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1989, No. 76

**An Act to amend the Local Government Act 1974**

[28 September 1989]

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Local Government Amendment Act (No. 4) 1989, and shall be read together with and deemed part of the Local Government Act 1974 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of November 1989.

**2. New Part XXXIVB inserted**—The principal Act is hereby amended by inserting, after Part XXXIVA (as inserted by section 34 (1) of the Local Government Amendment Act (No. 2) 1989), the following Part:

“PART XXXIVB

“TRANSPORT-RELATED ENTERPRISES AND DIVESTMENT OF UNDERTAKINGS

“594zQ. **Interpretation**—In this Part of this Act, unless the context otherwise requires,—

“ ‘Approved divestment plan’ means a plan approved by the Minister under section 594ZZA of this Act:

“ ‘Divestment plan’ means a plan submitted under section 594ZX of this Act:

“ ‘Divestment unit’ means a unit constituted under section 594ZV of this Act:

“ ‘Establishment unit’ means an establishment unit constituted under section 594I of this Act:

“ ‘Harbour ferry service’ means a service for the carriage for hire or reward of passengers or of goods by any vessel or hovercraft that engages in such carriage within the limits of any harbour:

“ ‘Instrument’—

“(a) Includes—

“(i) Any instrument of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities, or would do so if it or a copy of it were lodged, filed, or registered under any Act; and

“(ii) Any judgment, order, or process of a Court; but

“(b) Does not include any Act of Parliament:

“ ‘Land Transport Account’ means the Land Transport Account established under section 11 of the Transit New Zealand Act 1989:

“ ‘Liabilities’ means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere):

“ ‘Minister’ means the Minister of Transport:

“ ‘Passenger service’ means—

“(a) Any passenger service within the meaning of section 2 (1) of the Transport Services Licensing Act 1989; and

“(b) Any harbour ferry service, passenger rail service, cable car, hovercraft, monorail, tramway, or other form of public transport (other than air transport) that is available to the public generally:

“ ‘Passenger transport company’ means a company which, being a local authority trading enterprise within the meaning of Part XXXIVA of this Act, conducts any passenger transport operation:

“ ‘Passenger transport operation’ means any activity of any description carried on for the purposes of the provision of any service for the carriage for reward of persons by any means, including activities incidental to or connected therewith or capable of being conveniently carried on in association with any such activities; but does not include any agreement entered into by a local authority for the provision of a passenger service by some other person:

“ ‘Passenger transport undertaking’, in relation to any local authority, means the property and rights of the local authority that relate to or facilitate any passenger transport operation of any kind:

“ ‘Property’—

“(a) Means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal; and

“(b) Without limiting the generality of paragraph (a) of this definition, includes—

“(i) Choses in action and money; and

“(ii) Goodwill; and

“(iii) Rights, interests, and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective:

“ ‘Rights’ means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective.

**“594ZR. Local authority not to conduct passenger transport operation—**(1) Notwithstanding the provisions of this or any other Act, no local authority shall conduct a passenger transport operation after the 30th day of June 1991, or after such later date as the Minister in any particular case may allow.

**“(2)** A local authority shall not be in breach of subsection (1) of this section by reason only of its having an interest in a passenger transport company, whether or not in conjunction with any other local authority.

**“594ZS. Directors of passenger transport companies, etc.—**Notwithstanding the provisions of section 594R (2) of this Act, the articles of association of every passenger transport company shall provide—

- “(a)** That there shall be no fewer than 6 directors of the company; and
- “(b)** That not more than 2 members of any local authority or employees of any local authority may be directors of the company.

**“594ZT. Passenger transport companies incorporated before commencement of this Part—**Where any local authority has, before the coming into force of this Part of this Act, formed a passenger transport company, the local authority shall comply in all respects with the provisions of this Part of this Act as if such incorporation took place after the coming into force of this Part of this Act.

