

No 390

House of Representatives

**Supplementary
Order Paper**

Tuesday, 12 November 2013

**Social Housing Reform (Housing
Restructuring and Tenancy Matters
Amendment) Bill**

*Proposed amendments for the consideration
of the Committee of the whole House*

**Proposed amendments to the
Social Housing Reform (Housing
Restructuring and Tenancy Matters
Amendment) Bill**

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
 - **NOT have the status of an as-reported version of the Bill.**
-

Explanatory note

This Supplementary Order Paper has 2 principal effects. First, it makes provision for extra transitional matters. Secondly, it makes various technical and minor changes to existing provisions of the Bill. The transitional matters are now all contained in *new Schedule 4* which is inserted into the principal Act by *Schedule 2*. Some of the most significant of the extra transitional matters are as follows:

- HNZ will be able to use the new deduction notice powers in the Bill to collect debt calculated by HNZ before the date that HNZ's functions are transferred to the new agency (*see new clause 1AI of Schedule 4*). The Bill as introduced enables HNZ to recover (as a debt due to the Crown) overdue amounts from tenants by issuing deduction notices to a third party (for example, the tenant's employer) but only after HNZ has reminded the tenant of his or her obligation and has done all it reasonably can to obtain the unpaid amount. These powers come into force on the day after Royal assent under *Part 1* of the Bill. The change made by this SOP is to enable HNZ to use these powers after the date when its functions are transferred to the new agency (the **transfer date**), in respect of debt calculated under section 60 of the Act at any time before that date, including before the date of Royal assent:
- the agency will be able to use the new powers in *new Part 9* to collect debt incurred before the transfer date but not calculated by HNZ before that date (*see new clause 1AJ of new Schedule 4*):
- the agency will be able to use its new investigation and enforcement powers in *new Part 9* to investigate circumstances that occurred before the transfer date and to investigate and prosecute pre-transfer date offending if the act or omission constituted an offence at the time when it occurred (*see new clause 1AL of new Schedule 4*):
- provision is made for the continuation of certain appeals, eg, those commenced but not determined before the transfer date (*see new clauses 1AM and 1AN of new Schedule 4*):
- provision is made for the continuation of prosecutions commenced but not determined before the transfer date, and

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the preservation of powers relating to those prosecutions (*see new clause 1A of new Schedule 4*).

Most of the Bill's existing transitional provisions have also been moved into *new Schedule 4* for consistency (eg, *new sections 56A, 71A, and 115A*, which relate to the application of certain provisions to existing tenants).

This Supplementary Order Paper makes a number of technical and minor changes, some of the most significant of which are as follows:

- section 2 (commencement) is amended to provide that *new section 56(2)* is repealed if not brought into force by Order in Council before *Part 7*, when *new section 116(2)* (inserted by *clause 19*) will apply with similar effect. *New section 56(2)* requires tenants to advise HNZ of any change in circumstances that is likely to result in the tenant no longer being eligible for HNZ housing. The amendment is for the purpose of clarification and does not alter the later start date recommended by the Social Services Committee for *new section 56(2)*:
- section 2 is also amended to allow the following provisions to come into force on the day after Royal assent:
 - *new section 156* (which enables the appointment of the regulatory authority); and
 - *new section 178E* (which enables the making of regulations determining the body to whom appeals against certain decisions of the regulatory authority may be made); and
 - *new sections 179 and 180* (which enables the making of regulations relating to community housing providers):
- the amendment to *section 92(2)* replaces the reference to obtaining income-related rent or HNZ housing by fraud with obtaining any financial product by fraud. This is to align with the new terminology of the Bill to reflect that HNZ's functions in relation to assessment of housing need and eligibility are being transferred to the agency:
- the amendment to *new section 115A* ensures that all existing HNZ tenants and prospective tenants are subject to the new powers to investigate tenants' circumstances in *new section*

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120 and to investigate circumstances relevant to tenants' continued need for social housing in *new section 121*:

- the amendment to *new section 115A(2)* ensures that the new powers of the agency in *new sections 116 to 121* do not apply to a community housing tenant unless the tenant has been referred to the community housing provider by the agency as being eligible for social housing:
- provision is made by the insertion of *new section 141AA* to ensure that the agency (if it is not the Ministry of Social Development) cannot recover any debt caused by an error to which the debtor did not intentionally contribute. This provision mirrors the provision that already applies if the agency is the Ministry of Social Development (*see section 86(9A) and (9B) of the Social Security Act 1964*).

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2013&no=390&>.

The Honourable Minister, in Committee, to propose the amendments shown in the following document.

Hon Dr Nick Smith

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Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Act **2013**.

2 Commencement

(1) ~~New section 56(2) as inserted by **section 11**, **Part 2** (except **section 18**; new sections 101 and 135 (as inserted by **section 19**); and **section 24**) come into force on the earlier of—~~

~~(a) a date appointed by the Governor-General by Order in Council; and~~

~~(b) 14 April 2016.~~

(1) The following come into force on the earlier of a date appointed by the Governor-General by Order in Council and 14 April 2016:

(a) **section 11**, as far as it relates to **new section 56(2)**:

(b) **Part 2**, except—

(i) **section 18**; and

- (ii) section 19, as far as it relates to **new sections 101, 135, 156, 178E, 179, and 180**; and
 - (iii) section 24.
- (1A) Despite **subsection (1)**, if **new Part 7** (as inserted by **section 19**) is brought into force on a date appointed by the Governor-General by Order in Council, and **section 11**, as far as it relates to **new section 56(2)**, is not brought into force before that date, **new section 56(2)** expires and is repealed on that date.
- (2) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.
 - (3) One or more Orders in Council may be made under **subsection (1)** appointing different dates for different provisions and purposes.

3 Principal Act

This Act amends the Housing Restructuring and Tenancy Matters Act 1992 (the **principal Act**).

Part 1

Amendments to principal Act mainly with effect from day after Royal assent

4 Section 2 amended (Interpretation)

- (1) In section 2(1), insert in their appropriate alphabetical order:
“**HNZ** means the company
“**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”.
- (2) In section 2(1), repeal the definition of **rules**.
- (3) After section 2(3), insert:
“(4) References in this Act to **person** include an agency and any person who is an officer or employee in the service of the Crown in a government department or public body (other than as an officer of a court, in his or her official capacity).”

5 Part 5 heading replaced

Replace the Part 5 heading with “**Income-related rents, housing eligibility, and other matters**”.

6 Section 42 amended (Interpretation)

(1) In section 42(1), replace the definition of **appointed day** with:
“**appointed day** means 17 November 2000”.

(2) In section 42, insert in their appropriate alphabetical order:
“**code of conduct**, in relation to information that may be required under **section 59AA**, means the code of conduct established under **section 65AA**
“**financial product** means a financial product administered by HNZ or the Corporation and—
“(a) includes a loan or grant; but
“(b) does not include income-related rent”.

(3) In section 42(1), repeal the definition of **HNZ housing**.

(3A) In section 42(1), replace the definition of **partner** with:
“**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”.

(4) In section 42(1), replace the definition of **prospective tenant** with:

“**prospective tenant** means a person—
“(a) who—
“(i) is not a person to whom any HNZ housing is let or to be let; and
“(ii) has applied to HNZ (alone or together with some other person or people) to become a tenant of HNZ housing and—
“(A) has not yet had the application accepted or declined, or withdrawn it; or
“(B) has had the application accepted but has not yet been allocated particular HNZ housing; or
“(b) who—
“(i) is already a person to whom HNZ housing is let or to be let; but

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Part 1 cl 6A

“(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”.

6A Section 43 amended (Income-related rent)

In section 43(5), replace “section 58(4)” with “**section 58AA(2)**”.

7 Section 45 amended (Changes in rent)

In section 45(1)(b), replace “section 58(4)” with “**section 58AA(2)**”.

8 Section 52 amended (Estimating weekly income)

In section 52, replace “section 58(4)” with “**section 58AA(2)**”.

9 Section 53 amended (Regulations for purposes of calculation mechanism)

Replace section 53(5) and (6) with:

“(5) Nothing in this section affects the application of the New Zealand Bill of Rights Act 1990.”

10 Cross-heading above section 56 replaced

Replace the cross-heading above section 56 with:

“Administrative matters and review”.

10A New section 56A inserted (Application of sections 56 to 57AE)

After the cross-heading above section 56, insert:

“56A Application of sections 56 to 57AE

To avoid doubt, ~~sections 56 to 57AE—~~

“(a) apply to a tenant regardless of whether the tenant was let HNZ housing before or after the commencement of **section 10** of the Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Act ~~2013~~; and

“(b) apply to a prospective tenant regardless of whether the person applied for HNZ housing before or after that commencement.”

11 Section 56 replaced amended (Tenant’s duty to advise changes of circumstances)

Replace section 56 with:

“56 Tenant’s duty to advise change of circumstances

“(1) Every person to whom any HNZ housing is let at an income-related rent must promptly advise HNZ of—

“(a) any change in the person’s circumstances likely to result in the payment of a higher income-related rent; and

“(b) any change known to the person in the circumstances of any other applicable person likely to result in the payment of a higher income-related rent by the first-mentioned person.

“(2) Every person to whom any HNZ housing is let (whether at an income-related rent or a market rent) must promptly advise HNZ of—

“(a) any change in the person’s circumstances likely to result in the person no longer being eligible to be allocated HNZ housing or the particular HNZ housing the person is being let; and

“(b) any change known to the person in the circumstances of any other applicable person likely to result in the first-mentioned person no longer being eligible to be allocated—

“(i) HNZ housing; or

“(ii) the particular HNZ housing that the first-mentioned person is being let.

“(3) Every person who is a prospective tenant must promptly advise HNZ of any change in the circumstances of the person or the person’s spouse or partner likely to result in the person not or no longer being eligible to be allocated HNZ housing or allocated, assigned, or let any particular HNZ housing.”

12 New sections 57AA to 57AE and cross-heading inserted

After section 57, insert:

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Part 1 cl 12

“57AA HNZ may review housing eligibility

- “(1) HNZ may at any time of its own motion review any 1 or more of the following in relation to a tenant:
- “(a) the housing needs of the tenant:
 - “(b) the eligibility (including continued eligibility) of the tenant for HNZ housing:
 - “(c) the eligibility of the tenant to be or continue to be allocated, assigned, or let particular HNZ housing.
- “(2) Nothing in this section limits or affects any power of HNZ to conduct a review under any other enactment.

*“Investigations and information-gathering
powers*

**“57AB HNZ may investigate circumstances relevant to
income-related rent**

HNZ may investigate—

- “(a) the present circumstances of—
- “(i) any tenant of HNZ housing who is paying, or has applied to HNZ for HNZ to calculate, an income-related rent for the housing; or
 - “(ii) any person who is an applicable person in relation to the tenant:
- “(b) the circumstances (as they existed immediately before the income-related rent concerned was calculated or during any period when it was applicable) of—
- “(i) any tenant or former tenant of HNZ housing who was required to pay an income-related rent for the housing; or
 - “(ii) any person who was an applicable person in relation to the tenant or former tenant at the time concerned.

**“57AC HNZ may investigate circumstances of prospective
tenant**

HNZ may investigate the circumstances of a prospective tenant or of any person who would be an applicable person in relation to the prospective tenant, to the extent that those circumstances might be relevant to—

- “(a) the eligibility of the prospective tenant to be allocated HNZ housing or particular HNZ housing; or
- “(b) the housing needs of the prospective tenant.

“57AD HNZ may investigate circumstances relevant to continued eligibility

HNZ may investigate the circumstances of any tenant of HNZ housing (whether paying income-related rent or market rent for the housing) or the circumstances of any applicable person in relation to that tenant, to the extent that those circumstances might be relevant to—

- “(a) the continued eligibility of the tenant to be allocated HNZ housing; or
- “(b) the housing needs of the tenant; or
- “(c) the eligibility of the tenant to continue to be allocated, assigned, or let particular HNZ housing or to be allocated, assigned, or let some other HNZ housing.

“57AE HNZ may investigate circumstances of applicant for financial product

HNZ may investigate the circumstances of—

- “(a) an applicant for, or a recipient of, a financial product; or
- “(b) any person who, at the time of application, is the spouse or partner of the applicant.”

13 Section 58 replaced (Investigation of applications, etc)

Replace section 58 with:

“58 HNZ may ask questions, etc

For the purpose of any investigation conducted under **section 57AB, 57AC, 57AD, or 58AE 57AE**, HNZ—

- “(a) may ask any person whose circumstances it may investigate any relevant questions it thinks fit; and
- “(b) may ask any person whose circumstances it may investigate to verify by statutory declaration—
 - “(i) any information he or she has given when answering questions asked under **paragraph (a)**; or
 - “(ii) any other information that he or she has at any time given to HNZ; or

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- “(iii) any information within his or her personal knowledge that has at any time been given to HNZ by—
 - “(A) an applicable person in relation to that person (where the person whose circumstances are being investigated is a tenant); or
 - “(B) a person who would be an applicable person in relation to that person (where the person whose circumstances are being investigated is a prospective tenant); or
 - “(C) the spouse or partner of the person (where the person whose circumstances are being investigated is an applicant for, or recipient of, a financial product); or
 - “(D) any person who was an applicable person in relation to the tenant or former tenant at the time concerned.

“58AA Actions that may be taken by HNZ

- “(1) HNZ may take the actions stated in **subsection (2)** if—
 - “(a) any person whose circumstances it may investigate—
 - “(i) fails or refuses to answer (or, in HNZ’s opinion, fails or refuses to answer fully) any question asked under **section 58(a)**; or
 - “(ii) fails or refuses to verify any information by statutory declaration when asked to do so under **section 58(b)**; or
 - “(b) it believes on reasonable grounds that any person whose circumstances it may investigate under **section 57AB, 57AC, 57AD, or 57AE** has deliberately given a false or misleading answer to any question asked under **section 58(a)**; or
 - “(c) for the purpose of a review under **section 57AA**, HNZ requires information from a tenant pursuant to **section 59AA**, and—
 - “(i) the tenant fails or refuses to comply fully with the requirement for information; or

- “(ii) HNZ believes on reasonable grounds that the tenant has deliberately given false or misleading information in response to the requirement.
- “(2) The actions are,—
- “(a) to the extent that the tenant is the person or people to whom any HNZ housing is let or to be let,—
 - “(i) calculate an income-related rent for the tenant for that housing on the basis of HNZ’s own understanding of the circumstances; or
 - “(ii) treat the market rent for that housing as the income-related rent for the tenant for that housing:
 - “(b) to the extent that the tenant is a prospective tenant only,—
 - “(i) suspend the process of determining whether to allocate, assign, or let any HNZ housing to the prospective tenant; or
 - “(ii) decline the tenant’s application to become a tenant of HNZ housing:
 - “(c) to the extent that the tenant is an existing tenant only,—
 - “(ii) review the eligibility of the tenant to be or continue to be allocated, assigned, or let that particular HNZ housing on the basis of HNZ’s own understanding of the circumstances; or
 - “(iii) treat the tenant as not or no longer eligible to continue to be allocated HNZ housing:
 - “(d) to the extent that the person is an applicant for, or recipient of, a financial product,—
 - “(i) assess the eligibility of the person for that financial product on the basis of HNZ’s own understanding of the circumstances; or
 - “(ii) treat the person as not or no longer eligible for that financial product.”

14 Sections 59 to 62 and cross-heading replaced

Replace sections 59 to 62 and the cross-heading above section 62 with:

“59 HNZ may seek information

- “(1) For the purposes of a review under section 57 or **57AA** or an investigation under **section 57AB, 57AC, 57AD, or 57AE**, HNZ may request any person to—
- “(a) answer questions; or
 - “(b) allow HNZ to inspect any document or other written information; or
 - “(c) give HNZ—
 - “(i) a copy of any document or other written information; or
 - “(ii) a printout of any information stored digitally.
- “(2) The person does not have to comply with the request, but (for the purposes of section 7(1) of the Privacy Act 1993) this subsection authorises the person to make personal information available in response to the request.

“59AA HNZ may require information for certain purposes

- “(1) HNZ may by written notice require information from any person for any 1 or more of the following purposes:
- “(a) the purpose of ascertaining the housing needs of a prospective tenant:
 - “(b) the purpose of ascertaining the eligibility of a prospective tenant to be allocated HNZ housing:
 - “(c) the purpose of calculating the appropriate income-related rent for the HNZ housing concerned:
 - “(d) the purpose of a review under section 57 or **57AA**:
 - “(e) the purpose of any investigation under **section 57AB, 57AC, 57AD, or 57AE**:
 - “(f) the purpose of ~~determining and~~ detecting whether a person has committed or is committing an offence under **section 61AB or 61AC**:
 - “(g) the purpose of determining and detecting the cost of fraud under **section 61AB or 61AC**:
 - “(h) 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 question asked under **section 58(a)**.

- “(2) HNZ, when ~~requiring~~ it requires any information under **subsection (1)**, must do so in accordance with the code of conduct.
- “(3) HNZ may in writing require any person to advise whether or not any information provided under **subsection (1)** is accurate.
- “(4) A person from whom information is required under **subsection (1)** or advice is required under **subsection (3)** must comply with the requirement—
- “(a) no later than 5 working days after the notice was given; and
 - “(b) in the manner specified in the notice, without charge to HNZ.
- “(5) This subsection authorises (for the purposes of section 7(1) of the Privacy Act 1993) any person who is required to provide information under **subsection (1) or (3)** to make personal information available in response to the requirement.
- “(6) **Subsection (1)** does not—
- “(a) require any person to provide any information or produce any document that would be privileged in a court of law;
 - “(b) require any person to provide any information or produce any document that is legally professionally privileged.
- “(7) **Subsection (6)** does not apply to information—
- “(a) that consists wholly or partly of, or relates wholly or partly to,—
 - “(i) the receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person); or
 - “(ii) investment receipts (being receipts arising or accruing from any money lodged at any time with a lawyer for investment) of any person or persons (whether the lawyer, his or her client, or any other person or persons); and
 - “(b) that is contained in, or comprises the whole or part of, any book, account, statement, or other record prepared

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by or kept in connection with a trust account of the lawyer.

“(8) If a person refuses to disclose any information or document on the ground that it is privileged under **subsection (6)(a) or (b)**,—

“(a) HNZ 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

“(b) for the purposes of determining that application, the Judge may require the information or document to be produced to the court.

“(9) In this section,—

“**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

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

“**60 Recovery where rate of rent too low**

“(1) **Subsection (2)** applies to a tenant of HNZ housing and a period of time if, at any later time, HNZ—

“(a) has in its possession information (whether or not obtained as a result of a review or an investigation under this Part) that—

“(i) it did not have during that period, or had but did not have reasonable grounds to believe; and

“(ii) it now believes on reasonable grounds; and

“(b) is satisfied that, if it had had the information before the period and had had reasonable grounds to believe the information, it would have required the tenant to pay an income-related rent higher than the income-related rent the tenant was in fact required to pay for the housing in respect of the period.

“(2) If this subsection applies to a tenant of HNZ housing and a period of time, HNZ may calculate, and recover as a debt due to the Crown, the difference between—

- “(a) the higher income-related rent it would have required the tenant to pay for the housing in respect of the period; and
 - “(b) the income-related rent the tenant was in fact required to pay for the housing in respect of the period.
- “(3) Amounts recoverable under **subsection (2)** are not rent in arrear for the purposes of the Residential Tenancies Act 1986.

“**61 Allocation of HNZ housing**

- “(1) The matters to which HNZ may have regard in doing any of the things stated in **subsection (2)** may include criteria that have, or are capable of having, the effect that tenants, people who are or might be applicable persons in relation to those tenants, and other people who are or might be residing in the housing concerned, are treated differently on the basis of—
- “(a) their marital status, disability or absence of disability, age, or family status (as the terms marital status, disability, age, and family status are defined in section 21(1)(b), (h), (i), and (l) of the Human Rights Act 1993); or
 - “(b) whether or not they are resident, or ordinarily resident, or permanently resident, or lawfully resident, in New Zealand; or
 - “(c) their income; or
 - “(d) their property; or
 - “(e) 2 or more of those factors.
- “(2) The things are any thing that HNZ does in the course of allocating, assigning, and letting HNZ housing to tenants, and in administering and terminating tenancies, and include the following:
- “(a) assessing the eligibility of a prospective tenant to be allocated HNZ housing; and
 - “(aa) assessing the housing needs of a tenant; and
 - “(b) allocating, assigning, and letting, or continuing to let, HNZ housing to a tenant; and
 - “(c) reviewing the eligibility of a tenant to be, or continue to be allocated, HNZ housing; and

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- “(d) reviewing the eligibility of a tenant to be, or continue to be allocated, assigned, or let particular HNZ housing; and
 - “(e) terminating a tenancy; and
 - “(f) reallocating or reassigning HNZ housing to a tenant; and
 - “(g) retaining the current allocation, assignment, or letting of particular HNZ housing to a tenant.
- “(3) Nothing in this section affects the application of the New Zealand Bill of Rights Act 1990.

“Offences

“61AB Offence not to provide information or to provide false or misleading information

- “(1) A person who is required to provide information under **section 59AA(1)** commits an offence if the person—
- “(a) fails or refuses to provide, without reasonable excuse, the information required;
 - “(b) provides false or misleading information in response to the requirement.
- “(2) A person who is required under **section 59AA(3)** to advise whether information provided under **section 59AA(1)** is accurate commits an offence if the person—
- “(a) fails or refuses to provide that advice, without reasonable excuse;
 - “(b) provides false or misleading information in response to the requirement.
- “(3) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$2,000.

