

**Reprint
as at 1 October 2019**



**Housing Corporation (Social Housing Reform)
Amendment Act 2016**

Public Act 2016 No 4
Date of assent 24 February 2016
Commencement see section 2

Housing Corporation (Social Housing Reform) Amendment Act 2016: repealed, on 1 October 2019,
pursuant to section 30 of the Kāinga Ora–Homes and Communities Act 2019 (2019 No 50).

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal Act	3
4	New section 2A inserted (Act binds the Crown)	3
	2A Act binds the Crown	3
5	Section 3B amended (Objectives of Corporation)	3
6	New Part 5A inserted	3
Part 5A		
Social housing reform		
<i>Purpose, overview, and interpretation</i>		
	50A Purpose of this Part	3
	50B Overview of this Part	3
	50C Interpretation	3

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Housing and Urban Development.

<i>Entry into and implementation of social housing transactions</i>		
50D	Meaning and relevance of social housing reform objectives	4
50E	Minister may enter into transfer contracts as Corporation or subsidiary	5
50F	Minister may enter into transitional services contracts as Corporation or subsidiary	5
50G	Minister may do other things as Corporation or subsidiary relating to and to implement social housing transactions	5
50H	Provisions applying to things Minister may do	5
50I	Application of Public Works Act 1981	6
<i>Facilitation and implementation of social housing transactions</i>		
50J	Objectives of Corporation for this Part	6
50K	Functions of Corporation for this Part	6
<i>Miscellaneous</i>		
50L	Publication of social housing transaction	7
50M	Minister must notify Corporation or subsidiary of intention to enter into transitional services contract	7
50N	Minister must notify Corporation or subsidiary of social housing transaction	7
50O	Corporation or subsidiary must supply information	8
50P	Method of contracting	8
50Q	Delegation	8
<i>Legal effect</i>		
50R	Legal effect of things done by Minister	9
50S	Protection from liability for board, members, individuals, etc	9

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Housing Corporation (Social Housing Reform) Amendment Act 2016.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

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

4 New section 2A inserted (Act binds the Crown)

After section 2, insert:

2A Act binds the Crown

This Act binds the Crown.

5 Section 3B amended (Objectives of Corporation)

Insert as section 3B(b):

(b) but *see* section 50J for Part 5A objectives.

6 New Part 5A inserted

After Part 5, insert:

Part 5A
Social housing reform

Purpose, overview, and interpretation

50A Purpose of this Part

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.

(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:

- (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

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

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 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)

transfer contract has the meaning set out in section 50E

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

- (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:
 - (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 to decisions by the Minister to enter into transfer contracts (*see* section 50E) but may also be relevant to other decisions by the Minister under or in relation to this Part.

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:
 - (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.

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**):
 - (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.
- (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).

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:
- (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.

50H Provisions applying to things Minister may do

- (1) In acting under section 50E, 50F, or 50G, 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 sections 50E to 50G apply despite,—
- (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:
 - (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).
- Compare: 1993 No 105 ss 16–17, 181(2); 2004 No 115 ss 16–19, 129(2)

50I Application of Public Works Act 1981

- (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.
- (2) Subsection (1) applies despite the powers exercised (and exercisable) by the Minister under this Part.
- (3) Nothing in subsection (1) limits section 27(4A) of the Housing Restructuring and Tenancy Matters Act 1992.

Facilitation and implementation of social housing transactions

50J Objectives of Corporation for this Part

- (1) The Corporation's principal objectives for this Part are to facilitate the transaction processes and to facilitate and implement social housing transactions.
- (2) The Corporation's principal objectives for this Part prevail over the Corporation's other objectives.

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:
 - (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):

- (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).

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
 - (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
 - (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

- (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.
- (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.

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 a transaction process, or to facilitate the implementation by the Minister of a social housing transaction.
- (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.
- (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.
- (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.
- (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

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 1988 does not apply to a delegation to the chief executive of the Ministry of the Minister's functions and powers under this Part.
- (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

- (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

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.
- (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.
- (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.

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.
- (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.
- (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.

- (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.
- (6) This section applies despite any enactment or rule of law to the contrary.

Reprints notes

1 *General*

This is a reprint of the Housing Corporation (Social Housing Reform) Amendment Act 2016 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Kāinga Ora—Homes and Communities Act 2019 (2019 No 50): section 30