal behaviour and any advice given.
- Avoid behaviour that will cause distress, harassment or disruption in the workplace (e.g. the use of inappropriate, obscene or threatening language to colleagues, manager's clients or visitors).
- Ensure that personal values and philosophies do not inappropriately influence any decision made.

## Health and Safety

- Contribute to maintaining a healthy and safe workplace for everyone and take all practicable steps to prevent personal injury and illness (in accordance with the Health and Safety in Employment Act (and any amendments)).
- Report any hazard to their manager as soon as possible and give suggestions on how that hazard might be managed.
- Identify or report any accident that occurs in the work place, both to my manager and in the accident register.
- Wear personal protective clothing and/or use personal protective equipment as provided by Council and directed to wear.

## Professionalism

- Act in a professional manner at all times and accept personal responsibility and accountability for their own actions.
- Maintain standards of dress, language and behaviour that are appropriate to our workplace and maintain a positive image of Council.
- Ensure that workplace relationships do not adversely affect the way that you work.
- Work cooperatively as part of a team towards mutual objectives while complying with all Council policies, procedures, standards and guidelines.

## Communication

- Ensure that all communication is responded to promptly, and that written communication is worded in accordance with Council's in-house stylebook.

## CONFLICT OF INTEREST

A conflict of interest arises when your personal interests compromise or appear to compromise your responsibilities to Council or the general public. Always be mindful of the public's perception of your actions and take appropriate action to avoid conflict situations.

If you are a client of Council, you must ensure that your personal dealings with Council as a client are beyond reproach.

If you are unsure as to whether a conflict situation exists or how to handle that conflict please discuss the issue with your manager.

You should avoid working with a client who is a friend or relative, or work on a file or a contract of a friend, relative, colleague or close acquaintance. If forced into this situation by circumstance you should always declare an interest and should advise your manager. This is to protect Council from possible criticism or adverse publicity.

You may come into contact with information/knowledge that could be used to influence/guide some decisions and could be used to personally benefit you. This information is only to be used as necessary to do your job.

Care should be taken to avoid personal activities both private and public that might discredit the Council or your relationship with the general public. Guiding principles for deciding whether your personal activities may constitute a conflict of interest and/or misconduct are:

- The nature and circumstances of the activity;
- Your position, duties and responsibilities at Council;
- The effects of the activity on your ability to fulfil your work duties or Council's relationship with its customers or the general public.

**Examples could include:**

- Issuing building consents/planning permission for a property you have a personal interest in.
- Working with a voluntary/non-profit organisation who have dealings with the council.
- Providing advice that would benefit you/your family.
- Undertaking independent consultancy work (in an area that provides regulatory/compliance advice).

## SECONDARY EMPLOYMENT

Employees must not engage in secondary employment or undertake any out-of-work activities which could potentially affect your availability for your normal work hours, ability to perform your normal duties or which could potentially bring Council into disrepute.

If you are planning to commence any secondary employment you must discuss the matter with your manager and obtain agreement in writing. Part-time employees who work less than 20 hours per week for Hutt City Council may have additional part time employment and should bring this to the attention of their manager.

Employees are encouraged to participate in the activities of professional bodies and to hold office in such bodies. However, you should first inform your manager of your intentions, to ensure that no conflicts exist between such participation and your duties and responsibilities.

## GIFTS AND FAVOURS

Occasionally suppliers and other organisations that do business with Council ("suppliers") give gifts, favours, or offers of service ("gifts") to Council employees. Council requires receipt of gifts, except for inexpensive gifts (under \$100.00) that are openly distributed by suppliers and clients, to be disclosed, and for these to be recorded in a gifts register. Gifts over the value of \$100.00 where practical – will remain the property of the Council;

- Council allows staff to personally acquire only infrequent and inexpensive gifts that are openly distributed by suppliers and clients (for example, pens, badges, calendars and consumables – cakes/alcohol).
- Gifts should be infrequent (once a year) Frequent (more than twice a year) is not acceptable.
- Inexpensive – under the value of \$100.00.

Any gift over this value **must be registered** on the Gift Register (FIN-FORM-068).

We recognise that staff may be hosted for sporting or artistic events and that often the value of the "ticket" is in excess of \$100.00. It is acceptable to attend such events providing:

- There is clear benefit in building relationships
- That the event does not alter impartiality

- **That the host is not in an “active” or soon to be active tender situation.**

To prevent any misunderstanding all such events should be referred to your manager for approval, if further guidance is required please contact the General Manager Business Services.

Further information is contained in the Sensitive Expenditure Policy.

## Frequent Flyer Benefits

Occasionally staff will accrue frequent flyer points or similar minor personal benefits as a result of Council purchases. These benefits can only be retained by the staff member if it is not possible to transfer the benefit to Council efficiently.

The availability of these benefits cannot be taken into consideration when committing Council expenditure. For example, Council staff must not book a more expensive flight ticket to obtain frequent flyer points.

## HUTT CITY COUNCIL MONEY, PROPERTY AND USE OF BUSINESS TOOLS

All employees must ensure that public funds or resources are used prudently, with integrity, honesty, and trustworthiness and should reflect behaviour that is sensible and reasonable for the particular circumstances.

All Council property, business tools, resources and money must be used for Council purposes only and not be removed from the workplace without proper authorisation.

## CONFIDENTIALITY

The Council functions in an environment where information should be made available to the public unless there is good reason to withhold it. Grounds for withholding information is detailed in the Local Government Official Information and Meetings Act 1987.

## COPYRIGHT

Unless there is prior written agreement, copyright and similar proprietary rights and/or intellectual property rights in all work done in the course of employment with Council will belong to Council

## MEDIA COMMENTS

As a Council employee you may be asked for comment in relation to specific matters. Please bring all such requests to the attention of your manager or the Communications Team Leader.

Only those authorised by the Chief Executive or have express delegation as part of their job can make public statements. This applies to responses to:

- Media enquiries or any other external communication by a member of the media.
- Media request for comment on Council policy.
- Calls from journalist wanting staff to “comment” on a situation.

## COUNCIL POLICIES

There is a complete list of all Council policies on the Intranet. Council employees are required to comply with these policies.

From time to time these policies will be amended or added to. Council will make every effort to convey changes in policies to Council employees. Employees will share in the responsibility to be informed about Council policies by reading and keeping abreast of changes.

## BREACHES OF THE CODE OF CONDUCT

Behaviour or actions that are found to be in breach of the Code of Conduct may result in disciplinary action being taken against the employee concerned. The action can range from written warning to instant dismissal of employment (in cases of serious misconduct). In some instances the employees' behaviour may lead to prosecution.

If an employee observes another person breaching the Code of Conduct then the employee is to discuss the alleged breach/action with their Manager in the first instance. For further information refer to the Policy on Dealing with Misconduct.

This section of the Code of Conduct will detail what constitutes a breach. Behaviour or conduct that is inconsistent with our values, policies, procedures or performance expectations will not be tolerated.

Council has an obligation as a good employer to ensure that we have a fair procedure in place to deal with any possible instance of misconduct. Further information is contained in the Dealing with Misconduct and Managing Poor Performance Policies and each breach of the Code of Conduct will be carefully investigated.

The lists of behaviours on the following pages are considered to be unacceptable if carried out by Hutt City Council employees.

## MISCONDUCT OR SERIOUS MISCONDUCT

Misconduct is divided into two levels. Whether an action constitutes misconduct or serious misconduct will depend on the particular circumstances and/or severity of the action. Whether an action is deemed misconduct or serious misconduct will determine the appropriate form of disciplinary action (including dismissal) to be taken.

In making this judgment, regard needs to be given to:

- The nature and circumstances of the activity (what happened).
- The position, duties and responsibilities of the employee (Employee's role at Hutt City Council).
- The consequences of the misconduct on the employee's ability to fulfil her or his duties and responsibilities (How does this affect the employee's job).
- The effects of the activity or its consequences on working relationships with colleagues, customers, outside contacts and the general public (How does this affect the Hutt City Council).

