

State-Owned Enterprises (AgriQuality Limited and Asure New Zealand Limited) Bill

Government Bill

Explanatory note

General policy statement

Under the Animal Products Act 1999, only persons employed under the State Sector Act 1988, in a State enterprise, or within a Crown entity may be appointed as official assessors for the purpose of carrying out routine examinations of animal material and products for the purposes of that Act.

AgriQuality Limited (**AgriQuality**) and Asure New Zealand Limited (**Asure**) (both of whom are State enterprises) are currently the only entities that are able, in practical terms, to provide export red meat inspection services. AgriQuality has signalled its intention to provide these services in direct competition with Asure. The Government wishes to prevent this competition from occurring as it considers that it would result in a net cost to the Crown as the owner of both AgriQuality and Asure.

Under section 13 of the State-Owned Enterprises Act 1986, shareholding Ministers of a State enterprise can direct the board of directors of a State enterprise to omit certain provisions from the company's statement of corporate intent. However, without specific authorising legislation, a direction to prevent AgriQuality from providing export red meat inspection services may breach Part 2 of the Commerce Act 1986, as it could result in a substantial lessening of competition in a market. This Bill specifically authorises the issuing of a direction to AgriQuality with the effect that Part 2 of the Commerce Act 1986 would not apply to the direction.

The Government is also considering the possibility of merging AgriQuality and Asure to maximise the commercial and non-commercial ownership benefits of AgriQuality and Asure, including the potential for an improved provider integration of national biosecurity response capability. To enable a possible future merger, legislation is required to remove 1 or both companies from Schedules 1 and 2 of the State-Owned Enterprises Act 1986 (and consequentially amend a number of other enactments). This Bill meets that purpose. The Bill also provides that Part 3 of the Commerce Act 1986 does not apply to any merger of AgriQuality and Asure.

Clause by clause analysis

Clause 1 states the Bill's Title.

Clause 2 provides for the Bill's commencement. This Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1 Preliminary provisions

Clause 3 is an interpretation section.

Clause 4 provides that the Bill will bind the Crown.

Part 2 Matters concerning AgriQuality Limited and Asure New Zealand Limited

Subpart 1—Power to direct AgriQuality Limited

Clause 5 enables the shareholding Ministers of AgriQuality Limited to direct the board of directors of AgriQuality Limited not to provide certain services under the Animal Products Act 1999. These are the services referred to in section 79(2) of that Act. The shareholding Ministers may subsequently revoke a direction.

The shareholding Ministers may advise the board of directors of their intentions or expectations with regard to directions intended to be given, and must advise the Board of any matters to be referred to in a direction at least 14 days before the direction is given. This clause provides that giving a direction or advice is not a breach of any Act or rule of law. Further, the giving of a direction or advice is

specifically authorised for the purpose of section 43 of the Commerce Act 1986.

This clause also specifies how a direction or advice must be given to the board of directors and how a direction must be notified.

Clause 6 provides that the board of directors of AgriQuality Limited must comply with a direction given to it under *clause 5* despite anything to the contrary in any enactment or rule of law. This clause also provides that following a direction or advice given under *clause 5* is not a breach of any Act or rule of law.

Subpart 2—Merger of AgriQuality Limited and Asure New Zealand Limited

Clause 7 is an interpretation section for subpart 2 of Part 2 of the Bill.

Clause 8 sets out the amendments to, and the repeals of, enactments that the Governor-General may make by Order in Council. These amendments and repeals are either required in order to allow a merger of AgriQuality Limited and Asure New Zealand Limited to occur, or to reflect the consequences of such a merger.

The Governor-General may only make an Order in Council under this clause on the recommendation of the Minister responsible for AgriQuality Limited and Asure New Zealand Limited, and the Minister must be satisfied that a merger of those 2 companies has occurred or will occur before he or she can make that recommendation.

Clause 9 specifies that nothing in Part 3 of the Commerce Act 1986 applies to a merger of AgriQuality Limited and Asure New Zealand Limited.

Clause 10 provides that certain matters are not affected simply by reason of a merger of AgriQuality Limited and Asure New Zealand Limited. In particular, a merger of those companies, including a change of ownership of those companies, cannot be used by a third party to claim that there has been a breach of contract, and an employee cannot claim there has been a technical redundancy. Further, the employment and service of an employee of either of those companies is deemed not to be broken. However, these provisions do not apply if a person's employment is specifically terminated by the board of directors of AgriQuality Limited or Asure New Zealand Limited.

