

Version
as at 12 April 2022



Ministries of Agriculture and Forestry (Restructuring) Act 1997

Public Act 1997 No 100
Date of assent 10 December 1997
Commencement see section 1(2)

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry for Primary Industries.

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An Act to provide for the merger of the Ministry of Agriculture and the Ministry of Forestry into the new Ministry of Agriculture and Forestry, and for related matters

1 Short Title and commencement

- (1) This Act may be cited as the Ministries of Agriculture and Forestry (Restructuring) Act 1997.
- (2) This Act comes into force on 1 March 1998.

2 Interpretation

In this Act, unless the context otherwise requires,—

chief executive, in relation to any function or matter, means, subject to any enactment, the chief executive of the Ministry of Agriculture and Forestry or such other chief executive for the time being of a responsible Ministry which has, with the authority of the Prime Minister, assumed responsibility for the relevant function or matter

new Ministry, in relation to any function or matter, means, subject to any enactment, the Ministry of Agriculture and Forestry or such other Ministry as has, with the authority of the Prime Minister, for the time being assumed responsibility for the relevant function or matter

old Ministry means the Ministry of Agriculture or the Ministry of Forestry, as the case may require

working day means any day except—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day; and
- (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

- (b) a day in the period commencing with 20 December in any year and ending with 15 January in the following year.

Section 2 **working day** paragraph (a): replaced, on 12 April 2022, by wehenga 7 o Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/section 7 of the Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14).

Section 2 **working day** paragraph (ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

3 Abolition of Ministry of Agriculture and Ministry of Forestry

- (1) The Ministry of Agriculture is abolished.
(2) The Ministry of Forestry is abolished.

4 Enactments consequentially amended

The enactments specified in the Schedule are amended in the manner indicated in that schedule.

Savings

5 Savings relating to references and proceedings

- (1) Unless in any case the context otherwise requires, in any enactment or in any regulations or in any instrument or document—
- (a) every reference (whether direct or indirect) to the Director-General of Agriculture is to be read as a reference to the chief executive of the new Ministry;
- (b) every reference (whether direct or indirect) to the Secretary of Forestry is to be read as a reference to the chief executive of the new Ministry;
- (c) every reference (whether direct or indirect) to the Ministry of Agriculture is to be read as a reference to the new Ministry;
- (d) every reference (whether direct or indirect) to the Ministry of Forestry is to be read as a reference to the new Ministry.
- (2) References in the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 to the responsible chief executive include, where appropriate and with effect on and after 1 March 1998, references to the chief executive of the new Ministry.
- (3) All proceedings whatever that, immediately before the commencement of this Act, were pending by or against or which could have been brought by or against or in respect of the Director-General of Agriculture or the Secretary of Forestry (including by virtue of section 6 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995) may be carried on, completed, or enforced by or against or in respect of the chief executive of the new Ministry.
- (4) All proceedings whatever that,—
- (a) immediately before the commencement of this Act, were pending by or against or which could have been brought by or against or in respect of

any person other than the Director-General of Agriculture or the Secretary of Forestry; and

- (b) relate to anything done or omitted to be done by or against or in relation to that person in the performance of functions or powers of the Director-General of Agriculture or the Secretary of Forestry or the Director-General of Agriculture and Fisheries, whether as an employee of the relevant Ministry or otherwise,—

may be carried on, completed, or enforced by or against or in respect of the chief executive of the new Ministry or such other person as the Attorney-General may certify for the purposes of this section.

6 Savings relating to brands, stamps, marks, etc

Notwithstanding anything in the Flags, Emblems, and Names Protection Act 1981, all names, brands, stamps, logos, emblems, marks, forms, and other representations or documents in use by the Ministry of Agriculture or the Ministry of Forestry immediately before the date of commencement of this Act—

- (a) continue to have effect in relation to anything done before that date; and
- (b) may continue to be used, and have effect, for the purposes of the functions and powers of the new Ministry or the chief executive of the new Ministry.

Transfer of employees from Ministries of Agriculture and Forestry to new Ministry, etc

7 Transfer of employees

- (1) Every person—
 - (a) who is employed in either of the old Ministries immediately before the date of commencement of this Act; and
 - (b) whose transfer to the new Ministry is agreed to by the chief executive (or chief executive designate) of the new Ministry—

is deemed to have transferred to the new Ministry on the date of commencement of this Act.