### Misconduct

Misconduct is defined as behaviour that infringes Hutt City Council Code of Conduct but does not amount to serious misconduct.



Misconduct will generally result in disciplinary procedures being implemented and a warning being issued. The aim of each warning is to put the employee on notice that any further acts of misconduct while the warning is current, will incur further disciplinary action. A series of acts of misconduct over a period of time may have the cumulative effect of justifying dismissal.

## Serious Misconduct

Serious Misconduct is defined as behaviour where the code of conduct has been breached to such an extent that it destroys the employer's trust and confidence in the Employee.

Serious misconduct will generally lead to summary dismissal, that is, dismissal without further warning. In cases of serious misconduct dismissal will usually be without notice. Where there are mitigating circumstances, a final written warning may be considered appropriate.

Below are some breaches of the conduct in relation to both misconduct and serious misconduct.

### Breaches of the Code of Conduct

- Physical or verbal violence against other person including (but not limited to) members of the public, clients, other employees, elected members, or management, on Council premises or during work hours or while on Council business.
- The consumption or bringing of drugs (except as prescribed by a registered medical practitioner) or alcohol (without management consent) on Council's premises.
- Being present at work in an unfit state. This includes being under the influence of alcohol, drugs or solvents during working hours.
- Failure to follow safe working procedures, safety rules/instructions; not using safety equipment provided; or failure to report and document a work related accident.
- Certain Breaches of the Information and Communications Technology (ICT) Users Policy such as:
  - Posting, faxing, emailing, accessing or downloading from the internet, unauthorised and/or offensive notices and/or material.
  - Use of telephone for toll calls, internet, email, or facsimile for excessive or abusive personal use.
  - Removal, copying, falsification, destruction, unapproved use of desktop applications.
  - Loading software or other material onto HCC's IT Network without prior approval from Information Services and the appropriate manager, and/or without appropriate licensing.
- Unauthorised absence from work for the period of time outlined in your employment agreement relating to abandonment of employment.
- Refusal to obey a lawful order, insubordination or breach of work rules.
- Failure to notify your manager of a situation which changes your ability to carry out your duties.
- Failure to report for work at the time required, unauthorised absence from work or persistent lateness for work.
- Disrupting the workplace by acts of undesirable behaviour and/or misuse of time or resources including preventing or disrupting employees from carrying out their duties.
- Unauthorised disclosure of confidential information or council records.
- Using position or role in Council to further private interests or agendas or misrepresenting the Council for personal gain.

- Failure to account for cash or failure to follow the correct procedures for the handling of money.
- Fraudulent use of salary and expense claims (as per the Fraud Policy).
- Dishonesty or unauthorised possession, wilful damage or removal of property belonging to the Council, another employee or other person.
- Failure to account for goods and services or failure to follow Council procedures for the authorisation of goods and services.
- Deliberately undertaking acts which bring Council into disrepute or into a situation where a perceived conflict of interest could occur.
- Misrepresentation at job interview or in job application which resulted in Council not having correct and relevant information to make an appointment decision.
- Certain breaches of the Car User policy including
  - Being under the influence of alcohol or drugs.
  - Driving while talking on a cellphone/mobile radio unless an approved hands free kit is used.
  - Smoking in the Vehicle.
- Sexual, racial or any other harassment of contractors, customers or Council employees (including abusive, obscene or threatening language).
- Criminal behaviour.
- Work performance which fails to meet or is below agreed performance standards
- Failure to follow, or a breach of, the Hutt City Council's policies, standard procedure or performance standards.
- Smoking in non smoking areas.
- Gambling on work premises or in work time.

# POLICY

## GUIDE TO MANAGING MISCONDUCT

<b>Division</b>	Human Resources		
<b>Date Created</b>	30/07/08		
<b>Publication Date</b>	18/08/08		
<b>Review Period</b>	As required		
<b>Owner</b>	Jo Beck, Human Resources Manager		
<b>Approved By</b>	Jo Beck, Human Resources Manager		
<b>Document Identifier</b>	IS-POL-013-Managing Misconduct Policy.doc		
<b>Version</b>	<b>Author</b>	<b>Date</b>	<b>Description</b>
V 1.0	Linda Bird	18/08/08	For Employees and Managers to have in place a comprehensive and consistent approach for resolving disciplinary issues that may arise within the workplace

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## 1. PURPOSE

The purpose of this guide is for Employees and Managers to have in place a comprehensive and consistent approach for resolving disciplinary issues that may arise within the workplace. This procedure should be read in conjunction with the Hutt City Council Code of Conduct.

Following this procedure will ensure that a fair and transparent process is undertaken.

This procedure deals with misconduct and serious misconduct. Where it is determined that the issue may be a matter of poor performance rather than misconduct, the guide for dealing with poor performance should be referred to.

Hutt City Council acknowledges that most staff work hard and are committed to achieving the best outcomes for the organisation. A disciplinary process is used in exceptional situations only.

The objective of disciplinary action is to encourage a change in conduct.

## 2. STANDARDS OF BEHAVIOUR

An important aspect of the induction process is for managers to clearly establish the standards of conduct expected from employees and to ensure that they understand the potential consequences of any breach of those standards.

Managers have a responsibility to ensure that employees read and understand these documents and have free access to them at any time.

Standards for satisfactory and acceptable conduct by employees are outlined in a number of documents. These are:

- Hutt City Council Code of Conduct. (issued to all employees at commencement of employment)
- Hutt City Council Collective Employment Agreements/Individual Employment Agreement/Individual Performance Agreements and Job Descriptions.
- Other Hutt City Council policies on the Intranet and other policies that may be issued from time to time.
- Legislation – for example Occupational Health and Safety in Employment Act, Privacy Act, Human Rights Act, Employment Relations Act.

## 3. MISCONDUCT/SERIOUS MISCONDUCT

Misconduct is divided into two levels. Whether an action constitutes misconduct or serious misconduct will depend on the particular circumstances and/or severity of the action. Whether an action is deemed misconduct or serious misconduct will determine the appropriate form of disciplinary action (including dismissal) to be taken. Examples of serious misconduct and misconduct are found in the Hutt City Council Code of Conduct.

In making this judgment, regard needs to be given to:

- The nature and circumstances of the activity (what happened).
- The position, duties and responsibilities of the employee (Employee's role at Hutt City Council).
- The consequences of the misconduct on the employee's ability to fulfil her or his duties and responsibilities (How does this affect the employee's job).
- The effects of the activity or its consequences on working relationships with colleagues, customers, outside contacts and the general public (How does this affect the Hutt City Council).

### 3.1 MISCONDUCT

Misconduct is defined as behaviour that infringes Hutt City Council code of conduct but does not amount to serious misconduct.

Misconduct will generally result in disciplinary procedures being implemented and a warning being issued. The aim of each warning is to put the employee on notice that any further acts of misconduct while the warning is current, will incur further disciplinary action. A series of acts of misconduct over a period of time may have the cumulative effect of justifying dismissal.

### 3.2 SERIOUS MISCONDUCT

Serious Misconduct is defined as behaviour where the code of conduct has been breached to such an extent that it destroys employer's trust and confidence that Hutt City Council has in the Employee.

Serious misconduct will generally lead to summary dismissal, that is, dismissal without further warning. In cases of serious misconduct dismissal will usually be without notice. Where there are mitigating circumstances, a final written warning may be considered appropriate. During the investigation, suspension may be appropriate (see below).

### 3.3 SUSPENSION

Suspension is only to be used as a last resort and in situations that may constitute serious misconduct.

