

Social Housing Reform (Transaction Mandate) Bill

Government Bill

Explanatory note

General policy statement

The Government's programme of social housing reforms includes transfers of Housing New Zealand properties through a commercial process led by the Crown.

This Bill amends the Housing Corporation Act 1974 to provide designated Ministers (the **Minister**) with the authority to transfer Housing New Zealand Corporation (**HNZC**) properties, and the properties of HNZC's subsidiaries, by entering into contracts and performing other acts in the name of, and on behalf of, any 1 or more of HNZC and HNZC's subsidiaries, as relevant (**Housing New Zealand**). Contracts may be for the sale or lease of properties, or for Housing New Zealand to provide transitional services to transferees. The Minister must consider that the entry into a transfer contract is for the purpose of any 1 or more social housing reform objectives. In the case of transitional services agreements, the Government expects that the Minister will exercise the transaction mandate power only where HNZC has not been able to reach agreement. The amendments will also enable Ministers to perform other actions associated with the transactions. New objectives and functions for HNZC allow Housing New Zealand to implement these contracts, notwithstanding HNZC's existing objectives and functions.

This Bill also amends the Housing Act 1955 to give the Minister of Housing the exclusive power to administer State housing land that is identified by the Minister in a *Gazette* notice. State housing land held under the Housing Act 1955 constitutes only a small proportion of total land that is used for social housing.

This Bill also amends the Housing Restructuring and Tenancy Matters Act 1992 to clarify that the 'offer-back provisions' in the Public Works Act 1981 do not apply (and have never applied) to land vested in Housing New Zealand Limited (**HNZL**). This amendment is intended to confirm the current position in relation to land vested in the company (as defined in that Act) under Part 4 of that Act, to avoid any doubt and to avoid any delay to the social housing reform process that might arise from un-

certainty about this point. This clarification applies to HNZL land transferred under the transaction mandate power and to transactions managed by Housing New Zealand.

This Bill is an omnibus Bill introduced in accordance with Standing Order 263(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

It is intended that this Bill be divided into 3 separate Bills at the committee of the whole House stage, 1 each for the amendments to the following Acts: the Housing Act 1955, the Housing Corporation Act 1974, and the Housing Restructuring and Tenancy Matters Act 1992.

Departmental disclosure statement

The Treasury is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2015&no=42>.

Regulatory impact statement

The Treasury produced a regulatory impact statement on 25 March 2015 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.treasury.govt.nz/publications/informationreleases/ris/treasury/lethnzch>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendment to Housing Act 1955

Clause 3 provides that *Part 1* amends the Housing Act 1955.

Clause 4 inserts a *new section 2A*, which provides that the Minister may, after notifying HNZC and by notice in the *Gazette*, declare any State housing land or class of State housing land (including any dwellings, other buildings, and chattels on that

land) to be land that is subject to *new section 2A*. The effect of a declaration is that the Minister may, to the exclusion of HNZC, exercise and perform the functions, powers, and duties of HNZC under the Housing Act 1955 in respect of that land. This includes functions, powers, and duties under the following sections of that Act:

- under section 14, the power to hold and dispose of shares in a company formed to erect flats:
- under sections 15 to 23, powers relating to the disposal of State housing land:
- under sections 24 to 30, powers relating to easements:
- under section 36, powers relating to the execution of documents:
- under section 37, powers relating to restrictions on the registration of instruments.

However, sections 32 and 34 of the Housing Act 1955 (which relate to payments in respect of land and requirements to submit an annual report) do not apply to land administered by the Minister on the basis of *new section 2A*.

New section 2A also provides that HNZC is not responsible or liable for the Minister's performance or exercise of these functions, powers, or duties.

Part 2

Amendments to Housing Corporation Act 1974

Clause 5 provides that *Part 2* amends the Housing Corporation Act 1974 (the **Act**).

Clause 6 inserts a *new section 2A* to provide that the Act binds the Crown.

