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## Privacy Code of Practice: Department of Housing

### Department of Housing Privacy Code of Practice

#### The Code

The *Privacy Act and Personal Information Protection Act 1998* (the Act) provides for the protection of personal information and for the protection of the privacy of individuals generally.

This Code is intended to satisfy the requirements of a Privacy Code of Practice under Part 3 of the Act to the extent that the use of personal information by the Department of Housing departs from that Act.

The Act provides for Information Protection Principles which are modified by this Code.

This Code is made for the purpose of protecting the privacy of individuals.

This Code should be read in conjunction with the Department of Housing's Privacy Management Plan (the Plan).

#### Application of this Code

This Code applies to employees and clients of:

- the Department of Housing
- Public Housing
- the Office of Community Housing
- Home Purchase Assistance Authority
- the Housing Appeals Committee.

#### Definitions

In this Code :

"Act" means the *Privacy and Personal Information Protection Act 1998* (NSW)

"Department of Housing" means and includes the New South Wales Land and Housing Corporation. The Department of Housing comprises of Public Housing, the Home Purchase Assistance Authority and the Office of Community Housing.

"Information Protection Principles" has the same meaning as those words do in the Act.

"Investigative Agency" includes the Ombudsman's Office, the Independent Commission Against Corruption, the Police Integrity Commission, the Community Services Commission, the Health Care Complaints Commission, and the office of the Legal Services Commissioner.

"Law Enforcement Agency" includes the Police Service, the New South Wales Crime Commission, the Australian Federal Police, the National Crime Authority, the Director of Public Prosecutions of New South Wales, the Department of Corrective Services, and the Department of Juvenile Justice.

"Local Government Authority" means a council, or a county council, within the meaning of the *Local Government Act 1993*.

"Personal Information" has the same meaning as it does in the Act.

"Privacy Code of Practice" means this Code.

"Privacy Commissioner" means the Privacy Commissioner appointed under the Act.

"Public Register" means a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee).

"Public sector official" means, amongst other things, an officer of the Department of Housing, including of course, a person who is employed or engaged by a public sector agency.

"Publicly available publication" does not include any publication or document declared by the regulations not to be a publicly available document for the purposes of this Act.

"State Record" has the same meaning as in the *State Records Act 1998*.

"Tribunal" means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

#### Interpretation

Although the Department of Housing is defined inclusively, references to Public Housing, the Home Purchase Assistance Authority or the Office of Community Housing shall operate as references to those particular bodies only.

The *Freedom of Information Act 1989* operates where information is sought in relation to applications under sections 13 to 15 inclusive of the Privacy Act.

#### **Unsolicited information**

The Act does not apply to the collection of unsolicited information. However, the use, storage and access provisions of the Act will nevertheless apply to such information in so far as it is personal information.

#### **THE INFORMATION PROTECTION PRINCIPLES**

##### **Principle 1: Collection of personal information for lawful purposes (Section 8).**

It is not intended that the Department of Housing will depart from Principle 1.

Principle 1 states that :

*The Department of Housing must not collect personal information unless the information is collected for a lawful purpose that is directly related to a function or activity of the Department of Housing, and the collection of the information is reasonably necessary for that purpose.*

##### **Principle 2 - Collection of personal information directly from individual - (Section 9).**

It is not intended that the Department of Housing will depart from Principle 2 except in the circumstances described below.

Principle 2 states that :

*The Department of Housing must, in collecting personal information, collect the information directly from the individual to whom the information relates unless the individual has authorised collection of the information from someone else, or in the case of information relating to a person who is under the age of 16 years' the information has been provided by a parent or guardian of the person.*

##### **Exceptions to Principle 2**

###### **Priority Housing Assistance Program**

The Priority Housing Assistance Program requires the Department of Housing to seek information from other governmental agencies, such as the Department of Health, the Department of Community Services, Centrelink, the Police Service and so on, as well as non governmental support bodies and health professionals, in order to determine whether an individual has a need for Priority Housing.

In the majority of instances the individual concerned will have signed a written authority as part of their application for housing to have relevant information released to relevant third parties. In some cases it may be impracticable for the Department of Housing to have that authority before it at the time of the request for information.

This Code authorises the Department of Housing to collect information from other governmental agencies, non-governmental support bodies and health professionals for the purpose of assessing an individual's need for priority housing where :

- disclosure by those bodies is permitted by the Act or another law dealing with the use and disclosure of personal information; and
- it is impracticable to obtain that individual's authority.

