

HOUSING ASSETS TRANSFER BILL

EXPLANATORY NOTE

THIS Bill provides for the transfer of certain mortgages, land, and loan-related instruments under the Maori Housing Act 1935, the Maori Housing Amendment Act 1938, and the Housing Act 1955 to the Housing Corporation. It is proposed to transfer under the Bill—

- (a) Mortgages and other securities under the Maori Housing Act 1935 and the Maori Housing Amendment Act 1938:
- (b) Land that is subject to agreements for sale or lease by the Crown under the Maori Housing Amendment Act 1938 together with the agreements or leases:
- (c) Subleases of land granted by the Crown under the Maori Housing Amendment Act 1938:
- (d) Land subject to agreements for sale under section 16 of the Housing Act 1955 or licences to occupy under section 17 of that Act together with the agreements or licences:
- (e) Mortgages, debentures, and other securities that secure the repayment of money lent by or on behalf of the Crown under the Housing Act 1955 or the Housing Corporation Act 1974—
defined in the Bill as “housing assets”.

Clause 1 relates to the Short Title and commencement of the Bill.

Clause 2 defines terms used in the Bill.

Clause 3 provides that the Bill binds the Crown.

Clause 4 requires the responsible Minister and the Minister of Finance, in exercising their powers under the Bill in relation to mortgages, land, and instruments under the Maori Housing Act 1935 and the Maori Housing Amendment Act 1938, to consult with the Minister of Maori Affairs.

Clause 5 provides for the Housing Corporation to act as the agent for the Crown in the management of housing assets under the Maori Housing Act 1935 and the Maori Housing Amendment Act 1938 prior to their transfer to the Corporation.

Clause 6 provides that the responsible Minister and the Minister of Finance may prepare a list or lists of housing assets which those Ministers consider

should be transferred to the Corporation and requires any such list to be laid before the House of Representatives within 12 sitting days of being signed.

The clause empowers the Governor-General from time to time, by Order in Council, to vest housing assets referred to in any such list in the Corporation and requires the order to state the consideration payable or to be provided for the vesting of the assets.

Clause 7 contains a number of provisions relating to the actual vesting of housing assets. In particular, it—

- (a) Provides that the vesting of any housing assets in the Corporation is not to be regarded as a breach of any contract, or as giving rise to a right to terminate any contract, or as contravening any contractual or other restriction on the transfer of property, or as invalidating any security;
- (b) Requires District Land Registrars and other persons having responsibility for the maintenance of registers to give effect to the vesting of housing assets in the Corporation;
- (c) Provides that the vesting of housing assets is to take effect notwithstanding other Acts or any rule of law;
- (d) Makes it clear that the rights and obligations of the Crown under any agreement for sale or licence of land vested in the Corporation also vest in the Corporation.

Clauses 8 and 9 relate to title to land, mortgages, and other securities vested in the Corporation.

Clause 10 relates to the registration of easements not already registered under the Land Transfer Act 1952.

Clause 11 provides for certain specified provisions of the Maori Housing Act 1935, the Maori Housing Amendment Act 1938, and the Housing Act 1955 to continue to apply to housing assets vested in the Corporation and to agreements for sale, leases, and licences.

Clause 12 requires references in mortgages, securities, and other instruments to the Crown and certain other persons or bodies to be read as references to the Corporation or persons claiming by or through the Corporation.

Clause 13 provides for land owned by the Crown and set apart for the purposes of the Maori Housing Act 1935 but that is not to become vested in the Corporation under the Bill to become subject to the Land Act 1948. The clause also provides for land held by the Crown under a lease or licence but that is not subject to any sublease under the Maori Housing Amendment Act 1938 to cease to be set apart for the purposes of the Maori Housing Act 1935.

Clause 14 provides that the Corporation and any subsequent owner or mortgagee will not be liable under section 139 of the Rating Powers Act 1988 for rate arrears on land vested in the Corporation under the Bill or on land subject to any mortgage vested in the Corporation under the Bill.

