

**ISSUED UNDER SECTION 86 FOR OBTAINING INFORMATION
UNDER SECTION 80 OF THE
HOUSING RESTRUCTURING AND
TENANCY MATTERS ACT 1992**

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I, Andrew McKenzie, Chief Executive of Housing New Zealand Corporation, reviewed this Code of Conduct in 2019 and having consulted with the Privacy Commissioner; re-issue the following Code of Conduct under Section 86 of the Housing Restructuring and Tenancy Matters Act 1992 effective from the date this code is signed.

Every authorized staff member of Housing New Zealand Corporation must, on and after the date this code is signed, comply with this Code of Conduct when obtaining information under section 80 of the Housing Restructuring and Tenancy Matters Act 1992.

Delegated authority

The Counter Fraud and Investigations Manager has the authority to serve section 80 notices, the delegated Manager may also sub-delegate authority to staff employed in the investigations team.



Andrew McKenzie

20/2/19

Chief Executive

Housing New Zealand Corporation

[Note: Sections that are underlined are explained further in Appendix A]

1. Interpretation

In this Code, unless the context requires a different interpretation:

Act means the Housing Restructuring and Tenancy Matters Act 1992

Tenant, -

- (a) In relation to HNZ housing in general:
 - (i) means any person or people to whom any HNZ housing is let or to be let; and
 - (ii) includes a prospective tenant for HNZ housing; and
- (b) In relation to any particular HNZ housing, means the person or people to whom it is let or to be let.

Prospective tenant for HNZ housing means a person:

- (c) Who -
 - (i) is eligible to be allocated social housing; and
 - (ii) is not a person to whom any HNZ housing is let; and
 - (iii) has been referred or allocated to HNZ to be allocated, assigned, or let HNZ housing; or
- (d) Who -
 - (i) is already a person to whom HNZ housing is let; but
 - (ii) has applied to HNZ (alone or together with some other person or people) to become a tenant of some other HNZ housing and has not yet had the application accepted or declined, or withdrawn it.

financial product means a financial product administered by HNZ or HNZA and includes a loan or a grant.

HNZ before the day on which the order under section 53 of the Housing Corporation Act 1974 relating to it comes into force, means Housing New Zealand Limited. On and after that day must be read as a reference to HNZA as Housing New Zealand Limited's successor.

HNZA means the Housing New Zealand Corporation established under section 3 of the Housing Corporation Act 1974.

HNZ housing means premises (whether owned by the Crown, HNZ or, any other person) let or to be let by or on behalf of HNZ for occupation by any person as a place of residence.

authorised staff member means the Counter Fraud and Investigations Manager, and staff employed in the investigations team with delegated authority to issue a section 80 notice. It is also deemed to include other persons (if any) to whom the power to require such information is specifically delegated or sub-delegated under or in accordance with section 84 of the Act.

lawyer means a barrister or solicitor of the High Court, and includes a firm or an incorporated law firm (within the meaning of the Lawyers and Conveyancers Act 2006) in which the lawyer is, or is held out to be, a partner, director or shareholder.

partner, in the phrase “spouse or partner”, and in related contexts, means, in relation to any person (A), a person who is A’s civil union partner or de facto partner; and who is not, in the Corporation’s opinion, living apart from A.

prejudice the maintenance of the law includes an action that would, or would be likely, to prejudice the prevention, detection, investigation, prosecution, or punishment of an offence; or the imposition of a pecuniary penalty.

reasonable time means 5 working days from the time that the notice or the communication was deemed to be received by the individual.

reasonable cause includes:

- (a) cause to suspect that the person:
 - (i) has committed an offence under Section 90(2)(a) and (b) of the Act;
 - (ii) has obtained by fraud any HNZ financial product.
- (b) the fact that the person has failed, within a reasonable time (5 working days), or has refused to provide information in accordance with a section 80 notice requirement made to that person under clause 4.2 of this code.

section 80 notice means a written notice requiring:

- (c) Information from any person for any one or more of the purposes set out in section 80(1) of the Act;
- (d) Advice as to whether any information provided under section 80(1) is accurate (refer to Appendix B).

trust account, in relation to a lawyer, has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

2. Application and scope of Code

2.1 This code is issued under section 86 of the Act and applies in respect of any requirement for information for any of the purposes set out in section 80 of the Act (refer to Appendix B).