Clause 7 amends section 3B by inserting a cross-reference to HNZC's objectives for *new Part 5A*, located in *new Part 5A* (see *new section 50J*).

Clause 8 inserts *new Part 5A*, which contains provisions relating to social housing reform. *New Part 5A* comprises—

- *new sections 50A to 50C*, which set out the purpose, overview, and interpretation provisions specific to the Part:
- *new section 50D*, which sets out social housing reform objectives for *new section 50E* and provides that these objectives are relevant only to a decision by the Minister to enter into a transfer contract:
- *new sections 50E to 50H*, which give powers to designated Ministers (the **Minister**), acting jointly. The powers authorise the Minister to enter into contracts in the name of HNZC and its Crown entity subsidiaries, which will bind the relevant Housing New Zealand entity or entities. This includes contracts for the transfer of Housing New Zealand assets (for example, by way of sale or lease) to a transferee (**transfer contracts**) if the Minister considers that the entry into the contract is for the purpose of any 1 or more of the social housing reform objectives. It also includes contracts that require Housing New Zealand to provide transferees with services such as property or tenancy management in respect of assets transferred, for a transitional period (**transitional services con-**

tracts). Transfer contracts and transitional services contracts may be on such terms and conditions (including as to consideration) as the Minister may agree. Transferees may be any persons, including (but not limited to) community housing providers. *New section 50G* gives the Minister powers to do other things for and on behalf of (and that bind) Housing New Zealand, both before and after entering into a transfer contract or a transitional services contract. These powers include anything that the Minister considers necessary or desirable relating to the negotiation of a transfer contract or transitional services contract, or necessary or desirable to implement the social housing transaction that is contemplated by a contract or set of contracts once signed. Among other things, *new section 50H* provides that the Minister, in acting under these provisions, has all the powers of Housing New Zealand, but is not constrained by various things that might constrain Housing New Zealand, such as HNZC's objectives and functions:

- *new section 50I*, which provides that nothing in sections 40 to 42 of the Public Works Act 1981 (concerning the requirements to offer back surplus land to a previous owner and in relation to the disposal of surplus former Māori land) applies to land transferred, or interests in land granted, by the Minister for and on behalf of Housing New Zealand. (*See also Part 3.*) The intention of *new section 50I* is to be clear that nothing in sections 40 to 42 of that Act applies despite the Minister making the decisions:
- *new sections 50J and 50K*, which set out the objectives and functions of HNZC for *new Part 5A* and provide for how these objectives and functions interrelate with HNZC's other objectives and functions. The effect is that the new (and principal) function and objectives of HNZC for *new Part 5A* are to facilitate any process undertaken that may result in a social housing transaction and to facilitate and implement the social housing transactions contemplated by transfer contracts and transitional services contracts:
- *new sections 50L to 50Q*, which set out miscellaneous and administrative provisions. These include—
 - a requirement to publish a general statement for each social housing transaction that is entered into and settled (*new section 50L*):
 - a requirement for the Minister to notify Housing New Zealand of the Minister's intention to enter into a transitional services contract and to notify Housing New Zealand of (and provide documents and information relating to) unconditional social housing transactions (*new sections 50M and 50N*):
 - provisions requiring Housing New Zealand to supply certain information (*new section 50O*):
 - provisions relating to the method of contracting by the Minister in Housing New Zealand's name (*new section 50P*):

- provisions relating to delegation of the Minister's functions and powers under *new Part 5A (new section 50Q)*;
- *new sections 50R and 50S*, which contain provisions relating to legal effect and protection from liability for the boards, members, office holders, and employees of Housing New Zealand. *New section 50R* provides that Housing New Zealand is responsible and liable for anything done, or not done, by the Minister for and on behalf of Housing New Zealand under the powers in *new sections 50E, 50F, and 50G*, as if Housing New Zealand itself had acted, or not acted, under those sections with the same powers as the Minister. *New section 50R* does not limit a person's right to apply for judicial review. *New section 50S*, among other things, provides protection from liability for the Minister's decisions for the boards, members, office holders, and employees of Housing New Zealand; applies the benefit of the immunity in section 121 of the Crown Entities Act 2004 to directors, office holders, and employees of HNZC's subsidiaries for things done in relation to *new Part 5A*; and makes it clear that the effect of *new Part 5A* must be taken into account in determining the nature of the duties of each board and member in respect of acts or omissions under *new Part 5A*.