Clause 11 provides that subpart 2 of Part 2 of the Bill expires 2 years after the date on which this Bill receives the Royal assent.

Hon Trevor Mallard

State-Owned Enterprises (AgriQuality Limited and Asure New Zealand Limited) Bill

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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the State-Owned Enterprises (AgriQuality Limited and Asure New Zealand Limited) Act **2007**.

2 Commencement 5
This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Preliminary provisions

3 Interpretation 10
In this Act, unless the context otherwise requires,—
animal material has the same meaning as in section 4(1) of the Animal Products Act 1999

animal products has the same meaning as in section 4(1) of the Animal Products Act 1999 15

Board means the board of directors of AgriQuality Limited
official assurances has the same meaning as in section 61(2) of the Animal Products Act 1999

shareholding Ministers means the shareholding Ministers of AgriQuality Limited, being— 20

- (a) the Minister of Finance; and
- (b) the Minister of the Crown for the time being responsible for AgriQuality Limited.

4 Act binds the Crown 25
This Act binds the Crown.

Part 2
Matters concerning AgriQuality Limited and Asure New Zealand Limited

Subpart 1—Power to direct AgriQuality Limited

- 5 Directions and advice to AgriQuality Limited by shareholding Ministers** 5
- (1) The shareholding Ministers may, by written notice to the Board, give to the Board—
- (a) a direction that AgriQuality Limited must not provide services specified in the notice that involve routine examinations of animal material or animal products by official assessors appointed under section 79 of the Animal Products Act 1999, for the purpose of, amongst other things, enabling official assurances to be given under that Act: 10
- (b) a direction that revokes a direction given under **paragraph (a)**. 15
- (2) The shareholding Ministers—
- (a) may, at any time, by written notice to the Board, advise the Board of their intentions or expectations with regard to directions to be given under **subsection (1)**; and 20
- (b) must advise the Board, by written notice to the Board, of the matters to be referred to in a direction to be given under **subsection (1)** at least 14 days before the direction is given; and 25
- (c) must consider any comments relating to the direction that the Board makes to them within 10 days of the date on which the Board receives the advice under **paragraph (b)**.
- (3) The shareholding Ministers may give a direction under **subsection (1)** or advice under **subsection (2)** despite anything to the contrary in sections 4 to 7 of the State-Owned Enterprises Act 1986, the Companies Act 1993, the Commerce Act 1986, or any other Act or rule of law. 30
- (4) The giving of a direction under **subsection (1)** or advice under **subsection (2)** is specifically authorised for the purpose of section 43 of the Commerce Act 1986. 35
- (5) The Minister for State Owned Enterprises must—

- (a) present a copy of the direction to the House of Representatives within 12 sitting days after a direction is given to the Board under **subsection (1)**; and
- (b) publish a copy of it in the *Gazette* as soon as practicable after the giving of the direction.

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6 Consequences of directions and advice given under section 5

- (1) The Board must comply with a direction given to it under **section 5(1)** despite anything to the contrary in the State-Owned Enterprises Act 1986, the Companies Act 1993, the Commerce Act 1986, or any other Act or rule of law. 10
- (2) Neither the Crown nor any shareholding Minister is in breach of, or liable to any person under, sections 4 to 7 of the State-Owned Enterprises Act 1986, the Companies Act 1993, the Commerce Act 1986, or any other Act or rule of law by reason of the giving of a direction under **section 5(1)** or advice under **section 5(2)**. 15
- (3) No director of AgriQuality Limited is in breach of, or liable to any person under, the State-Owned Enterprises Act 1986, the Companies Act 1993, the Commerce Act 1986, or any other Act or rule of law by reason of any act or omission reasonably believed by the director to be necessary or desirable— 20
 - (a) to give effect to, or as a consequence of, a direction given under **section 5(1)**; or
 - (b) as a result of any advice given under **section 5(2)**. 25

Subpart 2—Merger of AgriQuality Limited and Asure New Zealand Limited

7 Interpretation

In this subpart, unless the context otherwise requires,—

- merger of AgriQuality and Asure** means any arrangement concerning AgriQuality Limited and Asure New Zealand Limited under which— 30
- (a) those 2 companies amalgamate and continue as 1 company, which may be AgriQuality Limited, Asure New Zealand Limited, or a new company (which must be a State enterprise); or 35
 - (b) 1 of those companies becomes a subsidiary of the other company; or

- (c) both of those companies become subsidiaries of another company (which must be a State enterprise)

responsible Minister means the Minister or (as the case may be) Ministers of the Crown for the time being responsible for AgriQuality Limited and Asure New Zealand Limited

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State enterprise means an organisation named in Schedule 1 of the State-Owned Enterprises Act 1986

subsidiary has the same meaning as in sections 5 and 6 of the Companies Act 1993.

