

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

Government Bill

As reported from the committee of the whole House

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## **Key to symbols used in reprinted bill**

**As reported from the committee of the whole House**

### **Struck out**

**Subject to this Act,**

Text struck out

### **New**

Subject to this Act,

Text inserted

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*Hon Trevor Mallard*

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

Government Bill

## **Contents**

	Page
1 Title	2
2 Commencement	2
<b>Part 1</b>	
<b>Preliminary provisions</b>	
3 Interpretation	2
4 Act binds the Crown	3
<b>Part 2</b>	
<b>Matters concerning AgriQuality Limited and Asure New Zealand Limited</b>	
Subpart 1—Power to direct AgriQuality Limited	
5 Directions and advice to AgriQuality Limited by share- holding Ministers	3
6 Consequences of directions and advice given under section 5	4
Subpart 2—Merger of AgriQuality Limited and Asure New Zealand Limited	
7 Interpretation	5
8 Amendments and repeals to enactments resulting from merger of AgriQuality and Asure	5
9 Part 3 of Commerce Act 1986 does not apply to merger of AgriQuality and Asure	6
10 Certain matters not affected by merger of AgriQuality and Asure	7
11 Expiry of subpart 2 of Part 2	7
Subpart 3—Commerce Commission investigation and report	
12 Investigation and report by Commerce Commission on examination services	7
13 Commerce Commission process	8
14 Levy of Asure New Zealand Limited or merged company	8

	Subpart 4—Ongoing negotiations and obligations concerning examination services	
15	Obligations concerning examination services	9

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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**

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

**Part 1  
Preliminary provisions**

**3 Interpretation**

In this Act, unless the context otherwise requires,— 10

**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

**Board** means the board of directors of AgriQuality Limited 15

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<b>examination services</b> means services involving 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	20
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**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—

(a) the Minister of Finance; and 25

- (b) the Minister of the Crown for the time being responsible for AgriQuality Limited.

**4 Act binds the Crown**

This Act binds the Crown.

**Part 2**

**Matters concerning AgriQuality Limited and Asure New Zealand Limited**

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Subpart 1—Power to direct AgriQuality Limited

**5 Directions and advice to AgriQuality Limited by shareholding Ministers**

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- (1) The shareholding Ministers may, by written notice to the Board, give to the Board—

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- (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:

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- (a) a direction that AgriQuality Limited must not provide the examination services specified in the notice:

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- (b) a direction that revokes a direction given under **paragraph (a)**.

- (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
- (b) must advise the Board, by written notice to the Board, of the matters to be referred to in a direction to be given

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- under **subsection (1)** at least 14 days before the direction is given; and
- (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)**. 5
- (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. 10
- (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.
- (5) The Minister for State Owned Enterprises must— 15
- (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. 20

## **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. 25
- (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)**. 30
- (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— 35
- (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)**.

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

### 7 Interpretation

In this subpart, unless the context otherwise requires,— 5

**merger of AgriQuality and Asure** means any arrangement concerning AgriQuality Limited and Asure New Zealand Limited under which—

- (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 10
- (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) 15

**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

**State enterprise** means an organisation named in Schedule 1 of the State-Owned Enterprises Act 1986 20

**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 25

- (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: 30
- (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: 35
- (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:

- (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:
  - (i) AgriQuality Limited: 5
  - (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 10
  - (ii) amending paragraph (c) by omitting “AgriQuality Limited” and substituting—
    - (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 15
    - (C) the name of a new company (which must be a State enterprise) formed as a result of a merger of AgriQuality and Asure: 20
- (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: 25
- (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. 30
- (3) Nothing in section 32 of the Ombudsmen Act 1975 limits or affects **subsection (1)** or an Order in Council made under **subsection (1)**. 35

**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**
- (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,— 5
- (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 10
- (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 15
- (f) give rise to a claim for, or entitle any person to, compensation for redundancy or any severance payment; or
- (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). 20
- (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. 25
- 11 Expiry of subpart 2 of Part 2**
- This subpart expires on the close of the day that is 2 years after the date on which this Act receives the Royal assent.