**Human Resources must be consulted prior to an employee being suspended.**

Suspension is used when:

- Staff/customers are at risk and/or
- The employee may be at risk and/or
- The situation is highly emotive and/or
- The allegation is criminal in nature and/or
- The organisation or the property of the organisation is at risk

Suspension is not to be used as a punitive measure and must be for as short a period as possible.

The Manager will advise the employee that he/she is suspended on full pay whilst an investigation is undertaken, and that during that period he/she is not to enter the premises. The employee is to be

advised that a further meeting will be held to discuss the outcome of the investigation. All details relating to the suspension are to be put in writing to the employee.

The employee must be given the opportunity to respond to the decision to suspend and to provide reasons as to why this should not occur. Failure to take this step may be deemed to disadvantage the employee.

### 3.4 CRIMINAL BEHAVIOUR

Where allegations of criminal behaviour are involved the matter is to be referred to Human Resources in the first instance.

Where a criminal charge is laid or criminal activity is suspected, Hutt City Council is obligated to meet with the employee and hear their explanation of the events before dismissal can occur.

If an employee is convicted of an offence which is unrelated to their employment, dismissal is not an automatic outcome. Each case will be considered on an individual basis.

## 4. DISCIPLINARY PROCEDURE

**Managers must consult Human Resources prior to taking any disciplinary action.**

### 4.1 PROCEDURAL FAIRNESS

#### 4.1.1 Procedures to be followed

At all times the principles of natural justice apply to ensure procedural fairness is properly observed.

The employer must ensure that:

- The Employee knows of and is aware of the rules and procedures.
- The Employee must be advised of the allegation and the seriousness of the breach and potential consequences if the allegation is established.
- The Employee must be given the opportunity to explain.
- The Employee's response must be fully considered before any decision is made.

#### 4.1.2 Purpose of Discipline Procedure

Disciplinary procedures are designed to accomplish four important goals:

- To demonstrate to the Employee that their behaviour/performance is unacceptable and in what way it is unacceptable.
- To give the Employee an opportunity to correct unacceptable behaviour/performance where the breaches are not of a serious nature.
- To ensure that where unacceptable behaviour or performance persists, the disciplinary and/or dismissal action taken is fair and reasonable in all circumstances.
- To ensure that the correct procedure is followed in all disciplinary and dismissal actions.

## 4.2 DISCIPLINARY PROCEDURES

### 4.2.1 Employee Rights

At any stage of any disciplinary process all employees have the following rights:

- To hear any allegations made against them, including viewing any written complaints
- To be given a genuine opportunity to refute those allegations or to explain and/or justify their actions
- To receive impartial consideration of the matter
- To have representation of their own choosing
- To have issues addressed promptly and to know that a full and thorough investigation taken place
- To see all relevant documentation relating to the investigation
- To have any mitigating factors considered and to comment on the proposed course of action before a decision on the outcome is finalised.

The Disciplinary process requires that any action taken shall be:

- **Taken promptly** – As soon as practicable after the event
- **Non punitive** – The emphasis will be on changing behaviour not punishing the person
- **Impartial** – all employees will have disciplinary procedures applied in an unbiased way
- **Consistent** – Similar action will be taken for similar offences
- **Fair** – The degree of the discipline will relate to the nature of the offence

### 4.2.2 Reprimand

In instances of minor misconduct, it is appropriate for Managers to undertake an informal counselling interview with the employee with the intention of getting the employee back on track.

A reprimand is a clear statement to the employee that their conduct is unacceptable; it is not a warning.

The Manager should meet with the employee on a one to one basis to discuss the problem/issue and to hear the employee's explanation. The Manager should be explicit about the problem and clarify the expectations of the employee. Offering Employee Assistance via the EAP programme, or training and development options may be appropriate ways of dealing with the issue.

The Manager should inform the Employee that if the expectations are not met and the situation does not improve within the agreed timeframe that disciplinary action may be required.

If the situation does not improve then the following steps should be followed.

## 4.3 FORMAL DISCIPLINARY PROCESS

### 4.3.1 Step 1: Preliminary Enquiry – Meeting with Employee

Once an allegation has been brought to the Manager's attention, or the Manager has observed an action themselves, a one to one informal discussion may be held with the employee to determine whether further investigation and/or disciplinary action is required. If the manager deems it likely that



the allegations have substance then the Manager should advise the employee that further action may be required and stop the meeting.

#### 4.3.2 **Step 2: Investigation**

##### **Refer to flow chart one**

The scope of an investigation will depend entirely on the nature of the allegation, complaint or issue raised, as well as the number of people involved.

The person conducting the investigation should keep an open-mind throughout the investigation.

All allegations of breaches of the code of conduct will usually be investigated by the Manager directly responsible for the employee concerned. The nature/severity of the actions and the complexity of the situation will determine whether the allegations should be treated as misconduct or serious misconduct. Where serious misconduct is alleged and/or dismissal is a possible outcome, Human Resources must be involved and the General Manager who has the delegated authority to dismiss may also be involved from the outset.

In some instances the General Manager or CEO in consultation with Human Resources may deem it appropriate to have an external, independent party investigate the allegations.

A full and fair investigation of the situation must be carried out immediately, to determine the facts and circumstances associated with the disciplinary matter. The investigation must:

- Gather the facts
- Listen to explanations
- Establish who is involved
- Review documentation
- Interview witnesses/complainants
- Determine whether disciplinary action is required.

##### **Investigating a Complaint**

Where a complaint has been made, the Manager (with HR) should interview the person who has made the complaint to get an explanation of what has occurred. At this interview:

- The complainant may bring a support person (Manager to advise)
- The complainant must be told that notes will be taken (to ensure an accurate record of events)
- The complainant must be advised that his/her name and a copy of the complaint will be made available to the person/s who has allegedly breached the code of conduct, policy, agreement or law
- The complainant should be asked to explain what has occurred in his/her own words to determine; who was involved, what was said or done, when and where the incident/s took place and whether there were other witnesses.
- All witnesses should be interviewed
- The Manager needs to ascertain whether more than one person is involved

As a result of the preliminary meeting held with the employee, the issue or breach needs to be investigated thoroughly by the manager. A full and fair investigation of the situation must be carried out immediately, to determine the facts and circumstances associated with the disciplinary matter.

**Other investigations: problem definition, concerns, general issues.**

Sometimes there may be issues within the workplace where the cause is difficult to determine. For example, there may be incompatibility issues, or general workplace tensions. An investigation can assist in establishing the cause and determine what action should be taken to resolve the issues. These investigations can become very complex and time consuming as they may involve a number of people and issues.

The nature of these investigations is not disciplinary, however, the commencement of a disciplinary process may be an outcome. Other outcomes could include no further action, training, counselling and facilitation.

**4.3.3 Step 3: Formal Meeting with Employee**

The employee is to be interviewed as early as possible during the investigation process. The Manager must ensure that the employee has been:

- Advised in advance of the purpose of the meeting - what the disciplinary meeting is about and what allegations the employee faces. Relevant facts from the investigation to date should be provided (or attach the investigation findings to the letter).
- Advised of their entitlement to have a representative present.
- Advised what time and place meeting will be. The meeting should be held in normal work time if at all possible.
- Advised who is attending from Employer's side and what their roles are within the meeting and/or organisation.
- Advised of the seriousness of the allegations and if proven that they may lead to disciplinary action (including likely outcome).

The Manager must have a witness present (this would usually be an HR representative) at any disciplinary interview to ensure that natural justice/procedural fairness requirements are met and that Hutt City Council has a witness available as to what happened. Notes of the meeting will be taken by Human Resources as part of evidence.

**During the Meeting**

**Note** – Adjournments may be requested by either party at any time throughout the meeting.

The Manager must:

- Ensure they have a witness or support person present. Human Resources needs to attend on behalf of Hutt City Council.
- Advise the employee of the possible consequences of the allegations being substantiated. (e.g. dismissal)
- Advise the employee of the nature of the allegation and that it is being investigated
- Provide the employee with all the facts – including written complaints, if any
- Request an explanation from the employee. Listen carefully to employee's version of events and allow the employee sufficient time to give a full explanation.
- Give the employee representative/support person a reasonable opportunity to speak.

