

State Sector Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the State Sector Act 1988 to facilitate machinery of government changes in the Public Service. It provides for the alteration or removal of the names of Departments from the First Schedule of the State Sector Act 1988 and makes other technical and consequential changes that are necessary to provide for machinery of government changes. In addition, it provides that, where, as a consequence of a machinery of government change, an employee is offered employment with another Department on terms and conditions of employment that are no less favourable or to which the employee agrees, the employee is not entitled to any redundancy payment arising from the fact that the employee's employer has changed and his or her former position has disappeared (a technical redundancy provision). The amendments to the First Schedule and the application of the technical redundancy provision are to be dealt with on a case-by-case basis as the need arises by Order in Council.

Machinery of government changes, such as the creation of new Departments, often require the transfer of functions, roles, and staff from Department to Department within the Public Service. While the name of a Department may be added to the First Schedule of the State Sector Act 1988 by Order in Council, Acts of Parliament have been required to alter any name and to remove the name of a Department from the Schedule. Acts have also been required to manage the financial risk posed by the issue of technical redundancy, and to give comfort on other specific concerns arising from machinery of government changes.

While the Crown is indivisible, the State Sector Act 1988 recognises separate Departments for certain purposes and imposes the responsibilities of employers upon chief executives of Departments. Because machinery of government changes affecting Departments are simply the Crown reorganising the manner in which it conducts its affairs, it is considered appropriate to deal with these matters in this Act and by Orders in Council rather than by the enactment of Acts of Parliament on each occasion.

The Bill also provides for the change of name of the Department of Work and Income to the Ministry of Social Development and the merger of the Department of Social Welfare with that Ministry. In addition to amending the First Schedule of the State Sector Act 1988, provision is made to deal with technical redundancies arising through the merger, and other consequential and technical changes required to give effect to the merger. These changes are included in the Bill, rather than being made by Order in Council, for administrative convenience given the need for the changes to be in force on **1 October 2001**.

Clause by clause analysis

Clause 1 sets out the Title of the Bill.

Part 1

Preliminary

Clause 2 relates to the commencement of the Bill.

Clause 3 sets out the purpose of the Bill, which is to—

- amend the State Sector Act 1988 to reflect and provide for reorganisations within the Public Service (including by enabling the restriction of compensation for technical redundancies arising from reorganisations); and
- reflect and provide for the change of the Department of Work and Income's name to the Ministry of Social Development and the abolition of the Department of Social Welfare and transfer of its functions to the Ministry of Social Development.

Part 2

Reorganisations within Public Service

Reorganisations generally

Clause 4 inserts new provisions into the State Sector Act 1988 to reflect and provide for reorganisations within the Public Service.

New section 30A enables Orders in Council to be made that amend the First Schedule of the State Sector Act 1988 (which lists all Departments that make up the Public Service) if a Department is abolished or has its name changed, or if a new department is established.

Currently, there is a power to add a new Department's name to the First Schedule of the State Sector Act 1988 by Order in Council (in section 27(2)), but not to amend the First Schedule if other reorganisations occur within the Public Service. The proposition underlying this amendment to the State Sector Act 1988 is that the way in which the Crown arranges its responsibilities among Departments is a matter for the Crown rather than Parliament. It is understood that changes to the First Schedule of the State Sector Act 1988 do not, of themselves, create or abolish Departments (which are not separate legal entities from the Crown). Accordingly, it is understood that changes to the First Schedule merely recognise the establishment, abolition, or change of name of Departments by the Crown.

This proposition is already reflected in a large number of enactments that use a generic definition of **responsible department** to mean "the department that is, under the authority of any warrant or with the authority of the Prime Minister, for the time being responsible for the administration of this Act". Similar powers for regulations to amend schedules of Departments and other organisations if a Department or organisation is established, abolished, or has its name changed are contained in section 32 of the Ombudsman Act 1975 and section 49 of the Official Information Act 1982.

