



ANALYSIS

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1990, No. 54

An Act to provide for the modification or cancellation of certain arrangements arrived at or entered into in the light of the reorganisation or proposed reorganisation of certain local authorities [3 July 1990]

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

1. Short Title—This Act may be cited as the Local Authority Reorganisation (Property Transfers) Act 1990.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Holder”, in relation to any liable property, means the person who or which holds the property:

“Liable property”, in relation to a liable transaction, means property—

(a) Transferred in the transaction (whether or not it has again been transferred); or

(b) Bought with, or acquired in full or part exchange for, property that is liable property in relation to the transaction:

“Liable transaction” means a transfer of property made or agreed to be made by a local authority (being a local

authority that has been dissolved or affected by an order under section 36 of the Local Government Act 1974) at any time during the period commencing on the 14th day of November 1988 and ending with the 31st day of October 1989:

“Property” includes—

- (a) A lease, licence, or permit; and
- (b) A right to obtain a lease, licence, or permit; and
- (c) An exemption from a requirement to have or obtain any lease, licence, or permit; and
- (d) A right to obtain an exemption from a requirement to have or obtain any lease, licence, or permit:

“Recipient”, in relation to a liable transaction, means the person to whom or which the transfer concerned was made:

“Transfer”, includes grant, conveyance, gift, and lease; and “to transfer” has a corresponding meaning:

“Transferor”, in relation to a liable transaction, means the local authority that made or agreed to make the transfer concerned.

(2) In this Act, terms defined in the Local Government Act 1974 have the meanings there defined.

3. Act binds the Crown—This Act binds the Crown.

4. Commission may investigate transactions—(1) The Commission may, of its own motion or at the request of—

- (a) The Minister; or
- (b) A local authority that the Commission thinks would have acquired the property concerned if the transaction had not proceeded,—

investigate any liable transaction.

(2) The Commission may refuse to investigate a liable transaction; and may at any time discontinue any investigation it has begun.

(3) As soon as is practicable after refusing to investigate, or discontinuing an investigation of, a liable transaction whose investigation has been requested under subsection (1) of this section, the Commission shall give the Minister or (as the case requires) the local authority requesting the investigation written notice of its reasons for doing so.

(4) Subject to section 5 of this Act, the Commission may, in investigating a liable transaction under this Act, have regard to any information already in its possession arising out of an

investigation of or inquiry into the transaction that the Commission undertook before the commencement of this Act.

5. Commission to give opportunity to consult—

(1) When investigating a liable transaction, the Commission shall ensure that—

- (a) The transferor (if it is still in existence); and
 - (b) Any person who was a member of the transferor at any time during the period commencing on the 14th day of November 1988 and ending with the 31st day of October 1989; and
 - (c) Any local authority that the Commission thinks is or may be affected by the transaction or any proposed rectification of the transaction; and
 - (d) The recipients; and
 - (e) Any other holders of any of the liable property,—
- have a reasonable opportunity to meet the Commission, and to make oral or written submissions to the Commission, about the transaction and the extent (if any) to which it should be rectified.

(2) The failure of any person to—

- (a) Take an opportunity under subsection (1) of this section;
or
 - (b) Comply with any request of the Commission,—
- shall not affect the Commission's ability to act under this Act.

6. Matters to which Commission is to have regard—In investigating a liable transaction, the Commission shall have regard to—

- (a) The purpose for which it purported to have been arrived at or entered into; and
- (b) Its effect, in relation to the policies of the Government and the Commission underlying local government reform; and
- (c) The manner in which it was effected; and
- (d) The effect of the transfer on the allocation of the property concerned, pursuant to a final reorganisation scheme, to any local authority specified in the scheme; and
- (e) The desirability of ensuring that a local authority inheriting liabilities and duties from another should also inherit property from the other; and
- (f) The need to deal justly and equitably with persons who have acquired liable property for value; and
- (g) The need to deal justly and equitably with persons who have acquired in good faith liable property in the

form of money, and spent it without acquiring property in exchange; and

(h) Any other matters the Commission thinks relevant.

7. Commission may recommend rectification—

(1) After completing any investigation, the Commission shall decide whether or not to rectify the liable transaction concerned.

