



ANALYSIS

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1998, No. 106

An Act to provide for the transfer of employees from the Ministry of Agriculture and Forestry to 2 State enterprises established under the State-Owned Enterprises Act 1986 with the intention of taking over certain commercial activities of the Ministry

[11 November 1998]

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

1. Short Title and commencement—(1) This Act may be cited as the Ministry of Agriculture and Forestry (Restructuring) Act 1998.

(2) This Act comes into force on 11 November 1998.

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

“Ministry” means the Ministry of Agriculture and Forestry:

“New company”, or “company”, means, as the case may be,—

- (a) AgriQuality New Zealand Limited; or
- (b) Asure New Zealand Limited.

3. Transfer of employees—(1) Every person—

- (a) Who is employed in the Ministry immediately before the date of commencement of this Act; and
- (b) Who is carrying out duties that on or after that date are to be carried out, in whole or in part, by a new company; and
- (c) Whose transfer to the relevant new company is agreed to by the company and the chief executive of the Ministry—

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

(2) The transfer of any employee by this section is subject to any relevant transfer provisions of the employment contract applying to that employee.

(3) This section applies notwithstanding section 61A of the State Sector Act 1988.

4. Protection of terms and conditions of employment on transfer—(1) The employment of any person deemed by section 3 to have been transferred to a new company is to be on terms and conditions no less favourable to the transferred employee than those applying to the employee at the date of transfer.

(2) Any unexpired collective employment contract which covers transferred employees 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 relevant new company; and
- (b) As if it were binding both on those employees and on the company.

(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 new company.

(4) Subsection (1) ceases to apply to a transferred employee who, after the transfer, receives any subsequent appointment within the new company.

5. Employment of transferred employees deemed to be continuous—Every employee deemed by section 3 to have been transferred to a new company becomes an employee of the relevant company on the date of the transfer, but, for the

purposes of every enactment, law, contract, and agreement relating to the employment of each such employee,—

- (a) The contract of employment of that employee that applied immediately before the transfer in respect of that person's employment in the Ministry is deemed to have been unbroken; and
- (b) The employee's period of service with the Ministry, and every other period of service of that employee that is recognised by the Ministry as continuous service, is deemed to have been a period of service with the relevant company.

6. Membership of Government Superannuation Fund—Where a person deemed by section 3 to have been transferred to a new company was a contributor to the Government Superannuation Fund under the Government Superannuation Fund Act 1956 immediately before that transfer,—

- (a) That person is deemed for the purposes of that Act to be employed in the Government service for so long as the person continues to be employed by the new company; and
- (b) That Act is deemed to apply to the person in all respects as if the person's service with the Government service were continuous.

7. No compensation for technical redundancy—No person who is deemed by section 3 to have transferred to a new company is entitled to any compensation for redundancy by reason only of the person ceasing to be employed by the Ministry.

8. Saving of appointments of Inspectors under Meat Act 1981—(1) The appointment of every Inspector appointed under the Meat Act 1981 who is deemed by section 3 of this Act to have transferred to a new company continues, and each such Inspector continues to have all the functions and powers of his or her office, until the earliest of the following occurs:

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

(2) No person is to be treated as employed in the State services for the purposes of the State Sector Act 1988 by reason only of that person's continuance in office under subsection (1).

(3) This section applies notwithstanding anything in section 10 of the Ministries of Agriculture and Forestry (Restructuring) Act 1997.

9. Forests Act 1949 amended in relation to Forestry Officers—(1) Section 2 (1) of the Forests Act 1949 is amended by repealing the definition of the term “Forestry Officer”, and substituting the following definition:

“ ‘Forestry Officer’ means—

“(a) The chief executive of the Ministry:

“(b) Any person appointed as a Forestry Officer under section 11:”.

(2) The Forests Act 1949 is amended by inserting, after section 10, the following section:

“11. **Forestry Officers**—(1) There may from time to time be appointed under the State Sector Act 1988 such Forestry Officers as may be required for the purposes of this Act.

“(2) The Minister may from time to time appoint as a Forestry Officer for the purposes of this Act any person employed in a State enterprise within the meaning of the State-Owned Enterprises Act 1986 or in a Crown Research Institute within the meaning of the Crown Research Institutes Act 1992, and may prescribe the functions and powers of a person so appointed.

“(3) No person is to be treated as employed in the State services for the purposes of the State Sector Act 1988, or in the Government service for the purposes of the Government Superannuation Fund Act 1956, by reason only of the person’s appointment under subsection (2).”

(3) A person who, immediately before the commencement of this Act, was a Forestry Officer by virtue of paragraph (b) or paragraph (c) of the definition of that term (as in force before its repeal by subsection (1)) ceases to be a Forestry Officer on the commencement of this Act.