

# **SOUTH WAIRARAPA DISTRICT COUNCIL**

**19 OCTOBER 2016**

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## **AGENDA ITEM D1**

### **LEGISLATION AFFECTING ELECTED MEMBERS**

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#### **Purpose of Report**

To provide a general explanation of legislation and any other relevant statutes Councillors must abide by as required by Clause 21 (5) of Part I of Schedule 7 of the Local Government Act 2002.

#### **Recommendations**

The Chief Executive Officer recommends that Council:

- 1. Receive the information.*

#### **1. General**

The Chief Executive Officer is required by the Local Government Act 2002 to provide a general explanation of relevant sections of legislation at the first meeting of a Local Authority following triennial general election of members.

#### **2. Legislation Affecting Elected Members**

Following is the legislation affecting elected members.

- Local Government Official Information and Meetings Act 1987
- Local Authorities (Members' Interests) Act 1968
- Sections 99, 105, and 105A of the Crimes Act 1961
- Secret Commissions Act 1910; and
- Financial Markets Conduct Act 2013

Copies of the above statutes can be obtained by request to the Chief Executive Officer.

#### **3. Other Relevant Publications**

The following publications will be distributed to newly elected members.

- LGNZ Standing Orders for meetings of local authorities, their committees, subcommittees and local and community boards.

- A Guide to the Local Authorities (Members' Interests) Act 1968
- Annual Plan 2016/2017
- South Wairarapa Long Term Plan 2015/2025
- Council's Policy Manual (community board members receive the Democracy section only, other policies available on request)
- LGNZ GROW Governance handbook (all elected members)

#### **4. Local Government Official Information and Meetings Act 1987**

LGOIMA came into force on 1 March 1988, and that Act incorporated Local Authorities under its umbrella.

Basically, all information in the hands of Local Authorities is "official information" and is discoverable.

This covers emails, texts, written, and verbal information (though this is hard to "discover").

The long and short of the application of this legislation is to treat all information as discoverable. There are some exemptions, for example legal privilege, some commercial dealings – but it is best to treat information as discoverable

#### **5. The Local Authorities (Members' Interests) Act 1968**

A copy of guidance provided by the Office of the Auditor General will be circulated.

Members' interests (basically conflicts of interests) can be a bit of a tricky area so it is recommended all members read or reread this document.

#### **6. Crimes Act 1961**

Copies of the relevant sections are attached as Appendix 1, in essence these sections cover the rules around giving or accepting of bribes, or corruption of officials.

For the avoidance of doubt, it is illegal.

#### **7. Secret Commissions Act 1910**

Included as Appendix 2 is the "interpretation" section of the above Act, which provides an outline of what is covered by this Act.

In general this act relates to receiving or giving "consideration" (of any kind) for what could be described as a "favour".

## **8. Financial Markets Conduct Act 2013**

The Securities legislation is not applicable to SWDC as we are not a “borrower” of public funds, and do not issue prospectuses.

Should this situation occur, guidance will be made available.

Under the Financial Markets Conduct Act 2013 essentially places elected members in the same position as company directors whenever the Council offers financial products (such as an issue of debt or equity securities). Elected members may be personally liable if documents that are registered under the Act, such as a product disclosure statement, contain false or misleading statements. Elected members may also be liable if the requirements of the Act are not met in relation to offers of financial products.

[Note that we do not offer financial product to the market]

## **9. Local Government Act 2002**

The purpose of the Local Government Act 2002 is to provide for democratic and effective local government that recognizes the diversity of NZ communities.

The Act:

- States the purpose of local government; and
- Provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them; and
- Promotes the accountability of local authorities to their communities; and
- Provides for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach.

Copies of the Act can be reviewed online at [www.legislation.govt.nz](http://www.legislation.govt.nz) or a hardcopy can be obtained by request to the Chief Executive Officer.

## **10. Appendices**

Appendix 1 – Crimes Act (excerpt)

Appendix 2 – Secret Commissions Act (excerpt)

Contact Officer: Paul Crimp, Chief Executive Officer

# **Appendix 1 – Crimes Act (excerpt)**

## 99 Interpretation

In this Part, unless the context otherwise requires,—

**bribe** means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect

**judicial officer** means a Judge of any court, or a District Court Judge, Coroner, Justice of the Peace, or Community Magistrate, or any other person holding any judicial office, or any person who is a member of any tribunal authorised by law to take evidence on oath

**law enforcement officer** means any constable, or any person employed in the detection or prosecution or punishment of offenders

**official** means any person in the service of the Sovereign in right of New Zealand (whether that service is honorary or not, and whether it is within or outside New Zealand), or any member or employee of any local authority or public body, or any person employed in the education service within the meaning of the [State Sector Act 1988](#)

# **Appendix 2 – Secret Commissions Act (excerpt)**

## **105 Corruption and bribery of official**

(1)

Every official is liable to imprisonment for a term not exceeding 7 years who, whether within New Zealand or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her official capacity.

(2)

Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by him or her in his or her official capacity.

## **105A Corrupt use of official information**

Every official is liable to imprisonment for a term not exceeding 7 years who, whether within New Zealand or elsewhere, corruptly uses or discloses any information, acquired by him or her in his or her official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or herself or any other person.