8 Amendments and repeals to enactments resulting from merger of AgriQuality and Asure 10

- (1) The Governor-General may, by Order in Council made on the recommendation of the responsible Minister, do 1 or more of the following:
- (a) amend Schedule 18 of the Income Tax Act 2004 by omitting either or both of the following items: 15
- (i) AgriQuality New Zealand Limited:
- (ii) Asure New Zealand Limited:
- (b) amend Part 2 of Schedule 1 of the Ombudsmen Act 1975 by omitting either or both of the following items: 20
- (i) AgriQuality Limited:
- (ii) Asure New Zealand Limited:
- (c) amend Schedule 1 of the State-Owned Enterprises Act 1986 by omitting either or both of the following items: 25
- (i) AgriQuality Limited:
- (ii) Asure New Zealand Limited:
- (d) amend Schedule 2 of the State-Owned Enterprises Act 1986 by omitting either or both of the following items: 30
- (i) AgriQuality Limited:
- (ii) Asure New Zealand Limited:
- (e) amend the definition of **organic milk** in regulation 3(1) of the Dairy Industry Restructuring (Raw Milk) Regulations 2001 by—
- (i) repealing paragraph (c); or
- (ii) amending paragraph (c) by omitting “AgriQuality Limited” and substituting— 35
- (A) “Asure New Zealand Limited”; or
- (B) the new company name used by Asure New Zealand Limited if Asure New

- Zealand Limited changes its company name as a result of a merger of AgriQuality and Asure; or
- (C) the name of a new company (which must be a State enterprise) formed as a result of a merger of AgriQuality and Asure: 5
- (f) repeal the Ministry of Agriculture and Forestry (Restructuring) Act 1998:
- (g) revoke the State-Owned Enterprises (Agriquality New Zealand Limited and Asure New Zealand Limited) Order 1998: 10
- (h) revoke the State-Owned Enterprises (AgriQuality Limited) Order 2004.
- (2) The responsible Minister may only recommend the making of an order under **subsection (1)** if he or she is satisfied that a merger of AgriQuality and Asure has occurred or is going to occur. 15
- (3) Nothing in section 32 of the Ombudsmen Act 1975 limits or affects **subsection (1)** or an Order in Council made under **subsection (1)**. 20
- 9 Part 3 of Commerce Act 1986 does not apply to merger of AgriQuality and Asure**
- Nothing in Part 3 of the Commerce Act 1986 applies to any merger of AgriQuality and Asure.
- 10 Certain matters not affected by merger of AgriQuality and Asure** 25
- (1) A merger of AgriQuality and Asure, including any transfer or sale of shares in AgriQuality Limited or Asure New Zealand Limited carried out as part of that merger, does not, by itself,— 30
- (a) give rise to a right for any person to terminate or cancel any lease, contract, or arrangement or to accelerate the performance of any obligation; or
- (b) release any surety wholly or in part from any obligation; or 35
- (c) invalidate or discharge any contract or security; or
- (d) give rise to a claim for breach of contract; or

- (e) break any person's employment for the purposes of any provision of an employment contract relating to continuity of service; or
 - (f) give rise to a claim for, or entitle any person to, compensation for redundancy or any severance payment; or 5
 - (g) break any person's Government service for the purposes of the Government Superannuation Fund Act 1956 (if that person is a contributor to the Government Superannuation Fund).
- (2) However, **subsection (1)(e) to (g)** does not apply to any termination of employment specifically agreed to by the board of directors of AgriQuality Limited or Asure New Zealand Limited as part of a merger of AgriQuality and Asure. 10
- 11 Expiry of subpart 2 of Part 2** 15
- This subpart expires on the close of the day that is 2 years after the date on which this Act receives the Royal assent.