**“594ZU. Regional council not to have interest in passenger transport company, undertaking, or operation—**Notwithstanding section 594H of this Act, or any other provision of this or any other Act, no regional council shall—

- “(a)** Hold any equity securities or debt securities in any passenger transport company formed pursuant to this Part of this Act; or
- “(b)** Hold any equity securities or debt securities or have any interest whatsoever in any body corporate or unincorporate which engages, directly or indirectly, in any passenger transport operation or includes in its assets any passenger transport undertaking; or
- “(c)** Conduct any passenger transport operation, whether or not on its own behalf; or
- “(d)** Include in its assets any passenger transport undertaking,—

whether or not any local authority has or has had any interest in the passenger transport operation or passenger transport undertaking.

**“594zv. Divestment units—**(1) If, on the date of the coming into force of this Part of this Act, a regional council is not in compliance with the provisions of section 594zu of this Act it shall, not later than the 1st day of January 1993, or such later date as the Minister in any particular case may allow, constitute and adequately fund a divestment unit, which shall comprise such persons as the regional council considers appropriate having regard to the functions of the divestment unit.

“(2) Each regional council to which this section applies is hereby authorised, and shall be deemed always to have been authorised, to constitute, reconstitute, fund, and (after the approval of the divestment plan) to dissolve, a divestment unit.

“(3) Where any regional council to which this section applies has not constituted a divestment unit within the time required by this section, the Minister may constitute a divestment unit in respect of that regional council and determine the funding to be provided by the regional council in respect of the divestment unit.

**“594zw. Function of divestment units—**The function of each divestment unit shall be to prepare and agree upon a divestment plan with the regional council, and, in so doing, it shall—

- “(a) Identify the interests, undertakings, and operations of the regional council that are in breach of section 594zu of this Act:
- “(b) Value those interests, undertakings, and operations or determine a method for their valuation:
- “(c) Identify any financial assistance received from the Crown (whether through the Urban Transport Council or any other source), or from any local authority, that was applied to the purchase of those undertakings, and the ratio of that financial assistance to the purchase price of those undertakings:
- “(d) Determine the best manner in which, and the time within which, those interests, undertakings, and operations should be sold:
- “(e) Make such other recommendations as are necessary for the divestment of those interests, undertakings, and operations in a prudent and businesslike manner.

**“594ZX. Divestment plan**—Not later than the 1st day of May 1993 or such later date as the Minister in any particular case may allow, a divestment unit shall submit to the regional council, and make available to the public, a divestment plan which shall include recommendations relating to those matters specified in section 594ZW of this Act, and shall similarly make available to the public any subsequent reports of the divestment unit on those matters.

**“594ZY. Sale to territorial authorities**—(1) In performing its functions under section 594ZW of this Act, a divestment unit shall fully investigate the prospect of disposing of the interests, undertakings, and operations referred to in that section to one or more local authority trading enterprises controlled by territorial authorities whose districts are within the region; and for that purpose any territorial authorities having such control shall jointly co-operate with the divestment unit to determine a means by which the interests, undertakings, and operations may be so disposed of.

(2) A divestment unit may only determine that any of the interests, undertakings, and operations be disposed of to any person other than a local authority trading enterprise referred to in subsection (1) of this section if it has first complied with the provisions of that subsection and is unable to determine a means of disposal to one or more of those trading enterprises.

**“594ZZ. Application of Local Government Official Information and Meetings Act 1987**—The Local Government Official Information and Meetings Act 1987 shall apply in respect of every divestment unit as if it were a regional council.

**“594ZZA. Determination and approval of regional council divestment plan**—(1) Each regional council to which section 594ZV of this Act applies and each divestment unit shall use their best endeavours to agree upon the matters contained in a divestment plan.

(2) Not later than the 1st day of August 1993, or such later date as the Minister in any particular case may allow, the regional council and the divestment unit shall report to the Minister on the extent of their agreement and on any disagreement relating to the matters contained in section 594ZW of this Act.

(3) Where there is agreement on all the matters referred to in subsection (2) of this section the Minister may approve the divestment plan.