2.2 All section 80 notices must be given in accordance with this code.

- 2.3 Any person who is required to provide any information under section 80, or who is the subject of that information, may make a complaint to the Privacy Commissioner that the requirement breaches this Code and that part 8 of the Privacy Act 1993 applies to the complaint as if the Code were a code of practice issued under Part 6 of that Act.
- 2.4 This Code may be reviewed from time to time. HNZC reviewed it in December 2017. The code will be reviewed thereafter at three yearly intervals.

3. Who must comply with Code of Conduct

The following persons must comply with the code of conduct when requiring information under section 80:

- (a) HNZ and every employee of HNZ;
- (b) the corporation and every employee of the Corporation;
- (c) Any other person to whom the power to require such information has been delegated or sub-delegated under or in accordance with section 84 of the act.

4. Steps to be taken prior to giving a section 80 notice

4.1 When seeking information about a:

- (a) tenant or an applicable person in relation to the tenant;
- (b) applicant for or recipient of a financial product or the spouse or partner of the applicant or recipient;
- (c) prospective tenant or the person who would be an applicable person in relation to the prospective tenant -

the authorised staff member must:

- (a) first request the information from the person who is the subject of that information, and
- (b) give that person a reasonable time, being 5 working days from the time that the notice or the communication was deemed to be received by the individual to provide the information and inform that person of that time -

except where the authorised staff member has reasonable grounds to believe that compliance with the provision would prejudice the maintenance of the law.

4.2 Notwithstanding clause 4.1, an authorised staff member may give a section 80 notice to the person who is the subject of that information.

4.3 A request under clause 4.1 must comply with Information Privacy Principle 3 of the Privacy Act 1993.

5. Giving of section 80 notices

5.1 Section 80 notices must be for an authorised purpose.

Section 80 notices may only be given:

- (a) for one or more of the purposes listed in section 80(1);
- (b) to obtain advice as to whether any information provided under section 80(1) is accurate. (refer to Appendix B).

5.2 Subject to clauses 6 and 7 of this Code an authorised staff member may give a section 80 notice to any person only if, after having complied with clause 4.1, he or she has reasonable cause.

Provided that, reasonable cause is not required before giving a section 80 notice to any financial institution, lawyer, employer or former employer of the person who is the subject of the information, or any department, departmental agency, or Crown entity.

5.3 Form and content of section 80 notice

Every section 80 notice must:

- (c) be in writing;
- (d) advise of the existence of this Code and notify the person to whom the notice is given how that person can view or obtain a copy;
- (e) specify that the notice is given under section 80 of the Act;
- (f) specify the information sought;
- (g) specify the date by or period within which the recipient must provide the required information and the form in which they are to be provided;
- (h) notify the recipient of their right to complain to the Privacy commissioner the notice breaches the Code; and
- (i) comply with information privacy principle 3 of the Privacy Act 1993.

5.4 The date or period specified in clause 5.3(e) must not be less than 5 working days after the notice is received.

6. Limitations on what may be requested from specified groups

6.1 **Employers or former employers**

Any section 80 notice given under clause 5 to an employer or former employer must:

- (a) require only information relating to the employment and address of an employee or former employee. Matters related to the employment include:
 - (i) occupation
 - (ii) Income
 - (iii) hours worked (part-time or full-time)
 - (iv) period of employment start and finish (if applicable), and
- (b) not require employers or former employers to provide information that relates solely to the marital or relationship status of an employee or former employee.