- Objectively consider any explanation offered by the employee.

The disciplinary investigation meeting may need to be adjourned where further investigation is required.

#### 4.3.4 **Step 4 Decision on Appropriate Action**

Once the Manager is satisfied that he/she has completed the investigation and that the employee has been provided with a full opportunity to explain, the Manager should adjourn the meeting to consider the employee's explanation and determine whether or not the allegation has been established.

**NOTE:** Where the decision maker is not the person conducting the investigation, for example, in situations where summary dismissal is a potential outcome, the investigator should present their findings to the decision maker, who will then conduct the disciplinary hearing.

Once the decision maker has made a preliminary decision, in consultation with Human Resources, a disciplinary hearing should be convened to advise the employee with his/her representative of the proposed action. This decision should always be issued in person. The employee and his/her representative should be given the opportunity to comment on the proposed action and to have that response considered by the decision maker. If the allegations are unsubstantiated no further action will be taken. The decision on the outcome has to be provided in writing to the Employee as soon as possible after the disciplinary meeting has taken place.

The decision maker needs to take whatever time is considered reasonable to fully consider the employee's comments or explanations. In some cases this will be clear cut, for example when the employee admits to the misconduct, in others further information may need to be sought.

In coming to a decision, the Manager must consider the following issues:

- frequency and nature of the behaviour
- seriousness of the behaviour
- degree of communication with employee on the behaviour to date
- employee's work history – length of service and performance
- any extenuating factors such as personal problems, personality clashes, language difficulties, cultural issues and the like
- implications, what impact will the decision have, if any, on other employees
- history and consistency – how have similar transgressions been dealt with in the past?
- any explanation or denial given by the employee
- procedural fairness

It is important that other possibilities are also considered, for example, whether the misconduct or poor performance is due to lack of training, or extenuating circumstances exist that accounts for the action.

#### 4.3.5 **Outcomes of Disciplinary process**

Warnings

Refer to flow chart two

**NOTE:** A Manager should never prejudge the outcome of a disciplinary hearing by preparing a warning letter in advance.

The warning **must** be put in writing and should include:

- The original allegation against the employee - state time, date, conduct or actions involved
- When the meeting to investigate the problem was held and who was present
- The employee's response to the allegation
- Hutt City Council's position following the investigation, showing how their conduct is inappropriate or unacceptable and how it has breached the code of conduct, employment agreement or policies of the organisation
- The improvements in performance/behaviour required
- The training/development/coaching/mentoring considered appropriate for addressing the problem
- The timeframe for delivery of these improvements
- How performance will be monitored

That the letter is a formal warning, effective for an appropriate period of time and a further breach of contract may place the employee's employment in jeopardy

The type of warning issued will vary depending on the level of seriousness and whether previous warnings have been issued.

### **First Warning**

Where there is a clear case of misconduct, but the level of the problem is less severe than serious misconduct the appropriate course of action is to issue a first written warning.

This disciplinary action is used for misconduct and states that a breach/behaviour is occurred and is put in writing to outline what has happened what is required in order to remedy the breach. The written warning is placed on the employees file for a period of time (depending on the severity of the breach).

The employee is to be given a copy of the warning and advised of the consequence of any further instances of misconduct. Place a copy of the warning on the employee's personal file. Advise the employee of his/her right to have a written explanation or response of the alleged 'behaviour' on his/her personal file.

### **Final Warning**

A final warning is issued in circumstances where the breach in behaviour has continued or where the misconduct is of a serious enough nature to forego the first formal warning, (and conversely, not serious enough to warrant summary dismissal). If behaviour is serious and does not warrant termination of employment then final warning issued. The final written warning place on Employees file for remainder of period with Hutt City Council.

The employee is to be given a copy of the warning and advised of the consequence of any further instances of misconduct. Place a copy of the warning on the employee's personal file. Advise the employee of his/her right to have a written explanation or response of the alleged 'behaviour' on his/her personal file.

## Dismissal

Dismissal is used where the behaviour is so serious that it has destroyed the employment relationship. Dismissal can be immediate or with notice. This needs to be in writing.

When an employee is dismissed the following **must occur**:

- A thorough investigation into the allegations of misconduct must be carried out.
- The Employee must be given an opportunity to respond to the allegations.
- The Employer's evaluation of the evidence and response must not have been predetermined or biased.
- The penalty must fit the crime.
- The Employee must be given notice of the specific allegation of misconduct.
- The Employee must be told that dismissal could be the outcome of any investigation.
- The Employee must be given the opportunity to get a lawyer or other representative to act for him or her.
- The Employee must be given a real opportunity to explain or refute the allegations and there must be an unbiased consideration of the explanation.

It is essential that all steps outlined under disciplinary procedures are undertaken in conjunction with Human Resources.

## Written advice of termination

Written advice of termination is to be handed to, or sent to, the employee and a copy sent to the employee's representative if appropriate.

The letter of dismissal must contain the same information as a warning:

- The original allegation against the employee - state time, date, conduct or actions involved
- When the meeting to investigate the problem was held and who was present
- The employee's response to the allegation
- Hutt City Council's position following the investigation, showing how their conduct is inappropriate or unacceptable and how it has breached the code of conduct, employment agreement or policies of the organisation
- That the decision of the organisation is dismissal (state type of dismissal)
- The arrangements to be made regarding final pay and other relevant factors such as handing back of Hutt City Council property.

## Final Pay

The Manager is to advise payroll IMMEDIATELY that the employee has been dismissed in order for the final pay to be processed on that same day.

## Handing back of property

The Manager should collect any Hutt City Council property from the employee. This may include; keys, building access cards/pendants, cell-phones, and library books.

## 5. RECORDS

When an employee has been dismissed, all papers relating to the dismissal, including any report recommending dismissal action and the letter of dismissal, are to be placed on the employee's personal file.

