



ANALYSIS

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1989, No. 17

An Act to amend the Ministry of Agriculture and Fisheries Act 1953

[26 April 1989

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 Amendment Act 1989, and shall be read together with and deemed part of the Ministry of Agriculture and Fisheries Act 1953 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 28th day after the day on which it receives the Royal assent.

2. Interpretation—(1) The principal Act is hereby amended by repealing section 2 (as amended by section 3 (2) of the Ministry of Agriculture and Fisheries Amendment Act 1972), and substituting the following section:

“2. (1) In this Act, unless the context otherwise requires,—

“‘Department’ means the Ministry of Agriculture and Fisheries:

“‘Director-General’ means the Department’s Chief Executive:

“ ‘Intellectual property’ includes all property rights constituted by the Patents Act 1953, the Designs Act 1953, the Trade Marks Act 1953, the Plant Varieties Act 1973, or the Plant Variety Rights Act 1987; and includes any trade secret; but does not include any property rights constituted by the Copyright Act 1962:

“ ‘Minister’ means the Minister of Agriculture:

“ ‘Working day’ means a day that is not a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday, Labour Day, or a day during a period commencing on any Christmas Day and ending with the 15th day of the following January.

“(2) The Department’s Chief Executive shall be known as the Director-General of Agriculture and Fisheries.”

(2) Section 3 (2) of the Ministry of Agriculture and Fisheries Amendment Act 1972 is hereby consequentially repealed.

3. New sections substituted—(1) The principal Act is hereby amended by repealing section 3 (as substituted by section 3 (1) of the Ministry of Agriculture and Fisheries Amendment Act 1972 and amended by section 65 of the Conservation Act 1987), and substituting the following sections:

“**3. Ministry of Agriculture and Fisheries**—There shall continue to be a department of State called the Ministry of Agriculture and Fisheries.

“**3A. Department under Minister’s control**—The department is under the Minister’s control.”

(2) Section 4 of the principal Act is hereby consequentially amended by inserting, before paragraph (a), the following paragraph:

“(aa) To administer this Act and the enactments specified in the Schedule to this Act:”.

(3) The following enactments are hereby consequentially repealed:

(a) Section 3 (1) of the Ministry of Agriculture and Fisheries Amendment Act 1972:

(b) So much of the Second Schedule to the Conservation Act 1987 as relates to section 3 (2) of the principal Act.

4. Principal functions of Department—(1) Section 4 of the principal Act is hereby amended by adding the following paragraphs:

“(c) To promote and conduct research and development relevant or ancillary to the functions of the Department:

“(d) To acquire intellectual property and copyright, and to formulate, implement, and review policies and procedures in relation to such acquisition, and generally to deal in and with intellectual property and copyright to the best advantage of the Department.”

(2) Section 11 (1) of the principal Act is hereby consequentially amended by inserting, after paragraph (i), the following paragraph:

“(ia) Acquire, dispose of, apply for registration in respect of, or otherwise deal in or with, intellectual property and copyright (whether Crown copyright or not), whether arising from research and development within the Department or not.”

(3) Every grant of a right in respect of any intellectual property made before the commencement of this Act in the name of the Department or the Director-General, or so made to Her Majesty the Queen on an application by the Department or the Director-General, shall be deemed to have been made in the name of the Minister.

5. Powers of Director-General—(1) Section 2 of the Dairy Industry Act 1952 is hereby amended by repealing the definition of the term “Director”, and substituting the following definition:

“‘Director’ means the Director-General of Agriculture and Fisheries:”

(2) Section 2 (1) of the Animals Act 1967 is hereby consequentially amended by repealing the definition of the term “Chief Veterinary Officer”, and substituting the following definition:

“‘Chief Veterinary Officer’ means a person who is—

“(a) A registered veterinary surgeon and an employee of the Department; and

“(b) For the time being so appointed by the Director-General.”