“61AC Offence to mislead HNZ for certain purposes or results

- “(1) A person commits an offence who, for the purpose described in **subsection (2)** or with the result described in **subsection (3)**,—
- “(a) makes any statement knowing it to be false in any material particular; or
 - “(b) deliberately does or says anything for the purpose of misleading or attempting to mislead HNZ; or

- “(c) when required to advise HNZ under **section 56** or provide information under **section 59AA**, deliberately omits to do or say anything for the purpose of misleading or attempting to mislead HNZ.
- “(2) The purpose is—
 - “(a) for that person or another person to be eligible or continue to be eligible to be allocated HNZ housing:
 - “(b) for that person or another person to be or continue to be allocated, assigned, or let particular HNZ housing, or to be allocated, assigned, or let some other HNZ housing:
 - “(c) for that person or another person to have calculated for him or her, or to pay or continue to pay as rent for HNZ housing, an income-related rent or lower income-related rent than the person would otherwise be entitled to under this Act:
 - “(d) for that person or another person to receive or continue to receive a financial product.
- “(3) The result is that person or another person, whether or not entitled to it under this Act,—
 - “(a) is or continues to be assessed as eligible to be allocated HNZ housing:
 - “(b) is or continues to be allocated, assigned, or let particular HNZ housing:
 - “(c) is allocated, assigned, or let some other HNZ housing:
 - “(d) is let HNZ housing at an income-related rent or lower income-related rent:
 - “(e) receives or continues to receive a financial product.
- “(4) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000, or both.

“Appeals

“62 **Rights of appeal**

- “(1) This section and **sections 62AA to 62AC** apply to—
 - “(a) any decision or determination of HNZ made under this Part, the calculation mechanism, or Schedule 3 (other than a decision under section 43(4)) in respect of an income-related rent; and

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- “(b) any assessment by HNZ of—
 - “(i) the eligibility of any tenant to be, or to continue to be, allocated HNZ housing; or
 - “(ii) the housing needs of any tenant.
- “(2) Nothing in this section and **sections 62AA to 62AC**, or in any regulations under section 63, limits or affects the rights of any tenant of HNZ housing or of HNZ under the Residential Tenancies Act 1986.

“62AA Tenant may appeal

A tenant may, in accordance with regulations made under section 63, appeal against a decision, determination, or assessment referred to in **section 62(1)**, if HNZ—

- “(a) has confirmed the decision, determination, or assessment (whether as originally made or as varied) by means of a process established by HNZ to review such decisions, determinations, or assessments; or
- “(b) has no such process for the time being established.

“62AB Powers of appeal body

- “(1) In determining the appeal, the appeal body has all the powers, duties, functions, and discretions HNZ had in relation to the matter concerned and may—
 - “(a) confirm, modify, or reverse the decision, determination, or assessment; or
 - “(b) refer all or any part of the matter back to HNZ for further consideration, together with—
 - “(i) any directions it thinks just relating to the reconsideration; and
 - “(ii) a written statement of its reasons for doing so.
- “(2) The appeal body—
 - “(a) may award costs against HNZ in respect of any appeal if—
 - “(i) the appeal is allowed in whole or in part; or
 - “(ii) all or any part of the matter is referred back to HNZ for further consideration; and
 - “(b) may award costs against the appellant in respect of any appeal that is refused, if the appeal body believes that

the appeal was frivolous or vexatious, or should not have been brought.

“62AC Where appeal body established by regulations

If regulations under section 63(1)(a) establish a body to dispose of appeals under **sections 62 to 62AB**, any party to any appeal to the body who is dissatisfied with any determination of the body may appeal to a District Court, and in that case,—

- “(a) within 14 days after the date of the determination, the appellant must—
 - “(i) lodge a notice of appeal with the court; and
 - “(ii) give a copy of the notice to every other party to the appeal:
- “(b) the court or a Judge may, on the application of the appellant or intending appellant, extend any time prescribed or allowed under this section for the lodging of a notice of appeal:
- “(c) except as provided by this section, the case must be dealt with in accordance with the rules of the District Court.”

14A Section 63 (Regulations for purposes other than calculation mechanism)

- (1) In section 63(1)(a), after “section 62” insert “to **section 62AC**”.
- (2) In section 63(1)(a)(i), replace “that section” with “those sections”.

15 Section 64 replaced (Delegation of powers under this Part)

Replace section 64 with:

“Delegation

“64 Delegation of powers under this Part

- “(1) HNZ—
 - “(a) may not delegate a power under section 57(2)(b), **58(b)**, **58AA(1) or (2)**, or **section 60**, except to the Corporation or an employee of HNZ or the Corporation; and
 - “(b) may not delegate any other power under this Part, the calculation mechanism, or Schedule 3, except to—

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- “(i) the Corporation or an employee of HNZ or the Corporation; or
 - “(ii) a person engaged by HNZ or the Corporation under a contract for services providing for the person to exercise that power.
- “(2) An employee to whom a power has been delegated by HNZ in accordance with **subsection (1)** may, with the consent of HNZ, subdelegate that power to another employee of HNZ or the Corporation.
- “(3) If HNZ delegates a power under this Part, the calculation mechanism, or Schedule 3 (not being a power referred to in **subsection (1)(a)**) to a body corporate engaged by HNZ or the Corporation under a contract for services,—
- “(a) the body corporate cannot subdelegate it except to a person who is an employee of the body corporate; and
 - “(b) an employee of the body corporate to whom it is sub-delegated cannot subdelegate it further.
- “(4) **Subsections (1) and (3)** override section 130(1) of the Companies Act 1993.”

16 New sections 65AA to 65AP and cross-headings inserted

After section 65, insert:

“Code of conduct

“65AA Code of conduct applying to obtaining information under section 59AA

- “(1) HNZ, in consultation with the Privacy Commissioner, must, within 3 months after the commencement of this section, issue a code of conduct that applies in respect of any requirement for information under **section 59AA**.
- “(2) The code of conduct—
- “(a) must include the matters specified in **section 65AE**; and
 - “(b) may include restrictions on obtaining—
 - “(i) specified classes of information; and
 - “(ii) information from specified classes of persons or from persons in specified relationships; and
 - “(c) must specify procedures applying to the obtaining of information under **section 59AA**.

- “(3) HNZ may from time to time, in consultation with the Privacy Commissioner, amend the code of conduct, or revoke the code of conduct and issue a new code of conduct.
- “(4) Nothing in the code of conduct may derogate from any code of practice issued by the Privacy Commissioner under Part 6 of the Privacy Act 1993 that applies to the information required under **section 59AA**, and HNZ, in consultation with the Privacy Commissioner, must amend the code of conduct to conform with any such code of practice. This subsection is affected by **section 65AC**.
- “(5) As soon as practicable after issuing any code of conduct and any amendment to it under this section, HNZ must arrange for it to be published on an Internet site that is publicly available at all reasonable times or published in a form that is otherwise accessible to the public.

“**65AB Who must comply with code of conduct**

The following persons must comply with the code of conduct when requiring information under **section 59AA**:

- “(a) HNZ, and every employee of HNZ;
- “(ab) the Corporation and every employee of the Corporation;
- “(b) every person to whom the power to require such information has been delegated under **section 64**;
- “(c) every person or body corporate engaged by HNZ under a contract for services providing for the person to exercise the power to require such information;
- “(d) every employee of a person or body corporate referred to in **paragraph (c)**.

“**65AC Regulations authorising information to be obtained**

- “(1) The Governor-General may, on the advice of the Minister given after consultation with the Privacy Commissioner, by Order in Council, make regulations authorising HNZ to obtain pursuant to a requirement under **section 59AA**—
- “(a) any specified class of information; or
- “(b) information from any specified class of persons; or
- “(c) information in any specified manner.
- “(2) **Subsection (1)** applies despite the fact that the making of that requirement under **section 59AA** would otherwise be in

breach of any code of practice issued by the Privacy Commissioner under Part 6 of the Privacy Act 1993.

“65AD Complaints

- “(1) Any person who is required to provide any information under **section 59AA**, or who is the subject of that information, may make a complaint to the Privacy Commissioner that the requirement breaches the code of conduct.
- “(2) Part 8 of the Privacy Act 1993 applies to the complaint as if the code of conduct were a code of practice issued under Part 6 of that Act.

“Compare: 1964 No 136 s 11B

“65AE Matters to be included in code of conduct

- “(1) The code of conduct issued under **section 65AA** must contain the following matters:
- “(a) provisions requiring the information to be first sought, as the case may require, except where compliance with the provision would prejudice the maintenance of the law, from—
 - “(i) the tenant or an applicable person in relation to the tenant; or
 - “(ii) the applicant for or recipient of a financial product or the spouse or partner of the applicant or recipient; or
 - “(iii) the prospective tenant or the person who would be an applicable person in relation to the prospective tenant; or
 - “(iv) the former tenant or an applicable person in relation to the former tenant at the time concerned (*see* **section 57AB(b)**):
 - “(b) provisions allowing a person referred to in **paragraph (a)** the time that is specified in the code to provide the information before HNZ requires that information or confirmation of that information from another person or agency, except where compliance with such provision would prejudice the maintenance of the law:
 - “(c) a provision prohibiting a requirement under **section 59AA** being made in respect of a person referred to in

paragraph (a) to any other person (not being a financial institution, lawyer, employer, or former employer of a person referred to in **paragraph (a)**, and not being a department, departmental agency, or Crown entity), unless there is reasonable cause to make a requirement under that section:

“(d) a provision prohibiting a requirement under **section 59AA** being made to an employer in respect of any information that relates solely to the marital or relationship status of an employee or a former employee of that employer:

“(e) provisions otherwise restricting requirements under **section 59AA** being made to an employer to information specified in the code relating to the employment and the address of an employee or a former employee of that employer.

“(2) In **subsection (1)(c)**, **reasonable cause** includes—

“(a) cause to suspect that the person—

“(i) has committed an offence under this Act; or

“(ii) has obtained by fraud any income-related rent or HNZ housing; or

“(iii) as a result of committing fraud, pays or continues to pay an income-related rent or remains a tenant of HNZ housing or particular HNZ housing:

“(b) the fact that the person has failed, within the time specified in the code, or has refused to provide information in accordance with a requirement made to that person under a provision referred to in **subsection (1)(a)**.

“Compare: 1964 No 136 s 11C

“Deduction notices

“65AF Interpretation of deduction notice sections of this Part

In this section and in **sections 65AG to 65AP**, unless the context otherwise requires,—

“deduction notice means a notice issued under **section 65AG**

“overdue amount means the amount that is recoverable as a debt due to the Crown under **section 60(2)**, and that remains unpaid; and includes any part of any amount of that kind

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“**payment**, in relation to a third party, includes payments made, or to be made, by the third party as—

“(a) salary or wages:

“(b) a retiring allowance or pension or other payment of a similar nature:

“(c) a benefit:

“(d) weekly compensation under the Accident Compensation Act 2001:

“(e) a bonus or an incentive payment:

“(f) commission:

“(g) consideration for work performed under a contract for services

“**tenant** means—

“(a) 1 or more people to whom HNZ housing is or was let at an income-related rent; and

“(b) includes any former tenant

“**third party** means the person required to make 1 or more deductions under a deduction notice.

“Compare: 1957 No 87 ss 2(1), 79

“**65AG Deduction of overdue Crown debt**

“(1) HNZ may recover an amount as a debt due to the Crown by issuing a deduction notice in accordance with this section if any overdue amount remains unpaid after HNZ has reminded the tenant of the obligation to pay the amount and has done all it reasonably can to obtain the unpaid amount.

“(2) Nothing in **subsection (1)** requires HNZ to take proceedings in any court to establish or recover the debt before issuing a deduction notice.

“(3) The deduction notice may require a third party to deduct an amount specified in the notice due from any payment that is payable or will become payable by the third party to the tenant, whether that payment will be made—

“(a) on the third party’s own account; or

“(b) in the third party’s capacity as an agent or a trustee; or

“(c) for any other reason.

“(4) To avoid any doubt, HNZ may issue a deduction notice under this section in relation to an overdue amount regardless of

whether that amount became recoverable as a debt due to the Crown under **section 60(2)** before the commencement of this section.

“Compare: 1964 No 136 s 86A

“65AH Matters relating to deduction notice

- “(1) HNZ must specify in the deduction notice—
- “(a) whether the deduction is to be made as a lump sum or by instalments; and
 - “(b) the time or times by which the amounts deducted must be paid to HNZ; and
 - “(c) the date on which the deduction notice takes effect, being a date not earlier than 7 working days after the date on which it was issued.
- “(2) HNZ must make all reasonable efforts to give the tenant a copy of the deduction notice within 7 working days after the notice is issued.
- “(3) A deduction notice is revoked when HNZ notifies the third party in writing to that effect or issues a new deduction notice to that third party.
- “(4) HNZ—
- “(a) may revoke a deduction notice at any time;
 - “(b) must revoke the deduction notice if satisfied that the overdue amount has been paid.
- “(5) Every deduction notice is subject to **sections 65AI to 65AP**.

“65AI Issue of deduction notice to State sector employer

In any case where a tenant is employed within a department (within the meaning of the State Sector Act 1988), a deduction notice may be issued under **section 65AG** to the chief executive of that department in respect of any salary or wages payable to the tenant.

“Compare: 1964 No 136 s 86B

“65AJ Discharge of debt

In any case where a third party deducts, under a deduction notice, any money payable to a tenant, the tenant is, to the

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extent of the amount deducted, discharged from his or her debt to the Crown.

“Compare: 1964 No 136 s 86C

“65AK Deduction notices issued to banks

- “(1) Where the third party is a bank, any money held by the bank to the credit of the tenant is subject to the provisions of **section 65AG** and the amount required to be deducted under the deduction notice is, without prejudice to any other remedies against the tenant or any other person, deemed to be held in trust for the Crown and is a debt due to the Crown and may be recovered by HNZ in any court or tribunal of competent jurisdiction.
- “(2) For the purposes of this section, **bank** means a person carrying on in New Zealand the business of banking, a credit union within the meaning of the Friendly Societies and Credit Unions Act 1982, and a building society within the meaning of the Building Societies Act 1965; but does not include the Reserve Bank of New Zealand established under the Reserve Bank of New Zealand Act 1989 (except in relation to an account maintained by that bank for an employee of the bank).
- “(3) For the purposes of this section, **money held by the bank to the credit of the tenant** includes money, and any interest on money, that is on deposit or deposited with a bank to the credit of the tenant, whether or not—
- “(a) the deposit or depositing is on current account:
 - “(b) the money is to be at interest at a fixed term or without limitation of time:
 - “(c) the tenant has made any application to withdraw or uplift the money.
- “(4) For the purposes of this section, money on deposit with a bank is deemed to be to the credit of the tenant if the money—
- “(a) is held in a joint bank account in the name of the tenant and 1 or more other persons; and
 - “(b) can be withdrawn from the account by or on behalf of the tenant without a signature being required at the time of that withdrawal from, or on behalf of, the other person or persons.

“Compare: 1964 No 136 s 86D

“65AL Making of deductions

- “(1) Any person who makes a deduction under a deduction notice is deemed to be acting—
- “(a) on the authority of the tenant and any other person concerned; and neither the tenant nor that other person has any claim against the third party or HNZ or the Crown in respect of that deduction; and
 - “(b) on behalf of HNZ; and, without prejudice to any other remedies against the tenant or any other person, any amount deducted must be held in trust for the Crown and is a debt due to the Crown and may be recovered by HNZ in any court or tribunal of competent jurisdiction.
- “(2) A third party must, on request, give the tenant a statement in writing of any amount deducted, and of the purpose for which the deduction was made.

“Compare: 1964 No 136 s 86E

“65AM Offences in relation to deduction notices

- “(1) Every person commits an offence and is liable on conviction to a fine not exceeding \$2,000 who—
- “(a) fails to make any deduction required by a deduction notice; or
 - “(b) fails, after making a deduction, to pay the amount deducted to HNZ within the time specified in the notice; or
 - “(c) permits payment to or on behalf of any person, other than HNZ, of any amount deemed to be held in trust for the Crown under **sections 65AG to 65AL**.
- “(2) Every employer commits an offence and is liable on conviction to a fine not exceeding \$1,000 who dismisses an employee or alters an employee’s position in the employer’s business or undertaking to the employee’s prejudice by reason of a deduction notice having been issued to the employer.

“Compare: 1957 No 87 s 106A; 1964 No 136 s 86F

“65AN Protected earnings

- “(1) Despite anything in **sections 65AG to 65AL**, where a deduction notice is issued to an employer of a tenant, the employer must not, in making deductions under the deduction notice, re-

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duce the amount paid to the tenant by way of salary or wages in respect of any week to an amount that is less than 60% of the amount calculated as being the tenant's net ordinary weekly pay for a week.

- “(2) For the purposes of this section, the tenant's net ordinary weekly pay for a week is the balance left after deducting from the tenant's ordinary weekly pay (as defined in section 8 of the Holidays Act 2003) the amount of tax required to be withheld or deducted in accordance with the PAYE rules of the Income Tax Act 2007 if that ordinary weekly pay were the only salary or wages paid to the tenant by the employer in respect of a week.

“Compare: 1964 No 136 s 86G

“65AO Penalty for late deductions

- “(1) A third party is liable to pay to HNZ a penalty calculated in accordance with **subsection (2)** if the third party fails wholly or in part to—
- “(a) deduct the amount required by the notice; or
 - “(b) pay any amount deducted under the notice to HNZ by the time specified in the notice.
- “(2) The penalty referred to in **subsection (1)** must be calculated as follows:
- “(a) on the amount in default, 10% of that amount or \$5, whichever is the greater;
 - “(b) for each additional month or part of a month in which the amount in default or any part of the amount has not been deducted or, as the case may be, has not been paid to HNZ, a further penalty of 2% of that amount or part of the amount or \$1, whichever is the greater.
- “(3) HNZ may, in its discretion, remit the whole or part of a penalty if satisfied that the failure to make the deduction or the payment was due to circumstances reasonably beyond the third party's control, or that, in all the circumstances, the imposition of that penalty would be inequitable.
- “(4) If HNZ decides to remit the whole or part of any penalty and any amount of the penalty has been paid under this section, HNZ may refund any excess.

“(5) An amount payable to HNZ under **subsection (1)** is a debt due to the Crown and may be recovered by HNZ in any court or tribunal of competent jurisdiction.

“Compare: 1964 No 136 s 86I

“**65AP How notice may be given**

“(1) Every notice given to any person under any of **sections 65AG to 65AO** may be given by delivering it to that person,—

“(a) in the case of a natural person (other than an officer or employee in the service of the Crown in his or her official capacity),—

“(i) personally; or

“(ii) by leaving it at that person’s usual or last known place of residence or business or at the address specified by that person in any application or other document received from that person; or

“(iii) by posting it in a letter addressed to that person at that place of residence or business or at that address:

“(b) in the case of any other person, including an officer or employee in the service of the Crown in his or her official capacity,—

“(i) where applicable, personally; or

“(ii) by leaving it at that person’s place of business; or

“(iii) by posting it in a letter addressed to that person at that place of business.

“(2) If any such 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 fourth day after the day on which it is posted, and, in proving the delivery, it is sufficient to prove the letter was properly addressed and posted.

“(3) A notice to a person under any of **sections 65AG to 65AO** may be given by electronic means in accordance with Part 2 of the Electronic Transactions Act 2002.

“Compare: 1964 No 136 s 86J”.

Part 2

Amendments to principal Act with effect from day appointed by Order in Council

17 Section 2 amended (Interpretation)

- (1) In section 2(1), insert in their appropriate alphabetical order:
- “**additional resident**, in relation to any social housing, means a person who—
- “(a) is aged 16 years or over; and
 - “(b) is financially independent (within the meaning of section 3(1) of the Social Security Act 1964); and
 - “(c) resides or is to reside in the housing; but
 - “(d) is not an applicable person
- “**agency** means the social housing agency or agencies appointed under **section 101**
- “**applicable person**, in relation to any social housing,—
- “(a) means every person to whom the housing is or is to be let; and
 - “(b) includes every person who is the spouse or partner of such a person
- “**appointed day** means 17 November 2000
- “**assessable assets** has the meaning given to that term by the calculation mechanism
- “**assessable income** has the meaning given to that term by **section 109**
- “**authority** means the authority appointed under **section 156** to perform the functions and exercise the powers of the regulatory authority under **Part 10**
- “**calculate** includes ascertain
- “**calculation mechanism**,—
- “(a) before the commencement of the regulations first made under **section 115**, means **sections 108 to 114** and the provisions of Schedule 2; and
 - “(b) after that commencement, means **sections 108 to 114** and the regulations for the time being in force under **section 115**

“**code of conduct**,—

“(a) in relation to information that may be required under **section 82**, means the code of conduct issued under **section 88**

“(b) in relation to information that may be required under **section 125**, means the code of conduct issued under **section 137**

“**community housing** means any premises that are let or to be let by or on behalf of a registered community housing provider for occupation by any person as a place of residence (whether or not the premises are owned by the provider or any other person)

“**community housing provider** means a housing provider (other than HNZ or the Corporation) that has, as 1 of its objects, the provision of one or both of the following types of housing:

“(a) social rental housing;

“(b) affordable rental housing

“**contributions**, in relation to an additional resident of any social housing, means all payments made by the resident, and the value of all goods or services provided or paid for by the resident,—

“(a) as a contribution towards the costs and expenses incurred by the applicable persons in residing there; or

“(b) in consideration of goods or services provided by the applicable persons while the resident is residing there; or

“(c) in consideration of the resident being allowed to reside there; or

“(d) for 2 or all of those reasons

“**income-related purpose** has the same meaning as in section 3(1) of the Social Security Act 1964

“**income-related rent**,—

“(a) in relation to a tenant of HNZ housing, means a rent that the agency has—

“(i) calculated for the tenant under the calculation mechanism or Schedule ~~2~~ 3; and

“(ii) notified to HNZ; or

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“(b) in relation to a tenant of a registered community housing provider, means a rent that the agency has—

“(i) calculated for the tenant under the calculation mechanism; and

“(ii) notified to the provider

“**joint Ministers** means the Minister of Finance, the Minister of Housing, and the Minister for Social Development

“**market rent**,—

“(a) in relation to HNZ housing, means the rent for the time being determined by HNZ or the Tenancy Tribunal (under the Residential Tenancies Act 1986) as the market rent for that housing; or

“(b) in relation to housing provided by a registered community housing provider, means the rent for the time being determined by that provider or the Tenancy Tribunal (under the Residential Tenancies Act 1986) as the market rent for that housing

“**notification** means notification by the agency under **sections 105 or 107A**

“**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

“**prospective tenant** means a person—

“(a) who—

“(i) is not a person to whom any social housing is let or to be let; and

“(ii) has applied to the agency (alone or together with some other person or people) for an assessment of the person’s eligibility for social housing and—

“(A) whose eligibility for social housing has not yet been confirmed or declined or whose application for an assessment has not yet been withdrawn; or

“(B) whose eligibility for social housing has been confirmed but who has not yet been allocated any particular social housing by a social housing provider; or

“(b) who—

- “(i) is already a person to whom social housing is let or to be let; but
- “(ii) has applied to the agency (alone or together with some other person or people) to become a tenant of some other social housing and has not yet had the application accepted or declined, or withdrawn it

“**registered community housing provider** means a community housing provider that is registered by the authority under **Part 10** as a community housing provider

“**rent period**, in relation to any social housing, means a period in respect of which the tenant is required by the tenancy agreement to pay rent for the housing

“**social housing** means HNZ housing or community housing

“**social housing provider** means HNZ or a registered community housing provider

“**standard tax** means the amount of tax reckoned on a weekly basis that would be deductible in accordance with tax code M specified in section 24B of the Tax Administration Act 1994

“**study grant** means a basic grant or independent circumstances grant under regulations under section 303 of the Education Act 1989 (or an allowance, award, bursary, grant, or scholarship that the agency considers to have been established under that section in place of a basic grant or independent circumstances grant)

“**tenant**,—

“(a) in relation to social housing in general,—

“(i) means any person or people to whom any social housing is let or to be let; and

“(ii) includes a prospective tenant; and

“(b) in relation to any particular social housing, means the person or people to whom it is let or to be let”.