“(4) Where there is a disagreement on any matter referred to in subsection (2) of this section—

“(a) The regional council and the divestment unit shall report separately to the Minister and to each other setting out the matters that each considers relevant and the solution proposed by each; and

“(b) The disagreement shall be resolved by the written determination of the Minister, who may then amend and approve the divestment plan.

“(5) Notwithstanding that the regional council and the divestment unit may have agreed on any matter referred to in subsection (2) of this section, the Minister, in writing, may determine the matter on a different basis and amend and approve the plan accordingly if the Minister is satisfied that, having regard to the provisions of section 594ZU of this Act, the interests of the regional council, and, if appropriate, the interests of the territorial authorities whose districts are within the region and of other regional councils, it is fair and equitable to do so, and, in so doing,—

“(a) The Minister may exclude from the divestment plan any interest, undertaking, or operation that the Minister does not consider ought to be sold or transferred; or

“(b) Vary the manner in which any interest, undertaking, or operation is to be sold or transferred.

“(6) Before making any determination under subsection (5) of this section, the Minister shall advise the regional council and the divestment unit of the Minister’s intention to do so and shall give a reasonable opportunity for each to make submissions on the matter.

“(7) Where any matter is to be determined by the Minister under subsection (4) or subsection (5) of this section, the Minister may, instead of determining the matter personally, direct that the matter be determined by arbitration or in some other manner, and, where the Minister so directs in relation to a matter to be determined under subsection (5) of this section, the provisions of subsection (6) of this section shall apply in relation to the person or persons directed to make the determination as if that person or those persons were the Minister.

“(8) Where any matter is not included in a divestment plan and the Minister, having regard to the provisions of section 594ZU of this Act, considers that it should be so included, the Minister may direct the regional council and the divestment unit to consider the matter and report to the Minister concerning its inclusion in the divestment plan.

“(9) The Minister may, on the application of a regional council or divestment unit, and after consultation with each of them, amend any approved divestment plan.

“(10) The Minister may, on the application of a regional council, made with the approval of the divestment unit, include in any divestment plan, as part of the approval of the plan or by way of amendment to an approved divestment plan, any interest, undertaking, or operation of the regional council.

“(11) Where any undertaking is included in an approved divestment plan pursuant to subsection (10) of this section, this Part of this Act shall apply in all respects as if that undertaking were a passenger transport undertaking.

“(12) No divestment plan prepared under this Part of this Act shall be put into effect until it has been approved by the Minister; and every approved divestment plan shall be put into effect in the form approved by the Minister. The Minister may grant approval of part of a divestment plan if the Minister considers it appropriate, and this Part of this Act shall apply to that part as if it were an approved divestment plan.

“(13) The Minister shall notify Transit New Zealand of any approval of a divestment plan or amendment of an approved divestment plan given or made under this section.

“594ZZB. **Passenger transport interests, undertakings, and operations to be sold**—The passenger transport interests, undertakings, and operations of each regional council that are to be disposed of or sold in accordance with an approved divestment plan shall be disposed of or sold, as soon as practicable after the plan has been approved by the Minister under section 594ZZA of this Act, in accordance with that plan; and in any event not later than the 30th day of June 1994 or such later date as the Minister in any particular case may allow.

“594ZZC. **Duty to act in furtherance of objects of this Part of Act**—(1) Every regional council to which section 594ZU of this Act applies, at all times shall do everything in its power to achieve the objectives of this Part of this Act, and for that purpose, but without limitation, shall do everything in its power—

“(a) To preserve and maintain all passenger transport undertakings of the regional council pending their sale or disposal pursuant to an approved divestment plan:

“(b) To assist the divestment unit in the exercise of its functions:



“(c) To facilitate the sale or disposal of its passenger transport undertaking pursuant to an approved divestment plan.