Section 139 of the Rating Powers Act 1988 provides that where an occupier of land is in arrears in payment of rates, the arrears may be recovered by a local authority from the owner of the land or from a first mortgagee.

This section is not binding on the Crown: see *The King v. Mayor, etc., of Inglewood* [1931] N.Z.L.R. 177.

The purpose of the clause is to ensure that the Corporation and any subsequent owner or mortgagee will not become liable for existing rate arrears and penalties following the transfer to the Corporation under the Bill of land

and mortgages. The clause will not affect liability for rate arrears which arise after the transfer.

Hon. John Luxton

HOUSING ASSETS TRANSFER

ANALYSIS

Title	9. Land certification
1. Short Title and commencement	10. Certification of easements
2. Interpretation	11. Application of other Acts
3. Act to bind the Crown	12. Provisions relating to securities and agreements
4. Exercise of powers by Ministers	13. Status of certain other land
5. Corporation may act as agent in management of certain housing assets	14. Corporation and others not liable for unpaid rates
6. Transfer of housing assets to Corporation	Schedule
7. Additional provisions relating to vesting	
8. Title to housing assets vested in Corporation	

A BILL INTITULED

An Act to provide for the transfer of certain mortgages, land, and housing-related assets of the Crown to the Housing Corporation of New Zealand and to provide for related matters

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

1. Short Title and commencement—(1) This Act may be cited as the Housing Assets Transfer Act 1993.

10 (2) This Act shall come into force on the date on which it receives the Royal assent.

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

“Corporation” means the Housing Corporation of New Zealand:

15 “Housing assets” means—

(a) Mortgages and other securities under the Maori Housing Act 1935 or the Maori Housing Amendment Act 1938 that secure the repayment of money lent,

including charges under section 21 of the Maori Housing Amendment Act 1938:

(b) Land set apart under the Maori Housing Amendment Act 1938 for the purposes of the Maori Housing Act 1935 and land in respect of which any of the powers conferred by section 4 (3) of the Maori Housing Amendment Act 1938 have been exercised, being land owned by the Crown and that is subject to an agreement for sale or lease by the Crown under that Act:

(c) Subleases of land granted by the Crown under the Maori Housing Amendment Act 1938:

(d) Land that is subject to an agreement for sale under section 16 of the Housing Act 1955 or a licence to occupy under section 17 of that Act:

(e) Mortgages, debentures, and other securities that secure the payment of money lent by or on behalf of the Crown pursuant to the Housing Act 1955 or the Housing Corporation Act 1974:

“Ministers” means the responsible Minister and the Minister of Finance:

“Responsible Minister” means, subject to any enactment, the Minister of the Crown who under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act:

“Sitting day” means a sitting day of the House of Representatives.

3. Act to bind the Crown—This Act shall bind the Crown.

4. Exercise of powers by Ministers—The Ministers shall, before exercising the powers conferred on them by this Act in relation to any housing assets referred to in paragraph (a) or paragraph (b) or paragraph (c) of the definition of that term in section 2 of this Act, consult fully with the Minister of Maori Affairs.

5. Corporation may act as agent in management of certain housing assets—(1) The Corporation may act as agent for the Crown in the management of any housing assets referred to in paragraph (a) or paragraph (b) or paragraph (c) of section 2 of this Act on such terms and conditions and for such remuneration as may be agreed in writing from time to time between the Ministers and the Corporation and, for that

purpose, may exercise the powers and functions conferred on the Crown or any other person by the Maori Housing Act 1935 and the Maori Housing Amendment Act 1938.

5 (2) A copy of any instrument of appointment under this section may be lodged with a District Land Registrar or Chief Surveyor and shall, for the purposes of the Land Transfer Act 1952, be conclusive evidence of the authority of the Corporation to exercise those powers and functions.

10 (3) Without limiting subsection (1) of this section, the Corporation may execute on behalf of the Crown a transfer to any purchaser of the estate or interest of the Crown in any land that has been sold to that purchaser pursuant to the Maori Housing Amendment Act 1938.