- (2) Schedule 2 is repealed on the commencement of the regulations first made under **section 115**.

18 New section 3AA inserted (Transitional provisions)

After section 3, insert:

“3AA Transitional and savings provisions

This Act is subject to the transitional provisions set out in **Schedule 4**, which provides for transitional and savings provisions.”

19 New Parts 7 to 10 inserted

After section 69, insert:

“Part 7

“HNZ housing

“70 Purpose of this Part and Parts 8 to 10

“(1) The purpose of this Part and **Parts 8 to 10** is to reform the provision of social housing by establishing a framework for a multiple-provider social housing market.

“(2) This Part and **Parts 8 to 10**—

“(a) enable the assessment of need and eligibility for social housing, and eligibility for an income-related rent, and associated functions (such as providing advice, managing applications for social housing, carrying out investigations, and referring and allocating prospective tenants and tenants to social housing providers), to be performed by 1 or more government agencies that are independent of the agency that provides state housing:

“(b) align Housing New Zealand Corporation’s role to the provision of social housing in a multiple-provider environment:

“(c) facilitate the growth of the community housing sector by enabling the extension, on terms and conditions set by the joint Ministers, of an income-related rent subsidy to registered community housing providers and an income-related rent to their tenants:

“(d) enable the appointment of a government agency as a regulatory authority for registered community housing providers, with associated objectives, functions, and powers to monitor and enforce compliance with regulatory standards:

“(e) enable the making of regulations that prescribe eligibility criteria and performance standards to be met by registered community housing providers:

- “(f) create certain offences for failure to comply with information requirements issued to tenants and associated parties by relevant government agencies.
- “(2) In this section, **government agency** means any department, departmental agency, or Crown entity.

“**71 Interpretation of terms used in this Part**

In this Part, unless the context otherwise requires,—

“**financial product** means a financial product administered by HNZ or the Corporation and—

“(a) includes a loan or grant; but

“(b) does not include income-related rent

“**prospective tenant for HNZ housing** means a person—

“(a) 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

“(b) 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

“**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.

“~~**71A Application of sections 72, 75, 76, and 78**~~

To avoid doubt, ~~**sections 72, 75, 76 and 78**~~

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- “(a) apply to a tenant regardless of whether the tenant was let HNZ housing before or after the commencement of **section 19** of the Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Act **2013 (commencement)**; and
- “(b) apply to a tenancy agreement for HNZ housing regardless of whether the agreement was entered into before or after that commencement.

“72 **Income-related rent**

- “(1) This subsection applies to HNZ housing and a tenant if—
 - “(a) an income-related rent has been calculated for the tenant under **Part 9**, the calculation mechanism, or under Schedule 3; and
 - “(b) the agency has notified under **section 107A** the income-related rent calculated for the tenant; and
 - “(c) that notification of the income-related rent has not been replaced by a notification from the agency to the effect that the tenant must pay market rent.
- “(2) If **subsection (1)** applies to any HNZ housing and a tenant, the rent for the housing must be the income-related rent for the time being notified by the agency, subject to **subsections (4) and (5)**.
- “(3) If **subsection (1)** does not apply to any HNZ housing and a tenant, the rent for the housing must be its market rent for the time being.
- “(4) The income-related rent for any HNZ housing must not exceed its market rent for the time being.
- “(5) If satisfied that special circumstances justify its doing so, HNZ may, in its absolute discretion, set for and accept from a tenant of any HNZ housing a rent lower than the rent otherwise required by **subsection (2)** or **subsection (3)** to be paid for the housing by the tenant.
- “(6) **Subsections (2) to (5)** are subject to **section 75**.

“75 **Changes in rent**

- “(1) This section applies to an existing tenant of HNZ housing if HNZ—

- “(a) is required by **section 72 or 76** to change the rent for the housing; or
 - “(b) is empowered by **section 72** to change the rent for the housing, and decides to do so.
- “(2) HNZ must, in accordance with section 136 of the Residential Tenancies Act 1986, give a tenant to whom **subsection (1)** applies written notice of the change in rent stating—
- “(a) the date on which it takes effect; and
 - “(b) the matters referred to in paragraphs (j) and (k) of section 13A of that Act.
- “(3) In the case of a reduction in rent, the notice has effect as a variation of the tenancy agreement for the housing whether or not the tenant signs it.
- “(4) In the case of an increase in rent, the notice must comply with section 24 of the Residential Tenancies Act 1986 except to the extent that **section 76** of this Act provides otherwise.
- “**76 Increase in rent due to change in tenant’s circumstances**
- “(1) If HNZ receives a notification from the agency under **section 107A** of an increase in an income-related rent due to a change in the tenant’s circumstances or the circumstances of an applicable person in relation to the tenant,—
- “(a) HNZ must, subject to **subsection (3)**, give the tenant written notice, in accordance with **section 75(2)**, stating the date on which the increased income-related rent takes effect (the **effective date**); and
 - “(b) the effective date must be a date no earlier than 61 days after the date (as stated in the agency’s notification) that the change in circumstances occurred; and
 - “(c) HNZ must give the notice to the tenant at least 2 weeks before the effective date.
- “(1A) The income-related rent notified under **subsection (1)(a)** for any HNZ housing must not exceed the market rent for the time being for that housing.
- “(2) The agency may recover from the tenant as a debt due to the Crown, the difference (if any) between—
- “(a) the higher income-related rent calculated by the agency for the tenant for the housing in respect of the period

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- commencing on the date that is 61 days after the change in circumstances occurred and ending on the day before the effective date (capped at the market rent); and
- “(b) the income-related rent applying to that period that the tenant was in fact required to pay for the housing the agency had calculated for the tenant for the housing and set out in its in respect of that period previous notification.
- “(3) HNZ must change the rent charged following receipt of a notification from the agency unless, in HNZ’s opinion, it would not result in a material difference to the rent charged for the housing concerned.
- “(4) Section 24(1)(c) to (h) and 24(1A) and (2) of the Residential Tenancies Act 1986 do not apply to the increase in rent.
- “(5) Amounts recoverable under **subsection (2)** are not rent in arrear for the purpose of the Residential Tenancies Act 1986.

Example

Mary is a tenant of HNZ and is paying an income-related rent to HNZ. On 1 March, Mary returned to full-time employment but did not tell the agency of her change in circumstances.

Several months later, the agency becomes aware that Mary’s circumstances had changed on 1 March. The agency calculates an increased income-related rent for Mary, and notifies HNZ accordingly. The increased income-related rent does not exceed the market rent for the housing.

On 1 October that same year, HNZ notifies Mary that she must pay an increased income-related rent (in accordance with the agency’s notification) from the rent period beginning on 21 October (the effective date).

The agency is entitled to recover from Mary, as a debt due to the Crown, the difference between—

- (a) the higher income-related rent for the housing (as set out in the agency’s notification), in respect of the period commencing on 1 May (61 days after the change in circumstances) and ending on 20 October; and
- (b) the income-related rent applying to that period that the agency had calculated for the tenant for the housing (as set out in the agency’s previous notification).
-

“78 HNZ may review placement

“(1) HNZ may—

“(a) allocate a prospective tenants for HNZ housing to particular HNZ housing:

“(b) review the eligibility of a tenant to be or to continue to be allocated, assigned, or let particular HNZ housing:

“(c) require a tenant to transfer to different HNZ housing (being housing that is appropriate for the tenant’s housing needs) if HNZ considers that the transfer is necessary or desirable for any reason.

“(2) Nothing in this section limits or affects—

“(a) a tenant’s rights under the Residential Tenancies Act 1986:

“(b) HNZ’s rights as a landlord under the Residential Tenancies Act 1986, including its rights to terminate a tenancy in accordance with the Residential Tenancies Act 1986 that Act:

“(c) HNZ’s functions and powers under this Act or any other Act.

“78A Limits on obligations of HNZ

Nothing in this Act requires HNZ to provide any housing or particular housing to a tenant referred or allocated to HNZ by the agency.

“Financial products

“79 HNZ may investigate circumstances of applicant for financial product

HNZ may investigate the circumstances of—

“(a) an applicant for, or a recipient of, a financial product; or

“(b) any person who, at the time of application, is the spouse or partner of the applicant.

“80 HNZ may ask questions, take actions, etc

“(1) For the purpose of any investigation conducted under **section 79, HNZ—**

“(a) may ask any person whose circumstances it may investigate any relevant questions it thinks fit; and

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- “(b) may ask any person whose circumstances it may investigate to verify by statutory declaration—
 - “(i) any information he or she has given when answering questions asked under **paragraph (a)**; or
 - “(ii) any other information that he or she has at any time given to HNZ; or
 - “(iii) any information within his or her personal knowledge that has at any time been given to HNZ by the spouse or partner of the person.
- “(2) HNZ may take the actions stated in **subsection (3)** if—
 - “(a) any person whose circumstances it may investigate—
 - “(i) fails or refuses to answer (or, in HNZ’s opinion, fails or refuses to answer fully) any question asked under **subsection (1)(a)**; or
 - “(ii) fails or refuses to verify any information by statutory declaration when asked to do so under **subsection (1)(b)**; or
 - “(b) it believes on reasonable grounds that any person whose circumstances it may investigate under **section 79** has deliberately given a false or misleading answer to any question asked under **subsection (1)(a)**.
- “(3) The actions are to—
 - “(a) assess the eligibility of an applicant for, or recipient of, a financial product on the basis of HNZ’s own understanding of the circumstances;
 - “(b) treat the applicant or recipient as not or as no longer eligible for that financial product.
- “**81 HNZ may seek information**
- “(1) For the purposes of a review under **section 78** or an investigation under **section 79**, HNZ may request any person to—
 - “(a) answer questions; or
 - “(b) allow HNZ to inspect any document or other written information; or
 - “(c) give HNZ—
 - “(i) a copy of any document or other written information; or
 - “(ii) a printout of any information stored digitally.

- “(2) The person does not have to comply with the request but (for the purposes of section 7(1) of the Privacy Act 1993) this subsection authorises the person to make personal information available in response to the request.
- “**82 HNZ may require information for certain purposes**
- “(1) HNZ may by written notice require information from any person for any 1 or more of the following purposes:
- “(a) for the purpose of any investigation under **section 79**:
- “(b) for the purpose of detecting whether a person has committed or is committing an offence under **section 84 or 85**:
- “(bb) for the purpose of determining and detecting the cost of fraud under **section 84 or 85**:
- “(c) 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 question asked under **section 80(1)(a)**.
- “(2) HNZ when requiring any information under **subsection (1)** must do so in accordance with the code of conduct.
- “(3) HNZ may in writing require any person to advise whether any information provided under **subsection (1)** is accurate.
- “(4) A person from whom information is required under **subsection (1)** or advice is required under **subsection (3)** must comply with the requirement—
- “(a) no later than 5 working days after the notice was given; and
- “(b) in the manner specified in the notice, without charge to HNZ.
- “(5) This subsection authorises (for the purposes of section 7(1) of the Privacy Act 1993) any person who is required to provide information under **subsection (1)** or advice under **subsection (3)** to make personal information available in response to the requirement.
- “(6) **Subsection (1)** does not—
- “(a) require any person to provide any information or produce any document that would be privileged in a court of law:

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- “(b) require any person to provide any information or produce any document that is legally professionally privileged.
- “(7) **Subsection (6)** does not apply to information—
- “(a) that consists wholly or partly of, or relates wholly or partly to,—
- “(i) the receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person); or
- “(ii) investment receipts (being receipts arising or accruing from any money lodged at any time with a lawyer for investment) of any person or persons (whether the lawyer, his or her client, or any other person or persons); and
- “(b) 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.
- “(8) If a person refuses to disclose any information or document on the ground that it is privileged under **subsection (76)(a) or (b)**,—
- “(a) HNZ 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 or not the claim of privilege is valid; and
- “(b) for the purposes of determining that application, the Judge may require the information or document to be produced to the court.
- “(9) In this section,—
- “**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
- “**trust account**, in relation to a lawyer, has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006.

“Placement in HNZ housing

“83 Placement in HNZ housing

- “(1) The matters to which HNZ may have regard in doing any of the things stated in **subsection (2)** may include criteria that have, or are capable of having, the effect that tenants, people who are or might be applicable persons in relation to those tenants, and other people who are or might be residing in the housing concerned are treated differently on the basis of—
- “(a) their marital status, disability or absence of disability, age, or family status (as the terms marital status, disability, age, and family status are defined in paragraphs (b), (h), (i), and (l) of section 21(1) of the Human Rights Act 1993); or
 - “(b) whether or not they are resident, or ordinarily resident, or permanently resident, or lawfully resident, in New Zealand; or
 - “(c) their incomes; or
 - “(d) their property; or
 - “(e) 2 or more of those factors.
- “(2) The things are any thing that HNZ does in the course of allocating, assigning, and letting HNZ housing to tenants, and in administering and terminating tenancies, and include—
- “(a) allocating, assigning, and letting, or continuing to let, HNZ housing to a tenant; and
 - “(b) reviewing the eligibility of a tenant to be or to continue to be allocated, assigned, or let particular HNZ housing; and
 - “(c) terminating a tenancy; and
 - “(d) reallocating or reassigning HNZ housing to a tenant; and
 - “(e) retaining the current allocation, assignment, or letting of particular HNZ housing to a tenant.
- “(3) Nothing in this section affects the application of the New Zealand Bill of Rights Act 1990.

“Offences

“84 Offence not to provide information or to provide false or misleading information

“(1) A person who is required to provide information under **section 82(1)** commits an offence if the person—

“(a) fails or refuses to provide, without reasonable excuse, the information required:

“(b) provides false or misleading information in response to the requirement.

“(2) A person who is required to advise under **section 82(3)** whether information provided under **section 82(1)** is accurate commits an offence if the person—

“(a) fails or refuses to provide the advice without reasonable excuse:

“(b) provides false or misleading information in response to the requirement.

“(3) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$2,000.

“85 Offence to mislead HNZ for certain purposes or results

“(1) A person commits an offence who, for the purpose described in **subsection (2)** or with the result described in **subsection (3)**,—

“(a) makes any statement knowing it to be false in any material particular; or

“(b) deliberately does or says anything for the purpose of misleading or attempting to mislead HNZ; or

“(c) when required to provide information under **section 82**, deliberately omits to do or say anything for the purpose of misleading or attempting to mislead HNZ.

“(2) The purpose is—

“(a) for that person or another person to be or continue to be allocated, assigned, or let particular HNZ housing, or to be allocated, assigned, or let some other HNZ housing:

“(b) for that person or another person to receive or continue to receive a financial product.

“(3) The result is that person, or another person, whether or not entitled to it under this Act,—

- “(a) is or continues to be allocated, assigned, or let particular HNZ housing:
 - “(b) is allocated, assigned, or let some other HNZ housing:
 - “(c) receives or continues to receive a financial product.
- “(4) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000, or both.

“Delegations

“86 Delegation of powers under this Part

- “(1) HNZ—
- “(a) may not delegate a power under **section 80(1)(b), (2), or (3)**, except to the Corporation, the agency, the chief executive of the agency, or to an employee of HNZ or the Corporation; and
 - “(b) may not delegate any other power under this Part except to—
 - “(ia) the Corporation; or
 - “(i) an employee of HNZ or the Corporation; or
 - “(ii) a person engaged by HNZ or the Corporation under a contract for services providing for the person to exercise that power; or
 - “(iii) the agency or chief executive of the agency.
- “(2) An employee to whom a power has been delegated by HNZ in accordance with **subsection (1)** may, with the consent of HNZ, subdelegate that power to another employee of the Corporation or of HNZ.
- “(2A) The agency or the chief executive of ~~an~~ the agency to whom a power has been delegated by HNZ in accordance with **subsection (1)**, may with the consent of HNZ, subdelegate that power to an employee of the agency.
- “(3) If HNZ delegates a power under this Part (not being a power referred to in **subsection (1)(a)**) to a body corporate engaged by HNZ or the Corporation under a contract for services,—
- “(a) the body corporate cannot subdelegate the power except to a person who is an employee of the body corporate; and

- “(b) an employee of the body corporate to whom the power is subdelegated cannot subdelegate it further.
- “(4) **Subsections (1) to (3)** override section 130(1) of the Companies Act 1993.

“Reimbursement

“87 **Reimbursement of HNZ**

Section 7 has effect as if—

- “(a) this Part, the calculation mechanism, and Schedule 3 were a requirement by the Crown for HNZ to enter into agreements (as the circumstances from time to time require) for the provision by HNZ of housing and related services to persons who pay income-related rents rather than market rents for the housing, in return for the payment by the Crown of the price to HNZ of doing so; and
- “(b) that price were the difference between the amounts of market rents for the housing and the income-related rents charged.

“Code of conduct

“88 **Code of conduct applying to obtaining information required under section 82**

- “(1) HNZ, in consultation with the Privacy Commissioner, must, within 3 months after the commencement of this section, issue a code of conduct that applies in respect of any requirement for information under **section 82**.
- “(2) The code of conduct—
 - “(a) must include the matters specified in **section 92**; and
 - “(b) may include restrictions on obtaining—
 - “(i) specified classes of information; and
 - “(ii) information from specified classes of persons or from persons in specified relationships; and
 - “(c) must specify procedures applying to the obtaining of information under **section 82**.
- “(3) HNZ may from time to time, in consultation with the Privacy Commissioner, amend the code of conduct, or revoke the code of conduct and issue a new code of conduct.

- “(4) Nothing in the code of conduct may derogate from any code of practice issued by the Privacy Commissioner under Part 6 of the Privacy Act 1993 that applies to the information required under **section 82**, and HNZ, in consultation with the Privacy Commissioner, must amend the code of conduct to conform with any such code of practice. This subsection is affected by **section 90**.
- “(5) As soon as practicable after issuing any code of conduct and any amendment to it under this section, HNZ must arrange for it to be published on an Internet site that is publicly available at all reasonable times or published in a form that is otherwise accessible to the public.
- “(6) The code of conduct that, before the commencement of this section, was issued under Part 5 is, on the commencement of this section, deemed to be issued under this section.

“Compare: 1964 No 136 s 11B

“**89 Who must comply with code of conduct**

The following persons must comply with the code of conduct when requiring information under **section 82**:

- “(a) HNZ and every employee of HNZ:
- “(aa) the Corporation and every employee of the Corporation:
- “(b) the agency and every employee and the chief executive of the agency:
- “(c) every person or body corporate engaged by HNZ under a contract for services providing for the person to exercise the power to require such information:
- “(d) every employee of a person or body corporate referred to in **paragraph (c)**.

“**90 Regulations authorising information to be obtained**

- “(1) The Governor-General may, on the advice of the joint Ministers given after consultation with the Privacy Commissioner, by Order in Council, make regulations authorising HNZ to obtain pursuant to a requirement under **section 82**—
- “(a) any specified class of information; or
- “(b) information from any specified class of persons; or
- “(c) information in any specified manner.

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“(2) **Subsection (1)** applies despite the fact that the making of that requirement would otherwise be in breach of any code of practice issued by the Privacy Commissioner under Part 6 of the Privacy Act 1993.

“**91 Complaints**

“(1) Any person who is required to provide any information under **section 82**, or who is the subject of that information, may make a complaint to the Privacy Commissioner that the requirement breaches the code of conduct.

“(2) Part 8 of the Privacy Act 1993 applies to any such complaint as if the code of conduct were a code of practice issued under Part 6 of that Act.

“**92 Matters to be included in code of conduct**

“(1) The code of conduct issued under **section 88** must contain the following matters:

“(a) provisions requiring the information to be first sought, as the case may require, except where compliance with such provision would prejudice the maintenance of the law, from the applicant for or recipient of a financial product or the spouse or partner of the applicant or recipient:

“(b) provisions allowing a person referred to in **paragraph (a)** the time that is specified in the code to provide the information before HNZ requires that information or confirmation of that information from another person or agency, except where compliance with such provision would prejudice the maintenance of the law:

“(c) a provision prohibiting a requirement under **section 82** being made in respect of a person referred to in **paragraph (a)** to any other person (not being a financial institution, a lawyer, employer, or former employer of the person referred to in **paragraph (a)**, and not being a department, departmental agency, Crown entity), unless there is reasonable cause to make a requirement under that section:

“(d) a provision prohibiting a requirement under **section 82** being made to an employer in respect of any informa-

tion that relates solely to the marital or relationship status of an employee or a former employee of that employer:

“(e) provisions otherwise restricting requirements under **section 82** being made to an employer to information specified in the code relating to the employment and the address of an employee or a former employee of that employer.

