

STATE-OWNED ENTERPRISES AMENDMENT BILL (NO. 2)

AS REPORTED FROM THE STATE ENTERPRISES COMMITTEE

COMMENTARY

Recommendation

The State Enterprises Committee has examined the State-Owned Enterprises Amendment Bill (No. 2) and recommends that it be passed with the amendment shown.

Conduct of the examination

The State-Owned Enterprises Amendment Bill (No. 2) was read a second time and referred to the State Enterprises Committee on 28 March 1996. The closing date for submissions was 30 April, later extended for one submission to 14 May 1996. We received just two submissions, and invited both to be presented orally. In addition, the Regulations Review Committee wrote to us discussing the method of bringing the Act into force once passed. We also invited the Commerce Commission to appear, to assist us to weigh up concerns expressed in one submission.

This commentary sets out briefly the details of our consideration of the bill and issues addressed by us.

Purpose

The bill was introduced to facilitate the sale of the Crown's shares in Works and Development Services Corporation (NZ) Limited. The provision to remove the company from the First Schedule to the State-Owned Enterprises Act 1986 means that the company will no longer be a State enterprise subject to that Act. The company's removal, by this bill, from the Second Schedule to that same Act effectively removes the restriction on the sale of the Crown's shares. The bill enables both steps to be taken by Order in Council, once a sale has been agreed.

Issues addressed

The principal concerns expressed by submissioners, other than those questioning the philosophy of the sale of State enterprises itself, were as follows:

- that the sale needs to be managed to prevent an anti-competitive monopoly situation resulting; and

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- that the sale not jeopardise the use of the company's resources in civil defence emergencies.

In addition, the Regulations Review Committee expressed a concern at the use of Orders in Council to trigger the commencement of the bill. The committee has an ongoing concern that such a mechanism to bring into force Acts or provisions thereof is not governed by any convention as to the timing of the commencement.

Management of the sale

We explored concerns that the outcome of the sale should not strengthen the position of the leading firm or firms in the roading industry at the expense of a competitive industry. In this, we were assisted by the Commerce Commission which, with this in mind, will be required to approve any purchase. It is clear to us that the test of dominance applied by the Commission is comprehensive and that the Commission applies that test rigorously. Concerns were expressed by one submissioner that the assessment of dominance should take account of sector and regional strengths as well as an operator's national position. Again, the Commission assured us that different geographic and product market definitions are used to arrive at conclusions on the degree of market power.

Impact on Civil Defence assistance

Concerns were expressed that a sale might impede the emergency response capability of the company, and we must acknowledge that the company has historically had a strong reputable role in managing civil defence situations. However, we note that the company's formal role in civil defence has in recent years declined. In 1992, at the time of a sales scoping report on the company, the Director of Civil Defence did not see "a sale of Works having significant implications for the Crown's civil defence obligations". At that time the company retained some particular civil defence responsibilities; a seat on the National Civil Defence Committee and ownership of a number of emergency generators and pumps that could be applied in a civil emergency. Today, neither of these residual responsibilities exist.

On this point, it is worth noting that we discussed this with the company at the time of our review of its 1994/95 performance as a State enterprise, when we noted that the company had severed its remaining formal links with Civil Defence. The company stated that it took this action in recognition that it was "no longer able to provide the comprehensive national coverage that was implicit in its non-commercial and non-contestable role prior to [its] establishment as a State-owned enterprise". The company seemed well aware, however, of the important role that it can play in civil defence and we are confident that it will continue to respond speedily and appropriately where it is able to assist.

Regulations Review Committee concerns

The Regulations Review Committee recommended that we provide certainty as to the commencement of the Act by requiring the Act to be brought into force within two years. True, there is little value in having legislation on the statute books which remains inoperative for several years and we share the committee's desire for some certainty. However, we foresee potential problems in an automatic trigger for the legislation, particularly if near that time it has become apparent that a sale will not proceed.

We consider a better option to be that the legislation, effectively the right of the Executive to sell the company, should expire within two years if not exercised. A new clause 1A is recommended accordingly.

Should the company be sold?

