



ANALYSIS

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1995, No. 31

An Act—

- (a) To provide for the restructuring of the Ministry of Agriculture and Fisheries; and**
- (b) To repeal the Ministry of Agriculture and Fisheries Act 1953; and**
- (c) To amend certain related enactments; and**
- (d) To provide for related matters** [23 June 1995]

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 Fisheries (Restructuring) Act 1995.

(2) This Act shall come into force on the 1st day of July 1995.

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

“Agency” means the Ministry of Agriculture, the Ministry of Fisheries, or any Crown Research Institute:

“Intellectual property”—

(a) Includes—

(i) All property rights constituted by the Patents Act 1953, the Designs Act 1953, or the Trade Marks Act 1953; and

(ii) Any trade secret; but

(b) Does not include any property rights constituted by the Copyright Act 1994:

“Responsible chief executive”, in relation to any function or matter, means, subject to any enactment, the chief executive for the time being of a responsible Ministry who has, with the authority of the Prime Minister, assumed responsibility for that function or matter:

“Responsible Minister”, in relation to any function or matter, means, subject to any enactment, any Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for that function or matter:

“Responsible Ministry”, in relation to any function or matter, means, subject to any enactment, the Ministry that has, with the authority of the Prime Minister, for the time being assumed responsibility for that function or matter:

“Working day” means any day except—

(a) A Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and

(b) A day in the period commencing with the 20th day of December in any year and ending with the 15th day of January in the following year.

PART I

RESTRUCTURING OF MINISTRY OF AGRICULTURE AND FISHERIES

*Repeal of Ministry of Agriculture and Fisheries Act 1953***3. Abolition of Ministry of Agriculture and Fisheries—**

The Ministry of Agriculture and Fisheries constituted under the Ministry of Agriculture and Fisheries Act 1953 is hereby abolished.

4. Repeals—(1) The following enactments are hereby consequentially repealed:

(a) The Ministry of Agriculture and Fisheries Act 1953:

(b) The Ministry of Agriculture and Fisheries Amendment Act 1972:

(c) So much of the Third Schedule to the Official Information Amendment Act 1987 as relates to the Ministry of Agriculture and Fisheries Act 1953:

(d) The Ministry of Agriculture and Fisheries Amendment Act 1989:

(e) Section 12 (5) of the Meat Export Control Amendment Act 1989:

(f) So much of the Schedule to the Regulations (Disallowance) Act 1989 as relates to the Ministry of Agriculture and Fisheries Act 1953:

(g) So much of the Schedule to the Conservation Law Reform Act 1990 as relates to the Ministry of Agriculture and Fisheries Amendment Act 1972 (in that Schedule referred to as item 1972, No. 3):

(h) The Ministry of Agriculture and Fisheries Amendment Act 1990:

(i) So much of the Third Schedule to the Biosecurity Act 1993 as relates to the Ministry of Agriculture and Fisheries Act 1953:

(j) So much of the Second Schedule to the Copyright Act 1994 as relates to the Ministry of Agriculture and Fisheries Act 1953.

(2) Without limiting anything in the Acts Interpretation Act 1924, the repeal of any enactment by subsection (1) of this section does not prejudice—

(a) Any amendment made by that enactment to any enactment not referred to in that subsection; or

(b) Any provision in any enactment referred to in that subsection other than a provision amending any other enactment.

5. Enactments amended—The enactments specified in the Schedule to this Act are hereby amended in the manner indicated in that Schedule.

Savings

6. Savings relating to references and proceedings—
(1) Unless in any case the context otherwise requires, in any enactment or in any regulations or in any instrument or document,—

(a) Every reference to the Director-General of Agriculture and Fisheries shall be read as a reference to the responsible chief executive:

(b) Every reference to the Ministry of Agriculture and Fisheries shall be read as a reference to the responsible Ministry.