New section 30B restricts, on a case-by-case basis, compensation for technical redundancy arising from a reorganisation within the Public Service. An employee of Department A will not be entitled to payments or other benefits on the ground that his or her position in Department A has ceased to exist if—

- the position ceases to exist as a result of a transfer of functions of Department A to Department B; and

- the employee is made an equivalent offer of employment in Department B in connection with that transfer; and
- the Governor-General declares, by Order in Council, that this section applies to that transfer.

An **equivalent offer** is an offer of employment—

- in a substantially similar position or another position that the employee is willing to accept; and
- on terms and conditions that are no less favourable than those applying to the employee immediately before the offer, or on other terms and conditions to which the employee agrees; and
- on terms that treat the period of service with Department A as if it were service with Department B and as if it were continuous.

Given these safeguards and the limits on its application, the section overrides the employee's employment agreement to the extent that the section and agreement are inconsistent.

New section 30C overrides sections 60 (which requires appointments to be on merit), 61 (which imposes an obligation to notify vacancies), 61A and 61B (which relate to the transfer of employees between and within Departments), and 65 (which relates to reviews of appointments) for appointments of employees of Department A to a position in Department B if—

- the employee's position in Department A ceases to exist as a result of a transfer of functions of Department A to Department B; and
- the Governor-General declares, by Order in Council, that this subsection applies to that transfer.

This section also provides for the application of collective employment agreements so as to preserve the status quo for the reappointed employee and existing employees of Department B in terms of the coverage of those agreements and to ensure that other new employees of Department B are covered by the collective agreement that is appropriate to their work.

New section 30D deals with the consequences of reorganisations for references to a particular Department in enactments and other things. If the reference is no longer appropriate due to a name change, abolition of a Department, or transfer of a Department's functions, the reference must be read as a reference to the Department under its new name or to the new responsible Department (ie,

the Department that has been transferred responsibility for the matter to which the reference relates), as applicable. *New section 30E* makes analogous changes for references to particular chief executives. *New section 30F* clarifies that these provisions apply to any reference to a particular Department in anything, including, without limitation, in deeds, agreements, proceedings, instruments, documents, and notices. The thing must be in existence at the time of the name change, abolition, or transfer of functions. To ensure consistency, changes to references due to name changes and abolitions of Departments (in which case the First Schedule would also be amended) will only apply on and after the First Schedule is amended.

New section 30G contains a power to provide, by Order in Council, for other saving and transitional matters connected with the abolition or change of name of a Department, the transfer of functions between Departments, or the establishment of a new department. It is not expected that this provision will need to be used often, and it is included only in case specific saving or transitional issues arise that the generic provisions do not adequately provide for.

New section 30H states, for the avoidance of doubt, that reorganisations within the Public Service do not affect property, rights, or obligations of the Crown or the commencement or continuation of proceedings. The proposition underlying this clause is that Departments are not separate legal entities in their own right. Accordingly, it is understood that reorganisations within the Public Service do not affect rights or obligations of the Crown. Even if contracts (eg, software licences) purport to be with a particular Department, Departments can only contract on behalf of the Crown, and accordingly the rights and obligations under those contracts may be exercised by the Crown through any other responsible Department and, equally, must be performed by the Crown even if that particular responsible Department is abolished.

Clause 5 consequentially amends the State Sector Act 1988.

Reorganisation resulting in Ministry of Social Development

Clauses 6 to 15 and the *Schedule* essentially repeat the generic provisions in *new sections 30A to 30H* of the State Sector Act 1988 and make the amendments to the First Schedule of that Act and other changes to Acts, regulations, and things that are needed to reflect and provide for the—

- change of the Department of Work and Income's name to the Ministry of Social Development; and
- abolition of the Department of Social Welfare (known as the Ministry of Social Policy) and transfer of its functions to the Ministry of Social Development.

These changes (except the actual amendments in the *Schedule*) could have been done by an Order in Council under the new sections of the State Sector Act 1988 inserted by this Bill, but the Crown wishes the Ministry of Social Development to be operational on **1 October 2001** and so these provisions are included in the Bill.

Hon Trevor Mallard

State Sector Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the State Sector Amendment Act **2001**.