We were unable to agree on this question. Accordingly, while all members supported the decision to incorporate new clause 1A, majority decisions were taken on the remaining clauses and on the recommendation that the bill be passed.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

New (Unanimous)

Subject to this Act,

Text inserted unanimously

Hon. Philip Burdon

STATE-OWNED ENTERPRISES AMENDMENT (NO. 2)

ANALYSIS

Title	3. Amendment to Ombudsmen Act 1975
1. Short Title and commencement	4. Amendment to Official Information Act 1982
1A. Expiry	5. Amendment to Income Tax Act 1994
2. Provision for Works and Development Services Corporation (NZ) Limited to cease to be State enterprise	6. Repeal

A BILL INTITULED

An Act to amend the State-Owned Enterprises Act 1986

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

5 **1. Short Title and commencement**—(1) This Act may be cited as the State-Owned Enterprises Amendment Act (No. 2) 1996 and shall be read together with and deemed part of the State-Owned Enterprises Act 1986* (hereinafter referred to as the principal Act).

10 (2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council, and one or more Orders in Council may be made bringing different provisions into force on different dates.

15 (3) A date may be appointed pursuant to **subsection (2)** of this section for bringing **sections 3, 4, and 6** of this Act into force only if the Governor-General is satisfied, at the time of the making of the Order in Council, that at least 50 percent of the ordinary shares in Works and Development Services Corporation (NZ) Limited are no longer held by Ministers of the Crown on behalf of the Crown.

20 (4) A date may be appointed pursuant to **subsection (2)** of this section for bringing **section 5** of this Act into force only if the Governor-General is satisfied, at the time of the making of the Order in Council, that none of the ordinary shares in Works

*1986, No. 124 (R.S. Vol. 33, p. 1)

and Development Services Corporation (NZ) Limited is held by Ministers of the Crown on behalf of the Crown.

New (Unanimous)

1A. Expiry—This Act shall expire and be deemed to have been repealed on the close of the day that is 2 years after the date on which this Act receives the Royal assent unless an Order in Council is made under **section 1(2)** of this Act bringing the provisions of this Act into force before the close of that day.

2. Provision for Works and Development Services Corporation (NZ) Limited to cease to be State enterprise—(1) The principal Act is hereby amended by omitting from the First Schedule (as amended by section 2 of the State-Owned Enterprises Amendment Act 1988) the item “Works and Development Services Corporation (NZ) Limited”.

(2) Notwithstanding the coming into force of **subsection (1)** of this section, section 22 of the principal Act shall, so long as Ministers of the Crown continue to hold shares in Works and Development Services Corporation (NZ) Limited (in this section called “the Corporation”), continue to apply as if—

- (a) The Corporation were a State enterprise; and
- (b) The Minister of Finance and the Minister for State-Owned Enterprises were the shareholding Ministers for the Corporation.

(3) Section 2 of the State-Owned Enterprises Amendment Act 1988 is hereby consequentially repealed.

(4) The principal Act is hereby amended by omitting from the Second Schedule (as amended by section 3 of the State-Owned Enterprises Amendment Act 1988) the item “Works and Development Services Corporation (NZ) Limited”.

(5) Notwithstanding the coming into force of **subsection (4)** of this section and whether or not all or any of the shares in the Corporation are held by Ministers of the Crown on behalf of the Crown, sections 23 to 30 of the principal Act and any Order in Council made at any time pursuant to any of those sections shall continue to apply after the coming into force of **subsection (4)** of this section as if—

- (a) The Corporation were a State enterprise and a company named in the Second Schedule to that Act; and

(b) The Minister of Finance and the Minister for State-Owned Enterprises were the shareholding Ministers for the Corporation.

5 (6) Section 3 of the State-Owned Enterprises Amendment Act 1988 is hereby consequentially repealed.

(7) Each Minister of the Crown who holds shares in the Corporation on behalf of Her Majesty the Queen may exercise all or any of Her Majesty's rights and powers as the holder of those shares.

10 **3. Amendment to Ombudsmen Act 1975**—The Ombudsmen Act 1975 is hereby amended by omitting from Part II of the First Schedule (as amended by section 4 of the State-Owned Enterprises Amendment Act 1988) the item “Works and Development Services Corporation (NZ) Limited”.

15 **4. Amendment to Official Information Act 1982**—The Official Information Act 1982 is hereby amended by omitting from the First Schedule (as substituted by section 23 (1) of the Official Information Amendment Act 1987 and amended by
20 section 4 of the State-Owned Enterprises Amendment Act 1988) the item “Works and Development Services Corporation (NZ) Limited”.

25 **5. Amendment to Income Tax Act 1994**—The Income Tax Act 1994 is hereby amended by omitting from Schedule 18 the item “Works and Development Services Corporation (NZ) Limited”.

6. Repeal—The State-Owned Enterprises Amendment Act 1988 is hereby consequentially repealed.