(2) All proceedings whatever that, immediately before the commencement of this Act, were pending by or against or which could have been brought by or against or in respect of the Director-General of Agriculture and Fisheries may be carried on, completed, or enforced by or against or in respect of the responsible chief executive.

(3) All proceedings whatever that,—

(a) Immediately before the commencement of this Act, were pending by or against or which could have been brought by or against or in respect of any person other than the Minister of Agriculture or the Minister of Fisheries or the Director-General of Agriculture and Fisheries; and

(b) Relate to anything done or omitted to be done by that person in the performance of functions, duties, or powers of the Minister of Agriculture or the Minister of Fisheries or the Director-General of Agriculture and Fisheries, whether as an employee of that Ministry or otherwise,—

may be carried on, completed, or enforced by or against or in respect of the responsible Minister or the responsible chief executive or such other person as the Attorney-General may certify for the purposes of this section.

7. Saving of existing appointment—(1) The person who, immediately before the date of commencement of this Act, held office as the Director-General of Agriculture and Fisheries shall be deemed to have been appointed under the State Sector Act 1988 to the office of chief executive of the Ministry of

Agriculture and that appointment shall be deemed to be on the same terms and conditions of employment applying to that person immediately before that date.

(2) The term of office of the person deemed by subsection (1) of this section to have been appointed to the office of chief executive of the Ministry of Agriculture shall expire on the date on which, but for the passing of this Act, his or her term would have expired under the employment contract applying to him or her.

8. Savings relating to brands, stamps, marks, etc.— Notwithstanding anything in the Flags, Emblems, and Names Protection Act 1981, all names, brands, stamps, logos, emblems, marks, forms, and other representations or documents in use by the Ministry of Agriculture and Fisheries immediately before the date of commencement of this Act—

- (a) Shall continue to have effect in relation to anything done before that date; and
- (b) May continue to be used, and shall have effect, for the purposes of the functions, duties, and powers of the responsible Minister, the responsible chief executive, or the responsible Ministry.

Transfer of Employees from Ministry of Agriculture and Fisheries

9. Transfer of employees—(1) Notwithstanding anything in section 61A of the State Sector Act 1988, every person employed in the Ministry of Agriculture and Fisheries immediately before the date of commencement of this Act who was carrying out duties that on or after that date are to be carried out (in whole or in part) by another agency shall, subject to subsection (2) of this section, be deemed to have transferred to that other agency on that date.

(2) No employee shall be deemed by subsection (1) of this section to have been transferred to an agency other than the Ministry of Agriculture unless the chief executive (or chief executive designate) of that other agency agreed, subject to the provisions referred to in subsection (3) of this section, to the transfer of the employee to that other agency.

(3) The transfer of any employee by this section is subject to the provisions (if any) of the employment contract applying to that employee immediately before the date of commencement of this Act relating to the transfer of employees.

10. Protection of conditions of employment upon transfer—(1) If any employee of the Ministry of Agriculture and Fisheries is deemed by section 9 of this Act to have transferred to any other agency, the employment of that person by that other agency shall be on the same terms and conditions of employment applying to that person immediately before the date of the transfer.

(2) Without limiting the generality of subsection (1) of this section, if any rights and obligations of an employee under a contract of service arise by virtue of a collective employment contract and such rights and obligations are transferred to another agency by virtue of section 9 of this Act, that collective employment contract shall be deemed, as from the commencement of the transfer date, to continue on the same terms (including any terms relating to new employees) as if it were a contract made with that agency, or any bargaining agent that is a party to it, and the employee.

(3) Subsections (1) and (2) of this section shall continue to apply to the terms and conditions of employment of each transferred employee until such time as any of the terms and conditions of employment that apply under the employment contract applying to that employee at the date of the transfer are varied by agreement between the employee and the agency to which the employee has transferred.

(4) The terms and conditions of employment of each transferred employee shall, from the date of any such variation, be determined in accordance with the employment contract applying to that employee in the agency in which the transferred employee is then employed.