- (2) In this Act, the State Sector Act 1988¹ is called “the principal Act”.

¹ 1988 No 20

Part 1 Preliminary

- 2 Commencement** 5
 Except as provided in **section 6**, this Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Purpose**
 The purpose of this Act is to—
- (a) amend the State Sector Act 1988 to reflect and provide for reorganisations within the Public Service (including by enabling the restriction of compensation for technical redundancies arising from reorganisations); and 10
- (b) reflect and provide for the change of the Department of Work and Income’s name to the Ministry of Social Development and the abolition of the Department of Social Welfare and transfer of its functions to the Ministry of Social Development. 15

Part 2 Reorganisations within Public Service 20

Reorganisations generally

- 4 New sections 30A to 30H inserted**
 The principal Act is amended by inserting, after section 30, the following sections:
- “**30A Amendment of First Schedule to reflect reorganisations within Public Service** 25
 The Governor-General may, by Order in Council, amend the First Schedule if a Department is abolished or its name is changed or a new department is established.
- “**30B Restriction of compensation for technical redundancy arising from reorganisations within Public Service** 30
 “(1) An employee is not entitled to receive any payment or other benefit solely on the ground that his or her position in a Department (**Department A**) has ceased to exist if—

- “(a) the position ceases to exist as a result of a transfer of functions of Department A to another Department (**Department B**); and
- “(b) the employee is made an equivalent offer of employment in Department B in connection with that transfer; and 5
- “(c) the Governor-General declares, by Order in Council, that this section applies to that transfer.
- “(2) An **equivalent offer** is an offer of employment— 10
 - “(a) in a substantially similar position to the employee’s position in Department A, or another position that the employee is willing to accept; and
 - “(b) on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer, or on any other terms and conditions to which the employee agrees; and 15
 - “(c) on terms that treat the period of service with Department A (or any other period of service recognised by Department A as continuous service) as if it were service with Department B and as if it were continuous. 20
- “(3) This section overrides the employee’s employment agreement to the extent that it is inconsistent with that agreement.

- “30C **Appointment of employees within Public Service following reorganisations**
- “(1) Sections 60 to 61B and 65 do not apply in relation to the appointment of an employee of 1 Department (**Department A**) to a position in another Department (**Department B**) if— 25
 - “(a) the employee’s position in Department A ceases to exist as a result of a transfer of functions of Department A to Department B; and 30
 - “(b) the Governor-General declares, by Order in Council, that this subsection applies to that transfer.
- “(2) **Sections 30D(2) and (3) and 30E(2) and (3)** do not apply to an individual employment agreement.
- “(3) **Sections 30D(2) and (3) and 30E(2) and (3)** apply to a collective agreement only in respect of those employees of Department A who are appointed to a position in Department B (**reappointed employees**) and other employees whose work is covered by that agreement under **subsection (4)(c)**. 35

- “(4) If the work done by employees of Department B is covered by more than 1 collective agreement as a result of the application of **sections 30D(2) and (3) and 30E(2) and (3)**—
- “(a) a reappointed employee’s work is covered by only the collective agreement that covered that work in Department A; and 5
- “(b) that collective agreement does not cover the work of employees of Department B who are not reappointed employees; but
- “(c) the work of a new employee of Department B who is not a reappointed employee is covered by whichever collective agreement would have covered the subject matter of that work if it had been done before the transfer of functions. 10
- “(5) Sections 57, 62(3), and 63(3) of the Employment Relations Act 2000 do not apply to the extent that **subsection (4)(a), (b), or (c)** applies. 15
- “(6) **Subsection (4)** does not apply in relation to a collective agreement to the extent that the parties agree otherwise.
- “**30D Consequential changes to references to Departments following reorganisations** 20
- “(1) If an enactment or other thing refers to a particular Department and that reference is no longer appropriate because the Department’s name has changed, the reference must be read as a reference to the Department under its new name. 25
- “(2) If an enactment or other thing refers to a particular Department and that reference is no longer appropriate because the Department has been abolished, the reference must be read as a reference to the new responsible Department.
- “(3) If an enactment or other thing refers to a particular Department and that reference is no longer appropriate because functions have been transferred between Departments, the reference must be read as a reference to the new responsible Department. 30
- “(4) In this section, the **new responsible Department** is the Department to which responsibility for the matter to which the reference relates has been transferred. 35

