

Health Sector (Transfers) Amendment Act 2000

Public Act 2000 No 92
Date of assent 14 December 2000

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Health Sector (Transfers) Amendment Act 2000.
- (2) In this Act, the Act known before the commencement of this Act as the Health Reforms (Transitional Provisions) Act 1993 is called “the principal Act”.

2 Commencement

- (1) Section 14 comes into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on 1 January 2001.

3 Title repealed

The Title of the principal Act is repealed.

4 Name of principal Act changed

- (1) As from the commencement of this section, the principal Act is called the Health Sector (Transfers) Act 1993.
- (2) The Short Titles of the principal Act and of the Health Reforms (Transitional Provisions) Amendment Act 1997 are consequentially amended by omitting the words “Health Reforms (Transitional Provisions)”, and substituting in each case the words “Health Sector (Transfers)”.
- (3) As from the commencement of this section, every reference in any enactment and in any document to the Health Reforms (Transitional Provisions) Act 1993 must, unless the context

otherwise requires, be read as a reference to the Health Sector (Transfers) Act 1993.

5 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing the definitions of **Residual Health Management Unit**, **transferee**, and **transferor**, and substituting the following definitions:

“**RHMU** means the Residual Health Management Unit continued by section 57 of the New Zealand Public Health and Disability Act 2000

“**transferee** means any of the following

“(a) the Crown (whether or not acting through a Government department):

“(b) a publicly-owned health and disability organisation:

“(c) a subsidiary of a publicly-owned health and disability organisation:

“(d) a person declared under subsection (6) to be a transferee for the purposes of this Act

“**transferor** means any of the following

“(a) the Crown (whether or not acting through a Government department):

“(b) a publicly-owned health and disability organisation:

“(c) a subsidiary of a publicly-owned health and disability organisation:

“(d) Health Benefits Limited:

“(e) in relation to any assets or liabilities that are transferred for a second or subsequent time, includes the transferee to whom those assets or liabilities have previously been transferred.”

- (2) Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“**Crown endowment** means, in relation to land held by a DHB, a trust settled by the Crown or by or pursuant to any Act, Provincial Ordinance, grant, or Order in Council in respect of that land, whether before or after it came to be held by the DHB, being a trust—

“(a) for the purpose of providing an income derived from that land—

“(i) for hospital purposes (such as for the maintenance of a hospital); or

- “(ii) for the purposes of any health services or disability support services or both; or
 - “(b) for the purposes of establishing, or providing a site for, a hospital or like institution; or
 - “(c) for hospital purposes; or
 - “(d) for the purposes of any health services or disability support services or both; or
 - “(e) for any or all of the purposes described in paragraphs (a) to (d)
- “**Crown endowment land** means, in relation to a DHB, land that—
- “(a) is vested in the DHB as a Crown endowment; and
 - “(b) was either—
 - “(i) granted by the Crown to the DHB or to any of its predecessors in title; or
 - “(ii) vested in the DHB or in any of its predecessors in title by or pursuant to any Act, Provincial Ordinance, grant, or Order in Council; and
 - “(c) was not land that, before it was granted to, or vested in, the DHB or any of its predecessors in title, had been given to the Crown, whether in trust or otherwise; and
 - “(d) is not a public reserve within the meaning of the Reserves Act 1977; and
 - “(e) is not, except for being held as a Crown endowment, land that is held in trust for a particular purpose; and
 - “(f) is not, except for being held as a Crown endowment, land in respect of which special provision is made by any Act or Provincial Ordinance
- “**Crown entity** has the same meaning as in section 2(1) of the Public Finance Act 1989
- “**Health Benefits Limited** means the company incorporated under the Companies Act 1993 with the name Health Benefits Limited
- “**predecessor in title**, in relation to a DHB, means any of its predecessors in title that was an area health board or a hospital board or a Crown health enterprise or a hospital and health service or a similar body established under an enactment relating to the management of public hospitals and charitable institutions
- “**publicly-owned health and disability organisation** means any DHB, the RHMU, the NZBS, and Pharmac”.

- (3) Section 2(1) of the principal Act is amended by omitting from paragraph (f) of the definition of **transfer** the expression “section 22 of, or”.
- (4) Section 2 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:
“(2) Unless the context otherwise requires, terms defined in section 6(1) of the New Zealand Public Health and Disability Act 2000 have the same meanings in this Act.”
- (5) Section 2 of the principal Act is amended by adding the following subsection:
“(6) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare any person to be a transferee for the purposes of this Act.”

