

**Waitemata District Health Board v Sisters of Mercy (Roman Catholic Diocese of Auckland Trust Board) 7/10/02, CA21/02**

Unsuccessful appeal by WDHB - case concerned the obligation on public bodies to offer back land taken for public works - land in question was acquired from SoM in 1956 for the purposes of the North Shore Hospital - SoM lodged a statement of claim alleging that the land was no longer required for the purpose for which it was taken and that WDHB's predecessor in title, the Auckland Area Health Board, had breached its obligation under s 40 Public Works Act 1981 (PWA) to offer the land back no later than 31 May 1993 - WDHB's application to High Court to strike out parts of the application was dismissed and it now appealed - whether Health Sector (Transfers) Amendment Act 2000 (HSTAA) applied to land in question between 1993 and 2000.

Held, HSTAA did not prevent the claim being brought in respect of facts occurring before 1 January 2001 which had allegedly triggered the obligation under s 40 PWA at those earlier times - the use of present tense in HSTAA, the limit of its application to District Health Boards with Crown Health Enterprises being excluded, and the operational character of the provisions all indicate that HSTAA does not override rights which have already arisen - HSTAA could not have retrospective effect due to the existence before 2001 of the 1993 provisions which provided comparable protection against the application of PWA, the terms of the immediately following provision of HSTAA, and the principle against retrospectivity - appeal dismissed.