- “30E Consequential changes to references to chief executives following reorganisations**
- “(1) If an enactment or other thing refers to a particular designation of a chief executive or a chief executive of a particular Department and that reference is no longer appropriate because the designation or name of the Department has changed, the reference must be read as a reference to the chief executive under the new designation or the Department’s new name (as applicable). 5
- “(2) If an enactment or other thing refers to a chief executive of a particular Department and that reference is no longer appropriate because the Department has been abolished, the reference must be read as a reference to the new responsible chief executive. 10
- “(3) If an enactment or other thing refers to a chief executive of a particular Department and that reference is no longer appropriate because functions have been transferred between Departments or between chief executives, the reference must be read as a reference to the new responsible chief executive. 15
- “(4) In this section, the **new responsible chief executive** is the chief executive to whom, or to whose Department, responsibility for the matter to which the reference relates has been transferred. 20
- “30F Application of consequential changes to references**
- “(1) **Sections 30D and 30E—** 25
- “(a) apply to things that are in force or existing at the time of the name change, abolition, or transfer of functions (whether coming into force, entered into, or created before or after the commencement of this section); and
- “(b) apply to references in anything, including (without limitation) deeds, agreements, proceedings, instruments, documents, and notices. 30
- “(2) **Sections 30D(1) and (2) and 30E(1) and (2)** apply only on and after the First Schedule is amended in respect of the relevant name change or abolition. 35
- “(3) **Sections 30D and 30E** apply to employment agreements only in accordance with **section 30C**.

“30G Other saving and transitional matters arising from reorganisations within Public Service

The Governor-General may, by Order in Council, provide for savings and transitional matters connected with the abolition or change of name of a Department, the transfer of functions between Departments, or the establishment of a new department. 5

“30H Effect of reorganisations within Public Service

“(1) The abolition or change of name of a Department, the transfer of functions between Departments, or the establishment of a new department does not affect— 10

“(a) property, rights, or obligations of the Crown (whether or not in the name of the Crown or of a particular Department, chief executive, or other person in a Department); or 15

“(b) the commencement or continuation of proceedings by or against the Crown (whether or not in the name of the Crown or of a particular Department, chief executive, or other person in a Department).

“(2) In this section, **property** means property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal; and includes rights, interests, and claims of every kind in relation to property, however they arise. 20

“(3) This section does not limit **sections 30A to 30G**.

“(4) This section applies for the avoidance of doubt.” 25

5 Consequential amendment relating to new sections 30A to 30H

Section 27 of the principal Act is amended by repealing subsection (2).

Reorganisation resulting in Ministry of Social Development 30

6 Commencement of sections 7 to 15

Sections 7 to 15 come into force on **1 October 2001**.

7 Purpose of sections 7 to 15

The purpose of **sections 7 to 15** is to reflect and provide for the— 35

- (a) change of the Department of Work and Income's name to the Ministry of Social Development; and
- (b) abolition of the Department of Social Welfare (known as the Ministry of Social Policy) and transfer of its functions to the Ministry of Social Development. 5

8 First Schedule amended

The First Schedule of the State Sector Act 1988 is amended—

- (a) by inserting, after the item "Serious Fraud Office.", the item "Ministry of Social Development."; and
- (b) by omitting the item "Department of Social Welfare."; 10
and
- (c) by omitting the item "Department of Work and Income."