###### **Under the age of sixteen**

The Department of Housing may receive applications from persons who may be under the age of sixteen and in need of housing services. In such cases, the Department may collect information from a third party other than the parent or guardian where that is in the interest of the minor applicant.

In such cases, the relevant welfare agency or DOCS as the case may be, may be contacted. It will often be contrary to the child's interests to seek to notify their parent in those circumstances, which are often emergency circumstances.

###### **Tenancy Management and the Good Neighbour Policy**

The Department of Housing receives complaints from complainants from time to time about the conduct of Department of Housing tenants. The Department of Housing is required to investigate the truth or otherwise of the allegations concerning a particular tenant. In order to do this, it must investigate complaints and in this process it may collect information indirectly concerning a tenant about whom a complaint has been made. This Code authorises such indirect collection from complainants.

###### **Fraud**

The Department of Housing may, where it appears appropriate, ascertain information directly from any third party where it appears that a fraud on the Department of Housing has, may be or is being committed.

Such inquiries will be appropriate where fraud is reasonably suspected and the collection is necessary to assist the Department to assess whether fraud has or is taking place or to investigate the extent of such fraud.

###### **The Office of Community Housing - Investigations**

Without limiting the operation of the preceding paragraph, the Office of Community Housing may collect information regarding incidents or allegations of fraud from Community Housing Organisations for the purpose of conducting an investigation or determining whether :

- further investigations are warranted, or
- the appointment of an investigator, administrator or liquidator

is warranted.

#### **The Office of Community Housing - Miscellaneous**

The Office of Community Housing May collect information directly from Community Housing Organisations funded by the Office for the purpose of:

- assisting applicants for community housing or community housing tenants to modify premises in which they reside or may reside, where those applicants are disabled;
- assisting the delivery of services to applicants for community housing or community housing tenants; or
- to receive complaints or appeals regarding housing matters from applicants for community housing or community housing tenants;

where it is in the interests of the applicant or the Community Housing organisation to have resolved any of the matters referred to in this clause.

#### **The Housing Appeals Committee**

Subject to principle 3, where a tenant or applicant makes an appeal to the Housing Appeals Committee, the applicant will be taken to have given permission to the referral of all relevant documents to the Housing Appeals Committee for the purpose of that Committee hearing the appeal.

This section puts beyond doubt the fact that it is 'reasonably contemplated' that an appeal requires the subject matter of that appeal to be disclosed to the body hearing the appeal - in this case, the Housing Appeals Committee.

#### **Government Home Lending Schemes**

One of HPAA's principal functions under the Home Purchase Assistance Authority Act 1993 (NSW) is to manage existing and future home purchase assistance schemes. Existing schemes include government home loan programs administered by non-government sector loan managers (principally Co-operative Housing Societies) under management agreements entered into with FANMAC Ltd.

Subject to principle 3, the HPAA may collect information, in respect of individuals who hold or held home loans under government home loan programs , directly from:

- Loan managers; or
- FANMAC Ltd (or any successor of FANMAC Ltd);

for the purpose of exercising its legislative function to manage home purchase assistance schemes.

#### **HPAA Tenants**

HPAA administers a portfolio of rental properties. The Residential Tenancy Agreements between HPAA and the tenants of those properties (hereinafter referred to as 'HPAA Tenants') provides rights, under certain conditions, to extended tenure where HPAA Tenants have applied for and remain eligible for public housing accommodation from Public Housing.

Subject to principle 3, HPAA may receive information from Public Housing regarding HPAA Tenants' applications for public housing accommodation for the purpose of HPAA determining the rights of HPAA Tenants to extended tenure under their Residential Tenancy Agreements with HPAA.

#### **Code Authorisation**

This Code authorises the collection of personal information otherwise than directly from the individual in the circumstances described above.

#### **Principle 3 - Requirements when collecting personal information (Section 10)**

It is not intended that the Department of Housing will depart from Principle 3 except in the circumstances described below. Principle 3 states that :

*If the Department of Housing collects personal information from an individual, the Department of Housing must take such steps as are reasonable in the circumstances to ensure that, before the information is collected or as soon as practicable after collection, the individual to whom the information relates is made aware of the following:*

- *the fact that the information is being collected,*
- *the purposes for which the information is being collected,*
- *the intended recipients of the information,*
- *whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided,*
- *the existence of any right of access to, and correction of, the information,*
- *the name and address of the agency (Department of Housing) that is collecting the information and the agency (if other than Department of Housing) that is to hold the information.*

#### **Exemption :**

##### **Fraud**

The Department of Housing need not comply with information protection principle 3 if, in the investigation of any tenancy related fraud, compliance would detrimentally affect (or prevent the proper exercise of) any of the Department of Housing's investigative functions or its conduct of any lawful investigation.