(3) The following enactments are hereby consequentially repealed:

(a) The Ministry of Agriculture and Fisheries Amendment Act 1962:

(b) The Ministry of Agriculture and Fisheries Amendment Act 1964:

(c) Section 32 (3) (a) of the Plants Act 1970:

(d) Paragraphs (b) and (c) of section 3 of the Ministry of Agriculture and Fisheries Amendment Act 1972.

6. Delegation of all Director-General's powers under any enactment—(1) The principal Act is hereby amended by repealing sections 9 and 10, and substituting the following section:

“9A. Where the Director-General has delegated to an employee of the Department all the Director-General's powers under any enactment, the delegation has effect as a delegation of all the Director-General's powers under the enactment for the time being, whether conferred on the Director-General before or after the delegation was made.”

(2) Every delegation that was in force under section 9 or section 10 of the principal Act immediately before the commencement of this Act shall continue to have effect according to its tenor as if it had been made on that commencement under section 28 or section 41 of the State Sector Act 1988.

7. Inventions, etc., by employees—The principal Act is hereby amended by inserting, after section 11, the following section:

“11A. (1) Notwithstanding anything in any other enactment, any intellectual property devised or developed by an officer or employee of the Department belongs to the Crown (which shall be deemed to be the assignee of the officer or employee in respect of the property) if—

“(a) It was devised or developed in the course of the duties of the officer or employee, being duties from which 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 devised or developed by an officer or employee of the Department shall, as between the officer or employee and the Crown (as the officer or employee's ultimate employer), belong to the officer or employee.

“(2) There may be paid to an officer or employee of the Department who devises or develops any intellectual property that belongs to the Crown any amount by way of bonus or grant appropriate in the circumstances.

“(3) Any intellectual property 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) the Minister from time to time agrees.

“(4) Where intellectual property 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 Minister may assign the property or any interest in it to the person or persons who provided the resources, upon any terms and conditions the Minister thinks fit.

“(5) Subsection (4) of this section does not limit the generality of subsection (3) of this section.”

8. New sections inserted—The principal Act is hereby amended by inserting, after section 13, the following sections:

“13A. **Failure to pay statutory fees, etc.**—(1) In this section, ‘statutory debt’ means any fee, charge, or levy required by any enactment administered by the Department (other than the Plant Variety Rights Act 1987), or by any regulation, order, notice, direction, or other instrument, made or issued under any such enactment, (being an enactment that does not provide 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 the Department, the Director-General, any employee of the Department, or any person holding any office under any such enactment.

“(2) Where, after the expiration of the time provided by the enactment concerned (or by subsection (4) of this section) or, in the case of any resource rental payable under the Fisheries Act 1983, after the expiration of 20 working days after it has been demanded in writing by any employee of the Department, 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) 10 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 the debt or that part.

“(4) Where 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 Department.

“(5) If the Director-General 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 Department as to—

“(a) The person’s liability to pay the debt; or

“(b) The amount of the debt; or

“(c) Both,—

the Director-General 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 as aforesaid, the Court may waive payment as aforesaid.

“(7) Where—

“(a) The Director-General 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,—

subject to section 13B of this section, 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 the 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 Director-General 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 Director-General that it is not payable, the Director-General may withdraw, or refuse to provide the person with, service of the kind to which the debt relates.

“(9) Where—

“(a) Ten or more working days have expired since the Director-General 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 Director-General that it is not payable,—

the Director-General may, after causing the person to be sent by registered mail or given orally notice that the Director-General has decided to do so, withdraw or refuse to provide the service concerned.

“(10) Where the Director-General has under subsection (9) of this section withdrawn or refused to supply a service, the Director-General is not required to re-instate or supply it until,—

“(a) The statutory 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 paid.

“13B. **Department to deduct costs of collecting levies—**

(1) Where, pursuant to any enactment administered by the Department, the Director-General collects any levy (however described) and pays it to any person or persons, the Director-General shall, notwithstanding anything to the contrary in the enactment, deduct from the amounts of levy collected the actual and reasonable costs to the Department of the collection of those amounts and the making of payments, and pay only the residue (or, where 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 Director-General 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.”

9. Annual report—The principal Act is hereby amended by repealing section 14.