7. Further limitations on what may be requested

- 7.1 No person is required to provide any information or produce any document that would be privileged in a court of law, or that is legally professionally privileged, except as provided in clause 7.2.
- 7.2 Clause 7.1 does not apply to information that consists wholly or partly of, or relates wholly or partly to:
 - (a) The receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person); or
 - (b) Investment receipts (being receipts arising or accruing from any money lodged at any time with a lawyer for investment) or any person or persons (whether the lawyer, his or her clients, or any other person or persons) and that is contained in, or comprises the whole or part of, any book, account, statement, or other record prepared by or kept in connection with a trust account of the lawyer.
- 7.3 If a person refused to disclose any information or document on the ground that it is privileged under clause 7.1:
 - (c) HNZN or that person or any other person to whom the information or document relates may apply to a District Court Judge for an order determining whether the claim of privilege is valid; and
 - (d) for the purposes of determining that application, the Judge may require the information or document to be produced to the court.

8. Enforcing compliance with section 80 notices

- 8.1 No enforcement proceedings under section 82 of the Act are to be commenced unless the authorised staff member has advised the recipient of a section 80 notice that:
 - (a) no person will be required to provide any information or documents that would be privileged in a Court of law except as provided in clause 7.2 of this Code; and

- (b) a person commits an offence and is liable on conviction to a fine not exceeding \$2,000 who:
 - (i) fails or refuses to provide without reasonable excuse the information or advice required; or
 - (ii) provides false or misleading information in response to the requirement.

9. Application of information Privacy Principles

- 9.1 Except where expressly overridden by this Code or by the Act, the Information Privacy Principles set out in section 6 of the Privacy Act 1993 apply to all information collected, stored or used by HNZC under this Code.

Appendix A

Explanatory Notes for the Code of Conduct for obtaining information under Section 80 of the Housing Restructuring and Tenancy Matters Act 1993

Why have a Code?

Parliament has recognised the powers given to Housing New Zealand to compulsorily obtain information can be intrusive and should be balanced with a Code that governs the way in which those powers are exercised. The Code provides important safeguards to protect confidential relationships and to ensure fair procedures are followed.

Section 86 of the Act requires Housing New Zealand to issue the Code after consultation with the Privacy Commissioner and to publish it on an Internet site that is publically available at all reasonable times or in a form that is accessible to the public. Copies can be obtained free of charge from any Housing New Zealand office or from the Housing New Zealand website at www.hnzc.co.nz.

Information collecting powers

Housing New Zealand collects personal information about its clients in several different ways and for a variety of purposes. Sometimes the information is collected directly from the client on application form or during interviews. Sometimes informal inquiries are made of clients or of other people with authorisation from the client. Occasionally information is collected by using statutory powers.

Where Housing New Zealand is given special statutory powers to obtain information, these powers override the Privacy Act 1993.

Section 80 of the Housing Restructuring and Tenancy Matters Act 1992 permits Housing New Zealand to require any person to provide information for one or more of the purposes set out in section 80(1) of that Act, and to require any person to provide advice as to whether or not any such information is accurate (refer section 80(3)). Section 80(1) and (3) are set out in Appendix B of the Code.

The Code deals only with the exercise of powers to obtain information under section 80(1) and (3). It does not apply to requests for information made under other statutory or non-statutory powers.

4. Steps to be taken prior to giving a section 80 notice

Preliminary requests

Before giving a section 80 notice to any person other than the applicant for or recipient of a financial product, their spouse or partner, or a prospective tenant or the person who would be an applicable person in relation to the prospective tenant (the subjects), the information must first be sought from the subjects directly (in compliance with the information privacy principle 2 of the Privacy Act 1993). These steps to obtain the information directly from the subjects themselves must be taken on every occasion, even in cases where it is unlikely that the subject will be able to provide the information, for example where that person does not have custody or

control of the information or the information is not “about” that person. The following exceptions are found in Principle 2 of the Privacy Act 1993, section 6(2) (refer to Appendix C). In which case the section 80 notice may be given without the need for any preliminary requests.