(5) Nothing in subsection (1) of this section shall continue to apply to any transferred employee who receives any subsequent appointment within the agency to which that employee was transferred.

11. Employment of transferred employee deemed to be continuous—(1) Every employee of the Ministry of Agriculture and Fisheries who is deemed by section 9 of this Act to have transferred to another agency shall, on the date of the transfer, become an employee of that other agency, but, for the purposes of every enactment, law, determination, contract, and agreement relating to the employment of each such employee, the contract of employment of that employee shall be deemed to have been unbroken and that employee's period of service with that Ministry, and every other period of

service of that employee that is recognised by that Ministry as continuous service, shall be deemed to have been a period of service with that other agency.

(2) Except as otherwise provided in any employment contract, no employee of the Ministry of Agriculture and Fisheries who is deemed by section 9 of this Act to have transferred to another agency shall be entitled to receive any payment or other benefit merely because he or she has ceased by virtue of the transfer to be an employee of that Ministry.

12. Membership of Government Superannuation Fund—Every person who, immediately before becoming an employee of an agency by virtue of section 9 of this Act, was an officer or employee of the Ministry of Agriculture and Fisheries and was a contributor to the Government Superannuation Fund under the Government Superannuation Fund Act 1956 shall, for the purposes of that Act, be deemed to be employed in the Government service for so long as that person continues to be employed by a Government department or Crown Research Institute and that Act shall be deemed to apply to that person in all respects as if that person's service with the Government service is continuous.

PART II

ADMINISTRATIVE PROVISIONS

Contracting Out

13. Contracting out—(1) The responsible chief executive of the Ministry of Fisheries may perform his or her functions and duties—

- (a) By his or her own employees; or
- (b) By entering into an arrangement or contract with any other agency or any other instrument of the Crown or any corporation sole, body of persons (whether corporate or unincorporate), or individual.

(2) In deciding under this section how to perform any function or duty, the responsible chief executive shall give due consideration to the advantages and disadvantages of different options.

(3) Before entering into any arrangement or contract under subsection (1) (b) of this section, the responsible chief executive may, after consultation with the Minister of Fisheries, set standards or specifications or both which shall be complied with by the other party to the agreement or contract.

(4) No arrangement or contract under subsection (1)(b) of this section between the responsible chief executive and any other party (other than an agency or other instrument of the Crown) shall provide for that other party (or any person acting on behalf of that other party) to perform or exercise any function, duty, or power that—

(a) Is conferred or imposed on Fishery Officers or Honorary Fishery Officers under Part VI of the Fisheries Act 1983 or on examiners under section 67B of that Act; or

(b) Relates to the prosecution of any fisheries-related offence;—

and any such arrangement or contract shall be invalid to the extent that it contravenes the preceding provisions of this subsection.

(5) Nothing in this section or any arrangement or contract entered into under the authority of this section shall relieve the responsible chief executive of the obligation to perform or ensure the performance of any function or duty imposed on the responsible chief executive by this Act or any other Act.

Intellectual Property

14. Intellectual property—(1) Notwithstanding anything in any other enactment, any intellectual property, data, or research devised or developed on or after the commencement of this Act by an employee of the Ministry of Agriculture and Fisheries who becomes an employee of the Ministry of Agriculture or the Ministry of Fisheries on the commencement of this Act belongs to the Crown (which shall be deemed to be the assignee of the employee in respect of the property) if—

(a) It was devised or developed in the course of the duties of the employee, whether or not the intellectual property might reasonably be expected to result; or

(b) It was devised or developed wholly or principally by or through the use of resources provided by the Crown;—

but any other intellectual property, data, or research devised or developed by an employee of the Ministry shall, as between the employee and the Crown (as the employee's ultimate employer), belong to the employee.

(2) There may be paid to any such employee who devises or develops any intellectual property, data, or research that belongs to the Crown any amount by way of bonus or grant appropriate in the circumstances.