9 Restriction of compensation for technical redundancy arising from reorganisation 15

- (1) An employee is not entitled to receive any payment or other benefit solely on the ground that his or her position in the Department of Social Welfare has ceased to exist if—
 - (a) the position ceases to exist as a result of the transfer of the Department of Social Welfare's functions to the Ministry of Social Development; and 20
 - (b) the employee is made an equivalent offer of employment in the Ministry of Social Development in connection with that transfer.
- (2) An **equivalent offer** is an offer of employment— 25
 - (a) in a substantially similar position to the employee's position in the Department of Social Welfare, or another position that the employee is willing to accept; and
 - (b) on terms and conditions of employment that are no less 30
favourable than those applying to the employee immediately before the offer or on any other terms and conditions to which the employee agrees; and
 - (c) on terms that treat the period of service with the Department of Social Welfare (or any other period of service 35
recognised by the Department of Social Welfare as continuous service) as if it were service with the Ministry of Social Development and as if it were continuous.

- (3) This section overrides the employee's employment agreement to the extent that it is inconsistent with that agreement.

10 Appointment of employees following reorganisation

- (1) Sections 60 to 61B and 65 do not apply in relation to the appointment of an employee of the Department of Social Welfare to a position in the Ministry of Social Development if the employee's position in the Department of Social Welfare ceases to exist as a result of the transfer of that Department's functions to the Ministry of Social Development. 5
- (2) **Section 13** does not apply to an individual employment agreement. 10
- (3) **Section 13** applies to a collective agreement only in respect of those employees of the Department of Social Welfare who are appointed to a position in the Ministry of Social Development (**reappointed employees**) and other employees whose work is covered by that agreement under **subsection (4)(c)**. 15
- (4) If the work done by employees of the Ministry of Social Development is covered by more than 1 collective agreement as a result of the application of **section 13**,—
- (a) a reappointed employee's work is covered by only the collective agreement that covered that work in the Department of Social Welfare; and 20
- (b) that collective agreement does not cover the work of employees of the Ministry of Social Development who are not reappointed employees; but 25
- (c) the work of a new employee of the Ministry of Social Development who is not a reappointed employee is covered by whichever collective agreement would have covered the subject matter of that work if it had been done before the transfer of functions. 30
- (5) Sections 57, 62(3), and 63(3) of the Employment Relations Act 2000 do not apply to the extent that **subsection (4)(a), (b), or (c)** applies.
- (6) **Subsection (4)** does not apply in relation to a collective agreement to the extent that the parties agree otherwise. 35

11 Consequential amendments to other enactments

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

- 12 Consequential changes to other references to Department of Work and Income and to its chief executive**
- (1) If any other enactment or other thing refers to the Department of Work and Income (or to it as Work and Income New Zealand) and that reference is no longer appropriate because the Department's name has changed to the Ministry of Social Development, the reference must be read as a reference to the Department under its new name. 5
- (2) If any other enactment or other thing refers to the chief executive of the Department of Work and Income (or to him or her as the chief executive of Work and Income New Zealand) and that reference is no longer appropriate because the name of the Department has changed, the reference must be read as a reference to the chief executive of the Ministry of Social Development. 10 15
- 13 Consequential changes to other references to Department of Social Welfare and to its chief executive**
- (1) If any other enactment or other thing refers to the Department of Social Welfare (or to it as the Ministry of Social Policy) and that reference is no longer appropriate because the Department has been abolished, the reference must be read as a reference to the Ministry of Social Development. 20
- (2) If any other enactment or other thing refers to the chief executive of the Department of Social Welfare (or to him or her as the chief executive of the Ministry of Social Policy) and that reference is no longer appropriate because the Department has been abolished, the reference must be read as a reference to the chief executive of the Ministry of Social Development. 25
- 14 Application of consequential changes to references** 30
- (1) **Sections 12 and 13—**
- (a) apply to things that are in force or existing at the time of the name change, abolition, or transfer of functions (whether coming into force, entered into, or created before or after the commencement of this section); and 35
- (b) apply to references in anything, including (without limitation) deeds, agreements, proceedings, instruments, documents, and notices.

- (2) **Section 13** applies to an employment agreement only in accordance with **section 10**.

