

Departmental Disclosure Statement

Social Housing Reform (Transaction Mandate) Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Treasury.

The Treasury certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

30 June 2015

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Part One: 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.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Legislation to enable transfers of HNZC houses, The Treasury, 25 March 2015. http://www.treasury.govt.nz/publications/informationreleases/ris	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
The Regulatory Impact Analysis Team (RIAT) reviewed the RIS prepared by the Treasury relating to the asset transfer provisions. RIAT considers the information and analysis summarised in the RIS meets the quality assurance criteria. RIAT noted that the proposals had not yet been subject to public consultation but that public meetings about the Social Housing Reform Programme (SHRP) were planned before the introduction of the legislation.	
2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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Officials have considered whether any international obligations may be relevant to the legislation, but not identified any.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Treasury has considered whether the legislation is consistent with the principles of the Treaty of Waitangi.

In and of itself, the Bill is consistent with the principles Treaty of Waitangi. However, the principles of the Treaty of Waitangi are also relevant to the decisions that the Bill empowers the Crown to make. As of April 2015, the Crown is undertaking a programme of engagement and consultation throughout New Zealand to identify and understand Treaty of Waitangi interests that may be impacted by the SHRP transactions. This will inform the Crown's decisions regarding exercise of the powers - as regards the location and structure of the SHRP transactions, for example.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The Ministry of Justice advised the Attorney General that the Bill appears to be consistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990.

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
While the proposed section 50N allows the Minister to request information from HNZN in relation to the SHRP transactions, the provision does not impact privacy interests protected by the Privacy Act 1993.	
3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO

As stated above, the legislation does not implicate privacy interests protected by the Privacy Act 1993.

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>HNZC was consulted on the policy informing the Bill, and also on a draft of the Bill itself. As outlined in the regulatory impact statement, consultation with HNZC has been as complete as possible within the relatively short period prior to the transaction process commencing. The Crown first met with HNZC in October 2014 to hear the organisation's concerns about conducting the transfer programme within the existing legislative framework. In November, officials sought approval from Ministers to explore options for legislative change to address these concerns. The two parties have since met a number of times to discuss options that meet the needs of both, and offer the best possible outcomes for the transfer programme.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The Treasury undertook a "transaction simulation" exercise, analysing how the proposed legislation will facilitate the anticipated transactions. Any potential improvements identified in this exercise were remedied, and officials are now satisfied that the legislation will achieve its objectives.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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The proposed section 27(4A) of the Housing Restructuring and Tenancy Matters Act 1992 (HRTMA) clarifies that the offer back regime set out in sections 40-42 of the Public Works Act 1981 does not apply (and has never applied) to the sale or disposal, by Housing New Zealand Limited (HNZL), of land vested in it pursuant to the HRTMA.

This provision is retrospective in the sense that the new wording applies to all previous sales or disposals by HNZL in addition to all future sales. However, we do not consider that this amendment alters any existing rights or freedoms, as it confirms the current legal position that the offer back regime does not apply.

The purpose of the proposed section is to avoid any doubt from arising on the possibility of the offer back regime applying, and to prevent any such argument from delaying the progression of social housing reform.

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>The proposed s 50R will provide that HNZC members and subsidiary directors should bear no responsibility or liability in respect of decisions made by Ministers under the new part 5A.</p> <p>While HNZC members and subsidiary directors will not be liable for decisions of the Minister under part 5A, there is no exclusion of liability in relation to the contracts and other obligations HNZC and subsidiaries are bound to as a result of Ministers' decision making under the part (beyond the exclusions of liability already provided by the Crown Entities Act 2004).</p>	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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The amendments allow Ministers to perform a variety of actions in the name of HNZN and its subsidiaries, for the purposes of the social housing reform programme objectives.

Inevitably, the amendments impact rights and obligations owed by HNZN - this is central to the policy objective of empowering the Crown to execute and implement the social housing transactions in HNZN's name. Having consulted extensively with HNZN, The Treasury is comfortable that it understands the potential impacts of the powers on HNZN and that these impacts are acceptable.

Exercise of the powers may impact rights and obligations owed by HNZN and its subsidiaries under contract, although not inconsistently with the terms of those contracts. For example, while Ministers will be able to determine how HNZN and its subsidiaries exercise rights or perform obligations under contracts with third parties, HNZN nonetheless remains bound by those contracts - the third parties' rights under the contract remain intact. If Ministers require HNZN or its subsidiaries to breach a contract with a third party, the third parties' remedies against HNZN remain those provided by the contract. Due diligence carried out prior to exercising the power will reduce the risk of such conflicts arising.

The amendments to the Housing Act 1955 allow the Minister of Housing to exclusively administer State housing land identified in a Gazette notice. This exclusive right to administer land removes all rights and obligations that HNZN otherwise has under the Housing Act 1955 in respect of that land.

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
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The transaction mandate is an unusual legal mechanism. It provides Ministers with the ability to effect the transfer of HNZC assets in HNZC's name, without a decision-making role for the HNZC board. While there are no direct precedents for this approach in other statutes, it is analogous to a private law power of attorney – a well-established means of giving effect to transactions by one party on behalf of, and in the name of, another party.

The Treasury considered whether the Crown could achieve its objectives by exercising existing direction powers in the Crown Entities Act 2004 (CEA), but concluded that it could not. In particular, the CEA direction powers could only require that HNZC implement a policy objective - and not the performance of specific acts (for example, that HNZC sell particular properties at a particular price). Further, a CEA direction would not provide clear separation between actions by the Crown (albeit on behalf of HNZC) and actions by HNZC's board.

We also considered a new direction power that would allow the Crown to direct not only that HNZC pursue a particular policy, but also the performance of particular actions. This option would similarly entail a role for HNZC's board - introducing an unacceptable degree of uncertainty and dependence on the Board.

Finally, we considered a statutory vesting mechanism. While this would allow Ministers to transfer property titles, it would not practicably support the many ancillary actions associated with the transfer of tenanted properties (such as the transfer of tenancy agreements, and the implementation of sale and purchase agreements). We therefore advised against this approach.

The Bill clarifies that the offer-back regime set out in the Public Works Act 1981 does not apply to land vested in the HNZL (for further explanation of this clarification, see question 4.3).