6 New section 2A inserted

The principal Act is amended by inserting, after section 2, the following section:

“2A Purposes of this Act

The purposes of this Act are as follows:

- “(a) to provide for assets, liabilities, or functions within the public health and disability sector to be transferred to the Crown or to certain specified bodies within that sector:
- “(b) to provide for the effect and the consequences of—
- “(i) transfers, in accordance with this Act, of assets, liabilities, or functions within the public health and disability sector:
- “(ii) sales or other dispositions of land by DHBs:
- “(c) to permit DHBs, subject to specified conditions, to sell or dispose of land that is subject to trusts or certain other restrictions.”

7 Application of transfer to third parties

Section 6(1) of the principal Act is amended by omitting the expression “sections 4, 5, and 22”, and substituting the expression “sections 4 and 5”.

8 New heading substituted

The principal Act is amended by omitting the heading “*Assets Held in Trust*” (which appears above section 10), and substituting the following heading: “*Assets held in trust or subject to restrictions*”.

9 Assets to remain subject to trusts

Section 10 of the principal Act is amended by omitting the expression “section 11”, and substituting the expression “sections 11 to 11D”.

10 New sections 11A to 11H inserted

The principal Act is amended by inserting, after section 11, the following sections:

“11A Power of DHB to deal with trust land

- “(1) Subject to subsections (2) to (6) and to clause 43 of Schedule 3 of the New Zealand Public Health and Disability Act 2000, the powers of a DHB to sell, exchange, mortgage, or charge land may be exercised by that DHB in respect of land held in trust for any purpose, despite the terms of that trust.
- “(2) The proceeds of any sale effected pursuant to subsection (1), and the land or money obtained by any exchange effected pursuant to subsection (1), are to be subject, so far as may be practicable, to the same trusts as the land so disposed of, or to any similar trusts that the Attorney-General may approve.
- “(3) Nothing in this section applies to—
- “(a) any public reserve within the meaning of the Reserves Act 1977; or
- “(b) any Crown endowment land.
- “(4) In respect of any land held in trust, the power of sale conferred by subsection (1) may not be exercised if the sale of the land is expressly prohibited by a term of the trust.
- “(5) Any question as to whether subsection (4) prevents the sale of any land may be determined by the Attorney-General.
- “(6) No mortgage or charge given by a DHB in respect of any land that is held in trust for any purpose may contain or im-

ply any power of sale of the land, whether or not the mortgage or charge purports to do so.

“Compare: 1983 No 134 ss 75, 77(3)

“11B Power of Minister of Health to cancel Crown endowment

“(1) The Minister of Health may, by written notice given to a DHB, declare that any land vested in the DHB (being land that the Attorney-General has, by written notice to the Minister of Health, declared to be Crown endowment land) is no longer subject to the Crown endowment.

“(2) Where a notice is given by the Minister of Health under subsection (1), from the date of the notice the land—

“(a) ceases to be subject to the Crown endowment; and

“(b) subject to clause 43 of Schedule 3 of the New Zealand Public Health and Disability Act 2000, may be sold, exchanged, mortgaged, charged, or otherwise dealt with by the DHB free from the terms of the Crown endowment.

“(3) The Attorney-General may declare any land vested in a DHB to be Crown endowment land for the purposes of subsection (1) even if either or both of the following applies:

“(a) the purpose of the Crown endowment can no longer be attained or ascertained:

“(b) it is uncertain whether the land is Crown endowment land.

“11C Power of DHB to apply proceeds of sale of Crown endowment land

“(1) Subject to subsection (2), where a DHB holds in trust the proceeds of the sale of any land (being land that was, at the time of the sale, subject to a Crown endowment), the DHB may, despite the terms of that endowment, and whether the land was sold before or after the commencement of this section, apply the proceeds of the sale—

“(a) for the purposes of any health services or disability support services, or both, provided by the DHB; or

“(b) for any purpose for which the DHB may lawfully apply its own property.

- “(2) The power conferred by subsection (1) may be exercised in respect of the proceeds of the sale of any land only if the Attorney-General, by written notice given to the DHB, declares that the land sold (whether before or after the commencement of this section) was Crown endowment land.
- “(3) A notice may be given under subsection (2) in respect of land sold by a DHB even if either or both of the following applies:
- “(a) the purpose of the Crown endowment can no longer be attained or ascertained:
 - “(b) it is uncertain whether the land sold was Crown endowment land.