“(2) In **subsection (1)(c)**, **reasonable cause** includes—

“(a) cause to suspect that the person—

~~“(i) has committed an offence under this Act; or~~

~~“(ii) has obtained by fraud any income-related rent or HNZ housing; or~~

~~“(iii) as a result of committing fraud, pays or continues to pay an income-related rent or remains a tenant of HNZ housing or particular HNZ housing;~~

“(i) has committed an offence under this Part; or

“(ii) has obtained by fraud any financial product.

“(b) the fact that the person has failed, within the time specified in the code, or has refused, to provide information in accordance with a requirement made to that person under a provision referred to in **subsection (1)(a)**.

“Compare: 1964 No 136 s 11C

“Part 8

“Community housing

“93 **Interpretation of terms used in this Part**

In this Part, unless the context otherwise requires,—

“**prospective tenant for community housing** means a person—

“(a) who—

“(i) is eligible to be allocated community housing; and

“(ii) is not a person to whom any community housing is let; and

“(iii) has been referred or allocated to a registered community housing provider to be allocated, assigned, or let community housing; or

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- “(b) who—
 - “(i) is already a person to whom community housing is let; but
 - “(ii) has applied to the registered community housing provider (alone or together with some other person or people) to become a tenant of some other community housing offered by that provider and has not yet had the application accepted or declined, or withdrawn it

“**tenant**,—

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

“96 Income-related rent

- “(1) This subsection applies to community housing, a registered community housing provider, and a tenant if—
 - “(a) the tenant is an eligible tenant who—
 - “(i) has been allocated or referred to a registered community housing provider by the agency; or
 - “(ii) immediately before becoming a tenant of a registered community housing provider—
 - “(A) was a tenant or prospective tenant of HNZ housing; and
 - “(B) had not been assessed by the agency as being no longer eligible for social housing; and
 - “(b) an income-related rent has been calculated for the tenant under **Part 9** and the calculation mechanism; and
 - “(c) the agency has notified under **section 107A** the income-related rent calculated for the tenant; and
 - “(d) that notification of the income-related rent has not been replaced by a notification from the agency to the effect that the rent for the housing may be determined by the

registered community housing provider but must not exceed its market rent for the time being.

- “(2) If **subsection (1)** applies to any community housing, a registered community housing provider, and a tenant, the rent for the community housing must be the income-related rent for the time being notified by the agency, subject to **subsections (4) and (5)**.
- “(3) If **subsection (1)** does not apply to any community housing, a registered community housing provider, and a tenant, the rent for the housing may be determined by the registered community housing provider, but must not exceed its market rent for the time being.
- “(4) The income-related rent for any community housing must not exceed its market rent for the time being.
- “(5) If a registered community housing provider is satisfied that special circumstances justify its doing so, it may, in its absolute discretion, set for and accept from a tenant a rent lower than the rent otherwise required by **subsection (2)** to be paid for the housing by the tenant.
- “(6) **Subsections (2) to (5)** are subject to **section 97**.
- “(7) In **subsection (1)**, **eligible tenant** means a tenant who is eligible to be allocated, assigned, or let community housing at an income-related rent on the basis of ministerial directions issued under **section 103**.

“**97 Changes in rent**

- “(1) This section applies to an existing tenant of community housing if the registered community housing provider—
- “(a) is required by **section 96 or 98** to change the rent for the housing; or
- “(b) is empowered by **section 96** to change the rent for the housing, and decides to do so.
- “(2) The registered community housing provider must, in accordance with section 136 of the Residential Tenancies Act 1986, give a tenant to whom **subsection (1)** applies written notice of the change in rent, stating—
- “(a) the day on which it takes effect; and

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- “(b) the matters referred to in paragraphs (j) and (k) of section 13A of that Act.
- “(3) In the case of a reduction in rent, the notice has effect as a variation of the tenancy agreement for the housing whether or not the tenant signs it.
- “(4) In the case of an increase in rent, the notice must comply with section 24 of the Residential Tenancies Act 1986 except to the extent that **section 98** provides otherwise.
- “**98 Increase in rent due to change in tenant’s circumstances**
- “(1) If a registered community housing provider receives a notification from the agency under **section 107A** of an increase in an income-related rent due to a change in the tenant’s circumstances or the circumstances of an applicable person in relation to the tenant,—
- “(a) the provider must, subject to **subsection (3)**, give the tenant written notice, in accordance with **section 97(2)**, stating the date on which the increased income-related rent takes effect (the **effective date**); and
- “(b) the effective date must be a date no earlier than 61 days after the date (as stated in the agency’s notification) that the change in circumstances occurred; and
- “(c) the provider must give the notice to the tenant at least 2 weeks before the effective date.
- “(2) The agency may recover from the tenant as a debt due to the Crown, the difference (if any) between—
- “(a) the higher income-related rent calculated by the agency for the tenant for the housing in respect of the period commencing on the date that is 61 days after the change in circumstances occurred and ending on the day before the effective date (capped at the market rent); and
- “(b) the income-related rent applying to that period that the tenant was in fact required to pay for the housing in respect of that period; agency had calculated for the tenant for the housing and set out in its previous notification.
- “(2A) The income-related rent notified under **subsection (1)(a)** for the housing must not exceed its market rent for the time being.

- “(3) A registered community housing provider must change the rent charged following receipt of a notification from the agency unless, in the provider’s opinion, it would not result in a material difference to the rent charged for the housing concerned.
- “(4) Section 24(1)(c) to (h) and 24(1A) and (2) of the Residential Tenancies Act 1986 do not apply to the increase in rent.
- “(5) Amounts recoverable under **subsection (2)** are not rent in arrear for the purposes of the Residential Tenancies Act 1986.

Example

Mary is a tenant of a registered community housing provider and is paying an income-related rent to the provider. On 1 March, Mary returned to full-time employment but did not tell the agency of her change in circumstances.

Several months later, the agency becomes aware that Mary’s circumstances had changed on 1 March. The agency calculates an increased income-related rent for Mary, and notifies the registered community housing provider accordingly. The increased income-related rent does not exceed the market rent for the housing.

On 1 October that same year, the registered community housing provider notifies Mary that she must pay an increased income-related rent (in accordance with the agency’s notification) from the rent period beginning on 21 October (the effective date).

The agency is entitled to recover from Mary, as a debt due to the Crown, the difference between—

- (a) the higher income-related rent for the housing (as set out in the agency’s notification) in respect of the period commencing on 1 May (61 days after the change in circumstances) and ending on 20 October; and
 - (b) the income-related rent applying to that period that the agency had calculated for the tenant for the housing (as set out in the agency’s previous notification).
-

“99 **Placement in community housing**

- “(1) The matters to which a registered community housing provider may have regard in doing any of the things stated in **subsection (2)** may include criteria that have, or are capable of having, the effect that tenants, people who are or might be applicable persons in relation to those tenants, and other people who

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are or might be residing in the housing concerned are treated differently on the basis of—

- “(a) their marital status, disability or absence of disability, age, or family status (as the terms marital status, disability, age, and family status are defined in paragraphs (b), (h), (i), and (l) of section 21(1) of the Human Rights Act 1993); or
- “(b) whether or not they are resident, or ordinarily resident, or permanently resident, or lawfully resident, in New Zealand; or
- “(c) their incomes; or
- “(d) their property; or
- “(e) 2 or more of those factors.

“(2) The things are anything that a registered community housing provider does in the course of allocating, assigning, and letting community housing to tenants, and in administering and terminating those tenancies, and include—

- “(a) allocating, assigning, and letting community housing to tenants at an income-related rent; and
- “(b) allocating, assigning, and letting community housing to tenants; and
- “(c) reviewing the eligibility of a tenant to be or to continue to be allocated, assigned, or let particular community housing; and
- “(d) terminating a tenancy; and
- “(e) reallocating or reassigning community housing to tenants; and
- “(f) retaining the current allocation, assignment, or letting of particular community housing to tenants.

“(3) Nothing in this section affects the application of the New Zealand Bill of Rights Act 1990.

“99A Powers of registered community housing provider in relation to placement
Registered community housing provider may review placement

- “(1) A registered community housing provider may—
- “(a) allocate a prospective tenants for community housing to particular community housing provided by that provider:

- “(b) review the eligibility of a tenant to be or to continue to be allocated, assigned, or let particular community housing provided by that provider:
 - “(c) require a tenant to transfer to different community housing provided by that provider if the provider considers that the transfer is necessary or desirable for any reason and the other housing is appropriate to the tenant’s housing needs.
- “(2) Nothing in this section limits or affects—
- “(a) a tenant’s rights under the Residential Tenancies Act 1986:
 - “(b) a registered community housing provider’s rights as a landlord under the Residential Tenancies Act 1986, including its rights to terminate a tenancy in accordance with the Residential Tenancies Act 1986 with that Act.

“99B Limits on obligations of registered community housing provider

Nothing in this Act requires a registered community housing provider to provide any housing or particular housing to a tenant referred or allocated to the provider by the agency.

“99C Reimbursement of registered community housing providers

The Crown may, from time to time, require a registered community housing provider to enter into agreements for the provision, by that provider, of social housing and related services to any persons paying income-related rents in return for the payment by the Crown of the price (being the difference between the amount of market rents for the housing and the income-related rent calculated):

“99C Reimbursement of registered community housing providers

The Crown may require a registered community housing provider to enter into 1 or more agreements for the provision, by that provider, of social housing and related services to any persons paying income-related rents in return for the payment by the Crown of the price to the provider of doing so (being

the difference between the amount of market rents for the housing and the income-related rents notified to the provider by the agency).

“Part 9

“Social housing agency

“Preliminary provisions

“100 Interpretation of terms used in this Part

(1) In this Part unless the context otherwise requires,—

“**appeal body** means the body specified in regulations made under **section 135(1)** to whom appeals under **section 132** may be made

“**Ministry** means the department for the time being responsible for the administration of the Social Security Act 1964

“~~prescribed~~; means for the time being,—

- “(a) prescribed by the calculation mechanism for the purposes of the provision; or
- “(b) calculated under a means prescribed by the calculation mechanism for the purposes of the provision.

“*Appointment, functions, and operation of social housing agency*

“101 Social housing agency

The Governor-General may, from time to time, by Order in Council made on the recommendation of the joint Ministers, appoint a department, departmental agency, or a Crown entity or any combination of 1 or more departments, departmental agencies, or Crown entities, to perform some or all of the functions and exercise some or all of the powers of the agency under this Act.

“102 Functions of agency

The functions of the agency include the following:

- “(a) providing assistance and advice to people on matters relating to housing or services related to housing; and
- “(b) managing applications for social housing, including—

- “(ii) assessing the eligibility of prospective tenants to be allocated social housing or to be referred or allocated to any particular social housing provider:
- “(iia) assessing the housing needs of prospective tenants:
- “(iii) reviewing the eligibility of tenants to continue to be allocated social housing and reviewing their housing needs:
- “(iv) operating a waiting list or waiting lists of prospective tenants who have been assessed as being eligible for social housing, but who have yet to be allocated, assigned, or let social housing:
- “(v) referring or allocating prospective tenants to social housing providers:
- “(vi) providing the results of its assessments of eligibility and housing needs to HNZ or registered community housing providers; and
- “(c) any other functions ~~set out in this Part~~ of the agency set out in this Act and any other functions under **Part 7** that are delegated to the agency.

“103 Ministerial directions to agency

- “(1) The joint Ministers and, if applicable, any other Minister responsible for the agency may give to the agency directions setting out the terms and conditions on which the income-related rent subsidy must be made available to registered community housing providers and HNZ, including—
 - “(a) the type of housing units that may be funded using the subsidy during any specified period of time; or
 - “(b) the number of housing units that may be funded using the subsidy during any specified period of time; or
 - “(c) the location of housing units that may be funded using the subsidy during any specified period of time.
- “(1A) The joint Ministers, and if applicable, any other Minister responsible for the agency must give to the agency directions stating the criteria by which the agency must assess—
 - “(a) a person’s eligibility for social housing;
 - “(b) a person’s continued eligibility for social housing.

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- “(1B) The joint Ministers, and if applicable, any other Minister responsible for the agency may give to the agency directions determining—
- “(a) the timing of reviews by the agency under **section 118**;
 - and
 - “(b) the class or classes of people which the agency may or may not review under that section.
- “(1C) Before making any direction under this section, the joint Ministers and, if applicable, any other Minister responsible for the agency must consult—
- “(a) the agency and the authority; and
 - “(b) any social housing provider that, in the Minister’s opinion, will be materially affected by the direction.
- “(1D) The requirement in **subsection (1C)(b)** does not apply to the first directions to be made under **subsection (1A) or (1B)**.
- “(2) The agency must, in carrying out functions under this Act, give effect to any directions that are given to it under this section and that are signed by the joint Ministers and, if applicable, any other Minister responsible for the agency.
- “(3) If the agency is a Crown entity, **subsections (1) to (2)** do not limit Part 3 of the Crown Entities Act 2004.
- “(3A) If there is any inconsistency between the provisions of this Act and the Crown Entities Act 2004 relating to ministerial directions, the provisions of the Crown Entities Act 2004 prevail.
- “(4) As soon as practicable after giving a direction under this section, a Minister must publish it in the *Gazette* and present a copy of it to the House of Representatives.

“Compare: 2004 No 115 ss 103, 115

*“Eligibility, housing needs, and income-related
rent*

“**105 Agency to notify social housing providers of eligibility and housing needs**

- “(1) The agency must, in relation to any tenant of a social housing provider that has been referred or allocated to the provider by the agency or is housed by the provider, notify the provider each time the agency makes an assessment of—

- “(a) the eligibility or continued eligibility of the tenant for social housing; and
 - “(b) the housing needs of the tenant.
- “(2) The notification—
- “(aa) must set out the results of the agency’s assessment; and
 - “(a) may include any other information that the agency considers reasonable or necessary, including matters relevant to tenancy sustainability; and
 - “(b) must include the information reasonably requested by the social housing provider, to enable the social housing provider to make decisions on allocating, assigning, and letting housing, and continuing to allocate, assign, and let housing.
- “(3) The agency must update the notification following any determination that affects the tenant’s eligibility for social housing or housing needs assessed by the agency or determined on review and appeal, and may update a notification following an investigation under this Part.
- “(4) A social housing provider is entitled to rely on a notification given under this section.
- “(5) A notification under this section may be given by electronic means in accordance with Part 2 of the Electronic Transactions Act 2002.

“106 Income-related rent

- “(1) This subsection applies to social housing and a tenant if—
- “(a) the tenant is eligible to be allocated social housing or has been allocated, assigned, or let particular social housing; and
 - “(b) the tenant has applied to the agency for it to calculate an income-related rent; and
 - “(c) the agency is satisfied that—
 - “(i) it has had all information reasonably needed to calculate or review an income-related rent for long enough to be able to do so; and
 - “(ii) the information is accurate.
- “(2) If **subsection (1)** applies, the agency must—

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- “(a) calculate the income-related rent for the time being for the tenant; and
 - “(b) provide notification under section 107A.
- “(2A) However, if the agency is not satisfied that it has had all information reasonably needed to calculate or review an income-related rent for long enough to be able to do so or that the information is accurate, the agency must provide notification to the social housing provider under **section 107A** that, as applicable,—
- “(a) the rent for the housing must be its market rent for the time being, in accordance with **section 72(3)**; or
 - “(b) the rent for the housing may be determined by the registered community housing provider, but must not exceed its market rent for the time being, in accordance with **section 96(3)**.
- “(3) The agency must update a notification following any change to the income-related rent calculated or determined for the tenant.
- “(4) The agency may update a notification following an investigation of circumstances relevant to an income-related rent under this Part.

“**107 Backdating of applications for calculation of income-related rent**

- “(1) The agency may treat an application made at any time for it to calculate an income-related rent as having been made at any earlier time it determines, if satisfied that—
- “(a) it has all information reasonably needed to calculate an income-related rent as at the time determined; and
 - “(b) the information is accurate; and
 - “(c) it was unreasonable in all the circumstances to expect the application to have been made earlier.
- “(2) This subsection applies to an application made to the agency for it to calculate an income-related rent if,—
- “(a) at the time it was made, the agency—
 - “(i) did not have all the information reasonably needed to calculate an income-related rent; or
 - “(ii) had all the information reasonably needed to calculate an income-related rent, but was not satisfied that it was accurate; and

- “(b) at some later time, the agency is satisfied that—
 - “(i) it has all that information; and
 - “(ii) the information is accurate.
- “(3) The agency may treat an application to which **subsection (2)** applies as if the agency had had all the information reasonably needed to calculate an income-related rent at any time it determines between the time the application was made and the later time concerned.

“107A Agency to must notify social housing providers of a tenant’s eligibility for income-related rent

- “(1) The agency must notify a social housing provider of the income-related rent calculated for a tenant who has been referred or allocated to, or is housed by, that social housing provider.
- “(2) The agency—
 - “(a) must update the notification following any change to the income-related rent calculated or notified for the tenant, including any change where the agency’s assessment is that the income-related rent should be equal to the market rent; and
 - “(b) may update a notification following an investigation under this Part.
- “(3) An updated notification must state whether the change in income-related rent is due to a change in the tenant’s circumstances or the circumstances of any other applicable person and, if so, the date the change in circumstances occurred.
- “(4) A social housing provider is entitled to rely on a notification given under this section.
- “(5) A notification under this section may be given by electronic means in accordance with Part 2 of the Electronic Transactions Act 2002.

“Calculating income-related rents

“108 Calculating income-related rents

- “(1) An income-related rent (calculated on a weekly basis) is the higher of the following rents:
 - “(a) a rent calculated by reference to household income under **subsection (2)**:

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- “(b) a rent calculated by reference to benefit levels under **subsection (3)**.
- “(2) A rent calculated by reference to household income is the sum of—
 - “(a) the prescribed proportion of the sum of the assessable incomes of the applicable persons concerned, up to the prescribed threshold (or the threshold prescribed for tenants of a category to which the tenant belongs); and
 - “(b) the prescribed proportion of any amount by which that sum is greater than that threshold; and
 - “(c) if any of the applicable persons is eligible to receive family tax credits under subparts MA to MF and MZ of the Income Tax Act 2007, the prescribed proportion of the lesser of—
 - “(i) the total of the amounts that the applicable persons are eligible to receive as family tax credits under those subparts; and
 - “(ii) a prescribed amount (or an amount calculated by a prescribed means).
- “(3) A rent calculated by reference to benefit levels is the sum of—
 - “(a) the prescribed proportion of the rate (before abatement) stated in paragraphs (a) to (f) of clause 1 of Schedule 9 of the Social Security Act 1964 that would be appropriate if the tenant were a beneficiary; and
 - “(b) if any of the applicable persons is eligible to receive family tax credits under subparts MA to MF and MZ of the Income Tax Act 2007, the prescribed proportion of the lesser of—
 - “(i) the total of the amounts that the applicable persons are eligible to receive as family tax credits under those subparts; and
 - “(ii) a prescribed amount (or an amount calculated by a prescribed means).

“109 Assessable income

The assessable income of an applicable person is the agency’s estimate of the person’s weekly income from all sources,—

- “(a) if the agency considers that income tax is payable on any part of it, after the deduction of whichever of the following the agency thinks fit in the particular case:
 - “(i) any income tax actually paid in respect of or deducted from that part; or
 - “(ii) the agency’s estimate of the amount of income tax payable in respect of it; and
- “(b) if the agency considers that any premium is payable in respect of any part of it under section 219(1) of the Accident Compensation Act 2001, after the deduction of whichever of the following the agency thinks fit in the particular case:
 - “(i) any premium actually paid in respect of that part; or
 - “(ii) the agency’s estimate of the amount of premium payable in respect of it; and
- “(c) if the agency considers that any levy is payable in respect of any part of it under section 219 of the Accident Compensation Act 2001, after the deduction of whichever of the following the agency thinks fit in the particular case:
 - “(i) any levy actually paid in respect of that part; or
 - “(ii) the agency’s estimate of the amount of levy payable in respect of it.

“110 Certain amounts included in weekly income

- “(1) For the purposes of **section 109**, a person’s weekly income includes—
 - “(a) the appropriate weekly proportion of any periodical payment, whether capital or not, made to the person on a regular basis by any other person for income-related purposes and used by the person for income-related purposes; and
 - “(b) the appropriate weekly proportion of the value of any goods, service, transport, or accommodation (other than accommodation provided by HNZ or a registered community housing provider) supplied to the person on a regular basis by any other person.

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“(2) A person’s weekly income includes contributions from additional residents to the extent only required by the calculation mechanism.

“(3) **Subsection (1)** does not limit **section 109**.

“(4) **Subsection (2)** overrides **subsection (1) and section 109**.

“**111 Calculation mechanism may include amounts in or exclude amounts from weekly income**

“(1) For the purposes of **section 109**, a person’s weekly income—

“(a) includes any amount or payment (or, as the case requires, the appropriate weekly proportion of any amount or payment) of a prescribed description:

“(b) does not include any amount or payment (or, as the case requires, the appropriate weekly proportion of any amount or payment) of a prescribed description.

“(2) **Subsection (1)(a)** does not limit **section 109**.

“(3) **Subsection (1)(b)** overrides **sections 109 and 110(1)**.

*“Assessable assets, and deprivation of income
or property*

“**112 Assessable assets**

“(1) Assessable assets generate imputed income at a rate of interest for the time being stated by the joint Ministers by notice in the *Gazette*; and, for the purposes of **section 109**,—

“(a) the gross income from any person’s assessable assets is the greater of the actual income from those assets and the imputed income they generate; and

“(b) the person’s weekly income must be estimated accordingly.

“(2) In **subsection (1)**, **assessable assets** has the meaning prescribed in regulations made under **section 115**.

“**113 Assessable income may be adjusted in certain cases**

“(1) **Subsection (2)** applies if the agency is satisfied that—

“(a) an applicable person has directly or indirectly deprived himself or herself of any income or property; and

“(b) as a consequence of the deprivation, an income-related rent of any social housing in respect of which the person

is an applicable person is (or but for this section would be) lower than it would otherwise be.