“(2) No regional council shall, without the prior written consent of the Minister,—

“(a) Dispose of or charge any of its passenger transport undertakings; or

“(b) Enter into or grant any lease, licence, concession, or other franchise agreement or arrangement of more than 12 months’ duration relating to any of its passenger transport undertakings; or

“(c) Extend the term of any lease, licence, concession, or other franchise agreement or arrangement relating to any of its passenger transport undertakings for a period exceeding 12 months,—

except in accordance with an approved divestment plan.

“(3) The Minister, upon being satisfied that all the passenger transport undertakings of a regional council that are to be disposed of or sold pursuant to an approved divestment plan have been so disposed of or sold, shall advise the regional council in writing that the consent of the Minister to any action referred to in subsection (2) of this section is no longer required.

“594ZZD. **Regional council not to enter into contracts—**

(1) Notwithstanding the provisions of this or any other Act or any rule of law, but subject to subsection (2) of this section, no regional council that is not in compliance with the provisions of section 594ZU of this Act, shall—

“(a) Administer competitive process in respect of a contract or agreement for the provision of a passenger service in its region; or

“(b) Negotiate any contract or agreement for the provision of a passenger service in its region; or

“(c) Enter into any contract or agreement for the provision of a passenger service in its region.

“(2) Notwithstanding the provisions of this or any other Act or any rule of law, where a regional council is not in compliance with section 594ZU of this Act the functions and powers referred to in subsection (1) of this section shall be deemed to be delegated to the Minister, and the Minister may appoint a ministerial committee of persons from the region to perform those functions and exercise those powers.

“(3) All contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices, (whether or not in writing) entered into by, made with, given to

or by, or addressed to the Minister or any ministerial committee acting under subsection (2) of this section on behalf of a regional council (whether alone or with any other person) shall be binding on and enforceable by, against, or in favour of the regional council as fully and effectually in every respect as if, instead of the Minister or ministerial committee, the regional council had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed, as the case may be.

**“594ZZE. Public availability of documents—**Where any regional council or territorial authority is required under this Part of this Act to make any document available to the public, it shall—

“(a) Make sufficient copies of that document available for public inspection, free of charge; and

“(b) Make sufficient copies of that document available for purchase at a reasonable price during normal office hours at the principal office of the regional council, territorial authority, or passenger transport company, or all of them, as the case may require; and

“(c) Notify, by advertisement in a newspaper circulating in every region or district of the regional council or territorial authority to which or to whose passenger transport company the document relates, the fact that copies are so available.

**“594ZZF. Financial assistance from Land Transport Account suspended—**(1) Except as directed by the Minister in writing, and notwithstanding any enactment, no regional council or territorial authority that is in breach of any of the provisions of this Part of this Act shall receive financial assistance from the Land Transport Account.

“(2) A regional council shall not for the purposes of subsection (1) of this section be in breach of the provisions of this Part of this Act by reason only of its being in breach of section 594ZU of this Act at the time of the coming into force of this Part of this Act.

**“594ZZG. Financial assistance to be identified—**Every establishment unit submitting an establishment plan or a divestment plan to a local authority under section 594K or section 594N respectively of this Act in respect of any passenger transport undertaking, and every local authority exercising its powers of divestment under section 594O of this Act in respect

of any passenger transport undertaking, shall, in writing to the Minister and to any relevant local authority, identify—

- “(a) The amount of financial assistance received from the Crown (whether through the Urban Transport Council or from any other source); and
- “(b) The amount of financial assistance received from any other local authority; and
- “(c) The ratio of that financial assistance to the purchase price of the undertaking.

“594ZZH. **Repayment of financial assistance—**  
(1) Where—

- “(a) A passenger transport asset purchased with financial assistance from the Crown is sold by any regional council or territorial authority; or
- “(b) Any equity securities in a passenger transport company are first issued or sold to any local authority (other than on the initial formation of the company) or to any other person; or
- “(c) There is a distribution of capital of a passenger transport company in any circumstances,—

an amount equal to that proportion of the sale or issue price or distribution that represents financial assistance from the Crown for the purchase of any passenger transport asset shall be payable to the Crown by the recipient of the sale or issue price or distribution, unless the Minister is satisfied that the money will be applied to public passenger transport purposes and directs in writing that the refund need not be paid.