“**11D Saving in respect of Charitable Trusts Act 1957**

Nothing in this Act prevents a DHB from exercising the rights conferred on trustees by Part III of the Charitable Trusts Act 1957.

“**11E Health sector reserves**

- “(1) In this section, **health sector reserve** means any land vested in a transferee that is a reserve within the meaning of the Reserves Act 1977.
- “(2) Every health sector reserve is deemed to be classified, under the Reserves Act 1977, as a Government purpose reserve for the purpose of the health and disability sector and for related purposes.
- “(3) Every health sector reserve may be transferred under this Act to any transferee, whether or not the transferee is in the health and disability sector.
- “(4) Every transferee to whom a health sector reserve is transferred under this Act is an administering body under the Reserves Act 1977 in respect of that reserve, except that neither section 25(3) of that Act nor Part IV of that Act applies to the transferee or to the reserve.
- “(5) A transferee outside the health and disability sector to whom a health sector reserve is transferred under this Act must, as soon as practicable, promote either of the following:
- “(a) an appropriate change of classification or purpose of the health sector reserve under the Reserves Act 1977:

- “(b) the revocation, under that Act, of the reservation of the health sector reserve as a reserve.
- “(6) If the reservation of any health sector reserve is revoked under the Reserves Act 1977, then, despite any enactment, from the date of the revocation the land comprising the former health sector reserve—
- “(a) remains vested in the transferee; and
- “(b) is subject to any reservations or trusts affecting that land arising from Acts (other than the Reserves Act 1977 or any other Act by which the former status as a reserve was conferred or confirmed), Provincial Ordinances, wills, deeds, or other instruments; and
- “(c) is subject to clause 3 of the First Schedule if it is public work land within the meaning of that clause; and
- “(d) is subject to any valid leases, rights, easements, or interests subsisting over that land at the date of the revocation.
- “(7) Despite the Reserves Act 1977, a lease or licence may be granted over a health sector reserve for health-related purposes or, with the consent of the Minister, for any other purposes.
- “(8) The granting of a lease or licence under subsection (7) is subject to,—
- “(a) if granted by a publicly-owned health and disability organisation or a subsidiary of such an organisation, clause 43 of Schedule 3 or clause 28 of Schedule 6 of the New Zealand Public Health and Disability Act 2000, as the case may require; and
- “(b) if granted by a transferee that is not a publicly-owned health and disability organisation or a subsidiary of such an organisation, clause 43 of Schedule 3 of the New Zealand Public Health and Disability Act 2000, as if that clause applied, with all necessary modifications, to the transferee.
- “(9) Any payment under a lease or licence over a health sector reserve may be paid to the transferee in whom the reserve is vested, and may be applied for the purposes of the transferee.
- “(10) To avoid any doubt, nothing in this Act permits the Minister to alter the status of a health sector reserve without complying with all processes required by the Reserves Act 1977, includ-

ing the processes under that Act that require changes in status to be approved by the Minister of Conservation.

“11F Saving in respect of Public Works Act 1981

Nothing in sections 11A to 11E limits the application of clause 3 of the First Schedule to land to which that clause applies.

“11G Saving in respect of Waikato Raupatu Claims Settlement Act 1995 and Ngai Tahu Claims Settlement Act 1998

Nothing in sections 11A to 11E limits the application of—

- “(a) section 11 of the Waikato Raupatu Claims Settlement Act 1995; or
- “(b) Part 9 of the Ngai Tahu Claims Settlement Act 1998.

“11H Part IVA of Conservation Act 1987

- “(1) Subject to subsections (2) to (5), the provisions of Part IVA of the Conservation Act 1987 apply, with all necessary modifications, in relation to every sale or other disposition of land by a transferee as if that disposition of land were a sale or other disposition of land by the Crown.
- “(2) The provisions of Part IVA of the Conservation Act 1987 do not apply in relation to any sale or other disposition of land by a transferee if the land sold or otherwise disposed of—
 - “(a) is land that,—
 - “(i) before being transferred to, or vested in, the transferee under this Act or the New Zealand Public Health and Disability Act 2000, had been given to the Crown, a DHB, or any predecessors in title of a DHB; and
 - “(ii) is being sold or disposed of to the donor of the land or to the successor of the donor of the land (being the person who would have been entitled to the land under the will or intestacy of the donor had the donor owned the land at the date of the donor’s death); or
 - “(b) is land acquired by the transferee other than land acquired by virtue of—
 - “(i) the operation of section 95 of the New Zealand Public Health and Disability Act 2000; or