This is an informal process which provides the individual with the opportunity to provide the information themselves rather than having it sought from others. This provides some measure of privacy protection as well as ensuring that they are kept informed about the nature for the enquiries being made about them. The person does not have to comply with the request. The request need not be in writing – it can be made in person or by phone.

When a request is made, Housing New Zealand must comply with information privacy principle 3 of the Privacy Act 1993, which requires that the person from whom the information is being requested is advised of the purpose of the request, the fact that giving the information is (at this stage) voluntary, the consequences of not providing the information, who will hold it, and that the person has a right to request access to and correction of their information. These matters can only be omitted if the authorised staff member believes on reasonable grounds that one of the exceptions to information privacy principle 3 applies. If the person does not provide the information after a reasonable time then, subject to the restrictions on what can be asked for from whom, the authorised staff member can give a section 80 notice to a third party who the authorised staff member reasonably believes holds the information.

5. Giving of section 80 notices

The purposes for which a section 80 notice may be given are set out in section 80(1) and (3) of the Act. Section 80 is reproduced in appendix B to the Code.

The term “working days” is defined in the Interpretation Act. A working day means a day of the week other than -

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday, and Labour Day; and
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and
- (e) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.

If a notice is sent to any person by post, then, in the absence of evidence to the contrary, the notice is deemed to have been received by that person on the eighth day after the day on which it is posted. This is when it is ‘given’ for the purposes of the Code. In proving the delivery, it is important to be able to show the letter was properly addressed and posted.

Notices may also be sent to any person by email to an email address provided by the recipient to HNZ for the purposes of administering the financial product to which the notice relates. Emails must comply with the requirements of the Electronic Transactions Act 2002.

The time period for complying with a section 80 notice can be extended from the minimum of 5 working days at the discretion of Housing New Zealand having regard to the circumstances of the case, including the volume of information requested and the manner in which it is stored or held.

The notice might specify the manner in which the information is to be produced. For example, it may require copies of documents to be produced, or original documents to be sent or shown to Housing New Zealand.

Information must be provided without charge to Housing New Zealand. (Refer to section 80(4)(b) of the Act).

Apart from notices given to the person themselves, or to financial institutions, lawyers, employers or former employers of that person, or to departments, departmental agencies or Crown entities, no-one can be required to provide information unless there is “reasonable cause” to give a notice.

The circumstances that might give an authorised staff member reasonable cause to give a notice are specified in the Act and repeated in the interpretation section of the Code.

There may be other statutory prohibitions on the release of information which are relevant in certain circumstances.

Exercise of the section 80 power to require information

Section 80 provides HNZ with a power to obtain information, with reasonable cause, except in certain circumstances (i.e. reasonable cause is not a requirement before issuing a section 80 notice to a bank, lawyer, employer or government agency). Staff will exercise section 80 powers reasonably, proportionately and not over intrusively. Staff will require approval from a senior manager before exercising the powers and must demonstrate that the use of the power is reasonable, proportional and not overly intrusive based on the matter in hand.

6. Limitations on what may be requested from specified groups

An authorised staff member seeking information will not necessarily be aware of the nature of that information, or the circumstances in which it has been obtained. For this reason, it is possible that a request for information, or a section 80 notice might encompass information in respect of which, if sought in court, the holder could claim a privilege to prevent them from disclosing it.

The Act makes it clear that a person who receives a section 80 notice requesting privileged information is not required to provide that information. It is not always clear whether a privilege will apply, and the grounds are quite limited.

If there is a dispute about whether the information can properly be considered to be privileged, the matter can be decided by a District Court Judge.

Any recipient of a notice who believes that such a privilege might apply to the information that has been required of them should immediately advise the authorised staff member concerned of the nature of the privilege they are claiming.

7. Further limitations on what may be requested.

Limitations on enforcement of section 80 notices

As discussed above, the Code imposes a number of restrictions on the types of information that may be required from certain persons. As a general rule no-one is required to provide any information that is legally professionally privileged or would be privileged in a court of law. This includes the privilege against self-incrimination and may include the privilege relating to special relationships of confidence, such as between doctor or psychologist and patient, priest and penitent and others. See Evidence Act 2006.