Part 3

Amendment to Housing Restructuring and Tenancy Matters Act 1992

Clause 9 provides that *Part 3* amends the Housing Restructuring and Tenancy Matters Act 1992 (the **Act**).

Clause 10 amends section 27 to provide that, to avoid doubt, nothing in sections 40 to 42 of the Public Works Act 1981 (concerning the requirements to offer back surplus land to a previous owner and in relation to the disposal of surplus former Māori land) applies or has ever applied to the sale or disposal, by the company (as defined in the **Act**), of land vested in the company pursuant to Part 4 of the **Act**.

Hon Paula Bennett

Social Housing Reform (Transaction Mandate) Bill

Government Bill

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Part 3

Amendment to Housing Restructuring and Tenancy Matters Act 1992

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Social Housing Reform (Transaction Mandate) Act **2015**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1**Amendment to Housing Act 1955**

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3 Principal Act

This **Part** amends the Housing Act 1955 (the **principal Act**).

4 New section 2A inserted (Minister may exclusively administer land declared subject to this section)

After section 2, insert:

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2A Minister may exclusively administer land declared subject to this section

(1) The Minister may, after notifying the Corporation and by notice in the *Gazette*, declare any State housing land or class of State housing land (including any dwellings, other buildings, and chattels on that land) to be land that is subject to this section.

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(2) The effect of a declaration is that the Minister, to the exclusion of the Corporation, has and may perform and exercise the functions, powers, and duties of the Corporation under this Act in respect of the land so declared to be land that is subject to this section.

(3) However, sections 32 to 34 do not apply in respect of that land.

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(4) All amounts payable to the Crown in respect of land declared to be land that is subject to this section (including all amounts that, if this Act had not been passed, would have been payable into the Housing Account (if any)) must be paid to a Crown Bank Account.

(5) The Corporation is not responsible or liable for the Minister's performance or exercise of functions, powers, or duties under **subsection (2)**.

25

Part 2**Amendments to Housing Corporation Act 1974****5 Principal Act**

This **Part** amends the Housing Corporation Act 1974 (the **principal Act**).

30

6 New section 2A inserted (Act binds the Crown)

After section 2, insert:

2A Act binds the Crown

This Act binds the Crown.

7 Section 3B amended (Objectives of Corporation)

Insert as section 3B(b):

(b) but *see* **section 50J** for **Part 5A** objectives.

8 New Part 5A inserted

After Part 5, insert:

5

Part 5A
Social housing reform

Purpose, overview, and interpretation

50A Purpose of this Part

The purpose of this Part is to enable social housing transactions to be entered into and implemented. 10

50B Overview of this Part

(1) This Part—

- (a) gives powers to the Minister to enter into social housing transactions for and on behalf of the Corporation or subsidiary; and 15
- (b) provides for both the Minister and the Corporation to have a role in implementing social housing transactions; and
- (c) provides for other matters, such as delegation of the Minister's powers, and provisions relating to liabilities.

(2) **Subsection (1)** is only a guide to the general scheme and effect of this Part. 20

50C Interpretation

In this Part, unless the context otherwise requires,—

assets has the same meaning as in section 51

contract includes a deed

Corporation or subsidiary means any 1 or more of the following, as relevant: 25

- (a) the Corporation:
- (b) any 1 or more Crown entity subsidiary of the Corporation

member means a member of a relevant board

Ministry means the department of State that, with the authority of the Prime Minister, is responsible for the administration of this Part 30

person includes the Crown

relevant board means the board of the Corporation or subsidiary, as relevant

settled, in respect of a social housing transaction, means that all conditions (if any) relating to the transfer of assets or interests in assets have been satisfied, and all assets or interests in assets have been transferred, under all relevant transfer contracts

