

# **Social Housing Reform (Transaction Mandate) Bill**

Government Bill

As reported from the Social Services Committee

## **Commentary**

### **Recommendation**

The Social Services Committee has examined the Social Housing Reform (Transaction Mandate) Bill and recommends by majority that it be passed with the amendments shown.

### **Introduction**

This is an omnibus bill, which means it seeks to amend more than one Act. It would amend the Housing Act 1955, the Housing Corporation Act 1974, and the Housing Restructuring and Tenancy Matters Act 1992.

### **Transaction mandate**

The bill aims to help implement the Government's programme to reform social housing. The aim of this programme is for the State to be one of several providers of social housing rather than the sole provider. Previous legislation has set the framework for the programme. This bill aims to encourage and develop the state housing reform objectives listed in clause 8, new section 50D.

So that the Crown can manage the transfer process, the bill sets out a "transaction mandate". This is a statutory power that would allow the Crown to execute social housing transactions on behalf of Housing New Zealand.

Currently, all decisions about Housing New Zealand's assets must be made under the authority of the relevant board. Clause 8 would insert new Part 5A into the Housing Corporation Act to change this. New Part 5A would enable the Minister of Finance and the Minister of Housing, acting jointly, to execute any transfers directly. New section 50E would authorise the Ministers to enter into "transfer contracts" to sell or lease Housing New Zealand properties for the purpose of a social housing reform ob-

jective listed in new section 50D. Housing New Zealand would implement contracts executed by Ministers.

### **Crown may sell land that is held for state housing purposes**

The bill seeks to remedy an ambiguity in the interpretation of the Housing Act. One interpretation is that, despite the Crown being the legal owner, only Housing New Zealand may sell and lease Crown land that is held for state housing purposes.

The other interpretation acknowledges Housing New Zealand as the Crown's agent for this land but allows the Crown, as principal and owner of the land, to also sell the land. The bill seeks to resolve the ambiguity by providing a new power for the Minister of Housing to designate this land as being under direct ministerial control. Clause 4 would insert new section 2A into the Housing Act. It would give the Minister of Housing the exclusive power to administer relevant state housing land (including any dwellings, other buildings, and chattels on that land) as identified in a *Gazette* notice.

### **Reporting requirements under the Housing Act**

Our main recommendation is to Part 1 of the bill, which would amend the Housing Act. Clause 4, new section 2A(3), would remove Housing New Zealand's obligation, under section 34 of the Act, to include in its annual report information on state housing land that is declared to be under exclusive ministerial administration. However, we consider it reasonable to require the Crown to report on its operations for such property. We recommend inserting new subsection 2A(8) into clause 4 to provide for this.

It would not be appropriate for Housing New Zealand to provide such reports, because it would no longer have control of the land. Instead, the report should be included in the responsible ministry's annual report (we anticipate that this could be the Ministry of Business, Innovation and Employment).

### **Notices should be disallowable**

We recommend inserting new subsection 2A(6) into clause 4. This would make it clear that notices declared under new section 2A would be disallowable instruments for the purposes of the Legislation Act 2012. It would also require such notices to be presented to the House of Representatives, to be scrutinised and disallowed as the House sees fit.

### **Amendments to Housing Corporation Act**

We recommend amending clause 8, new subsection 50D(2), to make it clear that the social housing reform objectives may be relevant to other decisions made by Ministers, not only decisions under new section 50E.

We recommend changing clause 8, new subsections 50J(1) and 50O(1), to make it clear that the corporation's principal objectives under proposed new Part 5A include facilitating transaction processes rather than a single transaction process.

We recommend changing clause 8, new subsection 50O(3), to clarify that information must be supplied as soon as practicable after the Minister's request is received, rather than after the request itself.

### **New Zealand Labour Party, Green Party of Aotearoa New Zealand, and New Zealand First minority view**

The New Zealand Labour Party, the Green Party of Aotearoa New Zealand, and New Zealand First oppose the bill for two main reasons.

The first is that the bill enables a policy we disagree with. The sale of a large proportion of the country's stock of state houses is central to the Government's policy. Our view is that the housing crisis more than anything demands a substantial increase in the number of houses affordable for people on very low incomes. In addition there is an urgent need to improve the quality of state housing, in particular to make it warm and dry. We think changing the ownership of the Government's existing stock does nothing to assist with those two urgent tasks. We do not accept the Government's claim that the sale of state houses is a means to the end of increasing and improving the stock of housing. We believe there are other ways to grow the community housing organisations that would be better overall than transferring ex-state houses to them. This concern is outside the scope of the bill but nevertheless central to our opposition.

The second objection to the bill is that it confers on the two Ministers extraordinary and unprecedented powers to directly negotiate the terms of the disposal of publicly owned assets, which according to Government policy could be as much as one-third of Housing New Zealand's \$18 billion value. The "transaction mandate" frees the Ministers from the requirements of Housing New Zealand's legislation and its governance. We think it is extremely unwise to give Ministers such unfettered powers to negotiate the transfer of such valuable assets out of the public realm into the private. The legislative underpinnings this bill clears away are there in part to protect Ministers from any perception of corruption, and that poses a risk to New Zealand's cherished reputation for being corruption-free. We agree with submitters who said the bill's provisions leave Ministers with insufficient transparency and accountability. We also agree with those who said the six policy objectives lack definition. The absurdity of this is illustrated, we believe, by the example cited by Treasury that ex-state houses might be sold at market rates in order to increase the supply, thus aiding affordability.

## **Appendix**

### **Committee process**

The Social Housing Reform (Transaction Mandate) Bill was referred to the committee on 18 August 2015. The closing date for submissions was 1 October 2015. We received and considered 11 submissions from interested groups and individuals. We heard eight submissions.