What are the safeguards against misuse of the powers?

Authorised staff may obtain information only where they are permitted to do so by law. All staff are obliged to maintain the security and confidentiality of all information that they handle as a result of their duties. Information cannot be disclosed to other agencies except where required or permitted by law. Any staff making unauthorised requests or disclosures of information may be subject to disciplinary action and possible criminal prosecution.

Within Housing New Zealand, access to personal information is limited to those staff who need it for the purposes of carrying out their work. A number of controls exist to safeguard access to and retention of information. Housing New Zealand operates a suite of policies setting out the requirements and expectations of staff, assurance activities occur around management controls, and technology systems have defined permissions and access rights for individuals.

Complaints

Complaints about the use of these powers may be made to HNZ. Complaints about a breach of the Code may be made to the Privacy Commissioner, who deals with them as if they were complaints about a Code of Practice under Part 6 of the Privacy Act. The Code may be amended at any time after consultation with the Privacy Commissioner.

9. Application of Information Privacy Principles

The Information Privacy Principles (IPPs) apply to almost all agencies and their handling of personal information. Housing New Zealand must comply with these principles.

This means, for example, that information must not be collected by unfair or unlawful means (IPP4), must be stored safely and securely (IPP5), must be accurate and up to date (IPP8).

However, some aspects of the Act and the Code override the information privacy principles. For example, the power to obtain information from a third party overrides IPP 2. The power to seek information from a third party also involves disclosing certain information. For example, a request for financial information from a bank will coincidentally disclose that Housing New Zealand may be investigating that person. Such an incidental disclosure will not be in breach of IPP 11, because Housing New Zealand is expressly authorised to take actions that will result in such disclosures.

Nothing in the Code or the Act affects an individual's right to seek access to or correction of personal information held about them by Housing New Zealand in accordance with IPPs 6 and 7.

Appendix B

PURPOSE FOR WHICH SECTION 80 REQUIREMENTS CAN BE MADE

Section 80 Housing Restructuring and Tenancy Matters Act 1992:

The purposes specified in subsection (1) and (3) of this section are-

- (a) for the purpose of any investigation under section 77:
- (b) for the purpose of detecting whether a person has committed or is committing an offence under section 82 or 83;
- (c) for the purpose of determining and detecting the cost of fraud under section 82 or 83;
- (d) for the purpose of ascertaining whether a person has failed or refused to answer fully, or has deliberately given a false or misleading answer, to any questions under section 78(1)(a).

....

The purpose:

S 80(3) "HNZ may in writing require any person to advise whether or not any information provided under subsection (1) is accurate."

Appendix C

EXCEPTIONS FOR WHICH SECTION 80 NOTICES CAN BE GIVEN WITHOUT PELIMINARY PROVISIONS

PRINCIPLE 2 SECTION 6(2) PRIVACY ACT 1993:

1. Where an agency collects personal information, the agency shall collect the information directly from the individual concerned.
2. It is not necessary for an agency to comply with subclause (1) if the agency believes, on reasonable grounds,—
 - (e) that the information is publicly available;
 - (f) that the individual concerned authorises collection of the information from someone else; or
 - (g) that non-compliance would not prejudice the interest of the individual concerned; or
 - (h) that non-compliance is necessary -
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution of offences; or
 - (ii) for the enforcement of a law imposing a pecuniary penalty; or
 - (iii) for the protection of the public revenue; or
 - (iv) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or
 - (i) that compliance would prejudice the purposes of the collection; or
 - (j) that compliance is not reasonably practicable in the circumstances of the particular case; or
 - (k) that the information –
 - (i) will not be used in a form in which the individual concerned is identified; or
 - (ii) will be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
 - (l) that the collection of the information is in accordance with an authority granted under section 54 of the Privacy act 1993.