15 Effect of reorganisation

- (1) The change of name of the Department of Work and Income to the Ministry of Social Development and the abolition of the Department of Social Welfare and transfer of its functions to the Ministry of Social Development does not affect—
- (a) property, rights, or obligations of the Crown (whether or not in the name of the Crown or of a particular Department, chief executive, or other person in a Department); or 10
 - (b) the commencement or continuation of proceedings by or against the Crown (whether or not in the name of the Crown or of a particular Department, chief executive, or other person in a Department). 15
- (2) In this section, **property** means property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal; and includes rights, interests, and claims of every kind in relation to property, however they arise.
- (3) This section does not limit **sections 8 to 14**. 20
- (4) This section applies for the avoidance of doubt.
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Schedule

Consequential amendments to other enactments

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Part 1 Acts

- Housing Restructuring Act 1992** (1992 No 76) 5
Omit from the heading to section 55 the words “**Department of Work and Income**” and substitute “**Responsible department**”.
Omit from section 55(a) the words “Department of Work and Income” and substitute the words “department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964”. 10
Omit from section 55(b) the word “Department”, and substitute the word “department”.
- Immigration Act 1987** (1987 No 74) 15
Omit from Schedule 1 the item “Department of Work and Income” and substitute the words “The department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964”.
Omit from Schedule 1 the item “Department of Social Welfare”.
- Ombudsmen Act 1975** (1975 No 9) 20
Omit from Part 1 of the First Schedule the item “The Department of Social Welfare.”
Omit from Part 1 of the First Schedule the item “The Department of Work and Income.”
Insert in Part 1 of the First Schedule, after the item “The Serious Fraud Office.”, the item “The Ministry of Social Development.” 25

Part 2 Regulations

- Evidence (Videotaping of Child Complainants) Regulations 1990** (SR 1990/164) 30
Revoke the definition of the term **Director-General** in regulation 2 and substitute the following definition:
“**Director-General** means the chief executive of the responsible department”.
Insert in regulation 2, in its appropriate alphabetical order, the following definition: 35
“**responsible department** means the department that is, with the authority of the Prime Minister, for the time being

Part 2—continued

Evidence (Videotaping of Child Complainants) Regulations 1990 (SR 1990/164)—continued

responsible for the administration of the Children, Young Persons, and Their Families Act 1989”.

Omit from the heading to regulation 11A the words “**Department of Social Welfare**” and substitute the words “**Responsible department**”. 5

Omit from regulation 11A the words “Department of Social Welfare” in each place where they occur and substitute in each case the words “responsible department”.

Omit from regulation 11A(1) and (3) the words “that Department” in both places where they occur and substitute in each case the words “that department”. 10

Omit from regulation 11A(1) the words “the Department for” and substitute the words “the department for”.

Omit from regulation 11C(1), (3), and (5) the words “Department of Social Welfare” in each place where they occur and substitute in each case the words “responsible department”. 15

Omit from regulation 14(5), (6)(b), (7)(b), and (9) the words “Department of Social Welfare” in each place where they occur and substitute in each case the words “responsible department”. 20

Omit from regulation 14(5), (6)(b), and (7)(b) the words “that Department” in each place where they occur and substitute in each case the words “that department”.

Family Proceedings Rules 1981 (SR 1981/261)

Omit from regulation 80(1) the words “Department of Social Welfare” and substitute the words “the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964”. 25

Omit from form F.P.34 in the First Schedule the words “Department of Social Welfare” and substitute the words “Ministry of Social Development”. 30

Omit from form F.P.71 in the First Schedule the words “Department of Social Welfare” in each place where they occur and substitute in each case the words “Ministry of Social Development”.

Income Tax (Social Assistance Suspensory Loans) Order 1995 (SR 1995/79) 35

Omit from clause 2 of the Schedule the words “Department of Social Welfare” and substitute the words “the department that is,

Part 2—*continued***Income Tax (Social Assistance Suspensory Loans) Order 1995**
(SR 1995/79)—*continued*

with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964". Omit from clause 3 of the Schedule the words "made by the Department of Social Welfare" and substitute the words "granted by the Secretary for War Pensions". 5

State Sector Order 1998 (SR 1998/171)

Revoke.