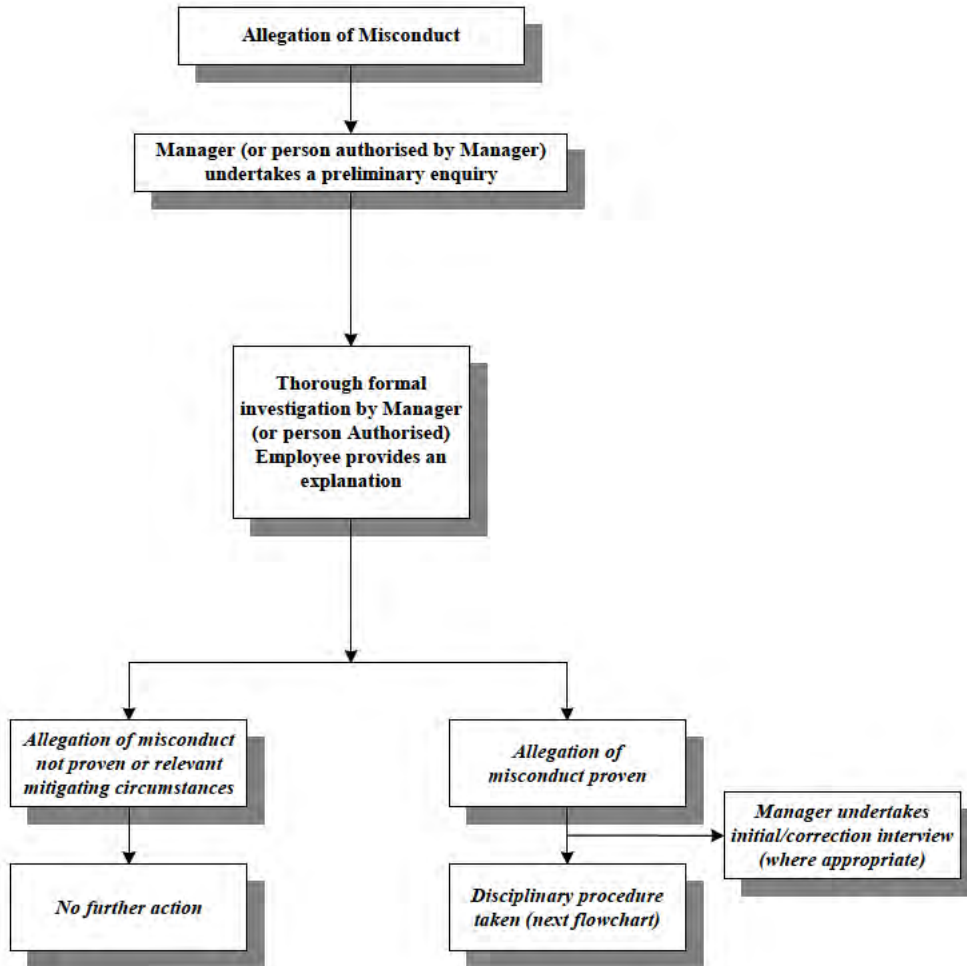
## 6. PERSONAL GRIEVANCES

Employees have the right to pursue a personal grievance if they feel they have been treated unfairly in relation to either the process or outcome of a disciplinary process (refer Employment Relationship Problems – attached).

FLOWCHART 1

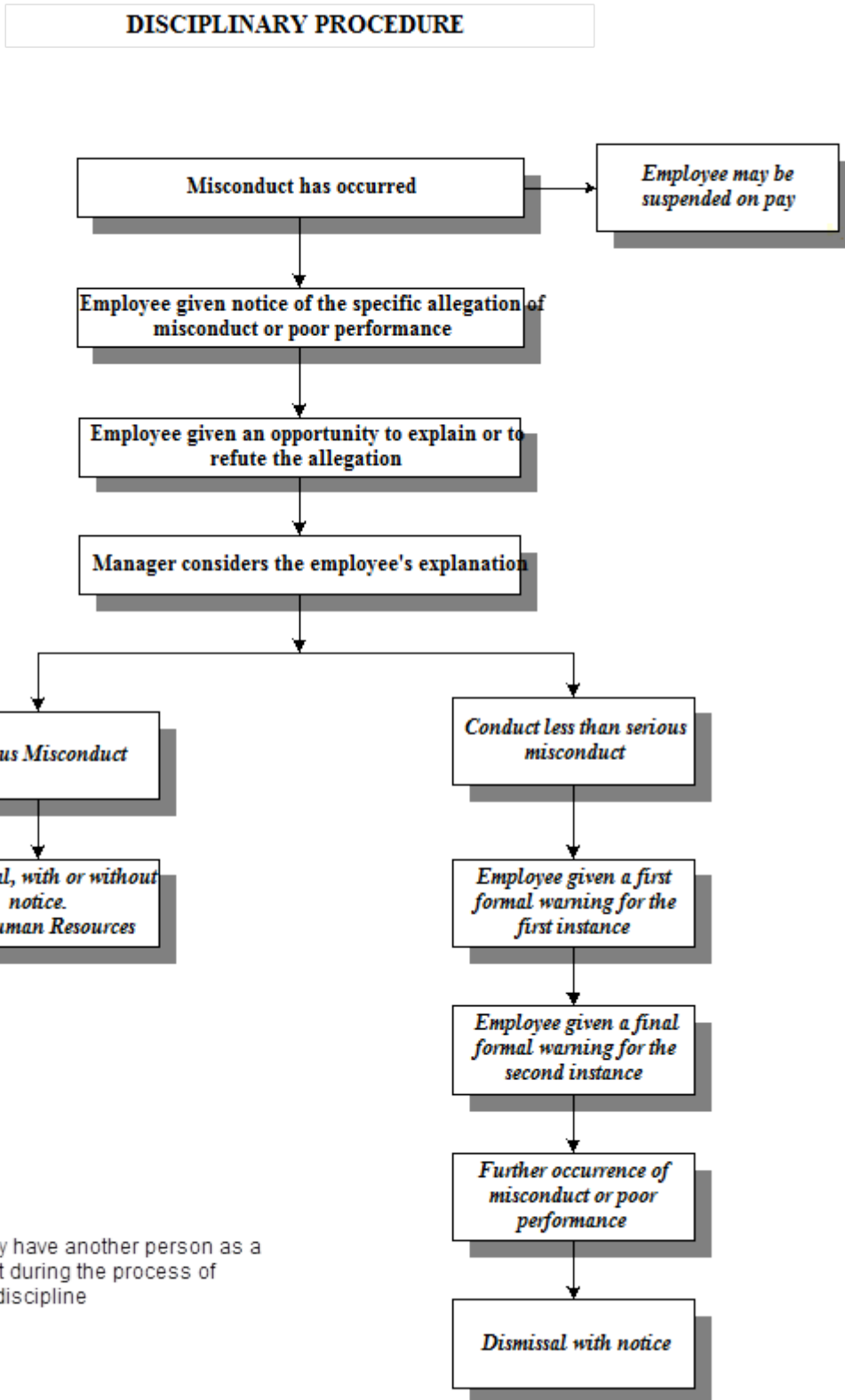
**DISCIPLINE AND DISMISSAL**

**Investigation Procedure**



NOTE: The employee may have another person as a witness or support during the process of investigation and discipline

FLOWCHART 2



NOTE:

The employee may have another person as a witness or support during the process of investigation and discipline



## 7. RESOLVING EMPLOYMENT RELATIONSHIP PROBLEMS

We aim to provide a fair workplace for you. At times you may have concerns about your employment and how you are being treated. In such instances, it is our aim to resolve matters as close to the source as possible and we ask that you bring any employment relationship problems to the attention of your Team Leader/Supervisor, Divisional Manager, General Manager or Human Resources. If the matter is unable to be solved internally within the Council you can contact the Wellington Office, Department of Labour Mediation Services for assistance.

We have set out the services available to you for resolving employment relationship problems.

### 7.1 WHAT IS AN EMPLOYMENT RELATIONSHIP PROBLEM?

An employment relationship problem is a personal grievance, dispute or other problem relating to your employment relationship with us.

It does not include any problem with the fixing of new terms for your employment.

Listed below are examples of employment relationship problems:

- you think you have been treated unfairly;
- a personal grievance;
- a breach of your employment agreement;
- a dispute over the interpretation, application or operation of your employment agreement;
- unfair bargaining for an individual employment agreement;
- a question about whether you are an employee or an independent contractor;
- a disagreement about arrears of wages or holiday pay, etc;
- you get a warning, or are dismissed.

### 7.2 WHO CAN HELP YOU WITH AN EMPLOYMENT RELATIONSHIP PROBLEM?

To help you solve your employment relationship problem you can contact:

1. Within your workplace
  - a. Your manager/supervisor or their manager;
  - b. Your Human Resources personnel.
2. Outside your workplace
  - a. The Department of Labour ("Department") offers free information and has a free mediation service which can provide us with assistance in working together and resolving the problem.
3. You can contact the Department on: 0800 800 863 or [www.dol.govt.nz](http://www.dol.govt.nz);
  - a. A union or an advocate
  - b. A lawyer.

## 7.4 WHAT IS A PERSONAL GRIEVANCE?

A personal grievance means any grievance that you have against us because of a claim that:

- you have been unjustifiably dismissed;
- action we have taken disadvantages you in your employment or a term of your employment is unjustifiable;
- you are discriminated against in your job;
- you are sexually harassed in your job;
- you are racially harassed in your job; or
- you have been pressured in your job because of your membership or non-membership of a union or employees' organisation.