- “(ii) a transfer under this Act; or
- “(c) is land being transferred to or vested in the Crown.
- “(3) Despite subsection (1), the Registrar-General of Land is not obliged to take any action under section 24D of the Conservation Act 1987 upon the registration of any disposition by a transferee of any land under the Land Transfer Act 1952 unless a certificate complying with subsection (4) is lodged with the instrument by which the disposition is being effected.
- “(4) The certificate required by subsection (3) must—
 - “(a) be signed by the chief executive of the transferee by which the disposition is being effected; and
 - “(b) certify that the disposition is one to which Part IVA of the Conservation Act 1987 applies; and
 - “(c) state the action that the Registrar-General of Land is required to take under section 24D of the Conservation Act 1987 upon the registration of that disposition; and
 - “(d) specify the certificate of title upon which the Registrar-General of Land is to record the statements required by section 24D of the Conservation Act 1987.
- “(5) Nothing in this section limits the provisions of clause 6 of the First Schedule.”

11 Repeal of sections 16 to 22 of principal Act

The principal Act is amended by repealing sections 16 to 22.

12 Amendment to Schedule 1 of principal Act

Schedule 1 of the principal Act is amended by repealing clause 3, and substituting the following clause:

“3 Modification of provisions of Public Works Act 1981

- “(1) In this clause, **public work land** means any land or interest in land owned by a transferee that—
 - “(a) on 10 May 1993 was subject to sections 40 to 42 of the Public Works Act 1981; and
 - “(b) has on 1 or more occasions been transferred by or under this Act.
- “(2) Sections 40 to 42 of the Public Works Act 1981 do not apply to any public work land so long as the land—

- “(a) is held by a transferee (regardless of whether or not those purposes are the purposes for which the land was acquired under the Public Works Act 1981 or under any corresponding former Act)—
 - “(i) for the purposes of the transferee; or
 - “(ii) to enable the transferee to prepare for the disposal of the land; or
 - “(iii) to enable the transferee to determine whether to transfer or hold the land for any purpose referred to in this subclause; or
 - “(b) is transferred under this Act to enable another transferee to hold the land for any of the purposes specified in paragraph (a); or
 - “(c) is held under a lease or licence granted by a transferee to any person other than a transferee for health-related purposes or, with the consent of the Minister, for any other purpose.
- “(3) If any public work land is not held or transferred in accordance with subclause (2), sections 40 and 41 of the Public Works Act 1981 apply as if the land were owned by the Crown. However, the proceeds of any sale of the land must nevertheless be applied for the purposes of the transferee that, immediately before the sale, owned the land.
- “(4) When subclause (3) applies to any public work land, the transferee that owns the land may, subject to subclause (5), sell or otherwise dispose of the land to any person on any terms or conditions it thinks fit if,—
- “(a) within 40 working days following an offer made, under section 40(2) of the Public Works Act 1981 (or such further period as the transferee allows), the parties have neither agreed on a price for the land nor agreed that the price be determined by the Land Valuation Tribunal; or
 - “(b) an offer under section 40 of that Act in respect of the land is not required.
- “(5) A transferee and a person who is entitled, or may become entitled, to receive an offer under section 40(2) of the Public Works Act 1981 in respect of any public work land may agree that the sale of the land is to be subject to any terms and con-

ditions, including, for example, a term or condition entitling the transferee to lease the land.

- “(6) An agreement under subclause (5), in relation to any public work land with a person who is entitled, or may become entitled, to receive an offer under section 40(2) of the Public Works Act 1981 in respect of that land, extinguishes the person’s entitlement or prospective entitlement under that section in respect of the land.”

13 Validation of use of public work land for purposes not related to health

In any case where, before the commencement of this section, any public work land (within the meaning of clause 3 of Schedule 1 of the principal Act) has, with the consent of a transferee (within the meaning of that Act) been used by a person other than such a transferee for purposes other than health-related purposes, that use of that land is deemed to have been made as if—

- (a) clause 3(2)(c) of that schedule (as enacted by section 12) had been in force at the time of the use; and
- (b) the Minister had consented, under that clause, to that use.

14 Orders in Council transferring assets or liabilities in December 2000

Before the commencement of section 5, an Order in Council, under section 5 of the principal Act, may be made as if section 2 of the principal Act had been amended by section 5, but no proposal approved by such an Order in Council may take effect before the commencement of section 5.

Legislative history

5 December 2000

Divided from New Zealand Public Health and
Disability Bill (Bill 48-3A)

7 December 2000

Third reading