(3) Any intellectual property, data, or research belonging to the Crown under this section may be made available for use (whether by way of assignment or licence or otherwise) on any conditions (including the payment of royalties or other money) agreed from time to time by the responsible Minister.

(4) If intellectual property, data, or research belonging to the Crown under this section was devised or developed wholly or partly through the use of resources other than public money or public stores (as defined in section 2 (1) of the Public Finance Act 1977), the responsible Minister may assign the property or any interest the Minister has in the property to the person or persons who provided the resources according to the proportion of the resources so provided in relation to the total resources utilised to devise or develop the property.

(5) Subsection (4) of this section does not prevent the responsible Minister using any property in order to carry out his or her functions.

(6) Subsection (4) of this section does not limit the generality of subsection (3) of this section.

Miscellaneous Provisions

15. Appointment of Inspectors—(1) Without limiting anything in the State Sector Act 1988, the responsible chief executive may, on or after the date of commencement of this Act, appoint as an Inspector for the purposes of any enactment administered in the Ministry of Agriculture or the Ministry of Fisheries any person who, immediately before that date, was an employee of the Ministry of Agriculture and Fisheries.

(2) Every employee of the Ministry of Agriculture and Fisheries who,—

(a) Immediately before the date of commencement of this Act, was an Inspector under any enactment administered in that Ministry that is to be administered in the Ministry of Agriculture on that date; and

(b) Becomes an employee of the Ministry of Agriculture on that date,—

shall continue to be an Inspector under that enactment until the employee ceases his or her employment in the Ministry or the appointment is sooner revoked.

(3) In addition to the powers and authorities exercisable by the Inspector under any such enactment, every employee of the Ministry of Agriculture who is so appointed as an Inspector shall have all such powers and authorities as may be necessary

for the enforcement of any Order in Council made under section 48 of the Customs Act 1966 which, for the purpose of preventing the introduction of any disease affecting stock or plant life, prohibits the importation into New Zealand of any goods.

16. Employees to act under direction of chief executive—(1) All employees of the Ministry of Agriculture or of the Ministry of Fisheries shall act under the direction of the responsible chief executive in the exercise and performance of the powers, duties, and functions conferred or imposed on them by any enactment administered in that Ministry.

(2) The responsible chief executive shall have full power and authority to exercise and perform any power or function which is conferred on the Director of any Division of the Ministry by any enactment administered in that Ministry.

17. Delegation of all chief executive's powers under any enactment—If the chief executive of the Ministry of Agriculture or of the Ministry of Fisheries delegates to an employee of the Ministry all the responsible chief executive's powers under any enactment, the delegation has effect as a delegation of all the responsible chief executive's powers, as the case may be, under any enactment for the time being in force, whether conferred on the responsible chief executive before or after the delegation was made.

18. Failure to pay statutory fees, etc.—(1) In this section, the term "statutory debt" means any fee, charge, or levy required by any enactment administered in the Ministry of Agriculture or the Ministry of Fisheries, or by any regulation, order, notice, direction, or other instrument, made or issued under any such enactment (other than an enactment that provides for the payment of interest or a monetary penalty for late payment of, or failure or refusal to pay, the fee, charge, or levy), to be paid to that Ministry or the holder of any specified office.

(2) If, after the expiration of the time provided by the enactment concerned (or by subsection (4) of this section), all or any part of a statutory debt remains unpaid, the debt shall be deemed to have been increased by an amount calculated in accordance with subsection (3) of this section.

(3) The amount by which an unpaid statutory debt, or any unpaid part of a statutory debt, is deemed to have been increased is the sum of—

- (a) Ten percent of the debt (or that part of the debt that remained unpaid after the expiration of the time provided for the debt's payment); and
- (b) For every complete period of 6 months after that expiration during which the debt or any part of it (including any deemed increase calculated under this subsection) has remained unpaid, 10 percent of debt or that part.

(4) If no time is otherwise provided by any enactment for the payment of statutory debts of any kind or description, the debt shall be paid within 20 working days of its being demanded in writing from the person required to pay it by any employee of the responsible Ministry.