## 7.5 WHAT CAN YOU DO IF YOU HAVE A PERSONAL GRIEVANCE?

- To raise a personal grievance, you should make us aware of your problem (verbally or in writing) within 90 days of the personal grievance arising unless:
  - we consent to you raising the personal grievance after 90 days; or
  - you successfully apply to the Employment Relations Authority ("Authority") for leave to raise the personal grievance after 90 days, in which case we must try to mutually resolve your grievance through mediation.
- You have three years after raising the personal grievance to bring any action arising from it to the Authority or the Employment Court ("Court").

## 7.6 MEDIATION SERVICES

If we cannot resolve your employment relationship problem between us then either or both of us may request help from the Department.

The Department provides mediation services which may include:

- information about rights and obligations;
- information about services;
- assistance in resolving problems; and
- fixing new terms of employment.

### **Problem Not Resolved at Mediation**

If we cannot resolve the problem at mediation you can refer it to the *Employment Relations Authority*.

### **Summary**

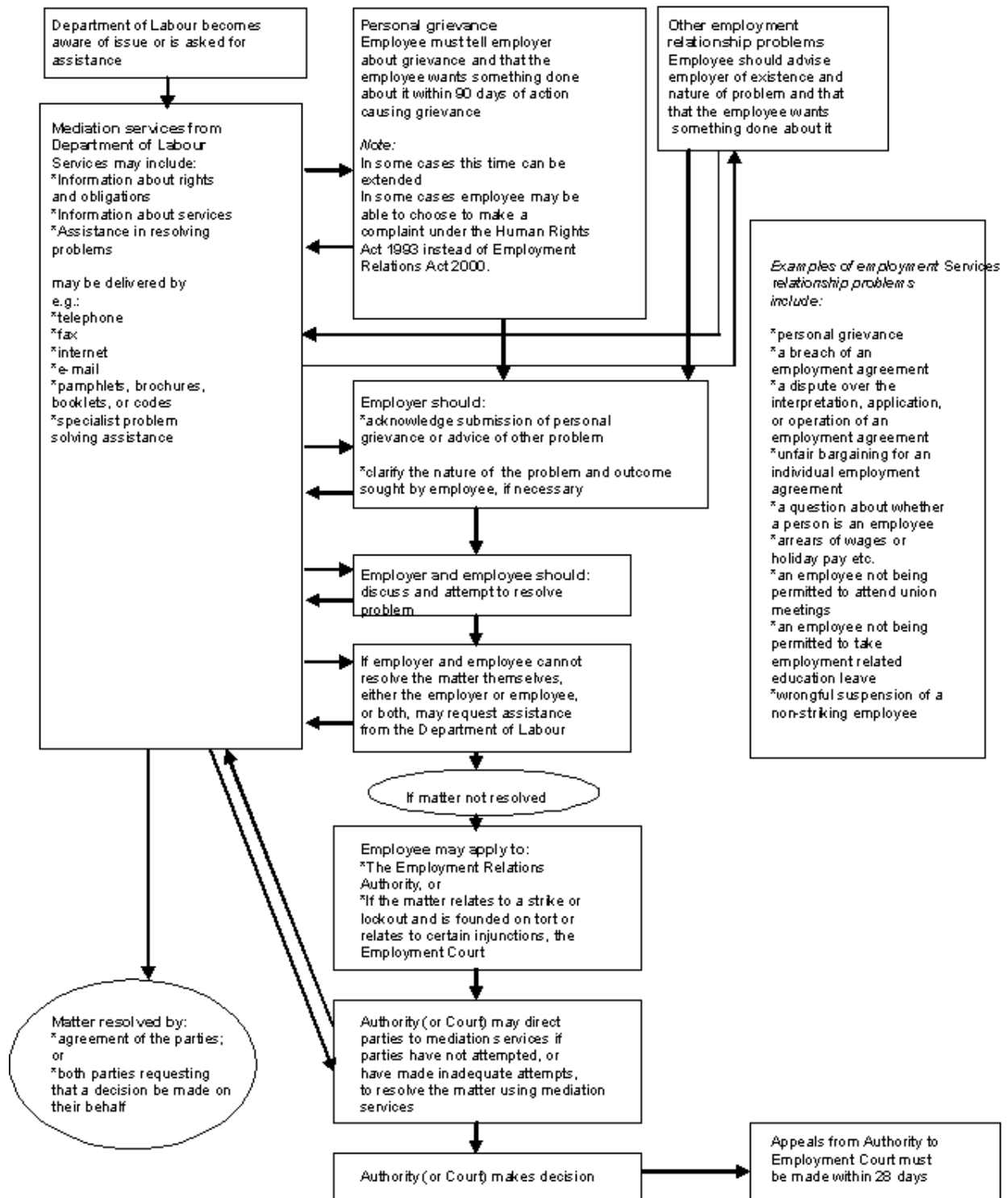
A summary of the process for resolving employment relationship problems is set out in the attached flowchart.

Please contact Human Resources if you would like further information.

## Information about Resolving an Employee's Employment Relationship Problem

Note: The information in this diagram is to assist parties to employment relationships to resolve their problems. It should not be treated as a complete description of any of the legal processes involved.

### Information About Resolving an Employee's Employment Relationship Problem



Note: The information in this diagram is to assist parties to employment relationships to resolve their problems. It should not be treated as a complete description of any of the legal processes involved.

# CHILD PROTECTION POLICY



Division	Human Resources
Date created	May 2017
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Approved by	Tony Stallinger, Chief Executive Officer

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## 1. SUMMARY

Hutt City Council is committed to ensuring the wellbeing and safety of children and young people. This policy provides guidance to staff on how to identify and respond to concerns about the wellbeing of a child, including possible abuse or neglect.

All staff who work with children are expected to be familiar with this policy and to abide by it. The process for responding to a concern about a child is on page 6 of this policy.

The interests of the child will be the paramount consideration when any action is taken in response to suspected abuse or neglect. Council commits to supporting the statutory agencies (The Children's Team, the Ministry for Vulnerable Children (Oranga Tamariki) - and the NZ Police) to investigate abuse and will report suspected cases and concerns to these agencies using the process in this policy.

Our HR Manager will be responsible for the administration and review of this policy.

## 2. PURPOSE

Our Child Protection Policy supports our staff to respond appropriately to potential child protection concerns, including suspected abuse and neglect. It also provides a process in the event of a claim of abuse or neglect against a staff member.

## 3. SCOPE

This policy applies to all staff who have dealings with children, including volunteers and part-time or temporary roles and contractors. It is intended to protect all children that staff encounter, the children of adults accessing services and any other children encountered by staff as they provide their service.

Managers have a responsibility to ensure that the appropriate authority is notified when a staff member has a belief that a child has been, or is likely to be, abused or neglected. This extends to ensuring that all known information about the child, young person and their family or whanau is shared in full with the appropriate authority, so that they (the appropriate authority) can determine the most appropriate response.

## 4. PRINCIPLES

1. The interests and protection of the child are paramount.
2. We have a commitment to ensure that relevant staff are able to identify the signs and symptoms of potential abuse and neglect including through digital communications and are able to take appropriate action.
3. We are committed to supporting all relevant staff to work in accordance with this policy.
4. We will always comply with relevant legislative responsibilities.
5. This child protection policy is made under the Vulnerable Children Act 2014.