- (2) The transfer of any employee by this section is subject to any relevant provisions of the employment contract applying to that employee.
- (3) This section applies notwithstanding section 61A of the State Sector Act 1988.

8 Protection of conditions of employment on transfer

- (1) The employment of any person deemed by section 7 to have been transferred to the new Ministry is to be on terms and conditions no less favourable than those that the transferred employee was entitled to receive under the employment contract applying to the employee at the date of transfer.

- (2) Any unexpired collective employment contract which covers employees transferred to the new Ministry is deemed, as from the date of transfer, to continue to apply on the same terms—
 - (a) as if it were a contract that had been made in respect of the new Ministry; and
 - (b) as if it were binding both on those employees and on the chief executive of the new Ministry.
- (3) Subsections (1) and (2) cease to apply to a transferred employee if the terms and conditions of employment that apply under the employment contract applying to the employee at the date of the transfer are varied by agreement between the employee and the chief executive of the new Ministry.
- (4) Subsection (1) ceases to apply to a transferred employee who, after the transfer, receives any subsequent appointment within the new Ministry.

9 No compensation for technical redundancy

No person who is deemed by section 7 to have transferred to the new Ministry is entitled to any compensation for redundancy by reason only of the person ceasing to be employed by an old Ministry.

10 Saving of appointments, etc

The appointment of every statutory officer who is deemed by section 7 to have transferred to the new Ministry continues until the earliest of the following occurs:

- (a) the term of appointment expires;
- (b) the person ceases employment in the new Ministry;
- (c) the appointment is revoked.

11 Powers of certain inspectors, etc, under Customs Orders

In addition to the powers and authorities exercisable by an inspector, chief technical officer, or deputy chief technical officer appointed under the Biosecurity Act 1993, every employee of the new Ministry who is appointed under that Act (whether before or after the commencement of this Act) has all such powers and authorities as may be reasonably necessary for the enforcement of any Order in Council made under section 96 of the Customs and Excise Act 2018 which prohibits the importation into New Zealand of goods that constitute risk goods within the meaning of the Biosecurity Act 1993.

Section 11: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

12 Employees, etc, to act under direction of chief executive

- (1) All inspectors, registrars, officers, and employees of the new Ministry must act under the direction of the chief executive of the new Ministry in the exercise

and performance of the powers and functions conferred or imposed on them by any enactment administered in the Ministry.

- (2) The chief executive of the new Ministry has full power and authority to exercise and perform any power or function which is conferred on the Director of any Division of the new Ministry by any enactment administered in the Ministry.

Miscellaneous provisions

13 Delegation of all chief executive's functions and powers under any enactment

If the chief executive of the new Ministry delegates to an employee of the new Ministry all the chief executive's functions or powers (or both) under any enactment, the delegation has effect as a delegation of all the chief executive's functions or powers (or both) under the enactment as from time to time in force, whether conferred on the chief executive by the enactment before or after the delegation was made.

14 Penalty for failure to pay statutory fees, etc

- (1) In this section and in sections 15 to 17, **statutory debt** means any fee, charge, or levy required by any enactment administered in the new Ministry or by any regulation, order, notice, direction, or other instrument made or issued under any such enactment (other than an enactment that provides for the payment of interest or a monetary penalty for late payment of, or failure or refusal to pay, the fee, charge, or levy), to be paid to the Ministry or the holder of any specified office.
- (2) If, after the expiration of the time provided by the enactment concerned (or by subsection (4)), all or any part of a statutory debt remains unpaid, the debt is deemed to have been increased by an amount calculated in accordance with subsection (3).
- (3) The amount by which an unpaid statutory debt, or any unpaid part of a statutory debt, is deemed to have been increased is the sum of—
 - (a) 10% of the debt (or that part of the debt that remained unpaid after the expiry of the time provided for the debt's payment); and
 - (b) for every complete period of 6 months after that expiry during which the debt or any part of it (including any deemed increase calculated under this subsection) has remained unpaid, 10% of the debt or that part.
- (4) If no time is otherwise provided by any enactment for the payment of statutory debts of any kind or description, the debt must be paid within 20 working days of its being demanded in writing from the person required to pay it by any employee of the new Ministry.
- (5) When the Ministry notifies a person of the incurring of a statutory debt, it must also notify that person of the consequences of non-payment under this section.