- “(2) The agency may treat the person’s assessable income as having been increased to the extent the agency thinks necessary to reflect the deprivation, or any lesser extent.
- “(3) **Subsection (2)** overrides **sections 108(1) and 114**.
- “(4) In this section,—
- “**income** does not include any amount that an applicable person might be considered to derive from any impairment lump sum under Schedule 1 of the Accident Compensation Act 2001
- “**property** does not include any such impairment lump sum received by an applicable person for the period of 12 months following the receipt of that payment.

“Estimating weekly income, and regulations for purposes of calculation mechanism

“**114 Estimating weekly income**

For the purposes of **section 109**, a person’s weekly income is the person’s estimated income for the prescribed period commencing on the day on which the estimation is made (or in the case of an application backdated under **section 107** or a review under **section 117** or action taken under **section 123**, the day from which the estimation is made), divided so as to equate to a weekly amount; but—

- “(a) that estimated income must be treated as an amount equal to—
- “(i) the agency’s estimate of the income received by the person for any period equal to the prescribed period (ending on a day before the day concerned) that the agency decides, divided so as to equate to a weekly amount; or
- “(ii) if the agency thinks it more appropriate in all the circumstances, the agency’s estimate of the income received by the person for any shorter period (ending on a day before the day concerned) that the agency decides, divided so as to equate to a weekly amount; and

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“(b) there may be deducted from that amount any items by which the agency is satisfied the income is likely to be reduced, and there may be added to that amount any items by which the agency is satisfied the income is likely to be increased.

“115 Regulations for purposes of calculation mechanism

“(1) The Governor-General may, by Order in Council, make regulations for any or all of the following purposes:

“(a) prescribing a definition of assessable assets for the purposes of **section 112(2)**:

“(b) prescribing matters contemplated by **sections 108 to 114**:

“(c) providing for any other matters contemplated by **sections 108 to 114**, necessary for their administration, or necessary for giving them full effect.

“(2) The regulations may—

“(a) prescribe a zero proportion (or a means for calculating proportions capable of producing a zero proportion) for the purposes of any provision:

“(b) prescribe a proportion or threshold (or a means for calculating a proportion or threshold) for the purposes of any provision by reference to any or all of the following matters:

“(i) the relationship status of the tenant concerned:

“(ii) the relationship status of the applicable persons concerned:

“(iii) the number of dependent children of the tenant concerned:

“(iv) the number of dependent children of the applicable persons concerned:

“(v) the number of people living or intended to live in the housing concerned:

“(c) prescribe a threshold (or a means for calculating a threshold) for the purposes of any provision by reference to the rate of a benefit within the meaning of section 3(1) of the Social Security Act 1964, or the rates of 2 or more such benefits.

- “(3) A means for calculating may comprise any number of mechanisms and parameters.
- “(4) **Subsection (2)** does not limit **subsection (1)**.
- “(5) Nothing in this section affects the application of the New Zealand Bill of Rights Act 1990.

~~“115A Application of sections 116 to 119~~

~~To avoid doubt, sections 116 to 119—~~

- ~~“(a) apply to a tenant regardless of whether the tenant was let HNZ housing before or after the commencement of section 19 of the Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Act 2013 (commencement); and~~
- ~~“(b) apply to a prospective tenant regardless of whether the person has applied for HNZ housing before or after that commencement.~~

“Administrative matters and review

“116 Tenant’s duty to advise changes of circumstances

- “(1) Every person to whom any social housing is let at an income-related rent must promptly advise the agency of—
 - “(a) any change in the person’s circumstances likely to result in the payment of a higher income-related rent; and
 - “(b) any change known to the person in the circumstances of any other applicable person likely to result in the payment of a higher income-related rent by the first-mentioned person.
- “(2) Every person to whom any social housing is let (whether at an income-related rent or a market rent) must promptly advise the agency of—
 - “(a) any change in the person’s circumstances likely to result in the person no longer being eligible to be allocated social housing or no longer in need of the particular social housing the person is being let; and
 - “(b) any change known to the person in the circumstances of any other applicable person likely to result in the first-mentioned person no longer—
 - “(i) being eligible to be allocated social housing; or

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- “(ii) being in need of the particular social housing that the first-mentioned person is being let.
- “(3) Every person who is a prospective tenant must promptly advise the agency of any change in the circumstances of the person or the person’s spouse or partner likely to result in the person not or no longer—
 - “(a) being eligible to be allocated social housing; or
 - “(b) needing to be allocated, assigned, or let any particular social housing.

“117 Reviews of income-related rents

- “(1) The agency may at any time, of its own motion or on application by a tenant of the social housing concerned, review any income-related rent to ascertain—
 - “(a) whether it or some other income-related rent is now appropriate; or
 - “(b) whether at some earlier time it or some other income-related rent was appropriate; or
 - “(c) both.
- “(2) After reviewing the income-related rent, the agency,—
 - “(a) if satisfied some other income-related rent (including an income-related rent equivalent to the market rent) is now appropriate, may calculate and notify that other income-related rent for the tenant:
 - “(b) if satisfied that at some earlier time a higher income-related rent was appropriate, may take action under **section 76(2), 98(2), or 126**:
 - “(c) if satisfied that at some earlier time a lower income-related rent was appropriate, must make any necessary refund.
- “(2A) However, if after reviewing the income-related rent, the agency is not satisfied that it has all information reasonably needed to calculate or review an income-related rent, the agency must provide notification to the social housing provider under **section 107A** that, as applicable,—
 - “(a) the rent for the housing must be its market rent for the time being, in accordance with **section 72(3)**; or
 - “(b) the rent for the housing may be determined by the registered community housing provider, but must not exceed

its market rent for the time being, in accordance with
section 96(3).

- “(3) The agency—
- “(a) does not have to calculate that other income-related rent under **subsection (2)(a)** unless, in the agency’s opinion, it would result in a material difference to the existing income-related rent; and
 - “(b) does not have to give a notification under **section 105 or 107A** unless the agency has calculated the income-related rent and, in the agency’s opinion, the result is a material difference from the existing income-related rent; and
 - “(c) does not have to act under **subsection (2)(b)** unless in the agency’s opinion, there has been a material underpayment of rent for the housing concerned.

“118 Agency may review housing eligibility and need for social housing

- “(1) The agency, in accordance with any direction under **section 103(1A) or (1B)**, may at any time review any 1 or more of the following in relation to a tenant:
- “(a) the housing needs of the tenant; or
 - “(b) the eligibility (including continued eligibility) of the tenant for social housing.
- “(1A) The agency may, on the application of the social housing provider, review the need of a tenant for particular social housing.
- “(2) Nothing in this section limits or affects any power of the agency to conduct a review under any other enactment.

“118 Agency may review housing eligibility

- “(1) The agency may—
- “(a) at any time, on its own motion or on the application of a social housing provider, review the eligibility of a prospective tenant for social housing;
 - “(b) subject to and in accordance with any directions given under **section 103(1B)**, at any time, on its own motion or on the application of a social housing provider,

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review the continued eligibility of a tenant for social housing.

“(2) The agency must conduct a review under **subsection (1)(a)** in accordance with directions given under **section 103(1A)**.

“(3) The agency must conduct a review under **subsection (1)(b)** in accordance with directions (if any) given under **section 103(1A)(b)**.

“(4) Nothing in this section limits or affects any power of the agency to conduct a review under any other enactment.

“118A Agency may review housing needs of tenant

“(1) The agency may, at any time, on its own motion or on the application of a social housing provider, review the housing needs of a tenant.

“(2) Nothing in this section limits or affects any power of the agency to conduct a review under any other enactment.

“Investigations and information-gathering powers

“119 Agency may investigate circumstances relevant to income-related rent

The agency may investigate—

“(a) the present circumstances of—

“(i) any tenant of social housing who is paying, or has applied to the agency for the agency to calculate, an income-related rent; or

“(ii) any person who is an applicable person in relation to the tenant:

“(b) the circumstances (as they existed immediately before the income-related rent concerned was calculated or during any period when it was applicable) of—

“(i) any tenant or former tenant of social housing who was required to pay an income-related rent for the housing; or

“(ii) any person who was an applicable person in relation to the tenant or former tenant at the time concerned.

“120 Agency may investigate circumstances of prospective tenant

The agency may investigate the circumstances of any prospective tenant or of any person who would be an applicable person in relation to that tenant to the extent that those circumstances might be relevant to—

- “(a) the eligibility of the prospective tenant to be allocated social housing or to be allocated or referred to any particular social housing provider; or
- “(b) the housing needs of the prospective tenant.

“121 Agency may investigate circumstances relevant to continued eligibility

“(1) The agency may investigate the circumstances of any tenant of social housing (whether paying income-related rent or market rent for the housing) or the circumstances of any applicable person in relation to that tenant, to the extent that those circumstances might be relevant to—

- “(a) the continued eligibility of the tenant to be allocated social housing; or
- “(b) the housing needs of the tenant.

“(2) The agency may, on application by a social housing provider, investigate the circumstances of any tenant of social housing or an applicable person in relation to the tenant, to the extent that those circumstances might be relevant to the continued need of the tenant for the particular social housing that the tenant has been allocated, assigned, or let.

“122 Agency may ask questions

For the purpose of any investigation conducted under **section 119, 120, or 121**, the agency—

- “(a) may ask any person whose circumstances it may investigate any relevant questions it thinks fit; and
- “(b) may ask any person whose circumstances it may investigate to verify by statutory declaration—
 - “(i) any information he or she has given when answering questions asked under **paragraph (a)**; or

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- “(ii) any other information that he or she has at any time given to the agency; or
- “(iii) any information within his or her personal knowledge that has at any time been given to the agency by—
 - “(A) an applicable person in relation to that person (where the person whose circumstances are being investigated is a tenant); or
 - “(B) a person who would be an applicable person in relation to that person (where the person whose circumstances are being investigated is a prospective tenant); or
 - “(C) any person who was an applicable person in relation to the tenant or former tenant at the time concerned.

“123 Actions that may be taken by agency

- “(1) The agency may take the actions stated in **subsection (2)** if—
 - “(a) any person whose circumstances it may investigate—
 - “(i) fails or refuses to answer (or, in the agency’s opinion, fails or refuses to answer fully) any question asked under **section 122(a)**; or
 - “(ii) fails or refuses to verify any information by statutory declaration when asked to do so under **section 122(b)**; or
 - “(b) it believes on reasonable grounds that any person whose circumstances it may investigate has deliberately given a false or misleading answer to any question asked under **section 122(a)**; or
 - “(c) for the purpose of a review under **section 447 or 118 or 118A**, the agency requires information from a tenant under **section 125(1)(d)**, and—
 - “(i) the tenant fails or refuses to comply fully with the requirement for information; or
 - “(ii) the agency believes on reasonable grounds that the tenant has deliberately given false or misleading information in response to the requirement.
- “(2) The actions are,—

- “(a) to the extent that the tenant is the person or people to whom any social housing is let or to be let,—
- “(i) calculate an income-related rent for the tenant on the basis of the agency’s own understanding of the circumstances; or
 - “(ii) calculate the income-related rent for the tenant as being equal to the market rent from time to time for the social housing:
- “(b) to the extent that the tenant is a prospective tenant only,—
- “(i) suspend the process of determining whether the tenant is eligible to be allocated social housing; or
 - “(ii) suspend the process of determining whether the tenant is eligible to be referred or allocated to HNZ or any registered community housing provider; or
 - “(iii) decline the tenant’s application to become a tenant of social housing:
- “(c) to the extent that the tenant is an existing tenant only,—
- “(i) ~~for the purpose of **section 117**~~; treat the tenant as having had a change in circumstances (and the date of change in circumstances) on the basis of its own understanding of the circumstances; or
 - “(ii) ~~review, on the basis of the agency’s own understanding of the circumstances,—~~
 - “(A) ~~the eligibility of the tenant for social housing; or~~
 - “(B) ~~the tenant’s housing needs:~~
 - “(ii) for the purpose of **section 118**, review, on the basis of the agency’s own understanding of the circumstances, the eligibility of the tenant for social housing:
 - “(iia) for the purpose of **section 118A**, review, on the basis of the agency’s own understanding of the circumstances, the tenant’s housing needs:
 - “(iii) treat the tenant as not eligible to be or continue to be allocated social housing, on the basis of

the agency's own understanding of the circumstances.

“124 Agency may seek information

- “(1) For the purposes of a review under **section 117 or 118 section 117, 118, or 118A** or an investigation under **section 119, 120, or 121**, the agency may request any person to—
- “(a) answer questions; or
 - “(b) allow the agency to inspect any document or other written information; or
 - “(c) give the agency—
 - “(i) a copy of any document or other written information; or
 - “(ii) a printout of any information stored digitally.
- “(2) The person does not have to comply with the request, but (for the purposes of section 7(1) of the Privacy Act 1993) this subsection authorises the person to make personal information available in response to the request.

“125 Agency may require information for certain purposes

- “(1) The agency may by written notice require information from any person for any 1 or more of the following purposes:
- “(a) the purpose of ascertaining the housing needs of a prospective tenant:
 - “(b) the purpose of ascertaining the eligibility of a tenant to be allocated social housing:
 - “(c) the purpose of calculating an appropriate income-related rent:
 - “(d) the purpose of a review under **section 117 or 118 section 117, 118, or 118A**:
 - “(e) the purpose of any investigation under **section 119, 120, or 121**:
 - “(f) the purpose of ~~determining and~~ detecting whether a person has committed or is committing an offence under **section 129 or 130**:
 - “(g) the purpose of determining and detecting the cost of fraud under **section 129 or 130**:
 - “(h) 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 question asked under **section 122(a)**.

- “(2) The agency when requiring any information under **subsection (1)** must do so in accordance with the code of conduct.
- “(3) The agency may in writing require any person to advise whether any information provided under **subsection (1)** is accurate.
- “(4) A person from whom information is required under **subsection (1)** or advice is required under **subsection (3)** must comply with the requirement—
 - “(a) no later than 5 working days after the notice was given; and
 - “(b) in the manner specified in the notice, without charge to the agency.
- “(5) This subsection authorises (for the purposes of section 7(1) of the Privacy Act 1993) any person who is required to provide information under **subsection (1) or (3)** to make personal information available in response to the requirement.
- “(6) **Subsection (1)** does not—
 - “(a) require any person to provide any information or produce any document that would be privileged in a court of law;
 - “(b) require any person to provide any information or produce any document that is legally professionally privileged.
- “(7) **Subsection (6)** does not apply to information that—
 - “(a) consists wholly or partly of, or relates wholly or partly to,—
 - “(i) the receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person); or
 - “(ii) investment receipts (being receipts arising or accruing from any money lodged at any time with a lawyer for investment) of any person or persons (whether the lawyer, his or her clients, or any other person or persons); and

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- “(b) 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.
- “(8) If a person refuses to disclose any information or document on the ground that it is privileged under **subsection (76)(a) or (b)**,—
- “(a) the agency 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 or not the claim of privilege is valid; and
- “(b) for the purposes of determining that application, the Judge may require the information or document to be produced to the court.
- “(9) In this section,—
- “**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
- “**trust account**, in relation to a lawyer has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006.

“**125A Powers of agency to use information**

If the agency is the Ministry of Social Development, the agency may, despite any other enactment,—

- “(a) use information obtained under this Part and Schedule 4 to perform its functions, duties, and powers under the Social Security Act 1964; and
- “(b) use information obtained under the Social Security Act 1964 to perform its functions, duties, and powers under this Part.

“**126 Recovery where rate of rent too low**

- “(1) **Subsection (2)** applies to a tenant of social housing and a period of time if, at any later time, the agency—
- “(a) has in its possession information (whether or not obtained as a result of a review or an investigation under this Act) that—

- “(i) it did not have during that period, or had but did not have reasonable grounds to believe; and
 - “(ii) it now believes on reasonable grounds; and
 - “(b) is satisfied that, if it had had the information before the period and had had reasonable grounds to believe the information, it would have calculated for the tenant an income-related rent higher than the income-related rent that it last notified to the social housing provider in respect of the period (capped at the market rent).
- “(2) If this subsection applies to a tenant of social housing and a period of time, the agency may calculate, and recover as a debt due to the Crown, the difference between—
- “(a) the higher income-related rent it would have calculated for the tenant, but capped at the market rent for the housing, in respect of the period; and
 - “(b) the income-related rent calculated and notified for the tenant (capped at the market rent).
- “(3) Amounts recoverable under **subsection (2)** are not rent in arrear for the purposes of the Residential Tenancies Act 1986.

“**126A Recovery of debt where agency is Ministry of Social Development**

For the purpose of **section 76(2), 98(2), or 126(2)**, if the agency is the Ministry of Social Development,—

- “(a) the agency must treat the debt as it were a debt due to the Crown under section 85A of the Social Security Act 1964, with any necessary modification; and
- “(b) to avoid doubt, the agency may recover that debt in accordance with that Act from any tenant or former tenant of social housing.

“Allocation of social housing

“**127 Allocation of social housing**

- “(1) The matters to which the agency may have regard in doing any of the things stated in **subsection (2)** may include criteria that have, or are capable of having, the effect that tenants, people who are or might be applicable persons in relation to those

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tenants, and other people who are or might be residing in the housing concerned are treated differently on the basis of—

- “(a) their marital status, disability or absence of disability, age, or family status (as the terms marital status, disability, age, and family status are defined in section 21(1)(b), (h), (i), and (l) of the Human Rights Act 1993); or
 - “(b) whether or not they are resident, or ordinarily resident, or permanently resident, or lawfully resident, in New Zealand; or
 - “(c) their incomes; or
 - “(d) their property; or
 - “(e) 2 or more of those factors.
- “(2) The things are any thing that the agency does in the course of determining eligibility for social housing or social housing offered by a social housing provider, and include—
- “(aa) assessing the housing needs of a tenant:
 - “(a) assessing the eligibility of prospective tenants to be allocated social housing:
 - “(b) reviewing the eligibility of tenants to be or continue to be allocated social housing, or reviewing the eligibility of a tenant under **section 118** or the ~~or~~ housing needs of a tenant under **section 118A**;
 - “(c) operating a waiting list of tenants who have been assessed as being eligible for social housing, but who have yet to be allocated, assigned, or let social housing or particular social housing:
 - “(d) providing the results of its assessments of eligibility and housing needs to HNZ or registered community housing providers:
 - “(e) referring or allocating prospective tenants to social housing providers.
- “(3) Nothing in this section affects the application of the New Zealand Bill of Rights Act 1990.

“Offences

“129 Offence not to provide information or to provide false or misleading information

“(1) A person who is required to provide information under **section 125(1)** commits an offence if the person—

“(a) fails or refuses to provide, without reasonable excuse, the information required:

“(b) provides false or misleading information in response to the requirement.

“(2) A person who is required under **section 125(3)** to advise whether the information provided under **section 125(1)** is accurate commits an offence if the person—

“(a) fails or refuses to provide that advice, without reasonable excuse:

“(b) provides false or misleading information in response to the requirement.

“(3) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$2,000.

“130 Offence to mislead agency for certain purposes or results

“(1) A person commits an offence who, for the purpose described in **subsection (2)** or with the result described in **subsection (3)**,—

“(a) makes any statement knowing it to be false in any material particular; or

“(b) deliberately does or says anything for the purpose of misleading or attempting to mislead the agency; or

“(c) when required to advise the agency under **section 116** or provide information under **section 125**, deliberately omits to do or say anything for the purpose of misleading or attempting to mislead the agency.

“(2) The purpose is—

“(a) for that person or another person to be eligible or continue to be eligible to be allocated social housing:

“(b) for that person or another person to be eligible or continue to be eligible to be allocated, assigned, or let particular social housing, or to be allocated, assigned, or let some other social housing:

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- “(c) for that person or another person to have calculated for them, or to pay or continue to pay as rent for social housing, an income-related rent or lower income-related rent than they would otherwise be entitled to under this Act or an income-related rent that they are not entitled to under this Act.
- “(3) The result is that that person or another person, whether or not entitled to it under this Act,—
 - “(a) is or continues to be assessed as eligible to be allocated social housing:
 - “(b) is or continues to be allocated or assigned to a particular social housing provider:
 - “(c) is or continues to be allocated, assigned, or let particular social housing:
 - “(d) is allocated, assigned, or let some other social housing:
 - “(e) is let social housing at an income-related rent or lower income-related rent.
- “(4) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding \$5,000, or both.

“Appeals

“131 Rights of appeal

- “(1) This section and **sections 132 to 134** apply to—
 - “(a) any decision or determination of the agency made under this Part, the calculation mechanism, or Schedule 3 in respect of an income-related rent; and
 - “(b) any assessment by the agency of—
 - “(i) the eligibility of any tenant to be, or to continue to be, allocated social housing; or
 - “(ii) the housing needs of any tenant.
- “(2) Nothing in this section and **sections 132 to 134**, or in any regulations made under **section 135**, limits or affects the rights of any tenant of social housing, or of any social housing provider as landlord, under the Residential Tenancies Act 1986.

“132 Tenant may appeal

A tenant may, in accordance with regulations made under **section 135**, appeal against a decision, determination, or assessment referred to in **section 131(1)** if the agency—

- “(a) has confirmed it (whether as originally made or as varied) under the process for the time being established by the agency to review such decisions, determinations, or assessments; or
- “(b) has no such process for the time being established.

“133 Powers of appeal body

“(1) In determining the appeal, the appeal body has all the powers, duties, functions, and discretions the agency had in relation to the matter concerned and may—

- “(a) confirm, modify, or reverse the decision, determination, or assessment; or
- “(b) refer all or any part of the matter back to the agency for further consideration, together with—
 - “(i) any directions it thinks just relating to the reconsideration; and
 - “(ii) a written statement of its reasons for doing so.

“(2) The appeal body—

- “(a) may award costs against the agency in respect of any appeal if—
 - “(i) it is allowed in whole or in part; or
 - “(ii) all or any part of the matter is referred back to the agency for further consideration; and
- “(b) may award costs against the appellant in respect of any appeal that is refused, if the appeal body believes that it was frivolous or vexatious, or should not have been brought.