“(2) Where an asset purchased with financial assistance from a territorial authority is sold by a regional council pursuant to an approved divestment plan, that proportion of the sale price of the asset that represents such financial assistance shall be refunded to the territorial authority.

“594ZZI. **Control of local authority powers in relation to passenger transport operations—**Every local authority that has any control over the designation or the specification of routes or the siting of stops, stands, depots, or other facilities ancillary to passenger transport operations, or control over other matters relating to passenger transport operations, shall ensure that its decisions are in accordance with accepted principles of town planning and sound traffic management and do not advantage or disadvantage any passenger transport operation except where necessary to comply with those principles.

**“594ZZJ. Supply of information—**The Minister, any establishment unit, and any divestment unit may from time to time, for the purposes of this Act, require the territorial authority or regional council, as the case may be, to make available to the Minister or the establishment unit or the divestment unit, as the case may be, information in its possession or over which it has control relating to its passenger transport undertakings, operations, interests and procedures; and the territorial authority or regional council shall make that information available in a form in which it may be readily understood.

**“594ZZK. Uses deemed to be permitted uses—**Where any land is transferred under this Part of this Act the use of that land which is established at the date of the transfer shall be deemed to be a use permitted as of right under the Town and Country Planning Act 1977 until the next completion of the review of the district scheme or appropriate part of the district scheme, and thereafter the status of that use shall be as provided from time to time in or under the district scheme.”

**3. Scope of operation of local authority trading enterprises that are passenger transport companies or that may receive payments for land transport related projects—**The principal Act is hereby amended by inserting after section 594Q (as inserted by section 34 of the Local Government Amendment Act (No. 2) 1989), the following section:

**“594QA. (1)** Without limiting the powers of any other local authority trading enterprise, any passenger transport company (as defined in section 594zQ of this Act) that is a local authority trading enterprise may carry out any activity, whether within or outside the district of any territorial authority that holds shares in the company and whether or not for the benefit of the inhabitants of any such district or the public generally, that is an activity that is ordinarily carried out by companies that are not local authority trading enterprises and are engaged in passenger transport.

**“(2)** Without limiting the powers of any other local authority trading enterprise, any local authority trading enterprise to which payments may be made under the authority of section 20 (3) of the Transit New Zealand Act 1989 may carry out any activity, whether within or outside the region or district of any local authority that holds shares in the company and whether or not for the benefit of the inhabitants of any such region or

district or the public generally, that is an activity that is ordinarily carried out by companies that are not local authority trading enterprises and are engaged in activities similar to those undertaken by the local authority trading enterprise.”

**4. Consequential amendments**—(1) Section 587 (1) of the principal Act (as enacted by section 2 of the Local Government Amendment Act 1979) is hereby amended—

(a) By inserting, after the words “Subject to”, the words “Part XXXIV<sub>B</sub> of this Act and to”:

(b) By omitting from paragraph (a) the words “(whether within the district or between any place in the district and any place outside the district)”.

(2) Section 588 (1) of the principal Act (as so enacted) is hereby amended by inserting after the words “Subject to”, the words “Part XXXIV<sub>B</sub> of this Act and to”.

(3) Section 589 of the principal Act (as so enacted) is hereby amended—

(a) By inserting in subsection (1), after the words “section 588 of this Act) may”, the words “, subject to Part XXXIV<sub>B</sub> of this Act,”:

(b) By inserting in subsection (2), after the words “Subject to”, the words “Part XXXIV<sub>B</sub> of this Act and to”:

(c) By inserting in subsection (3), after the words “rule of law”, the words “, but subject to Parts XXXIV<sub>A</sub> and XXXIV<sub>B</sub> of this Act”.

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This Act is administered in the Department of Internal Affairs.

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