(2) The Commission shall rectify a liable transaction by—

(a) Giving the Minister—

(i) Written specific determinations as to the disposition and administration of all liable property concerned; and

(ii) Written reasons for those determinations; and

(b) If a local authority requested the Commission to investigate the transaction, giving a copy of the determinations and reasons to it; and

(c) If the transferor is still in existence, giving a copy of the determinations and reasons to it.

(3) A determination may specify—

(a) Leaving any property as it is:

(b) Vesting any property in a local authority:

(c) Vesting any property in any other person:

(d) Continuing in effect (whether unchanged or with modifications) any arrangement,—

(i) Whether a trust, a contract, or any other arrangement; and

(ii) Whether or not there is any doubt or dispute as to the status of the recipient or any other holder of the property, the status of the property, or the validity of the transaction by which the arrangement was arrived at or entered into.

(4) Subsection (3) of this section does not limit the generality of subsection (2) of this section.

(5) If the Commission decides not to rectify a liable transaction, it shall—

(a) Give the Minister written reasons for the decision; and

(b) If a local authority requested the Commission to investigate the transaction, give a copy of the reasons to it; and

(c) If the transferor is still in existence, give a copy of the reasons to it.

8. Implementation of rectification—(1) Determinations under section 7 (2) of this Act shall be given effect to by Order in Council.

(2) Every Order in Council shall have effect according to its tenor.

(3) No Order in Council is invalid on the ground that—

- (a) It requires the holder of any property to transfer it to any other person; or
- (b) It requires the holder of any property to hold it subject to any trusts specified in the order; or
- (c) It frees any property of any trust to which it was or purported to be subject; or
- (d) It requires any person to take any action that is in breach of any contract; or
- (e) It continues in effect (whether unchanged or with modifications) any arrangement that was unlawfully arrived at or entered into; or
- (f) It requires any public official to take or refrain from taking any action.

(4) Subject to section 9 of this Act, the fact that an Order in Council continues in effect (whether unchanged or with modifications) any arrangement does not, unless the order makes express provision to the contrary, limit or affect any civil or criminal liability arising before the commencement of this Act.

9. Protection of holders of property acting in good faith—(1) Subject to subsection (2) of this section, a person who has at any time been the holder of any liable property shall not be criminally or civilly liable for any action taken in respect of the property before there is made under section 8 of this Act an Order in Council affecting the property, if the action—

- (a) Was taken in good faith; and
- (b) Was not—

(i) An action taken, after the 14th day of December 1989 and without the Minister's written consent, by a holder purporting to hold the property in trust; or

(ii) The commencement or continuation (otherwise than by way of adjournment or discontinuance) after the 14th day of December 1989 of any proceedings for or for the purpose of determining the status of the recipient or any other holder of the property, the status of the property, or the validity of the transaction by which the property was transferred; or

(iii) A transfer of the property after the 14th day of December 1989.

(2) Nothing in subsection (1) of this section protects or exempts any person from criminal or civil liability—

- (a) For a negligent action taken in respect of any property; or
- (b) Arising out of a failure to comply with an Order in Council under section 8 of this Act.

10. Commission may immediately recommend rectification of certain transactions—(1) The Commission may at any time rectify any transfer or purported transfer of property by the former Auckland Harbour Board during December 1988 to people holding or purporting to hold it as trustees; and, in relation to the rectification of any such transaction,—

- (a) The investigations the Commission has already undertaken before the commencement of this Act shall be deemed to have been undertaken under section 4 (1) of this Act; and
 - (b) The Commission's decision to undertake those investigations is hereby declared to have been lawful, justified, and proper; and
 - (c) The manner in which the Commission undertook those investigations is hereby declared to have been lawful, justified, proper, and sufficient; and
 - (d) The consultations undertaken by the Commission in relation to those investigations are hereby declared to have been a sufficient compliance with section 5 of this Act, and to have been lawful, justified, proper, and sufficient; and
 - (e) This Act shall have effect as if, in undertaking those investigations, the Commission had full and proper regard to the matters specified in paragraphs (a) to (h) of section 6 of this Act, and did not have regard to any improper or irrelevant matter.
- (2) Nothing in subsection (1) of this section limits or affects the generality of section 4 (4) of this Act.