social housing reform objectives has the meaning set out in **section 50D** 5

social housing transaction means a transaction that is contemplated by a contract, or 2 or more related contracts, entered into under **section 50E or 50F**

transaction process, in respect of a social housing transaction or potential social housing transaction, means the process beginning with the steps taken to identify the relevant market and ending with the entry into the social housing transaction (or earlier termination of the process) 10

transfer contract has the meaning set out in **section 50E**

transferee means a person who is a party (other than the Corporation or subsidiary) to a social housing transaction, or a nominee of that person

transitional services contract has the meaning set out in **section 50F**. 15

Entry into and implementation of social housing transactions

50D Meaning and relevance of social housing reform objectives

- (1) The social housing reform objectives are any 1 or more of the following:
- (a) people who need housing support can access it and receive social services that meet their needs: 20
 - (b) social housing is of the right size and configuration, and in the right areas, for households that need it:
 - (c) social housing tenants are helped to independence, as appropriate:
 - (d) there is more diverse ownership or provision of social housing:
 - (e) there is more innovation and more responsiveness to social housing tenants and communities: 25
 - (f) the supply of affordable housing is increased, especially in Auckland.
- (2) The social housing reform objectives are relevant only to a decision by the Minister to enter into a transfer contract (*see section 50E*).

50E Minister may enter into transfer contracts as Corporation or subsidiary 30

- (1) The Minister may enter into a contract, for and on behalf of the Corporation or subsidiary, that provides for either or both of the following (a **transfer contract**), if the Minister considers that the entry into the contract is for the purpose of any 1 or more of the social housing reform objectives:
- (a) the transfer of ownership of assets of the Corporation or subsidiary: 35
 - (b) the grant of an interest in assets of the Corporation or subsidiary.

- (2) A transfer contract may be on any terms and conditions (including as to consideration) that the Minister may agree with the transferee.

50F Minister may enter into transitional services contracts as Corporation or subsidiary

- (1) The Minister may enter into a contract, for and on behalf of the Corporation or subsidiary, that relates to any assets that are the subject of a transfer contract and that provides for either or both of the following (a **transitional services contract**):

- (a) the provision of housing related services by the Corporation or subsidiary, to the transferee, on a transitional basis: 10
- (b) the provision of access to information and information technology systems and processes of the Corporation or subsidiary, to the transferee, on a transitional basis.

- (2) A transitional services contract may be on any terms and conditions (including as to consideration) that the Minister may agree with the transferee. 15

- (3) See also **section 50M** (which relates to prior notification).

50G Minister may do other things as Corporation or subsidiary relating to and to implement social housing transactions

The Minister may, for and on behalf of the Corporation or subsidiary, do anything— 20

- (a) that the Minister considers necessary or desirable in relation to the negotiation of, or entry or potential entry into, a transfer contract or a transitional services contract:
- (b) to effect a transfer of assets or a grant of an interest in assets under a transfer contract: 25
- (c) that the Minister otherwise considers necessary or desirable for the implementation of a social housing transaction.

50H Provisions applying to things Minister may do

- (1) In acting under **section 50E, 50F, or 50G**, the Minister may do anything that the Corporation or subsidiary has the capacity, power, right, privilege, function, or discretion to do (including form an opinion). 30

- (2) However, the Minister is not constrained by, and **sections 50E to 50G** apply despite,—

- (a) the objectives, functions, or powers of the Corporation or subsidiary:
- (b) the statement of intent or statement of performance expectations for the Corporation or subsidiary: 35
- (c) the constitution of any subsidiary:
- (d) the role, authority, powers, or duties of any relevant board:

- (e) anything to the contrary contained or implied in this Act, the Crown Entities Act 2004, or the Companies Act 1993:
- (f) any rule of law to the contrary relating to capacity or validity of acts.
- (3) An act of the Minister in accordance with this Part binds the Corporation or subsidiary (regardless of the capacity of the entity or entities concerned). 5
Compare: 1993 No 105 ss 16–17, 181(2); 2004 No 115 ss 16–19, 129(2)
- 50I Application of Public Works Act 1981**
- (1) Nothing in sections 40 to 42 of the Public Works Act 1981 applies to land to be (or that may be) transferred, or to interests in land to be (or that may be) granted, under a transfer contract. 10
- (2) **Subsection (1)** applies despite the powers exercised (and exercisable) by the Minister under this Part.
- (3) Nothing in **subsection (1)** limits **section 27(4A)** of the Housing Restructuring and Tenancy Matters Act 1992.
- Facilitation and implementation of social housing transactions* 15
- 50J Objectives of Corporation for this Part**
- (1) The Corporation’s principal objectives for this Part are to facilitate the transaction process and to facilitate and implement social housing transactions.
- (2) The principal objectives for this Part prevail over the Corporation’s other objectives. 20
- 50K Functions of Corporation for this Part**
- (1) Despite section 18(1), the Corporation’s principal function for this Part is to achieve the principal objectives for this Part.
- (2) The Corporation’s functions for this Part include— 25
- (a) performing social housing transactions:
- (b) taking action in relation to or in connection with social housing transactions (including action under or in relation to transfer contracts or transitional services contracts, and including action provided for in the Corporation’s current statement of intent or statement of performance expectations): 30
- (c) taking action in relation to or in connection with potential social housing transactions (including action provided for in the Corporation’s current statement of intent or statement of performance expectations):
- (d) any other functions conferred on it by this Part.
- (3) **Subsection (2)** does not limit **subsection (1)**. 35

*Miscellaneous***50L Publication of social housing transaction**

- (1) The Minister must, as soon as practicable after a social housing transaction is settled,—
- (a) publish a notice in the *Gazette* describing the general nature of the social housing transaction; and 5
 - (b) present a copy of that notice to the House of Representatives.
- (2) The Ministry must,—
- (a) as soon as practicable after the Minister's notice is published in the *Gazette*, publish that notice on an Internet site maintained by or on behalf of the Ministry; and 10
 - (b) ensure that the notice remains on the site and accessible to members of the public at all reasonable times.

50M Minister must notify Corporation or subsidiary of intention to enter into transitional services contract 15

- (1) The Minister must give written notice to the Corporation or subsidiary, as relevant, of the Minister's intention to enter into a transitional services contract, at least 5 working days before entering into the contract.
- (2) The notice must be accompanied by a copy of the proposed contract.

50N Minister must notify Corporation or subsidiary of social housing transaction 20

- (1) The Minister must give written notice to the Corporation or subsidiary, as relevant, as soon as practicable after entering into a social housing transaction that is, or has become, unconditional.
- (2) The notice must be accompanied by— 25
- (a) the 1 or more contracts that give effect to the social housing transaction; and
 - (b) a copy of any related documents (for example, any notices given); and
 - (c) a description of the general nature of anything else done (or anticipated to be done) under **section 50G**. 30

50O Corporation or subsidiary must supply information

- (1) The Corporation or subsidiary must supply to the Minister any information requested in writing by the Minister to facilitate the transaction process, or to facilitate the implementation by the Minister of a social housing transaction.
- (2) **Subsection (1)** does not apply to the extent that the supply of the information would breach the information privacy principles set out in the Privacy Act 1993. 35