Without limiting the operation of the immediately preceding paragraph, the Office of Community Housing need not

comply with information protection principle 3 if compliance would detrimentally affect (or prevent the proper exercise of) any of the Office of Community Housing's investigative functions or its conduct of any lawful investigation whether that investigation is conducted within the Office Community Housing or within and of a Community Housing Organisation funded by the Office.

Good Neighbour Policy and Tenancy Management

The Department, as landlord, receives complaints from complainants from time to time about the conduct of tenants. The Department of Housing is required to investigate the truth or otherwise of the allegations concerning a particular tenant. In order to do this, it must investigate complaints, and, in this process, may collect information indirectly concerning a tenant about whom a complaint has been made.

This Code authorises the Department of Housing not to comply with information protection principle 3 where notification may prejudice the investigation of a complaint or investigation of any tenancy related fraud or the right of tenants or other people to make complaints.

#### **Principle 4 -Other requirements relating to collection of personal information (Section 11)**

Principle 4 states that :

*If the Department of Housing collects personal information from an individual, the Department must take such steps as are reasonable in the circumstances (having regard to the purposes for which the information is collected) to ensure that the information collected is :*

- *relevant to that purpose,*
- *is not excessive, and*
- *is accurate, up to date and complete, and*
- *the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.*

There is no intention to depart from this information protection principle.

#### **Principle 5 - Retention and security of personal information (Section 12)**

Principle 5 states that :

*Where the Department of Housing holds personal information, it will ensure :*

- *that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and*
- *that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information, and*
- *that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and*
- *that, if it is necessary for the information to be given to a person in connection with the provision of a service to the Department of Housing, everything reasonably within the power of the Department of Housing is done to prevent unauthorised use or disclosure of the information.*

There is no intention to depart from this information protection principle.

#### **Principle 6 - Information about personal information held by agencies (Section 13)**

Principle 6 states that :

*The Department of Housing must take such steps as are, in the circumstances, reasonable to enable any person to ascertain:*

*(a) whether the Department of Housing holds personal information, and*

*(b) whether the Department of Housing holds personal information relating to that person, and*

*(c) if the Department of Housing holds personal information relating to that person:*

*(i) the nature of that information, and*

*(ii) the main purposes for which the information is used, and that person's entitlement to gain access to the information.*

*unless the exception described below applies.*

There is no intention to depart from this information protection principle except in the circumstances described below.

#### **Tenancy Management and the Good Neighbour Policy**

The Department, as landlord, receives complaints from complainants from time to time about the conduct of Department of Housing tenants. The Department of Housing is required to investigate the truth or otherwise of the allegations concerning a particular tenant.

In order to do this, it must investigate complaints and in this process, may collect information concerning of a tenant about whom a complaint has been made.

This Code authorises the Department of Housing not to comply with information protection principle 6 to the extent necessary to protect the integrity of any past or current investigation concerning complaints regarding a tenant.

#### **Fraud**

The Department of Housing may, where it appears appropriate, ascertain information directly from any third party

where it appears that a fraud on the Department of Housing has, may be or is being committed.

This Code authorises the Department of Housing not to comply with information protection principle 6 to the extent necessary to protect the integrity of any past or current investigation concerning allegations of fraud.

Note : This exception is not intended to override the right of an individual to apply for access to their personal information, either under section 14 of the Act or the FOI Act.

#### **Principle 7 - Access to personal information held by agencies (Section 14).**

It is not intended that the Department of Housing will depart from Principle 7.

Principle 7 states that :

*Where the Department of Housing holds personal information, it must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.*

There is no intention to depart from this information protection principle.

#### **Principle 8 - Alteration of personal information (Section 15)**

Principle 8 states that :

*15 Alteration of personal information*

*(1) A public sector agency that holds personal information must, at the request of the individual to whom the information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the personal information:*

*(a) is accurate, and*

*(b) having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading.*

*(2) If a public sector agency is not prepared to amend personal information in accordance with a request by the individual to whom the information relates, the agency must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, in such a manner as is capable of being read with the information, any statement provided by that individual of the amendment sought.*

*(3) If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the public sector agency.*

There is no intention to depart from this information protection principle.