6. Transfer of housing assets to Corporation—(1) The
15 Ministers may, at any time or times, prepare a list or lists specifying housing assets which, in the opinion of the Ministers, should be vested in the Corporation in accordance with this Act.

20 (2) Every list prepared under subsection (1) of this section shall—

(a) Contain a description of each housing asset either individually or as a group or class; and

(b) Be signed by the Ministers; and

25 (c) Be laid before the House of Representatives by the responsible Minister within 12 sitting days of its being signed.

(3) For the purposes of subsection (2) (a) of this section, a group or class of housing assets includes a group or class of such assets other than any particular asset or assets.

30 (4) The Governor-General may, at any time or times, by Order in Council, vest in the Corporation on a date specified in the order the housing assets specified in the order, being assets set out in a list prepared under subsection (1) of this section and which is referred to in the order.

35 (5) Every Order in Council under this section shall specify the consideration payable or to be provided by the Corporation for the vesting of the housing assets.

Cf. 1990, No. 105, s. 6

7. Additional provisions relating to vesting—

40 (1) Nothing in this Act—

(a) Shall be regarded as placing the Crown, the Corporation, or any other person in breach of contract or

confidence or as otherwise making any of them guilty of a civil wrong; or

(b) Shall be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or 5

(c) Shall be regarded as placing the Crown, the Corporation, or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or 10

(d) Shall release any surety from any obligation; or

(e) Shall invalidate or discharge any contract or security.

(2) District Land Registrars and other persons charged with the keeping of books or registers shall make such entries in their respective books or registers and do everything necessary to give effect to the vesting of any housing assets in the Corporation under this Act. 15

(3) A certificate, signed by the Chief Surveyor for the land district in which the land is situated, that land described in the certificate, or described in any document on which the certificate appears, is land vested in the Corporation pursuant to this Act, shall be sufficient evidence, in the absence of proof to the contrary, that the land was so vested. 20

(4) The vesting of housing assets pursuant to this Act shall take effect notwithstanding any enactment or rule of law or agreement and, in particular, but without limitation, the vesting shall take effect notwithstanding any provision contained in the Land Act 1948, the Local Government Act 1974, the Reserves Act 1977, the Public Works Act 1981, the Resource Management Act 1991, or any other enactment relating to land. 25 30

(5) Where, by virtue of this Act, any land vests in the Corporation, the land shall vest in the Corporation for an estate in fee simple subject to and together with all agreements for sale, licences, leases, agreements to lease, and mortgages thereof, and to all trusts, reservations, encumbrances, and interests existing in respect of any part of that land immediately before the land vests in the Corporation. 35

(6) Without limiting subsection (5) of this section, where by virtue of this Act, any land vests in the Corporation and the land is at the time of vesting subject to any agreement for sale or licence, all the rights and obligations of the Crown under any such agreement or licence shall vest in the Corporation. 40

(7) All housing assets that are subject to the Maori Housing Act 1935 or the Maori Housing Amendment Act 1938 or the 45

Housing Act 1955 and that are vested in the Corporation pursuant to this Act shall cease to be subject to those Acts unless otherwise expressly provided by this Act or any other Act.

5 Cf. 1990, No. 109, s. 7

8. Title to housing assets vested in Corporation—(1) A District Land Registrar shall, on written application by any person authorised by either of the Ministers and on payment of any prescribed fee,—

10 (a) Register the Corporation as the proprietor, in substitution for the Crown, of the estate or the interest of the Crown in land that is incorporated in the register or otherwise registered in the land registration district concerned and that is vested in the Corporation pursuant to this Act; and

15 (b) Make such entries in the register and on any outstanding documents of title and generally do all such things as may be necessary to give effect to this section.

(2) A District Land Registrar shall, on written application by
20 any person authorised by either of the Ministers, and on payment of any prescribed fee, issue a certificate of title for land, other than land that is registered under the Land Transfer Act 1952, that is vested in the Corporation pursuant to this Act in Form No. 1 of the First Schedule to the Land Transfer Act
25 1952, amended as appropriate.