“134 Where appeal body established by regulations

If the agency is not the Ministry of Social Development and regulations under **section 135(1)(a)** establish a body to dispose of appeals under **sections 131 to 133**, any party to any appeal to the body who is dissatisfied with any determination of the body may appeal to a District Court and in that case,—

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- “(a) within 14 days after the date of the determination, the appellant must—
 - “(i) lodge a notice of appeal with the court; and
 - “(ii) give a copy of the notice to every other party to the appeal:
- “(b) the court or a Judge may, on the application of the appellant or intending appellant, extend any time prescribed or allowed under this section for the lodging of a notice of appeal:
- “(c) except as provided by this subsection, the case must be dealt with in accordance with the rules of the District Court.

“Regulations

“135 Regulations relating to appeals and other matters

- “(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
 - “(a) for the purposes of **section 132**,—
 - “(i) establishing a body to dispose of appeals under that section, prescribing how its members are to be appointed, and prescribing how it is to hear and dispose of appeals; or
 - “(ii) providing that such appeals are to be made to the Social Security Appeal Authority established by the Social Security Act 1964 as if they were appeals against decisions or determinations under that Act, and providing that sections 12J to 12N, section 120A, and sections 12P to 12S of that Act apply, with or without modification, to the hearing and disposal of appeals; or
 - “(iii) providing, if the agency is not the Ministry of Social Development, that such appeals are to be made to a District Court, and providing that the District Courts Act 1947 and the rules of the District Court apply, with or without modification, to the hearing and disposal of appeals; or
 - “(b) providing for any other matters contemplated by the provisions of this Part (other than **sections 108 to**

- 114**), necessary for their administration, or necessary for giving them full effect.
- “(2) Any body established under **subsection (1)(a)(i)** is a statutory board within the meaning of the Fees and Travelling Allowances Act 1951, and every member of it is entitled to—
- “(a) remuneration by way of fees, salary, or allowances for the member’s services as a member of it;
 - “(b) payment of travelling allowances and expenses in respect of time spent travelling in its service.
- “(2A) If regulations made under **subsection (1)** provide for the matters described in **subsection (1)(a)(ii)** (relating to the Social Security Appeal Authority), regulations may—
- “(a) provide for the function of the Benefits Review Committees in relation to appeals under this Act; and
 - “(b) require that an appeal to the Social Security Appeal Authority may not be heard until the matter has been ~~considered~~ confirmed or varied by the Benefits Review Committee.

“Delegations

“**136 Delegation of powers under this Part**

- “(1) The agency—
- “(a) may not delegate a power under **section 117(2)(b), 122(b), 123, or 126**, except to a person who is an employee of the agency; and
 - “(b) may not delegate any other power under this Part, the calculation mechanism, or Schedule 3, except to a person who is—
 - “(i) an employee of the agency; or
 - “(ii) engaged by the agency under a contract for services providing for the person to exercise that power.
- “(2) Despite **subsection (1)**, if the agency is a department, it may delegate any power under this Part to the chief executive of another department, HNZ, or the Corporation, or to an employee of the department, in accordance with section 41 of the State Sector Act 1988.

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- “(3) A power that has been delegated by the agency in accordance with **subsection (1) or (2)** may, with the consent of the agency, be delegated,—
- “(a) ~~by the chief executive of a department, to an employee of that department:~~
 - “(b) ~~by HNZ, to the Corporation, a departmental agency, or an employee of HNZ, the Corporation, or a departmental agency:~~
 - “(a) by the chief executive of a department, to a departmental agency or an employee of that department or departmental agency:
 - “(b) by HNZ, to the Corporation, or an employee of HNZ or the Corporation:
 - “(c) by the Corporation, to an employee of the Corporation:
 - “(d) by an employee of the agency, to another employee of the agency.
- “(4) If the agency delegates a power under this Part, the calculation mechanism, or **Schedule 3** (not being a power referred to in **subsection (1)(a)**) to a body corporate engaged by the agency under a contract for services,—
- “(a) the body corporate cannot subdelegate it except to a person who is an employee of the body corporate; and
 - “(b) an employee of the body corporate to whom it is sub-delegated cannot subdelegate it further.
- “(5) This section overrides section 130(1) of the Companies Act 1993.

“Code of conduct

- “**137 Code of conduct applying to obtaining information under section 125**
- “(1) The agency, in consultation with the Privacy Commissioner must, within 3 months after the commencement of this section, issue a code of conduct that applies in respect of any requirement for information under **section 125**.
- “(2) The code of conduct—
- “(a) must include the matters specified in **section 141**; and
 - “(b) may include restrictions on obtaining—
 - “(i) specified classes of information; and

- “(ii) information from specified classes of persons or from persons in specified relationships; and
- “(c) must specify procedures applying to the obtaining of information under **section 125**.
- “(3) The agency may from time to time, in consultation with the Privacy Commissioner, amend the code of conduct, or revoke the code of conduct and issue a new code of conduct.
- “(4) Nothing in the code of conduct may derogate from any code of practice issued by the Privacy Commissioner under Part 6 of the Privacy Act 1993 that applies to the information required under **section 125**, and the agency, in consultation with the Privacy Commissioner, must amend the code of conduct to conform with any such code of practice. This subsection is affected by **section 139**.
- “(5) As soon as practicable after issuing any code of conduct and any amendment to it under this section, the agency must arrange for it to be published on an Internet site that is publicly available at all reasonable times or published in a form that is otherwise accessible to the public.
- “(6) The code of conduct that, before the commencement of this section, was issued under Part 5—
- “(a) is, on the commencement of this section, deemed to be issued under this section; and
- “(b) applies, subject to any necessary modification, in respect of any requirements for information under **section 125**.
- “**138 Who must comply with code of conduct**
- (1) The following persons must comply with the code of conduct when requiring information under **section 125**:
- “(a) the agency, the chief executive of the agency (if a department), and every employee of the agency;
- “(b) every person to whom the power to require such information has been delegated under **section 136**;
- “(c) every person or body corporate engaged by the agency under a contract for services providing for the person to exercise the power to require such information;
- “(d) every employee of a person or body corporate referred to in **paragraph (c)**.

“139 Regulations authorising information to be obtained

- “(1) The Governor-General may, on the advice of the joint Ministers given after consultation with the Privacy Commissioner, by Order in Council, make regulations authorising the agency to obtain pursuant to a requirement under **section 125**—
- “(a) any specified class of information; or
 - “(b) information from any specified class of persons; or
 - “(c) information in any specified manner.
- “(2) **Subsection (1)** applies despite the fact that the making of that requirement under that section would otherwise be in breach of any code of practice issued by the Privacy Commissioner under Part 6 of the Privacy Act 1993.

“140 Complaints

- “(1) Any person who is required to provide any information under **section 125** or who is the subject of that information may make a complaint to the Privacy Commissioner that the requirement breaches the code of conduct.
- “(2) Part 8 of the Privacy Act 1993 applies to the complaint as if the code of conduct were a code of practice issued under Part 6 of the Privacy Act 1993.

“141 Matters to be included in code of conduct

- “(1) The code of conduct issued under **section 137** must contain the following matters:
- “(a) provisions requiring any information to be first sought, as the case may require, except where compliance with the provision would prejudice the maintenance of the law, from—
 - “(i) the tenant or an applicable person in relation to the tenant; or
 - “(ii) the prospective tenant or the person who would be an applicable person in relation to the prospective tenant; or
 - “(iii) a former tenant.
 - “(b) provisions allowing a person referred to in **paragraph (a)** the time that is specified in the code to provide the information before the agency requires that information, or advice on the accuracy of that information, from an-

other person or agency, except where compliance with such provision would prejudice the maintenance of the law:

- “(c) a provision prohibiting a requirement under **section 125** being made in respect of a person referred to in **paragraph (d)** (not being a lawyer, an employer, or former employer of a person referred to in **paragraph (a)**) and not being a department, departmental agency, Crown entity, financial institution), unless there is reasonable cause to make a requirement under that section:
- “(d) a provision prohibiting a requirement under **section 125** being made to an employer in respect of any information that relates solely to the marital or relationship status of an employee or former employee of that employer:
- “(e) provisions otherwise restricting requirements under **section 125** being made to an employer to information specified in the code relating to the employment and the address of an employee or former employee of that employer.

“(2) In **subsection (1)(c)**, **reasonable cause** includes—

- “(a) cause to suspect that the person—
 - “(i) has committed an offence under this Act; or
 - “(ii) has obtained by fraud any income-related rent or social housing; or
 - “(iii) as a result of committing fraud, pays or continues to pay an income-related rent or remains in social housing or particular social housing:
- “(b) the fact that the person has failed, within the time specified in the code, or has refused to provide information in accordance with a requirement made to that person under a provision referred to in **subsection (1)(a)**.

“Compare: 1964 No 136 s11C

“Debt recovery by agency other than Ministry

“141AA Debt recovery by agency other than Ministry

“(1) If the agency is not the Ministry of Social Development, subsection (2) applies to the exercise by the agency of its power to recover debt under section 76(2), 98(2), or 126.

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- “(2) The agency may not recover any sum comprising that part of the debt that was caused wholly or partly by an error to which the tenant did not intentionally contribute if—
- “(a) the tenant acted in good faith in—
- “(i) continuing to pay the lower income-related rent during the period to which the debt relates; or
- “(ii) failing to advise the agency in accordance with **section 116(1)**; or
- “(b) it would be inequitable in all the circumstances, including the tenant’s financial circumstances, to permit recovery.
- “(3) In **subsection (2)**, **error** means—
- “(a) any incorrect information provided to or held by the agency;
- “(b) any erroneous act or omission of the agency that occurs during an investigation or review under this Part;
- “(c) any other erroneous act or omission by the agency.
- “Compare: 1964 No 136 s 86(9A), (9B)

“141A Application of sections 142 to 152

Sections 142 to 152 apply for the purpose of debt recovery under **section 76(2), 98(2), or 126** to the agency only if the agency is not the Ministry of Social Development.

“Deduction notices

“142 Interpretation of deduction notice sections of this Part

In this section and in **sections 143 to 152**, unless the context otherwise requires,—

“deduction notice means a notice issued under **section 143**

“overdue amount means the amount—

- “(a) recoverable as a debt due to the Crown under **section 76(2), 98(2), or 126(2)**; and
- “(b) that remains unpaid and includes any part of any amount of that kind

“payment, in relation to a third party, includes payments made, or to be made, by the third party as—

- “(a) salary or wages:

- “(b) a retiring allowance or pension or other payment of a similar nature:
- “(c) a benefit:
- “(d) weekly compensation under the Accident Compensation Act 2001:
- “(e) a bonus or an incentive payment:
- “(f) a commission:
- “(g) consideration for work performed under a contract for services

“**tenant**—

- “(a) means 1 or more people to whom social housing is or was let at an income-related rent; and
 - “(b) includes any former tenant
- “**third party** means the person required to make 1 or more deductions under a deduction notice.

“Compare: 1957 No 87 ss 2(1), 79

“**143 Deduction of overdue Crown debt**

- “(1) The agency may recover an amount as a debt due to the Crown by issuing a deduction notice in accordance with this section if any overdue amount remains unpaid, after the agency has reminded the tenant of the obligation to pay the amount and has done all it reasonably can to obtain repayment of the unpaid amount.
- “(2) Nothing in **subsection (1)** requires the chief executive to take proceedings in any court to establish or recover the debt before issuing a deduction notice.
- “(3) The deduction notice may require a third party to deduct an amount specified in the notice due from any payment that is payable or will become payable by the third party to the tenant, whether that payment will be made—
 - “(a) on the third party’s own account; or
 - “(b) in the third party’s capacity as an agent or a trustee; or
 - “(c) for any other reason.

“Compare: 1964 No 136 s 86A

“**144 Matters relating to deduction notice**

- “(1) The agency must specify in the deduction notice—

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- “(a) whether the deduction is to be made as a lump sum or by instalments; and
 - “(b) the time or times by which the amounts deducted must be paid to the agency; and
 - “(c) the date on which the deduction notice takes effect, being a date not earlier than 7 working days after the date on which it was issued.
- “(2) The agency must make all reasonable efforts to give the tenant a copy of a deduction notice within 7 working days after the notice is issued.
- “(3) A deduction notice is revoked when the agency notifies the third party in writing to that effect or issues a new deduction notice to that third party.
- “(4) The agency—
- “(a) may revoke a deduction notice at any time;
 - “(b) must revoke the deduction notice if satisfied that the overdue amount has been paid.
- “(5) Every deduction notice is subject to **sections 145 to 152**.
- “(6) A notice under this section may be given by electronic means in accordance with Part 2 of the Electronic Transactions Act 2002.

“**145 Issue of deduction notice to State sector employer**

In any case where a tenant is employed within a department (within the meaning of the State Sector Act 1988), a deduction notice may be issued under **section 143** to the chief executive of that department in respect of any salary or wages payable to the tenant.

“Compare: 1964 No 136 s 86B

“**146 Discharge of debt**

In any case where a third party deducts, under a deduction notice, any money payable to a tenant, the tenant is, to the extent of the amount deducted, discharged from his or her debt to the Crown.

“Compare: 1964 No 136 s 86C

“147 Deduction notices issued to banks

- “(1) Where the third party is a bank, any money held by the bank to the credit of the tenant is subject to the provisions of **section 143** and the amount required to be deducted under the deduction notice is, without prejudice to any other remedies against the tenant or any other person, deemed to be held in trust for the Crown and is a debt due to the Crown and may be recovered by the agency in any court or tribunal of competent jurisdiction.
- “(2) For the purposes of this section, **bank** means a person carrying on in New Zealand the business of banking, a credit union within the meaning of the Friendly Societies and Credit Unions Act 1982, and a building society within the meaning of the Building Societies Act 1965, but does not include the Reserve Bank of New Zealand established under the Reserve Bank of New Zealand Act 1989 (except in relation to an account maintained by that bank for an employee of the bank).
- “(3) For the purposes of this section, **money held by the bank to the credit of the tenant** includes money, and any interest on money, that is on deposit or deposited with a bank to the credit of the tenant, whether or not—
- “(a) the deposit or depositing is on current account:
 - “(b) the money is to be at interest at a fixed term or without limitation of time:
 - “(c) the tenant has made any application to withdraw or uplift the money.
- “(4) For the purposes of this section, money on deposit with a bank is deemed to be to the credit of the tenant if the money—
- “(a) is held in a joint bank account in the name of the tenant and 1 or more other persons; and
 - “(b) can be withdrawn from the account by or on behalf of the tenant without a signature being required at the time of that withdrawal from, or on behalf of, the other person or persons.

“Compare: 1964 No 136 s 86D

“148 Making of deductions

- “(1) Any person who makes a deduction under a deduction notice is deemed to be acting—

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- “(a) on the authority of the tenant and any other person concerned, and neither the tenant nor that other person has any claim against the third party or the agency or the Crown in respect of that deduction; and
 - “(b) on behalf of the agency, and, without prejudice to any other remedies against the tenant or any other person, any amount deducted must be held in trust for the Crown and is a debt due to the Crown and may be recovered by the agency in any court or tribunal of competent jurisdiction.
- “(2) A third party must, on request, give the tenant a statement in writing of any amount deducted, and of the purpose for which the deduction was made.
- “Compare: 1964 No 136 s 86E

“149 Offences in relation to deduction notices

- “(1) Every person commits an offence and is liable on conviction to a fine not exceeding \$2,000 who—
- “(a) fails to make any deduction required by a deduction notice; or
 - “(b) fails, after making a deduction, to pay the amount deducted to the agency within the time specified in the notice; or
 - “(c) permits payment to or on behalf of any person, other than the agency, of any amount deemed to be held in trust for the Crown under **sections 147 and 148**.
- “(2) Every employer commits an offence and is liable on conviction to a fine not exceeding \$1,000 who dismisses an employee or alters an employee’s position in the employer’s business or undertaking to the employee’s prejudice by reason of a deduction notice having been issued to the employer.
- “Compare: 1957 No 87 s 106A; 1964 No 136 s 86F

“150 Protected earnings

- “(1) Despite anything in **sections 143 to 148**, where a deduction notice is issued to an employer of a tenant, the employer must not, in making deductions under the deduction notice, reduce the amount paid to the tenant by way of salary or wages in respect of any week to an amount that is less than 60% of the

amount calculated as being the tenant's net ordinary weekly pay for a week.

- “(2) For the purposes of this section, the tenant's net ordinary weekly pay for a week is the balance left after deducting from the tenant's ordinary weekly pay (as defined in section 8 of the Holidays Act 2003) the amount of tax required to be withheld or deducted in accordance with the PAYE rules of the Income Tax Act 2007 if that ordinary weekly pay were the only salary or wages paid to the tenant by the employer in respect of a week.

“Compare: 1964 No 136 s 86G

“**151 Penalty for late deductions**

- “(1) A third party is liable to pay to the agency a penalty calculated in accordance with **subsection (2)** if the third party fails wholly or in part to—
- “(a) deduct the amount required by the notice; or
 - “(b) pay any amount deducted under the notice to the agency by the time specified in the notice.
- “(2) The penalty referred to in **subsection (1)** must be calculated as follows:
- “(a) on the amount in default, 10% of that amount or \$5, whichever is the greater;
 - “(b) for each additional month or part of a month in which the amount in default or any part of the amount has not been deducted or, as the case may be, has not been paid to the agency, a further penalty of 2% of that amount or part of the amount or \$1, whichever is the greater.
- “(3) The agency may, in its discretion, remit the whole or part of a penalty if satisfied that the failure to make the deduction or the payment was due to circumstances reasonably beyond the third party's control, or that, in all the circumstances, the imposition of that penalty would be inequitable.
- “(4) If the agency decides to remit the whole or part of any penalty and any amount of the penalty has been paid under this section, the agency may refund any excess.

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“(5) An amount payable to the agency under **subsection (1)** is a debt due to the Crown and may be recovered by the agency in any court or tribunal of competent jurisdiction.

“Compare: 1964 No 136 s 86I

“**152 How notice may be given**

“(1) Every notice given to any person under any of **sections 143 to 151** may be given by delivering it to that person,—

“(a) in the case of a natural person (other than an officer or employee in the service of the Crown in his or her official capacity),—

“(i) personally; or

“(ii) by leaving it at that person’s usual or last known place of residence or business or at the address specified by that person in any application or other document received from that person; or

“(iii) by posting it in a letter addressed to that person at that place of residence or business or at that address:

“(b) in the case of any other person, including an officer or employee in the service of the Crown in his or her official capacity,—

“(i) where applicable, personally; or

“(ii) by leaving it at that person’s place of business; or

“(iii) by posting it in a letter addressed to that person at that place of business.

“(2) If any such 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 fourth day after the day on which it is posted, and, in proving the delivery, it is sufficient to prove the letter was properly addressed and posted.

“(3) A notice to a person under any of **sections 143 to 151** may be given by electronic means in accordance with Part 2 of the Electronic Transactions Act 2002.

“Compare: 1964 No 136 s 86J

“Transitional matters

“153 Transitional arrangements for certain tenants

- “(1)** This section and Schedule 3 apply to a tenant of HNZ if, but for the provisions of that schedule,—
- “(a)** the rent that the tenant would be required to pay for the first rent period commencing on or after the appointed day—
would be greater than—
 - “(b)** the rent, after the deduction of any accommodation assistance (within the meaning of clause 1 of Schedule 3) to which the tenant was entitled, that the tenant was required to pay for the last rent period commencing before the appointed day.
- “(2)** Schedule 3 overrides **section 106**.

“154 Responsible department may verify entitlement

For the purposes of **section 153** and Schedule 3,—

- “(a)** the agency may, with the consent of the applicable persons concerned, give the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964 details of—
 - “(i)** those persons’ assessable incomes and the components of those incomes, and their cash assets, as supplied—
 - “(A)** to the company under **section 43(1)**; or
 - “(B)** to the agency for the purpose of **section 106(1)**; and
 - “(ii)** the weekly market rent in relation to the housing; and
 - “(iii)** the dates of the beginning and end of the rent period in respect of the housing that commenced immediately prior to the appointed day; and
- “(b)** an officer or employee of the department may, on the basis of the details given under **paragraph (a)**,—
 - “(i)** certify in writing to the applicable persons the kinds of accommodation assistance (within the meaning of clause 1 of Schedule 3) they were receiving and, in respect of assistance of each kind,

whether they were receiving more than their entitlement, their entitlement, or less than their entitlement immediately before the appointed day; and

- “(ii) give the agency a copy of the certificate; and
- “(c) the agency may rely on the certificate.

“Part 10

“Regulatory authority

“*Preliminary provisions*

“155 Interpretation of terms used in this Part

In this Part, unless the context otherwise requires,—

“**appeal body** means the body specified in regulations made under **section 178E** to whom appeals under **section 178B** may be made

“**prescribed** means prescribed in regulations made under **section 179**

“**prescribed eligibility criteria** means the eligibility criteria prescribed under **section 179(1)(c)** that a community housing provider must meet to be registered or obtain registration of a specified class

“**prescribed performance standards** means the performance standards prescribed under **section 179(1)(d)** that a community housing provider must meet to maintain registration or registration of a specified class

“**register** means the register of community housing providers established under **section 169**.

“*Appointment, objectives, functions, and operation of authority*

“156 Regulatory authority

- “(1) The Governor-General may by Order in Council made on the recommendation of the joint Ministers appoint a department, any specified business unit within a department, departmental agency, or a Crown entity to perform the functions and exercise the powers of the regulatory authority under this Part.

“(2) If the authority is a Crown entity, then the Crown Entities Act 2004 applies to the authority except to the extent that this Act expressly provides otherwise.

“157 Authority’s main objectives

The authority’s main objectives are—

- “(a) to register and regulate community housing providers, in order to ensure that their tenants are appropriately housed; and
- “(b) to support the growth of a fair, efficient, and transparent community housing sector.