We received advice from the Treasury and from Housing New Zealand Corporation.

### **Committee membership**

Alfred Ngaro (Chairperson)

Darroch Ball

Matt Doocey

Jan Logie

Todd Muller

Jono Naylor

Dr Parmjeet Parmar

Carmel Sepuloni

Stuart Smith

Phil Twyford

Poto Williams

**Social Housing Reform (Transaction Mandate) Bill**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

~~text deleted by a majority~~



*Hon Paula Bennett*

## **Social Housing Reform (Transaction Mandate) Bill**

Government Bill

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### Part 3

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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**).

### 3A Section 2 amended (Interpretation)

In section 2(1), insert in its appropriate alphabetical order:

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

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

After section 2, insert:

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

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(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 (**section 2A land**).

(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 **section 2A** land ~~so declared to be land that is subject to this section~~.

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(3) However, sections 32 to 34 do not apply in respect of ~~that~~ **section 2A** land.

(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.~~

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

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(6) A declaration made under **subsection (1)** is a disallowable instrument but not a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

(7) All amounts payable to the Crown in respect of **section 2A** land (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.

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- (8) The Ministry must include in its annual report under section 43 of the Public Finance Act 1989 a report on the operations in respect of **section 2A** land for the relevant financial year.

## Part 2

### Amendments to Housing Corporation Act 1974

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#### 5 Principal Act

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

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

After section 2, insert:

##### 2A Act binds the Crown

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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

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After Part 5, insert:

### Part 5A

#### Social housing reform

##### *Purpose, overview, and interpretation*

##### 50A Purpose of this Part

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

##### 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
- (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.

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

**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: 5

- (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 10

**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 15

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

**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 for a social housing transaction or potential social housing transaction and ending with the entry into the social housing transaction (or earlier termination of the process) 20

**transfer contract** has the meaning set out in **section 50E** 25

**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**.

*Entry into and implementation of social housing transactions*

**50D Meaning and relevance of social housing reform objectives** 30

- (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:
  - (b) social housing is of the right size and configuration, and in the right areas, for households that need it: 35
  - (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:
- (f) the supply of affordable housing is increased, especially in Auckland.
- (2) The social housing reform objectives are relevant ~~only to a decision to decisions~~ by the Minister to enter into ~~a transfer contract~~ transfer contracts (see **section 50E**) but may also be relevant to other decisions by the Minister under or in relation to this Part. 5
- 50E Minister may enter into transfer contracts as Corporation or subsidiary**
- (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: 10
- (a) the transfer of ownership of assets of the Corporation or subsidiary:
- (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. 15
- 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**): 20
- (a) the provision of housing related services by the Corporation or subsidiary, to the transferee, on a transitional basis:
- (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. 25
- (2) A transitional services contract may be on any terms and conditions (including as to consideration) that the Minister may agree with the transferee.
- (3) See also **section 50M** (which relates to prior notification). 30
- 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—
- (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: 35

(b)	to effect a transfer of assets or a grant of an interest in assets under a transfer contract:	
(c)	that the Minister otherwise considers necessary or desirable for the implementation of a social housing transaction.	
<b>50H</b>	<b>Provisions applying to things Minister may do</b>	5
(1)	In acting under <b>section 50E, 50F, or 50G</b> , 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).	
(2)	However, the Minister is not constrained by, and <b>sections 50E to 50G</b> apply despite,—	10
(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:	
(c)	the constitution of any subsidiary:	
(d)	the role, authority, powers, or duties of any relevant board:	15
(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).	20
	Compare: 1993 No 105 ss 16–17, 181(2); 2004 No 115 ss 16–19, 129(2)	
<b>50I</b>	<b>Application of Public Works Act 1981</b>	
(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.	25
(2)	<b>Subsection (1)</b> applies despite the powers exercised (and exercisable) by the Minister under this Part.	
(3)	Nothing in <b>subsection (1)</b> limits <b>section 27(4A)</b> of the Housing Restructuring and Tenancy Matters Act 1992.	
	<i>Facilitation and implementation of social housing transactions</i>	30
<b>50J</b>	<b>Objectives of Corporation for this Part</b>	
(1)	The Corporation’s principal objectives for this Part are to facilitate the transaction <del>process</del> <u>processes</u> and to facilitate and implement social housing transactions.	
(2)	The <u>Corporation’s</u> principal objectives for this Part prevail over the Corporation’s other objectives.	35

**50K Functions of Corporation for this Part**

- (1) Despite section 18(1), the Corporation's principal function for this Part is to achieve the Corporation's principal objectives for this Part.
- (2) The Corporation's functions for this Part include—
- (a) performing social housing transactions: 5
  - (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): 10
  - (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)**. 15

*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 20
  - (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 25
  - (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** 30

- (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**

- (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. 5
- (2) The notice must be accompanied by—
- (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**. 10

**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. 15
- (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.
- (3) The Corporation or subsidiary must supply the information as soon as practicable after receiving the Minister's written request. 20
- (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.

**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. 25
- (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. 30
- (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.

Compare: 1993 No 105 s 180; 2004 No 115 s 127

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**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.

- (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. 5
- (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 10
- (b) must otherwise, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (5) This section applies despite any enactment or rule of law to the contrary.

*Legal effect*

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**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. 20
- (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.
- (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. 25
- (5) This section applies despite any enactment or rule of law to the contrary.
- (6) Nothing in this section affects the right of a person to apply, in accordance with the law, for judicial review. 30

**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—
- (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**. 35
- (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).
- (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. 5
- (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. 10
- (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. 15
- (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 20

### 9 Principal Act

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

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

After section 27(4), insert: 25

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

### Legislative history

1 July 2015  
18 August 2015

Introduction (Bill 42–1)  
First reading and referral to Social Services Committee