(3) A District Land Registrar shall, on written application by a person authorised by either of the Ministers and on payment of any prescribed fee, issue a certificate of title for land that is
30 subject to the Land Transfer Act 1952 but for which no certificate of title has been issued and that is vested in the Corporation pursuant to this Act in Form 2 in the First Schedule to the Land Transfer Act 1952, amended as appropriate.

(4) Every application under subsection (1) or subsection (2) or
35 subsection (3) of this section shall—

(a) State that the land has been vested in the Corporation under this Act; and

(b) Contain a description of the land that is sufficient to identify it; and

40 (c) In the case of any application under subsection (2) of this section, be accompanied by a certificate by the Chief Surveyor for the district concerned as to the correctness of the description.

(5) A District Land Registrar shall, on written application by any person authorised by either of the Ministers and on payment of any prescribed fee,—

(a) Register the Corporation as proprietor, in substitution for the Crown, of the estate or interest of the Crown as mortgagee under any mortgage of land that is registered in the land registration district concerned and that is vested in the Corporation pursuant to this Act; and 5

(b) Make such entries in the register and on any outstanding documents of title as are necessary for that purpose. 10

(6) Any other person charged with the keeping of any books or registers shall, on written application by any person authorised by either of the Ministers and on payment of any prescribed fee,— 15

(a) Register the Corporation, in substitution for the Crown, as the mortgagee under any mortgage of land or as the holder of any other security, not being a mortgage or security registered under the Land Transfer Act 1952, that is vested in the Corporation pursuant to this Act; and 20

(b) Make such entries in those books or registers as may be necessary for that purpose.

(7) Every application under **subsection (5)** or **subsection (6)** of this section shall— 25

(a) State that the mortgage or security has been vested in the Corporation under this Act; and

(b) Contain a description of the mortgage or security that is sufficient to identify it.

Cf. 1990, No. 105, s. 9 30

9. Land certification—(1) Before a District Land Registrar issues a certificate of title in respect of any land, other than land that is registered under the Land Transfer Act 1952, that is vested in the Corporation pursuant to this Act, the District Land Registrar shall either receive under the hand of, or request from, the Director-General of Survey and Land Information or any Chief Surveyor a certificate in a form substantially similar to the form set out in the Second Schedule to the Land Act 1948 as to the legal description of the land, any trusts and reservations affecting it, and any other matters that the District Land Registrar considers appropriate. 35 40

(2) A certificate in accordance with **subsection (1)** of this section shall be filed by the District Land Registrar in the land registry

office and shall be conclusive evidence to the District Land Registrar of the matters required to be stated in it.

Cf. 1990, No. 105, s. 10

5 **10. Certification of easements**—(1) Where land is vested
in the Corporation pursuant to this Act subject to the
reservation of or together with any easement, not being an
easement previously registered under the Land Transfer Act
1952, the Director-General of Survey and Land Information or
10 any Chief Surveyor shall include in the certificate given under
section 9 (1) of this Act a sufficient description of the easement
and particulars as to the rights and powers, terms, covenants,
conditions, or restrictions attaching thereto.

15 (2) The District Land Registrar shall enter a memorial of the
easement upon the relevant certificate of title by reference to
the certificate in which it is described as if that certificate were
the instrument creating the easement.

20 (3) Where a memorial of an easement is entered upon the
relevant certificate of title under **subsection (2)** of this section, the
easement shall be treated for all purposes including all
subsequent dealings as if it had been created under the Land
Transfer Act 1952.

Cf. 1986, No. 124, s. 26A; 1992, No. 27, s. 6

25 **11. Application of other Acts**—The enactments specified
in the Schedule to this Act shall, with all necessary
modifications, continue to apply in relation to housing assets
vested in the Corporation under this Act and all agreements for
sale, licences, leases, or agreements to lease to which any such
assets are subject whether or not those assets remain vested in
the Corporation.