#### **Principle 9 - Agency must check accuracy of personal information before use (Section 16)**

Principle 9 states that :

*Where the Department of Housing holds personal information, it must not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, accurate, up to date, complete and not misleading.*

There is no intention to depart from this information protection principle.

#### **Principle 10 - Limits on use of personal information (Section 17)**

It is not intended that the Department of Housing will depart from Principle 10 except in the circumstances described below.

Principle 10 states that :

*Where the Department of Housing holds personal information, it must not use the information for a purpose other than that for which it was collected unless:*

- *the individual to whom the information relates has consented to the use of the information for that other purpose, or*
- *the other purpose for which the information is used is directly related to the purpose for which the information was collected, or*
- *the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual to whom the information relates or of another person.*

#### **The Housing Appeals Committee**

This Code authorises provision of personal information to the Housing Appeals Committee for the purposes of the hearing of any appeal made by any applicant or tenant of the Department of Housing.

#### **Principle 11 - Limits on disclosure of personal information**

It is not intended that the Department of Housing will depart from Principle 11 except in the circumstances described below.

Principle 11 states that :

Where the Department of Housing holds personal information, it must not disclose the information to a person (other than the individual to whom the information relates) or other body, whether or not such other person or body is a public sector agency, unless:

- the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure, or
- the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body, or
- the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.

Where personal information is disclosed in accordance with the above paragraphs to a person or body that is a public sector agency, that agency must not use or disclose the information for a purpose other than the purpose for which the information was given to it.

#### **Exceptions to Principle 11**

##### **Office of Community Housing and Aboriginal Housing Office**

The Department of Housing administers properties as agent for the Aboriginal Housing Office. To remove any doubt, this Code authorises the disclosure of information from the Department of Housing to the Aboriginal Housing Office and vice versa for the purpose of the Department of Housing providing to the Aboriginal Housing Office property management and agency services.

The Department of Housing provides housing stock to the Office of Community Housing and an applicant's personal information for housing may be transferred from the Department of Housing's waiting list to that of the Office of Community Housing or a Community Housing organisation.

To remove any doubt, this Code authorises the disclosure of information from the Department of Housing to the Office of Community Housing and vice versa for the purposes of the Department of Housing providing to the Office of Community Housing or the relevant Community Housing Organisation :

- Department of Housing properties, and
- Applicant's personal information for Community Housing purposes.

##### **Memoranda of Understanding**

The Department of Housing has a number of Memoranda of Understanding with various governmental bodies. Such Memoranda of Understanding shall continue to operate to the extent that they comply with the Act and the information protection principles as modified by this Code and any Code applicable to the Department of Housing or the governmental body.

The Department of Housing has the following Memoranda of Understanding :

- Memorandum of Understanding with Department of Community Services;
- Memorandum of Understanding with the Police Service; and
- Joint Guarantee of Service with the Department of Health.

##### **Contractor Information**

This Code authorises disclosure of information relating to successful tenderers on a list which is made publicly available upon request. The list provides the name of the successful contractor and the amount tendered by that contractor.

The Department of Housing believes this list is in the public interest as it provides:

- support for competitive conduct;
- openness in tendering procedures;
- contestability of decisions.

##### **Ministerials**

This Code authorises the disclosure of personal information to a Minister or Member of Parliament, where it is reasonably required to respond in writing to a written ministerial request emanating either from a Minister or a Member of Parliament and such Ministerial deals with a function or activity of the Department of Housing.

#### **Principle 12 - Special restrictions on disclosure of personal information**

It is not intended that the Department of Housing will depart from Principle 12 except in the circumstances described below.

Principle 12 states that :

*The Department of Housing must not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.*

#### **Exceptions to Principle 12**

Subject to principle 3, the Department of Housing may disclose personal information regarding the ethnic or racial origin, health, or religion of an applicant for housing for the purpose of allocating to the person suitable housing in the Community Housing sector.

##### **Aboriginal Housing Office**

Subject to principle 3, the Department of Housing may give access to the software system and database called IHS to

the Aboriginal Housing Office (AHO) but shall restrict that access to Department of Housing properties which have been transferred to the Aboriginal Housing Office but which still remain on the Department of Housing's IHS system until such time as a separate database is established by the AHO.