- (3) The Corporation or subsidiary must supply the information as soon as practicable after the Minister's written request.
- (4) Section 178 of the Companies Act 1993 does not entitle a Crown entity subsidiary of the Corporation to refuse to provide information requested under this section. 5
- 50P Method of contracting**
- (1) The Minister may enter into a contract or other enforceable obligation in accordance with this Part, for and on behalf of the Corporation or subsidiary, by signing under the name of the entity or entities concerned.
- (2) A contract or other enforceable obligation entered into by the Minister for and on behalf of the Corporation under **subsection (1)** is deemed to be entered into in accordance with section 127(2) of the Crown Entities Act 2004. 10
- (3) A contract or other enforceable obligation entered into by the Minister for and on behalf of a Crown entity subsidiary of the Corporation under **subsection (1)** is deemed to be entered into in accordance with section 180(1)(a) of the Companies Act 1993. 15
- Compare: 1993 No 105 s 180; 2004 No 115 s 127
- 50Q Delegation**
- (1) The Minister may delegate all or any of the Minister's functions and powers under this Part to the chief executive of the Ministry. 20
- (2) Section 28(2) to (7) and section 29 of the State Sector Act 1988 apply to every delegation under **subsection (1)** of this section as if that delegation were a delegation under section 28 of that Act and the Minister were the appropriate Minister.
- (3) Section 41(2) and (5) of the State Sector Act 1998 does not apply to a delegation to the chief executive of the Ministry of the Minister's functions and powers under this Part. 25
- (4) Every person purporting to act under this Part pursuant to any delegation under section 41 of the State Sector Act 1988—
- (a) must produce evidence of his or her authority to do so if signing a document in the nature of a deed or if reasonably requested to do so; and
- (b) must otherwise, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation. 30
- (5) This section applies despite any enactment or rule of law to the contrary.
- Legal effect* 35
- 50R Legal effect of things done by Minister**
- (1) The Corporation or subsidiary is responsible and liable for anything done, or not done, under **section 50E, 50F, or 50G** as if the Corporation or subsidiary

- had acted, or not acted, under those sections with the same powers as the Minister.
- (2) Neither the Crown nor the Minister is responsible or liable to any person by reason of acting, or having not acted, under **section 50E, 50F, or 50G**.
- (3) In **subsections (1) and (2), not acted** includes failed to do something before acting. 5
- (4) Anything done, or purported to be done, under **section 50E, 50F, or 50G** is deemed to be done by the Corporation or subsidiary for the purpose of performing, or assisting the Corporation to perform, the Corporation's functions.
- (5) This section applies despite any enactment or rule of law to the contrary. 10
- (6) Nothing in this section affects the right of a person to apply, in accordance with the law, for judicial review.
- 50S Protection from liability for board, members, individuals, etc**
- (1) No relevant board or member, nor any office holder or employee of the Corporation or subsidiary, is liable to any person for— 15
- (a) a decision of the Minister under this Part; or
- (b) the exercise by the Minister of a power under **section 50E, 50F, or 50G**.
- (2) The effect of this Part must be taken into account in determining the nature of the duties of each relevant board and member in respect of acts or omissions under this Part (for example, under section 51 or 56 of the Crown Entities Act 2004 and under section 137 of the Companies Act 1993). 20
- (3) The benefit of the immunity in section 121 of the Crown Entities Act 2004 extends to each director, office holder, and employee of a Crown entity subsidiary of the Corporation as if they were in the same position as a member, office holder, or employee of the Corporation in respect of the performance or intended performance of the functions of the Corporation under this Part, with any necessary modifications. 25
- (4) Section 138A(2) of the Companies Act 1993 must be read as extending to powers or duties exercised or performed in relation to this Part in a manner that the director reasonably believed would best achieve the Corporation's principal function for this Part, even though, in other respects, it may not have been in the best interests of the Corporation or subsidiary. 30
- (5) A requirement to keep accounting records (for example, as in section 168(1) of the Crown Entities Act 2004) applies for this Part to the extent that a relevant board has actual or constructive knowledge of the matters. 35
- (6) This section applies despite any enactment or rule of law to the contrary.

Part 3
Amendment to Housing Restructuring and Tenancy Matters Act
1992

9 Principal Act

This **Part** amends the Housing Restructuring and Tenancy Matters Act 1992 5
(the **principal Act**).

10 Section 27 amended (Provisions relating to vesting of land)

After section 27(4), insert:

(4A) To avoid doubt, sections 40 to 42 of the Public Works Act 1981 do not apply 10
(and have never applied) to the sale or disposal by the company of land vested
in the company pursuant to this Part.