(5) If the responsible chief executive is satisfied that the failure or refusal of any person to pay all or any part of a statutory debt was a result of a genuine dispute between the person and the responsible Ministry as to—

- (a) The person's liability to pay the debt; or
- (b) The amount of the debt; or
- (c) Both,—

the responsible chief executive may waive the payment of all or any part by which the debt has been increased under subsection (2) of this section.

(6) If, in any action for the recovery of a statutory debt, the Court is satisfied that the failure or refusal of any person to pay all or any part of a statutory debt was a result of a genuine dispute between the person and the responsible Ministry as to—

- (a) The person's liability to pay the debt; or
- (b) The amount of the debt; or
- (c) Both,—

the Court may waive the payment of all or any part by which the debt has been increased under subsection (2) of this section.

(7) If—

- (a) The responsible chief executive is paid a statutory debt that is collected on behalf of and required to be paid to some other person or body; and
- (b) It has been deemed under this section to have been increased,—

then, subject to section 19 of this Act, to the extent that the amount of the increase has been received, it shall be paid to the person or body.

(8) If satisfied that—

(a) A statutory debt has been correctly calculated; and

(b) The time provided by an enactment concerned (or subsection (4) of this section) for the debt's payment has expired; and

(c) The debt or any part of it has not been paid,—

the responsible chief executive may give to the person liable to pay the debt written notice that unless within 10 working days the person pays the debt or part, or satisfies the responsible chief executive that it is not payable, the responsible chief executive may withdraw, or refuse to provide the person with, service of the kind to which the debt relates.

(9) If—

(a) Ten or more working days have expired since the responsible chief executive gave any person notice under subsection (8) of this section; and

(b) The person concerned has neither paid the statutory debt or part concerned nor satisfied the chief executive that it is not payable,—

the responsible chief executive may, after causing the person to be sent by registered mail or given orally a notice that the responsible chief executive has decided to do so, withdraw or refuse to provide the service concerned.

(10) If the responsible chief executive has under subsection (9) of this section withdrawn or refused to supply a service, the responsible chief executive is not required to re-instate or supply it until—

(a) A Court holds that the debt or part concerned is paid; or

(b) A Court holds that the debt or part is not payable; or

(c) A Court holds that some lesser amount is payable, and the amount is so paid.

19. Ministry to deduct costs of collecting levies—(1) If, pursuant to any enactment administered in the responsible Ministry, the responsible chief executive collects any levy (however described) and pays it to any person or persons, that chief executive shall, notwithstanding anything to the contrary in the enactment, deduct from the amounts of levy collected the actual and reasonable costs to that Ministry of the collection of those amounts and the making of payments, and pay only the residue (or, if the amounts collected are payable to

more than one person, the appropriate proportion of the residue) to each person concerned.

(2) When paying to any person any amount from which a deduction has been made under subsection (1) of this section, the responsible chief executive shall give the person—

- (a) Accounts, showing the deductions made, and how they have been calculated; and
- (b) An explanation for the making of each deduction.

20. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Obtaining any information or particulars that may be required for the effective performance of the functions and duties of any responsible Minister or chief executive under this Act:
- (b) Prescribing fines not exceeding \$1,000 for offences against any such regulation:
- (c) Prescribing transitional and savings provisions relating to the coming into force of this Act, which may be in addition to or in place of any of the provisions of this Act; and, without limiting the generality of the preceding power, any such regulations may provide that, subject to such conditions as are specified in the regulations, specified provisions of this Act shall not apply during a specified transitional period:
- (d) Providing for such matters as may be contemplated by or necessary for giving full effect to this Act and for its administration.

21. Advisory and technical committees—(1) The Minister of Agriculture and the Minister of Fisheries each have power to appoint from time to time advisory or technical committees, and to define the functions of any such committee.