“158 Authority’s functions

The functions of the authority are to—

- “(a) approve and register community housing providers in accordance with prescribed eligibility criteria and performance standards; and
- “(b) suspend or revoke such registration where a community housing provider no longer meets the prescribed eligibility criteria and performance standards; and
- “(c) maintain a register of registered community housing providers; and
- “(d) recommend to the joint Ministers the making of regulations for the purposes of this Part; and
- “(e) monitor and enforce compliance by registered community housing providers with any regulations made under this Part; and
- “(f) comply with any directions from the joint Ministers in relation to the regulation of registered community housing providers ~~that are in receipt of income-related rent subsidies~~; and
- “(g) provide the joint Ministers with such information and reports about the carrying out of its functions under this Part as the joint Ministers may request; and
- “(h) perform any other functions conferred on the authority by this Part.

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“159 Ministerial directions to authority

- “(1) The joint Ministers and, if applicable, any other Minister responsible for the authority; may give to the authority—
- “(a) directions specifying how registered community housing providers may be eligible for the income-related rent subsidy, including,—
 - “(i) the type of housing units that may be funded through the subsidy during any specified period of time; and
 - “(ii) the number of housing units that may be funded through the subsidy during any specified period of time; and
 - “(iii) the location of housing units that may be funded through the subsidy during any specified period of time:
 - “(b) directions stating the terms and conditions on which Crown grants are to be made available to registered community housing providers:
 - “(c) directions stating the terms and conditions on which assets of the Crown or of a Crown entity are to be made available to registered community housing providers.
- “(1A) Before making any direction under this section, the joint Ministers and, if applicable, any other Minister responsible for the agency must consult ~~with~~—
- “(a) the agency and the authority; and
 - “(b) any social housing provider that, in the Minister’s opinion, will be materially affected by the direction.
- “(1B) The requirement in **subsection (1A)(b)** does not apply to the first directions to be made under this section.
- “(2) The authority must, in carrying out functions under this Act, give effect to any directions that are given to it under this section and that are signed by the joint Ministers and if applicable, any other Minister responsible for the authority.
- “(3) If the authority is a Crown entity,—
- “(a) **subsections (1) to (2)** do not limit Part 3 of the Crown Entities Act 2004; and
 - “(b) if there is any ~~consistency~~ inconsistency between the provisions of this Act and the Crown Entities Act 2004

in relation to a direction under this section, the provisions of the Crown Entities Act 2004 prevail.

- “(4) As soon as practicable after giving a direction under this section, a Minister must publish it in the *Gazette* and present a copy of it to the House of Representatives.

“Compare: 2004 No 115 ss 103, 115

“Registration of community housing providers

“**160 Application for registration**

- “(1) A community housing provider may apply to the authority to be registered under this Part.

- “(2) An application must—

- “(a) be in the prescribed form; and
“(b) contain the prescribed information; and
“(c) be accompanied by any relevant prescribed fee.

“**161 Further information to be provided with registration application**

- “(1) The authority may require a community housing provider to provide any further information that the authority considers appropriate to an application for registration by that provider.

- “(2) The authority may refuse an application for registration if the community housing provider does not provide the further information required within a reasonable time after the requirement is made.

“**162 Authority must decide application for registration**

The authority must, as soon as practicable after receiving an application for registration that complies with **section 160**,—

- “(a) decide whether to register the applicant; and
“(b) give the applicant written notice of its decision; and
“(c) specify in the decision the class or classes of registration that the applicant has obtained.

“**163 Approval of registration**

- “(1) The authority may approve a community housing provider as a registered community housing provider if the authority is satisfied that—

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- “(a) the community housing provider’s application for registration complies with this Part; and
 - “(b) any relevant prescribed fee has been paid; and
 - “(c) having regard to the prescribed eligibility criteria and any other relevant matter, registration is appropriate.
- “(1A) The authority must in approving a registered community housing provider, determine the particular class or classes of registration that the provider has obtained.
- “(2) The authority must give effect to any approval of a community housing provider under **subsection (1)** by—
- “(a) giving notice of the registration of that provider in the *Gazette*; and
 - “(b) entering that provider’s name in the register.
- “(3) The effect of registration is that the community housing provider is, depending on the class or classes of registration it has obtained, eligible to receive any 1 or more of the following, on terms and conditions set by the joint Ministers:
- “(a) income-related rent subsidies from the Crown;
 - “(b) Crown grants;
 - “(c) assets of the Crown, or of a Crown entity.

“164 Refusal of registration

- “(1) If the authority is not satisfied that the requirements for registration in **section 163** have been met, the authority must refuse to register the community housing provider.
- “(2) The authority must give the community housing provider a written notice of the reasons for the decision to refuse to register the provider under this Part.

“165 Registration continuous so long as criteria continue to be met

- “(1) The authority must assess at least annually, and may assess at any other time, whether a registered community housing provider continues to meet the prescribed eligibility criteria and prescribed performance standards.
- “(2) A registered community housing provider that continues to meet those criteria and standards is entitled to the continuation

of its registration and any specified class of registration that it has obtained.

“166 Suspension of registration

“(1) If, after making an assessment under **section 165**, the authority determines that a registered community housing provider no longer meets the prescribed eligibility criteria and prescribed performance standards, the authority must—

“(a) suspend the provider’s registration until the provider satisfies the authority that it meets those criteria and standards; and

“(b) record the suspension in the register.

“(2) The authority must give the provider at least 14 days’ written notice and the opportunity to be heard before suspending its registration.

“(3) During the period for which the provider’s registration is suspended,—

“(a) the provider may not take on any new tenants paying an income-related rent:

“(b) the provider may be paid an income-related rent subsidy:

“(c) the provider may not apply for any further Crown grants:

“(d) the provider may not apply for any further assets of the Crown or of a Crown entity.

“(4) If the provider does not satisfy the authority for the purposes of **subsection (1)(a)** within 12 months after the suspension, or any further period that the authority may determine, the authority must revoke the provider’s registration in accordance with **sections 167 and 168**.

“167 When registration may be revoked

“(1) The authority may revoke the registration of a community housing provider under this Part if the authority is satisfied on reasonable grounds that the provider—

“(a) has failed, or is failing, to meet 1 or more of the prescribed eligibility criteria; or

“(b) has failed, or is failing, to meet 1 or more of the prescribed performance standards; or

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- “(c) has failed, or is failing, to comply with a lawful requirement of the authority under this Part; or
 - “(d) has ceased to operate as a community housing provider; or
 - “(e) is unable to pay its debts or to continue carrying on its business.
- “(2) The authority may revoke the registration of a community housing provider under this Part on the written request of the community housing provider.
- “(3) The authority may revoke the registration of a community housing provider whether or not that registration has been suspended under **section 166**.

“168 Procedure for revocation

- “(1) In any case where the authority revokes a community housing provider’s registration under **section 167**, the authority must—
- “(a) give written notice to the provider specifying the effective date of the revocation; and
 - “(b) give notice of the revocation in the *Gazette*; and
 - “(c) remove that provider’s name from the register referred to in **section 169**; and
 - “(d) give written notice to the agency of this as soon as practicable.
- “(2) If the revocation is on any of the grounds referred to in **section 167(1)**, the authority must—
- “(a) give the provider at least 14 days’ written notice and the opportunity to be heard before revoking the registration; and
 - “(b) give the provider a written notice of reasons for the decision.
- “(3) The effect of revocation is that the provider is no longer eligible to receive any benefits associated with any specified class or classes of registration that the provider has obtained, and those benefits may, without limitation, include income-related rent subsidies, Crown grants, or assets of the Crown or of a Crown entity.

“169 Register of community housing providers

The authority must establish and maintain a register of community housing providers that includes the following information about each registered provider:

- “(a) the current (and any former) full name and address and incorporation details (if applicable) of the provider; and
- “(b) the full names and addresses and appointment details of the current (and former) members of its governing body (if applicable); and
- “(c) the full details of any land in respect of which the provider is or was a registered proprietor, or over which it holds or has held a lease, tenancy agreement, or licence of more than 3 years’ duration, or at which it provides or has provided community housing services to the public; and
- “(d) its registration details as a registered community housing provider; and
- “(e) any prescribed information or documents.

“169A Certain community housing providers deemed to be registered

- “(1) A community housing provider that on the date of commencement of this section (**commencement date**) has entered into a Relationship and Grant Agreement with ~~the Social Housing Unit~~ within the Ministry of Business, Innovation, and Employment is, on and from the commencement date, deemed to be a registered community housing provider that has obtained a class of registration that qualifies the provider as being eligible to receive the income-related rent subsidy for 1 year after the commencement date.
- “(2) A community housing provider may choose not to be a deemed registered community housing provider by notifying the authority.
- “(3) To avoid doubt, this section does not affect a community housing provider’s right to receive Crown grants under the agreement referred to in **subsection (1)**.

*“Provisions relating to registered community
housing providers*

“170 Authority to monitor registered community housing providers

The authority—

- “(a) must monitor the compliance of registered community housing providers with the prescribed eligibility criteria and prescribed performance standards; and
- “(b) may require persons to supply information or produce documents for that purpose under **section 174**.

“171 Reporting requirements of registered community housing providers

- “(1) A registered community housing provider must provide reports on its operations to the authority—
 - “(a) annually in accordance with **section 172**; and
 - “(b) at any other time as required by the authority.
- “(2) A report must be in the form approved by the authority.

“172 Annual reports provided by registered community housing providers

- “(1) The reports to be provided annually by a registered community housing provider must include—
 - “(a) a report setting out its performance against the prescribed performance standards; and
 - “(b) a report containing its financial statements and accounts in accordance with a direction from the authority under this section; and
 - “(c) any other reports that the authority may require.
- “(2) The authority may give directions in relation to the contents of financial statements and accounts to be provided by registered community housing providers.
- “(3) The authority must publish a direction under this section in the *Gazette*.
- “(4) Reports must be provided to the authority in each year not more than 28 days after the annual general meeting of the registered community housing provider.

“173 Complaints about registered community housing providers

- “(1) Any person may complain to the authority alleging that a registered community housing provider has failed, or is failing, to meet prescribed eligibility criteria or prescribed performance standards.
- “(2) As soon as practicable after receiving a complaint, the authority must—
- “(a) inform the registered community housing provider concerned of the complaint; and
 - “(b) decide whether to accept or decline the complaint.
- “(3) The authority must, immediately after making a decision under **subsection (2)**,—
- “(a) give written notice of the decision to the person who made the complaint and the registered community housing provider concerned; and
 - “(b) if the authority decides to accept the complaint, proceed to investigate the complaint.
- “(4) The authority may decline to accept, and is not required to investigate, a complaint that it considers vexatious or frivolous.
- “(5) Nothing in this section affects the rights and obligations of community housing providers and their tenants under the Residential Tenancies Act 1986.

“174 Authority may require person to supply information or produce documents

- “(1) If the authority considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act, the authority may, by written notice served on any person, require the person—
- “(a) to supply to the authority, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
 - “(b) to produce to the authority, or to a specified person named in the notice, any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or
 - “(c) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any

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document or class of documents specified in the notice (within the time and in the manner specified in the notice).

- “(2) Information supplied in response to a notice under **subsection (1)(a)** must be—
- “(a) given in writing; and
 - “(b) signed in the manner specified in the notice.
- “(3) If a document is provided in response to a notice under **subsection (1)**, the authority, or the specified person to whom the document is produced, may—
- “(a) inspect and make records of that document; and
 - “(b) take copies of the document or extracts from the document.
- “(4) In this section, **specified person** means—
- “(a) an employee of the authority; or
 - “(b) another person to whom the authority has delegated the power to receive the relevant information.

*“Intervention powers in respect of registered
community housing providers*

“175 Use of intervention powers by authority

- “(1) The intervention powers of the authority under this Part may be used only in relation to a registered community housing provider that has obtained a class of registration that qualifies the provider as being eligible to receive Crown grants or assets of the Crown or of a Crown entity.
- “(1A) The authority may use its intervention powers in relation to a registered community housing provider referred to in **subsection (1)** if—
- “(a) there has been a failure by the provider to meet the prescribed eligibility criteria or prescribed performance standards; or
 - “(b) the provider fails to comply with a legal requirement or direction given by the authority; or
 - “(c) as a result of a change to the constitution or rules of the provider, or to the business activities carried on by the provider, the authority believes that the ability of the

provider to do either or both of the following things is, or will be, adversely affected:

- “(i) comply with the prescribed eligibility criteria and prescribed performance standards:
 - “(ii) provide social rental housing or affordable rental housing to people.
- “(2) The authority must not exercise a power under this Part unless it is satisfied that the exercise of the power—
- “(a) is appropriate in the circumstances; and
 - “(b) accords with guidelines established under **subsection (3)**.
- “(3) The joint Ministers must establish guidelines for the exercise of the authority’s powers under this Part.
- “(4) Guidelines established under **subsection (3)** must be published in the *Gazette*.
- “(5) The authority must make a copy of the current guidelines available to each registered community housing provider.

“176 Authority may appoint to governing body of registered community housing provider

- “(1) The authority, after consulting the governing body of a registered community housing provider and considering any nominations made by that governing body, may appoint 1 or more persons, whom the authority considers to be appropriately qualified, to that governing body.
- “(2) The appointment may be in place of 1 or more existing members of the governing body or in addition to the existing members of the governing body.
- “(3) If the appointment is in place of an existing member, the governing body must terminate the existing member’s appointment.
- “(4) An appointment or termination under this section has effect as if made in accordance with the constitution or rules of the registered community housing provider.
- “(5) This section applies despite anything to the contrary in the constitution or rules of the registered community housing provider.

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- “(6) No appointment may be made to a governing body under this section that would result in the proportion of members appointed by the authority being greater than that of a minority.
- “**177 Authority may give binding instructions to registered community housing provider**
- “(1) The authority may, after consultation with the governing body of a registered community housing provider, give binding instructions to the registered community housing provider or the members of its governing body.
- “(2) The instructions may relate to—
- “(a) the entering by the registered community housing provider into arrangements that the authority considers appropriate with 1 or more other registered community housing providers:
 - “(b) the appointment of an administrator to control and direct the registered community housing provider:
 - “(c) any other matter relating to the registered community housing provider that the authority thinks fit.
- “(3) The instructions may specify—
- “(a) the time within which a matter referred to in **subsection (2)** must be complied with; and
 - “(b) conditions to which that matter is subject, including a requirement for prior approval of the authority.
- “(4) In giving an instruction or an approval under this section, the authority must have regard to the interests of the tenants of the registered community housing provider.
- “(5) A registered community housing provider must comply with an instruction given to it under this section.
- “(6) A member of the governing body of a registered community housing provider must comply with an instruction given to the members of the governing body under this section.
- “(7) The authority may give more than 1 set of instructions to a registered community housing provider in relation to the same matter.

“Other reporting

“178 Reporting obligations

The joint Ministers may, by notice to the authority, request that the authority inquire into, and report on, any matter relating to the community housing sector.

“Appeals

“178A Rights of appeal

This section and **sections 178B to 178F** apply to any decision of the authority made under this Part—

- “(a) relating to the registration (including eligibility for registration) of a community housing provider:
- “(b) appointing a person to the governing body of a registered community housing provider under **section 176**:
- “(c) giving binding instructions to a registered community housing provider under **section 177**.

“178B Community housing provider may appeal

A community housing provider may, in accordance with regulations made under **section 178E** and within 28 days after the decision was made, appeal against a decision referred to in **section 178A** if the authority—

- “(a) has confirmed it (whether as originally made or as varied) under the process for the time being established by the authority to review such decisions; or
- “(b) has no such process for the time being established.

“178C Powers of appeal body

“(1) In determining the appeal, the appeal body has all the powers, duties, functions, and discretions the authority had in relation to the matter concerned and may—

- “(a) confirm, modify, or reverse the decision of the authority or any part of it; or
- “(b) refer all or any part of the matter back to the authority for further consideration, together with—
 - “(i) any directions it thinks just relating to the reconsideration; and
 - “(ii) a written statement of its reasons for doing so.

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- “(2) Without limiting **subsection (1)**, the appeal body may make an order requiring an entity—
- “(a) to be registered in the register with effect from a specified date; or
 - “(b) to be restored to the register with effect from a specified date; or
 - “(c) to be removed from the register with effect from a specified date; or
 - “(d) to remain registered in the register.
- “(3) The specified date may be a date that is before or after the order is made.
- “(4) The appeal body may make any other order it thinks fit.
- “(5) An order may be subject to any terms or conditions that the appeal body thinks fit.
- “(6) The appeal body—
- “(a) may award costs against the authority in respect of any appeal if—
 - “(i) it is allowed in whole or in part; or
 - “(ii) all or any part of the matter is referred back to the authority for further consideration; and
 - “(b) may award costs against the appellant in respect of any appeal that is refused, if the appeal body believes that the appeal was frivolous or vexatious, or should not have been brought.
- “(7) Subject to **section 178F**, a decision of the authority that is the subject of the appeal stands pending determination of the appeal.

“178D Where appeal body established by regulations

If regulations under **section 178E(1)(a)** establish a body to dispose of appeals under **sections 178A to 178F**, any party to an appeal to the body who is dissatisfied with any determination of the body may appeal to a District Court and in that case,—

- “(a) within 14 days after the date of the determination, the appellant must—
 - “(i) lodge a notice of appeal with the court; and

- “(ii) give a copy of the notice to every other party to the appeal:
- “(b) the court or a Judge may, on the application of the appellant or intending appellant, extend any time prescribed or allowed under this section for the lodging of a notice of appeal:
- “(c) except as provided by this section, the case must be dealt with in accordance with the rules of the District Court.

“178E Regulations relating to appeals

- “(1) The Governor-General may, by Order in Council, make regulations,—
 - “(a) establishing a body to dispose of appeals under **section 178B**, prescribing how its members are to be appointed, and prescribing how it is to hear and dispose of appeals; or
 - “(b) providing that such appeals are to be made to a District Court, and providing that the District Courts Act 1947 and the rules of the District Court apply, with or without modification, to the hearing and disposal of appeals.
- “(2) Any body established under **subsection (1)(a)** is a statutory board within the meaning of the Fees and Travelling Allowances Act 1951, and every member of it is entitled to—
 - “(a) remuneration by way of fees, salary, or allowances for the member’s services as a member of it:
 - “(b) payment of travelling allowances and expenses in respect of time spent travelling in its service.

“178F Appeal body may make interim order pending determination of appeal

- “(1) At any time before the final determination of an appeal, the appeal body may make an interim order requiring an entity—
 - “(a) to be registered in the register from a specified date; or
 - “(b) to be restored to the register with effect from a specified date; or
 - “(ba) to be removed from the register with effect from a specified date; or
 - “(c) to remain registered in the register.

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- “(2) The specified date may be a date that is before or after the order is made.
- “(3) An interim order may be subject to any terms or conditions that the appeal body thinks fit.
- “(4) If the appeal body refuses to make an interim order, the person or persons who applied for the order may, within 1 month after the date of the refusal, appeal to the High Court against the decision.
- “(5) If an interim order is made under **subsection (1)**, the authority must—
 - “(a) amend the register in accordance with the order as soon as is reasonably practicable after receiving the order; and
 - “(b) include a copy of the order in the register, unless the appeal body orders otherwise.
- “(6) To enable the authority to fulfil the duties imposed by this section, the Registrar of the appeal body in which the interim order is made must send a copy of the order to the authority as soon as practicable.

“178G Delegation of powers under this Part

- “(1) The authority may not delegate a power under this Part, except to—
 - “(a) an employee of the authority; or
 - “(b) a person engaged by the authority under a contract for services providing for the person to exercise that power.
- “(2) Despite **subsection (1)**, if the authority is a department, it may delegate any power under this Part to the chief executive of another department, or to an employee of the department.
- “(3) A power delegated by the authority in accordance with **subsection (1) or (2)** may, with the consent of the authority, be further delegated,—
 - ~~“(a) by the chief executive of a department, to an employee of that department;~~
 - “(a) by the chief executive of a department or departmental agency, to an employee of that department or departmental agency; or

- “(b) by an employee of the authority ~~department~~, to another employee of the authority.
- “(4) If the authority delegates a power under this Part to a body corporate engaged by the authority under a contract for services,—
 - “(a) the body corporate cannot subdelegate it except to a person who is an employee of the body corporate; and
 - “(b) an employee of the body corporate to whom it is sub-delegated cannot subdelegate it further.
- “(5) This section overrides section 130(1) of the Companies Act 1993.

“Regulations under this Part

“179 Regulations relating to community housing providers

- “(1) The Governor-General may, by Order in Council made on the recommendation of the joint Ministers, make regulations for all or any of the following purposes:
 - “(a) providing for the way in which applications for registration as a community housing provider must be made or the information that those applications must contain:
 - “(ab) in relation to the registration of community housing providers, specify different classes of registration for different purposes, including for the purposes of receiving—
 - “(i) income-related rent subsidies from the Crown:
 - “(ii) Crown grants:
 - “(iii) assets of the Crown or of a Crown entity:
 - “(b) specifying any relevant fee that applies to applications or the method by which it may be calculated:
 - “(c) prescribing the eligibility criteria that must be met to be registered or to obtain registration of a specified class, including—
 - “(i) financial viability requirements; and
 - “(ii) requirements related to organisational capacity and capability:
 - “(d) prescribing the performance standards that must continue to be met to maintain registration or to maintain

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- registration of a specified class, including matters that relate to—
- “(i) governance and management:
 - “(ii) financial viability:
 - “(iii) tenancy management:
 - “(iv) asset and property management:
- “(e) prescribing procedures, requirements, and other matters for the register of community housing providers established and maintained under **section 169**, including matters that relate to—
- “(i) the operation of the register:
 - “(ii) the form of the register:
 - “(iii) the information and documents that must be included on the register:
 - “(iv) access to the register:
 - “(v) the location of, and hours of access to, the register:
 - “(vi) search criteria for the register:
- “(f) specifying—
- “(i) the information that must be provided by persons who make complaints against a registered community housing provider; and
 - “(ii) the way in which that information must be evaluated; and
 - “(iii) the way in which decisions on whether to proceed with the complaint must be made and implemented:
- “(g) specifying the date on which (in accordance with this Part, the calculation mechanism, and the terms of the contracts between the authority and registered community housing providers)—
- “(i) the income-related rent subsidy will become available to some or all registered community housing providers; and
 - “(ii) an income-related rent will be available to some or all tenants of registered community housing providers:

- “(ga) specifying the type or types of registered community housing providers to whom the income-related subsidy may or may not be made available;
 - “(h) providing for any other matters contemplated by this Part, necessary for its administration, or necessary for giving it full effect.
- “(2) Any fee prescribed under **subsection (1)(b)** must be reasonable, having regard to the need to recover the costs incurred by the authority in performing its functions under this Part.