30 **12. Provisions relating to securities and agreements**—
(1) Without limiting the foregoing provisions of this Act, every
reference—

35 (a) In any memorandum of mortgage or other security
granted under the Maori Housing Act 1935 or the
Maori Housing Amendment Act 1938 that is vested in
the Corporation under this Act:

40 (b) In any agreement for the sale of land entered into or any
lease of land granted by the Crown pursuant to the
Maori Housing Amendment Act 1938, being land
that is vested in the Corporation under this Act:

(c) Where land leased to the Crown under the Maori Housing
Amendment Act 1938 is subject to a sublease granted

by the Crown that is itself vested in the Corporation,
 in the lease or sublease of the land—
 to the Crown, a Maori Land Board, Board of Maori Affairs, the
 Chief Executive of the Iwi Transition Agency or the Chief
 Executive of the Ministry of Maori Development, as the case
 may be, shall be read and construed as a reference to the
 Corporation or to any person claiming by or through the
 Corporation. 5

(2) Without limiting the foregoing provisions of this Act,
 every reference in any agreement for the sale of land entered
 into under section 16 of the Housing Act 1955 or in any licence
 to occupy land granted under section 17 of that Act, being land
 that is vested in the Corporation under this Act, to the
 Corporation shall be read and construed as a reference to the
 Corporation in its own right and not as an agent for the Crown
 or to any person claiming by or through the Corporation. 10
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13. Status of certain other land—(1) The Governor-
 General may from time to time, by Order in Council, declare
 that land owned by the Crown and set apart under the Maori
 Housing Amendment Act 1938 for the purposes of the Maori
 Housing Act 1935, not being land that is subject to an
 agreement for sale by the Crown, shall, on a date specified in
 the order, cease to be set apart for the purposes of the Maori
 Housing Act 1935 and be subject to the Land Act 1948. 20

(2) An Order in Council may be made under subsection (1) of
 this section in relation to any class of land referred to in that
 subsection or in respect of any particular parcel of such land. 25

(3) The Governor-General may from time to time, by Order
 in Council, declare that any land held by the Crown under a
 lease or licence and that is set apart under the Maori Housing
 Amendment Act 1938 for the purposes of the Maori Housing
 Act 1935, not being land subject to any sublease granted by the
 Crown under the Maori Housing Amendment Act 1938, shall,
 on a date specified in the order, cease to be set apart for the
 purposes of the Maori Housing Act 1935 and, in that event, the
 rights, powers, and obligations of the Crown under the lease or
 licence shall be exercised or performed by the person for the
 time being holding office as the chief executive of the Ministry
 of Maori Development as he or she thinks fit. 30
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(4) Nothing in this section applies in relation to land acquired
 by the Crown by way of gift. 40

**14. Corporation and others not liable for unpaid
 rates—**(1) This section applies to—

- 5 (a) Any land that is subject to an agreement for sale entered into under the Maori Housing Amendment Act 1938 or an agreement for sale or licence entered into or granted under the Housing Act 1955 and that is or was at any time vested in the Corporation under this Act:
- (b) Any land that is subject to a mortgage granted under either of those Acts where that mortgage is or was at any time vested in the Corporation under this Act.
- 10 (2) Nothing in section 139 of the Rating Powers Act 1988 shall be construed as imposing liability on the Corporation as the owner or mortgagee of land to which this section applies or on any subsequent owner or mortgagee of the land in respect of unpaid rates and any additional charges added to such rates
- 15 under section 132 of that Act, being rates due and payable before the land or mortgage was vested in the Corporation.

SCHEDULE

APPLICATION OF OTHER ACTS

Section 11

Title of Act	Amendment
The Maori Housing Act 1935	Sections 5, 6, 11, 12, 12A, 13, and 14A.
The Maori Housing Amendment Act 1938	Section 3(4), subsections (2) and (3) of section 4, subsections (3) to (5) of section 8, sections 9, 10, 11, 12, 14, 15, 21, and 23.
The Housing Act 1955	Sections 17, 18, 21 to 30, and 37.