- (6) This section applies only in respect of statutory debts that first arise after the commencement of this Act.

15 Waiver of penalty

- (1) If the chief executive is satisfied that the failure or refusal of any person to pay all or any part of a statutory debt was a result of a genuine dispute between the person and the Ministry as to—

- (a) the person's liability to pay the debt; or
- (b) the amount of the debt; or
- (c) both,—

the chief executive may waive the payment of all or any part by which the debt has been increased under section 14.

- (2) If, in any action for the recovery of a statutory debt, the court is satisfied that the failure or refusal of any person to pay all or any part of a statutory debt was a result of a genuine dispute between the person and the Ministry as to—

- (a) the person's liability to pay the debt; or
- (b) the amount of the debt; or
- (c) both,—

the court may waive the payment of all or any part by which the debt has been increased under section 14.

16 Services may be withdrawn until debt paid

- (1) If satisfied that—

- (a) a statutory debt has been correctly calculated; and
- (b) the time provided by the enactment concerned (or by section 14(4)) for the debt's payment has expired; and
- (c) the debt or any part of it has not been paid,—

the chief executive may give to the person liable to pay the debt written notice that, unless within 10 working days the person pays the debt or part, or satisfies the chief executive that it is not payable, the chief executive may withdraw, or refuse to provide the person with, service of the kind to which the debt relates.

- (2) If—

- (a) 10 or more working days have expired since the chief executive gave any person notice under subsection (1); and
- (b) the person concerned has neither paid the statutory debt or part concerned nor satisfied the chief executive that it is not payable,—

the chief executive may, after causing the person to be sent by registered mail or given orally a notice that the chief executive has decided to do so, withdraw or refuse to provide the service concerned.

- (3) If the chief executive has under subsection (2) withdrawn or refused to supply a service, the chief executive is not required to reinstate or supply it until—
- (a) a court holds that the debt or part concerned is paid; or
 - (b) a court holds that the debt or part is not payable; or
 - (c) a court holds that some lesser amount is payable, and the amount is so paid.

17 Levies collected on behalf of other person or body

- (1) If—
- (a) the chief executive of the new Ministry is paid a statutory debt that is collected on behalf of and required to be paid to some other person or body; and
 - (b) it has been deemed under section 14 to have been increased,—
- then, subject to subsection (2), to the extent that the amount of the increase has been received, it is to be paid to the person or body.
- (2) If, pursuant to any enactment administered in the new Ministry, the chief executive collects any levy (however described) and pays it to any person or persons, then, notwithstanding anything to the contrary in the enactment, the chief executive is to deduct from the amounts of levy collected the actual and reasonable costs to the Ministry of the collection of those amounts and the making of payments, and pay only the residue (or, if the amounts collected are payable to more than 1 person, the appropriate proportion of the residue) to each person concerned.
- (3) When paying to any person an amount from which a deduction has been made under subsection (2), the chief executive must give the person—
- (a) accounts, showing the deductions made and how they have been calculated; and
 - (b) an explanation for the making of each deduction.

18 Advisory and technical committees

- (1) The Minister of Agriculture and the Minister of Forestry each has power to appoint from time to time advisory or technical committees, and to define the functions of any such committee.
- (2) If the responsible Minister so directs, there may be paid out of public money to the members of any such committee remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply accordingly as if the committee were a statutory Board within the meaning of that Act.

Schedule
Enactments amended

s 4

Forests Act 1949 (1949 No 19) (RS Vol 34, p 569)

Amendment(s) incorporated in the Act(s).

Ombudsmen Act (1975 No 9) (RS Vol 35, p 469)

Amendment(s) incorporated in the Act(s).

State Sector Act 1988 (1988 No 20) (RS Vol 33, p 715)

Amendment(s) incorporated in the Act(s).

Consolidation notes**1 General**

This is a consolidation of the Ministries of Agriculture and Forestry (Restructuring) Act 1997 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 About this consolidation

This consolidation is not an official version of the legislation under section 78 of the Legislation Act 2019.

3 Amendments incorporated in this consolidation

Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14): wehenga 7/section 7

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8