“**180 Consultation requirements for making regulations**

- “(1) Before making a recommendation for the making of an Order in Council under **section 179**, the joint Ministers must be satisfied that the authority has consulted in accordance with **subsections (2) and (3)**.
- “(2) The authority must do everything reasonably practicable to consult with the persons or organisations that appear to the authority to be representative of the interests of persons likely to be substantially affected by the making of the relevant order.
- “(3) The process for consultation must, to the extent practicable in the circumstances, include—
- “(a) giving adequate and appropriate notice of the intention to make the order; and
 - “(b) giving a reasonable opportunity for interested persons to make submissions; and
 - “(c) adequate and appropriate consideration of submissions.
- “(4) A failure to comply with this section does not affect the validity of any Order in Council made.

“*Notice*

“**181 How notice may be given**

- “(1) Every notice given to any person under ~~any~~ this Part may be given by delivering it to that person,—
- “(a) in the case of a natural person (other than an officer or employee in the service of the Crown in his or her official capacity),—
 - “(i) personally; or

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- “(ii) by leaving it at that person’s usual or last known place of residence or business or at the address specified by that person in any application or other document received from that person; or
 - “(iii) by posting it in a letter addressed to that person at that place of residence or business or at that address; or
 - “(iv) by an electronic means of communication to that person that complies with Part 2 of the Electronic Transactions Act 2002:
- “(b) in the case of any other person, including an officer or employee in the service of the Crown in his or her official capacity,—
- “(i) where applicable, personally; or
 - “(ii) by leaving it at that person’s place of business; or
 - “(iii) by posting it in a letter addressed to that person at that place of business; or
 - “(iv) by an electronic means of communication to that person that complies with Part 2 of the Electronic Transactions Act 2002.
- “(2) If any such 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 fourth day after the day on which it is posted, and, in proving the delivery, it is sufficient to prove the letter was properly addressed and posted.”

20 Part 5 repealed

Part 5 is repealed on the date that Part 7 comes into force.

21 Schedule 2 amended

- (1) In Schedule 2, clauses 1, 2, and 3, replace “section 46(2)” with “**section 108(2)**”.
- (2) In Schedule 2, clause 4, replace “sections 46(2)(c) and 46(3)(b)” with “**sections 108(2)(c) and 108(3)(b)**”.
- (3) In Schedule 2, clause 5, replace “sections 46(2)(c)(ii) and 46(3)(b)(ii)” with “**sections 108(2)(c)(ii) and 108(3)(b)(ii)**”.

- (3A) In Schedule 2, clause 6, replace “section 46(3)(a)” with “**section 108(3)(a)**”.
- (4) In Schedule 2, clause 7, replace “HNZ” with “social”.
- (4A) In Schedule 2, clause 7, replace “the company’s” with “the agency’s”.
- (5) In Schedule 2, clause 8, replace “section 48(2)” with “**section 110(2)**”.
- (6) In Schedule 2, clause 8(a), (b), and (c), replace “HNZ” with “social”.
- (6A) In Schedule 2, clause 9, replace “section 49(1)(a)” with “**section 111(1)(a)**”.
- (6B) In Schedule 2, clause 9(b), replace “the Corporation” with the “Accident Compensation Corporation”.
- (7) In Schedule 2, clause 10, replace “section 49(1)(b)” with “**section 111(1)(b)**”.
- (7A) In Schedule 2, clause 10(c)(i), replace “HNZ” with “social”.
- (8) In Schedule 2, clause 11, replace “section 50(2)” with “**section 112(2)**”.
- (9) In Schedule 2, clause 12, replace “section 52” with “section 114”.

22 Schedule 3 amended (Transitional matters)

- (1AA) In the Schedule 3 heading, after “**Transitional matters**”, insert “**relating to certain HNZ tenants**”.
- (1AB) In Schedule 3, clause 1, definition of **affected tenant**, replace “section 54(1)” with “**section 153(1)**”.
- (1AC) In Schedule 3, clause 2, after “calculation mechanism”, insert “(capped at the market rent for the housing)”.
- (1AD) In Schedule 3, clause 3(2) and (3)(a), after “calculation mechanism”, insert “(capped at the market rent for the housing)”.
- (1) In Schedule 3, clause 3(4), replace “company” with “agency”.
- (1A) In Schedule 3, clause 3(4)(a), replace “section 57” with “**section 117**”.
- (1AE) In Schedule 3, clause 4(1)(a) and (b) and 2(a), after “calculation mechanism” insert “(capped at the market rent for the housing)”.

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- (2) In Schedule 3, clause 4(1)(a)(i), replace “section 55” with “**section 154**”.
- (3) In Schedule 3, clause 4(3), replace “company” with “agency”.
- (4) In Schedule 3, clause 4(3)(a), replace “section 57” with “**section 117**”.
- (5) In Schedule 3, clause 5(1)(a), replace “replacement HNZ housing” with “replacement social housing”.
- (5A) In Schedule 3, clause 5(2), replace “replacement HNZ housing” with “replacement social housing”.

Consequential amendments

23 Consequential amendments to enactments

The enactments specified in **Schedule 1A** **Schedule 1** are amended in the manner indicated in that schedule.

24 New Schedule 4 inserted

After Schedule 3, insert the **Schedule 4** set out in Schedule 2 of this Act.

Schedule 1

s 23

**New Schedule 1A inserted Consequential
amendments**

Housing Corporation Act 1974 (1974 No 19)

In section 20B(3), replace “section 42(1)” with “**section 2(1)**”.

In section 20B(4), replace “section 65” with “**section 87**”.

Legal Services Act 2011 (2011 No 4)

Replace section 7(1)(i) with:

- “(i) proceedings before any body established under the Housing Restructuring and Tenancy Matters Act 1992 to hear appeals under **sections 131 to 134** of that Act or proceedings before any body established under that Act to hear appeals under **section 178A to 178F** of that Act; or”.

Legal Services Act 2011 (2011 No 4)

After section 7(1)(i), insert:

- “(ia) proceedings before any body established under the Housing Restructuring and Tenancy Matters Act 1992 to hear appeals under **sections 131 to 134** of that Act or proceedings before any body established under that Act to hear appeals under **sections 178A to 178F** of that Act.”.

Privacy Act 1993 (1993 No 28)

In section 97, definition of **specified agency**, after paragraph (l), insert:

- “(la) the agency or agencies appointed under **section 101** of the Housing Restructuring and Tenancy Matters Act 1992.”.

Residential Tenancies Act 1986 (1986 No 120)

In section 25(3), replace “section 42(1)” with “**section 2(1)**”.

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Social Security Act 1964 (1964 No 136)

In section 3(1), definition of **income**, paragraph (f)(xvi), delete “section 42(1) of”.

In section 61EA(2), after paragraph (b) insert:

- ~~“(c) income-related rent (as defined in section 2 of the Housing Restructuring and Tenancy Matters Act 1992) paid in respect of premises owned by a registered community housing provider or let by or on behalf of the registered community housing provider for occupation by any person as place of residence.~~
- “(c) if the person has been assessed by the agency as being eligible to be allocated social housing, rent paid in respect of premises owned by a registered community housing provider or let by or on behalf of the provider for occupation by any person as a place of residence.”

In section 61EA, replace subsection 2A with:

“(2A) In subsection (2), **agency, company, income-related rent, and registered community housing provider** have the meanings given to them by section 2 of the Housing Restructuring and Tenancy Matters Act 1992.”

**Schedule 1A
Consequential amendments**

Schedule 2

s 24

New Schedule 4 inserted

Schedule 4

s 3AA

**Transitional and savings provisions
relating to Social Housing Reform
(Housing Restructuring and Tenancy
Matters Amendment) Act 2013**

Part 1A

Transitional and savings provisions

1AA Interpretation of this Part

In this Part, unless the context otherwise requires,—

2013 Amendment Act means the Social Housing Reform
(Housing Restructuring and Tenancy Matters) Amendment
Act **2013**

delegation includes subdelegation

new, in relation to a Part or provision of this Act, means the
Part or provision as amended or replaced by **Part 1** of the 2013
Amendment Act

old, in relation to a Part or provision of this Act, means the Part
or provision immediately before it was amended or replaced
by **Part 1** of the 2013 Amendment Act

Royal assent commencement date means the date on which
Part 1 of the 2013 Amendment Act (other than **section 11**
so far as it relates to **new section 56(2)**) comes into force

transfer date means the date on which **Part 7** of this Act
comes into force.

1AB Continuation of review process under section 62

The process for reviews established by HNZ under section 62,
as in force immediately before the commencement of **section**
14 of the 2013 Amendment Act, continues in force, until re-
placed or revoked, after that commencement as if it were es-
tablished under new **section 62**.

Schedule 4—*continued*Part 1A—*continued***1AC Continuation of delegations under section 64**

A delegation made under old section 64 before the Royal assent commencement date —

- (a) continues in force, until that delegation is replaced or revoked, after the Royal assent commencement date as if it were a delegation made under new **section 64**; and
- (b) new **sections 64** applies to that delegation with any necessary modifications.

1AD Income-related rent last calculated by HNZ carries forward as if calculated and notified by agency

- (1) This clause applies if a tenant was required to pay an income-related rent under new Part 5 immediately before the transfer date.
- (2) That rent as it was last calculated by HNZ for the tenant under old or new Part 5 must be treated for the purposes of **Parts 7 to 9**—
 - (a) as if it had been calculated by the agency as the income-related rent for the tenant; and
 - (b) as if it had been notified by the agency to HNZ under **section 107A**.

1AE Application of sections 56 to 57AD to existing and prospective tenants

To avoid doubt, **sections 56 to 57AD** (which relate to duty to advise change in circumstances, review of housing eligibility, and investigation of circumstances)—

- (a) apply to a tenant regardless of whether the tenant was let HNZ housing before or after the Royal assent commencement date; and
- (b) apply to a prospective tenant regardless of whether the person applied for HNZ housing before or after that date.

Schedule 4—*continued*
Part 1A—*continued*

1AF Application of sections 72, 75, 76, and 78 to existing and prospective tenants

To avoid doubt, sections 72, 75, 76, and 78 (which relate to income-related rent, change in rent, increase in rent, and review of placement)—

- (a) apply to a tenant regardless of whether the tenant was let HNZ housing before or after the Royal assent commencement date or the transfer date; and
- (b) apply to a tenancy agreement for HNZ housing regardless of whether the agreement was entered into before or after either of those dates.

1AG Application of sections 116 to 121 to existing, prospective, and community housing tenants

(1) To avoid doubt, sections 116 to 121 (which relate to administrative matters, reviews, investigations, and information-gathering powers)—

- (a) apply to a tenant regardless of whether the tenant was let HNZ housing before or after the Royal assent commencement date or the transfer date; and
- (b) apply to a prospective tenant regardless of whether the person has applied for HNZ housing before or after either of those dates.

(2) However, sections 116 to 121 do not apply to a tenant of community housing unless the tenant—

- (a) has been referred or allocated to the provider by the agency as being eligible for social housing; or
- (b) is a tenant to whom subsection (1) refers.

1AH Saving of definition of income under Social Security Act 1964

The definition of income in section 3(1) of the Social Security Act 1964, as it was immediately before the transfer date, continues in force for the purpose of any recalculation of debt by HNZ after the transfer date in respect of debt calculated or recovered before the transfer date.

Proposed amendments to the
Social Housing Reform (Housing
Restructuring and Tenancy Matters
Amendment) Bill

Schedule 2

Schedule 4—*continued*
Part 1A—*continued*

1AI **HNZ may use new Part 5 powers for purpose of recovery of section 60 debt (which relates to where rate of rent too low) calculated before transfer date**

- (1) For the purposes of the administration and recovery, after the transfer date, of section 60 debt calculated by HNZ before the transfer date,—
- (a) new Part 5 continues in force despite its repeal by **section 20** of the 2013 Amendment Act; and
 - (b) Schedules 2 and 3 (as they were before **Part 7** came into force) continue in force for the purpose of any re-calculation of that debt; and
 - (c) any delegations made under section 64 (whether before or after its replacement by the 2013 Amendment Act), and any delegations continued by **clause 1AC**, continue in force until replaced or revoked.
- (2) In this clause, **section 60 debt** means debt calculated before the transfer date under section 60 (whether before or after the commencement of **section 14** of the 2013 Amendment Act).

1AJ **Agency may use Part 9 powers for purpose of recovery of pre-transfer debt not calculated before transfer date**

- (1) The agency may exercise its powers or perform its functions conferred by or under **Part 9** to calculate pre-transfer debt and to recover that debt.
- (2) In this clause and **clause 1AK**, unless the context otherwise requires,—
- debt** includes an amount by which the amount of income-related rent that has been paid by a tenant is less than the amount of income-related rent that would have been calculated for the tenant if the tenant had complied with all of the tenant's obligations under Part 5 of the Act that applied at the relevant time
- pre-transfer debt** means any debt—
- (a) that was incurred before the transfer date; and
 - (b) that has not been calculated by HNZ before the transfer date; and

Schedule 4—*continued*

Part 1A—*continued*

- (c) that HNZ would have been entitled to recover under this Act as a debt due to the Crown if the debt had been calculated before the transfer date.

1AK Pre-transfer debt if agency is Ministry

- (1) This clause applies only if the agency is the Ministry.
- (2) The agency must comply with **section 126A**, and may exercise its powers under section 85A of the Social Security Act 1964, in respect of pre-transfer debt.

1AL Agency may use Part 9 powers in respect of offending and other matters before transfer date

- (1) The agency may exercise its powers or perform its functions conferred by or under **Part 9**—
- (a) to investigate circumstances that occurred before the transfer date; and
- (b) to investigate and prosecute pre-transfer offending.
- (2) In this clause and **clause 1AM**, unless the context otherwise requires, **pre-transfer offending** means any act or omission before the transfer date that constituted an offence at the time that it occurred.
- (3) This clause does not limit the Limitation Act 2010 (or the Limitation Act 1950, as the case may be).

1AM Certain appeals after transfer date

- (1) Any appeal under old or new Part 5 that is commenced before the transfer date may be continued and completed under new Part 5, and under any regulations and rules made under that Part, after the transfer date as if Part 2 of the 2013 Amendment Act had not been enacted.
- (2) Any appeal in respect of any debt that is calculated, or recovered, under—
- (a) old or new Part 5 before the transfer date; or

**Proposed amendments to the
Social Housing Reform (Housing
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Schedule 2

Schedule 4—*continued*
Part 1A—*continued*

- (b) old or new Part 5 on or after the transfer date as applied by this schedule—
may be commenced (after completion of the review process referred to in clause **1AB**), continued, and completed under new Part 5, and under any regulations and rules made under that Part, after the transfer date as if Part 2 of the 2013 Amendment Act had not been enacted.
- (3) In relation to any appeal referred to in **subclause (1) or (2)**, if the matter that is the subject of the appeal is referred back to HNZ for further action, HNZ continues to have all the powers, functions, and duties in respect of the completion of the matter as HNZ had immediately before the transfer date.
- (4) The State Housing Appeal Authority established under the Housing Restructuring and Tenancy Matters (Appeals) Regulations 2000 continues in existence for the purpose of appeals until 1 April 2017 or an earlier date appointed by the Governor-General by Order in Council.
- (5) For the purposes of **subclauses (1) and (2)**, the Housing Restructuring and Tenancy Matters (Appeals) Regulations 2000 are deemed to be made under new Part 5.

1AN Housing Restructuring and Tenancy Matters (Appeals) Regulations 2000 modified and continued

- (1) Without limiting **clause 1AM** and **subclause (2)**, the Housing Restructuring and Tenancy Matters (Appeals) Regulations 2000 must be read with the following modifications:
- (a) in the definition of **decision** in regulation 3, the reference to section 62(2) must be read as a reference to **section 62AA**; and
- (b) in the heading above regulation 4, the reference to section 62 must be read as a reference to **section 62AA**; and
- (c) in regulations 4(1), 16(2), and 17(1)(a), the reference to section 62(2) must be read as a reference to **section 62AA**.

Schedule 4—*continued*

Part 1A—*continued*

- (2) The Housing Restructuring and Tenancy Matters (Appeals) Regulations 2000 may continue to be amended as if section 63 had not been repealed by **section 20** of the 2013 Amendment Act.

1AO Continuation of prosecutions started before transfer date

- (1) HNZ may continue any prosecution started by HNZ before the transfer date as if the 2013 Amendment Act had not been passed.
- (2) For the purpose of any such prosecution, the functions, powers, and duties of HNZ immediately before the transfer date continue to apply.

Part 1

Transitional provisions relating to transfer of
employees of Corporation to agency

1 **Transfer of employees of Corporation to agency**

- (1) The chief executive of the Corporation must identify and consult the employees of the Corporation—
- (a) who are likely to be affected by the transfer of functions of the Corporation or HNZ to the agency; and
 - (b) whose duties are overall more closely connected with the functions of the agency than with the Corporation; and
 - (c) whose positions will, as a result of the transfer of functions to the agency, cease to exist within the Corporation.
- (2) An employee who is identified under **subclause (1)** may be offered equivalent employment by the agency, being employment that is—
- (a) in substantially the same position; and
 - (b) in the same general locality; and
 - (c) on terms and conditions that are no less favourable than those applying to the employee immediately before the

**Proposed amendments to the
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Amendment) Bill**

Schedule 2

Schedule 4—*continued*
Part 1—*continued*

- date the offer of employment is made to that employee;
and
- (d) on terms that treat the period of service with the Corporation (and every other period of service recognised by the Corporation as continuous service) as if it were continuous service with the agency.
- (3) The employee is not entitled to receive any payment or other benefit on the ground that the position held by the person in the Corporation has ceased to exist if—
- (a) the employee's position ceases to exist because the duties of the position are more closely connected with the functions of agency; and
 - (b) the employee is offered employment in an equivalent position in the agency (whether or not the employee accepts the offer).
- (4) This section overrides any provision to the contrary in Part 6A of the Employment Relations Act 2000.
- (5) Nothing in sections 60, 61, and 65 of the State Sector Act 1988 applies to the appointment of an employee to a position in the agency as a result of the transfer of functions of HNZ and the Corporation to the agency.

2 No compensation for technical redundancy of employees of Corporation

- (1) An employee of the Corporation is not entitled to receive any payment or other benefit on the ground that the position held by the person in the Corporation has ceased to exist if the employee's position ceases to exist because the duties of the position are more closely connected with the functions of the agency, and—
- (a) the employee is offered employment in an equivalent position in the agency (whether or not the employee accepts the offer); or
 - (b) the employee is offered and accepts employment in the agency.

Schedule 4—*continued*

Part 1—*continued*

- (2) In **subclause (1)(a), employment in an equivalent position** means employment that is—
- (a) in substantially the same position; and
 - (b) in the same general locality; and
 - (c) on terms and conditions that are no less favourable than those applying to the employee immediately before the date the offer of employment is made to that employee; and
 - (d) on terms that treat the period of service with the Corporation (and every other period of service recognised by the Corporation as continuous service) as if it were continuous service with the agency.
- 3 Consequences of transfer of functions to agency**
- (1) On the date that **Part 97** commences,—
- (a) all relevant information held by HNZ or the Corporation is held by the agency; and
 - (b) any relevant thing done, or omitted to be done, or that is to be done, by or in relation to HNZ or the Corporation is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to the agency.
- (2) In this section,—
- relevant information** means all information that relates to the exercise of a function or power of HNZ or the Corporation that is, on the commencement of **Part 97**, a function or power of the agency
- relevant thing** means any thing that relates to a function or power of HNZ or the Corporation that, on the commencement of **Part 97**, is a function or power of the agency.
- (3) The transfer of information from HNZ or the Corporation to the agency under **subclause (1)(a)** does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.

Schedule 4—*continued*Part 1—*continued***4 No claims for breach of contract**

No claim for breach of contract lies against HNZ, the Corporation, the agency, or any of their employees in respect of any information, knowledge, intellectual property, or goods to which the agency has gained access or has acquired as a result of the transfer of functions of HNZ and the Corporation to the agency.

Part 2

Transitional and savings regulations**5 Transitional and savings regulations**

- (1) The Governor-General may, by Order in Council made on the Minister's recommendation, make regulations prescribing transitional provisions, savings provisions, or both, for either or both of the following purposes:
 - (a) facilitating or ensuring the orderliness of the transition to the amendments made to this Act by the Social Housing Reform (Housing Restructuring and Tenancy Matters Amendment) Act **2013**;
 - (b) ensuring that existing rights or obligations continue as part of, or despite, that transition.
- (2) The Minister must not recommend the making of regulations under **subclause (1)** unless satisfied that those regulations—
 - (a) are reasonably necessary for either or both of the purposes in **subclause (1)(a) and (b)**; and
 - (b) are consistent with the purposes of this Act.
- (3) The transitional provisions or savings provisions prescribed by regulations under **subclause (1)** may be provisions in addition to or instead of those set out in **Parts 1A and 1** of this schedule, and may—
 - (a) provide that, for a transitional period, in any circumstances, or subject to any conditions, specified in the regulations, 1 or more provisions (including definitions) of those amendments to this Act do not apply, or apply with modifications or additions:

Schedule 4—*continued*

Part 2—*continued*

- (b) provide that, for a transitional period, in any circumstances, or subject to any conditions, specified in the regulations, 1 or more provisions repealed, amended, or revoked by those amendments to this Act are to continue to apply, or apply with modifications or additions, as if they had not been repealed, amended, or revoked:
 - (c) provide for any other matter necessary for either or both of the purposes in **subclause (1)(a) and (b)**.
- (4) No regulations made under this clause may be made, or continue in force, after the close of 14 April 2017.
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