## 5. DEFINITIONS

For purposes of this policy, unless otherwise stated, the following definitions shall apply:

Term	Definition
A child	Is anyone under the age of 18 years and is not married or in a civil union.
Safety Checking	Means the formal process of obtaining checks from another agency, e.g. the Police vetting service
Child Abuse	Is defined by the Oranga Tamariki Act, 1989, as "...the harming (whether physically, emotionally, sexually), ill-treatment, abuse, neglect, or deprivation of any child or young person". The definitions set out below provide some indicators of abuse however these should not be seen as an exhaustive list or as a check list.
Physical Abuse	Means any action that may result in physical harm of a child. This includes, but is not limited to: bruising, cutting, beating, hitting, shaking, burning, drowning, suffocating, biting, poisoning, strangling or otherwise causing physical harm to a child. Physical abuse can also involve the fabrication or inducing of illness.
Emotional Abuse	Is the persistent emotional ill treatment of a child causing severe and persistent adverse effects on the child's emotional, psychological, social and intellectual functioning or development. This can include a pattern of rejecting, degrading, ignoring, isolating, corrupting, exploiting or terrorising a child. It may also include age or developmentally inappropriate expectations being imposed on children. It also includes the seeing or hearing the ill treatment of others.
Sexual Abuse	<p>Involves forcing or enticing a child to take part in sexual activities (penetrative and non-penetrative, for example, rape, kissing, touching, masturbation) as well as non-contact acts such as involving children in the looking at or production of sexual images, sexual activities and sexual behaviours.</p> <p>Staff should be aware of their 'duty of care' which precludes developing a sexual relationship with or grooming of a child. A sexual relationship between an adult and a child will always be wrong, unequal and unacceptable.</p>
Neglect	Is the persistent failure to meet a child's basic physical or psychological needs, causing long term serious harm to the child's health or development. It may also include neglect of a child's basic or emotional needs. Neglect is a lack: of action, emotion or basic needs.
Digital Communication	Any form of electronic communicators including text message, writing, photograph, picture, recording or other matter that is communicated electronically.



Term	Definition
The Designated Person	For child protection within a service area is the manager of that area. As part of their overall responsibility for the safety and wellbeing of staff, contractors and visitors within their area of the workplace, the manager also has responsibility for child protection, including reporting and responding appropriately.

## 6. IDENTIFYING CHILD ABUSE AND NEGLECT

Our approach to identifying potential abuse or neglect is guided by the following principles:

- We understand that every situation is different and it is important to consider all available information about the child and their environment before reaching conclusions. For example behavioural concerns may be the result of life events, such as divorce, accidental injury, the arrival of a new sibling etc.
- We understand when we are concerned a child is showing signs of potential abuse or neglect we should talk to our manager before taking action and that we should not act alone.
- We recognise the signs of potential abuse
- We are aware of the signs of potential neglect.

## 7. WHAT WE WILL DO

We will meet our commitment to protect children from abuse through the following means:

### Awareness

We will ensure that all relevant staff are aware of the problem of child abuse and the risks to children.

### Prevention

We will ensure, through awareness and good practice, that staff and others minimise the risks to children.

Staff who work with children and young adults will be screened via the Police Vetting Service at the time of employment and every three years thereafter.

### Reporting

We will ensure that relevant staff are clear what steps to take where concerns arise regarding the safety of children.

## Responding

We will ensure that action is taken to support and protect children where concerns arise regarding possible abuse.

In order that the above standards of reporting and responding are met, Hutt City Council staff will ensure that they:

- Take seriously any concerns raised.
- Take positive steps to ensure the protection of children who are the subject of any concerns.
- Support children, staff or other adults who raise concerns or who are the subject of concerns.
- Act appropriately and effectively in instigating or co-operating with any subsequent process of investigation.
- Are guided through the child protection process by the principle of 'best interests of the child'.
- Listen to and take seriously the views and wishes of children.
- Work in partnership with parents or carers and other professionals to ensure the protection of children.

## 8. PROCEDURES FOR RESPONDING AND REPORTING CHILD ABUSE

Any issues of suspected child abuse must be taken seriously and handled in an appropriate manner that ensures the child's safety.

The HR Manager is responsible for ensuring that the procedure for reporting child abuse is effective and timely. If a member of staff has a child protection concern then they must inform their manager and/or the HR Manager using the incident reporting processes within the organisation. The following flowchart provides guidance to decision-making.

## 9. CONFIDENTIALITY AND INFORMATION SHARING

Keeping children safe requires the appropriate sharing of information subject to legal restrictions and the best interests of the child.

Council recognises that all staff must act within the legal requirements such as the Privacy Act, Oranga Tamariki Act, Health Information Act and other statutes. There are provisions within each of these acts for sharing information needed to protect children and enable other people to carry out their legitimate functions. In general, staff will not share information if they believe that by doing so this will endanger the child.

Council encourages the sharing of information when appropriate steps have been taken.

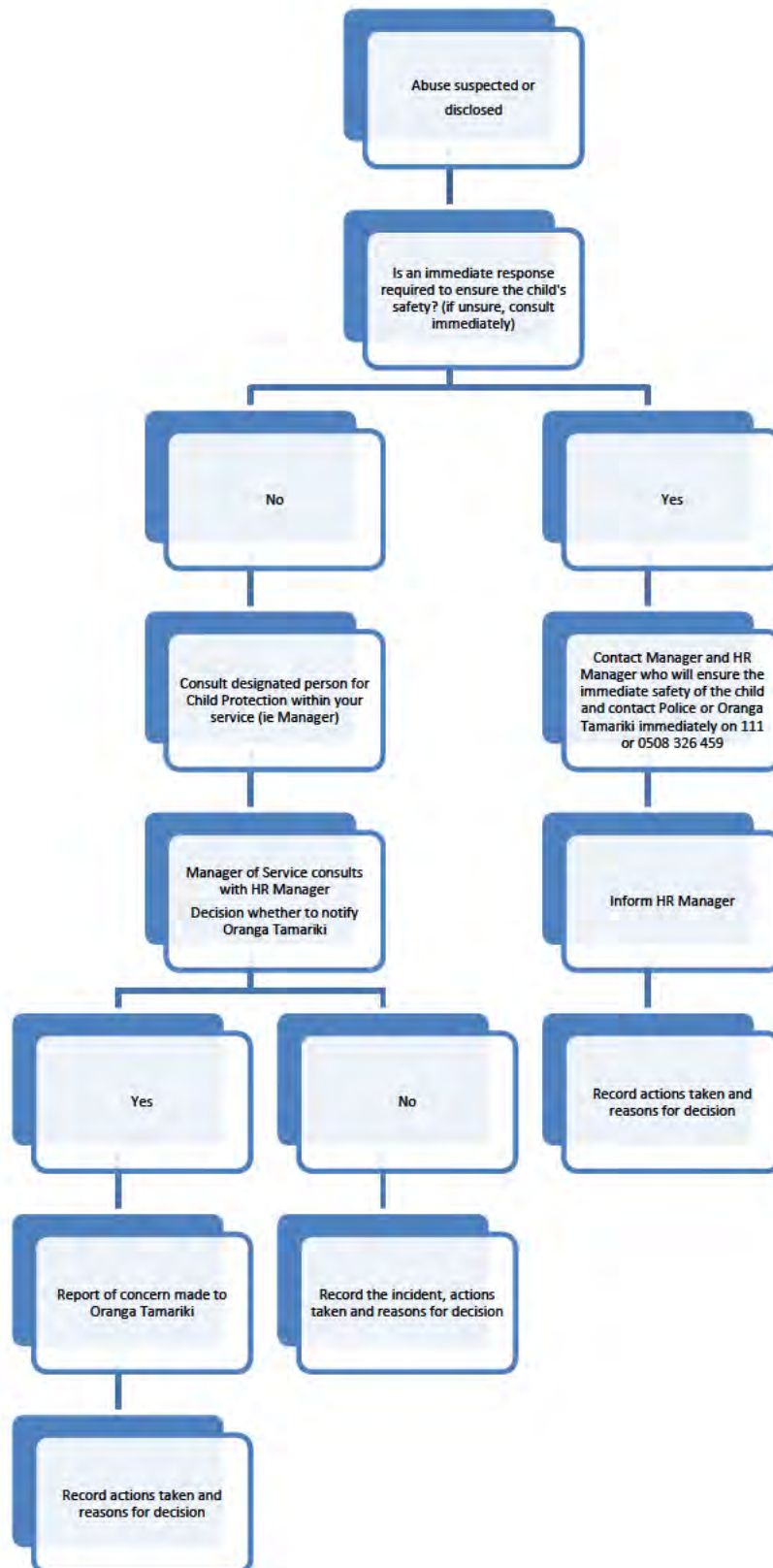
Staff may be asked to provide information to Oranga Tamariki, the Police, Court, Lawyers or Psychologists.