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- Subpart 3—Commerce Commission investigation and report 30
- 12 Investigation and report by Commerce Commission on examination services**
- (1) The Commerce Commission must, within 3 years after the commencement of this Act,— 35
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| (a) | investigate the prices charged for examination services;<br>and   |    |
| (b) | report to the Minister of Commerce on whether it is<br>necessary or desirable for examination services to be<br>controlled under Part 4 of the Commerce Act 1986.                               | 5  |
| (2) | The Commission must not commence its investigation under<br><b>subsection (1)</b> earlier than 2 years after the commencement of<br>this Act.   |    |
| (3) | However, <b>subsections (1) and (2)</b> do not apply if—  |    |
| (a) | the Minister of Commerce and the Meat Industry Asso-<br>ciation of New Zealand (Incorporated) agree that an<br>investigation and a report under <b>subsection (1)</b> are not<br>necessary; and | 10 |
| (b) | the Minister of Commerce gives written notice to the<br>Commission to that effect within 2 years after the com-<br>mencement of this Act.   | 15 |

**13 Commerce Commission process**

The Commerce Commission must carry out its investigation and report to the Minister of Commerce under **section 12(1)** as if that section was a request from the Minister under section 56 of the Commerce Act 1986, and Part 4 of that Act applies accordingly with all necessary modifications.

**14 Levy of Asure New Zealand Limited or merged company**

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| (1) | Asure New Zealand Limited or, if there has been a merger of<br>AgriQuality and Asure (as defined in <b>section 7</b> ), the new com-<br>pany formed as a result of the merger must pay to the Crown<br>the levy prescribed by regulations made under <b>subsection (2)</b> .   | 25 |
| (2) | The Governor-General may, by Order in Council made on the<br>recommendation of the Minister of Commerce, make<br>regulations—  | 30 |
| (a) | specifying the amount of levies, or method of calculat-<br>ing or ascertaining the amount of levies, on the basis<br>that the actual costs of performing or exercising the<br>Commerce Commission's functions, powers, and duties<br>under this subpart, and of collecting the levy money,<br>should be met fully out of levies: | 35 |

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| (b)   | including in levies, or providing for inclusion in levies of, any potential or likely shortfall in recovering those actual costs:   |        |
| (c)   | refunding, or providing for refunds of, any over-recovery of those actual costs:  | 5      |
| (d)   | providing for the payment and collection of those levies.   |        |
| (3)   | The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Crown.   |        |
| <br><b>Subpart 4—Ongoing negotiations and obligations concerning examination services</b> |   | <br>10 |
| <b>15 Obligations concerning examination services</b>                                     |   |        |
| (1)   | The Crown will continue to negotiate with New Zealand’s international trading partners for the acceptance of international guidelines on meat hygiene as set out in the Codex Alimentarius’s Code of Practice, “Code of Hygienic Practice for Meat” (CAC/RCP 58-2005) (the <b>Code</b> ).   | 15     |
| (2)   | If more than 66.6% of the total value of New Zealand’s post-mortem red meat exports (of both ovine and bovine origin) are made to international trading partners of New Zealand who have agreed to accept the international guidelines on meat hygiene as set out in the Code, the Executive Government of New Zealand must permit— | 20     |
| (a)   | competitive tendering for the provision of examination services to occur; and   | 25     |
| (b)   | examination services to be provided by persons who are not employed under the State Sector Act 1988.  |        |

### Legislative history

27 March 2007	Introduction (Bill 112-1)
3 April 2007	First reading and referral to Commerce Committee
4 May 2007	Reported from Commerce Committee (Bill 112-1)
15 May 2007	Second reading
24 May, 20 June 2007	Committee of the whole House (Bill 112-2)

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