(2) If the responsible Minister so directs, there may be paid out of money appropriated by Parliament for the purpose to the members of any such committee remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the committee were a statutory Board within the meaning of that Act.

22. Transfer of southern scallop quota—(1) As soon as reasonably practicable after the commencement of this Act, the Crown shall allocate as individual transferable quota to the Treaty of Waitangi Fisheries Commission 106 tonnes of the annual allowable catch for scallops in the Southern Scallop Fishery specified in Part III of Schedule 1D to the Fisheries Act 1983.

(2) Notwithstanding anything in the Maori Fisheries Act 1989,—

(a) Except as provided in subsection (3) of this section, the Commission shall, within 14 days after receiving the quota allocated to it under subsection (1) of this section, transfer that quota in equal amounts to the persons named in Part V of Schedule 1D to the Fisheries Act 1983:

(b) Nothing in sections 41 to 44A of the Maori Fisheries Act 1989 applies to any quota allocated under subsection (1) of this section or held in accordance with subsection (3) of this section.

(3) The Commission shall hold the quota to be allocated to Ngati Toa Rangatira for the use and benefit of Ngati Toa Rangatira; and, for that purpose, the Commission may lease any part of that quota to any other quota holder named in Part V of Schedule 1D to the Fisheries Act 1983.

(4) Section 28zw of the Fisheries Act 1983 does not prevent the Commission holding any quota for the purposes of this section.

Section 5

SCHEDULE
ENACTMENTS AMENDED

Enactment	Amendment
1975, No. 9—The Ombudsmen Act 1975 (R.S. Vol. 21, p. 657)	By omitting from Part I of the First Schedule the item relating to the Ministry of Agriculture and Fisheries, and substituting, in their appropriate alphabetical order, the following items: “The Ministry of Agriculture. “The Ministry of Fisheries.”
1983, No. 14—The Fisheries Act 1983 (R.S. Vol. 27, p. 137)	By repealing sections 28ZN and 28ZO (as inserted by section 13 of the Fisheries Amendment Act (No. 2) 1992). By omitting from section 28ZP (as so inserted) the expression “after the 31st day of March 1997”, and substituting the words “on or after the commencement of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995”. By repealing subsection (2) of section 28ZP (as so inserted), and substituting the following subsection: “(2) Where the annual allowable catch for scallops is decreased under section 28ZL of this Act,— “(a) The Director-General shall cancel such amount of the individual transferable quota for scallops held by the Crown as is equivalent to the amount of the decrease in the annual allowable catch: “(b) If the amount of the quota cancelled under paragraph (a) of this subsection is not sufficient to reduce to the annual allowable catch the amount of scallops that may be taken, the amount of scallops that may be taken under individual transferable quotas to which that annual allowable catch applies shall be reduced on a proportionate basis to total the amount of the decreased annual allowable catch.” By omitting from section 28ZQ (1), and also from section 28ZU (3) (as so inserted), the expression “section 28ZN or” wherever it occurs.

SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1988, No. 14—The Fisheries Act 1983 (R.S. Vol. 27, p. 137)— <i>continued</i>	<p>By omitting from section 28zv(1) (as so inserted) the words “Subject to section 28zN of this Act, the”, and substituting the word “The”.</p> <p>By omitting from section 89(1)(kc) the expression “or section 28zN”.</p> <p>By adding to section 107EB (as inserted by section 3 of the Fisheries Amendment Act 1994) the following subsection: “(4) Notwithstanding subsection (3) of this section, Schedule 1E to this Act may be amended or substituted by Order in Council at any time prior to the 1st day of October 1995.”</p>
1988, No. 20—The State Sector Act 1988 (R.S Vol. 33, p. 715)	<p>By omitting from the First Schedule (as substituted by section 28(1) of the State Sector Amendment Act (No. 2) 1989) the item relating to the Ministry of Agriculture and Fisheries, and substituting the following item: “Ministry of Agriculture.”</p>

This Act is administered in the Ministry of Agriculture and the Ministry of Fisheries.