Information sharing will be restricted to those who have a need to know in order to protect children.

Information will be only be given after the staff member has identified the person making the request, the actual purpose of the request, what use the information will be put to, and who will see the information.

## 10. RELATIONSHIPS WITH EXTERNAL AGENCIES

Council will not act alone, and will refer all suspected situations of child abuse to Police or Oranga Tamariki. The safety of the child will be the primary consideration, and no person in this organisation will collude to protect an adult or an organisation from allegations or investigations being made.



## Guiding Principles

**Respond** to the concern. Reassure the person who has given you information.

**Record** all information. Remember to distinguish between fact and opinion.

**Consult** with the Designated Person, your Policy or external agencies.

**Report** concerns to Oranga Tamariki or the Police.

## 11. DEALING WITH ALLEGATIONS AGAINST A STAFF MEMBER

Allegations, suspicions or complaints made against a staff member of abuse of a child must be taken seriously and reported to the HR Manager who will manage them immediately, sensitively and expediently.

It is not the responsibility of staff to investigate allegations of child abuse. A complaint will be made to Police and/or Oranga Tamariki for them to investigate. Council staff will not contact the child or its family whilst the investigation by Police and/or Oranga Tamariki is ongoing.

When abuse is suspected or an allegation is made against a staff member, the first consideration will be to ensure the safety of the child.

If a child discloses abuse, staff will follow the guide Dealing with Disclosures of Abuse in Appendix 1.

When abuse is suspected, staff will follow the process for Responding to Suspected Child Abuse included in this policy.

Staff will declare to their manager or the Human Resources Manager any situation where there could be a conflict of interest, and provision made on a case-by-case basis about who will handle the process.

The manager, together with the Human Resources Manager, must immediately ensure that the suspected individual does not have any contact with the child making the allegation. A risk assessment must be undertaken to determine what level of access, if any, that person should have, to other children. The staff member may be suspended during any risk assessment or Police investigation.

If the Police decide to undertake a criminal investigation, Council will not undertake an investigation and will await the outcome of the Police investigation.

If Council is aware that suspected staff member also works with children for another organisation, either as an employee or a volunteer, it will inform that other organisation of the suspension of the staff member, progress on the investigation and the subsequent outcome. Consultation with Oranga Tamariki or the Police will determine how this information is conveyed.

Council will liaise with Oranga Tamariki and the Police and assist in the investigation.

If there is insufficient evidence to pursue a criminal prosecution, then a disciplinary investigation may still be undertaken if there is "reasonable cause to suspect" that abuse may have occurred. The allegation may represent inappropriate behaviour or poor practice by a member of staff which needs to be considered under internal disciplinary procedures.

## 12. SAFE RECRUITMENT OF STAFF

All workers engaged by Council and working with children must be appropriately safety checked in accordance with the requirements of the Vulnerable Children's Act 2014.

## 13. TRAINING OF STAFF

Council staff who interact with children and families through their roles are expected to participate in any child protection training the Council may offer.

Responsibility for the provision of training rests with managers, with the assistance of the Human Resources Manager.

### Responsibilities

Function	Responsibilities
Managers <b>will</b>	Be familiar with the Child Protection Policy and ensure their staff are aware of the policy content. Ensure training is provided for relevant staff having contact with children
The HR Manager <b>will</b>	Act as a contact point for staff that have child safety concerns. Ensure that safety checking is undertaken as part of staff selection processes. Assist Managers with ensuring training is provided for relevant staff having contact with children.
Council staff <b>will</b>	Be aware of Council's Child Protection Policy and adhere to it. Alert their Manager if they have suspicions of abuse or neglect.
Council staff <b>will not</b>	Deal with the situation themselves Contact the investigating agency or the child or its family directly.

## 14. APPENDIX ONE

### Dealing with Disclosures of Abuse

1. Only a minority of children actively disclose abuse. Most child abuse is disclosed accidentally or through observation by an adult of a child's behaviour, words and physical appearance.
2. When a child does disclose abuse, this needs to be taken very seriously. It is important that any disclosure is dealt with appropriately, both for the wellbeing of the child and also to ensure that your actions do not jeopardise and legal action against the abuser.
3. There are a number of basic 'rules' that should be followed to ensure the safe handling of any disclosures of abuse from a child:

- (a) Don't panic.
  - (b) Remember that the safety and well-being of the child come before the interests of any other person.
  - (c) Listen to the child and accept what the child says.
    - Look at the child directly, but do not appear shocked.
    - Don't seek help while the child is talking to you.
    - Reassure them that they did the right thing by telling someone.
    - Assure them that it is not their fault and you will do your best to help.
    - Let them know that you need to tell someone else.
    - Let them know what you are going to do next and that you will let them know what happens.
    - Be aware that the child may have been threatened.
4. Write down what the child says in their own words – record what you have seen and heard also.
    - Make certain you distinguish between what the child has actually said and the inferences you may have made. Accuracy is paramount in this stage of the procedure
  5. Tell your manager or supervisor as soon as possible.
  6. If appropriate, the HR Manager will refer the matter to Oranga Tamariki or the Police.
  7. After making the referral to Oranga Tamariki or the Police, look after yourself. Discuss the matter with your manager, supervisor or relevant person.

#### **Important Notes**

8. The same action should be taken if the allegation is about abuse that has taken place in the past, as it will be important to find out if the person is still working with or has access to the children.
9. Dealing with an allegation that a professional, staff member, foster carer or volunteer has abused a child is difficult but must be taken seriously and dealt with carefully and fairly.

#### **Things TO SAY when a child discloses**

10. Repeat the last few words in a questioning manner.
  - 'I believe you'.
  - 'I am going to try to help you'.
  - 'I will help you'.
  - 'I am glad that you told me'.
  - 'You are not to blame'.

#### **Things NOT TO SAY when a child discloses**

- 'You should have told someone before'.
- 'I can't believe it! I am shocked!'
- 'Oh that explains a lot'.
- 'No not...he's a friend of mine'.
- 'I won't tell anyone else'.

- 'Why? How? When? Where? Who?'

### **Things TO DO**

- Reassure the child that it was right to tell you.
- Let them know what you are going to do next.
- Immediately seek help, in the first place from your Manager or the HR Manager.
- Write down accurately what the child has told you. Sign and date your notes. Keep all notes in a secure place for an indefinite period.
- Seek help for yourself if you feel you need support.

### **Things NOT TO DO**

- Do not attempt to deal with the situation yourself.
- Do NOT formally interview the child:
- Never ask leading questions.
- Never push for information or make assumptions.
- Only necessary relevant facts should be obtained, when clarification is needed.
- Do not make assumptions, offer alternative explanations or diminish the seriousness of the behaviour or alleged incidents.
- Do not keep the information to yourself or promise confidentiality.
- Do not take any action that might undermine any future investigation or disciplinary procedure, such as interviewing the alleged victim or potential witnesses, or informing the alleged perpetrator or parents or carers.
- Do not permit personal doubt to prevent you from reporting the allegation to your Manager or the HR Manager.

## **15. APPENDIX TWO**

Council has identified the key positions that will be subject to safety checking under the Act as:

- All library (including Clubhouse), museum and pool staff
- All community centre staff
- All leisure active recreation staff
- Community projects and relationship staff
- Other positions as identified on a case by case basis