

MINISTRY OF AGRICULTURE AND FORESTRY (RESTRUCTURING) BILL

AS REPORTED FROM THE GOVERNMENT ADMINISTRATION
COMMITTEE

COMMENTARY

Recommendation

The Government Administration Committee has examined the Ministry of Agriculture and Forestry (Restructuring) Bill and recommends that it be passed with the amendments shown.

Conduct of the examination

The Ministry of Agriculture and Forestry (Restructuring) Bill is a Government bill. It was introduced into the House on 21 July 1998 and referred to the Government Administration Committee after its second reading on 30 July 1998. The committee called for submissions on the bill but none were received. We met on 27 August and 10 September 1998 to consider the bill. This process included a briefing from the then Minister for Agriculture, Dr the Hon Lockwood Smith. While the bill was before the committee a new Minister of Food, Fibre, Biosecurity and Border Control was appointed by the Prime Minister. In total, we spent 35 minutes considering the bill. Advice was received from the Ministry of Agriculture and Forestry (MAF).

Purpose

The bill will provide for the transfer of staff from the Ministry of Agriculture and Forestry to two State-owned enterprises to be established under the State-Owned Enterprises Act 1986. The bill provides for the legislation to come into force on 1 November 1998.

Background

The Minister told us that the bill deals mainly with MAF Quality Management which was formed in 1990. Following a major review of New Zealand's biosecurity services in 1997 by Brian Roche and others the Government announced its decision to separate MAF Quality Management from the Ministry of Agriculture

and Forestry, and to establish two new State-owned enterprises. These two companies are as yet unnamed but for the purposes of this report will be referred to as 'SOE Meat' and 'SOE Food'.

The business of SOE Meat will be food quality systems. It will provide meat inspections and other services to meat-processing companies. Approximately 900 staff will transfer to the SOE whose headquarters will be located in Christchurch. It is expected that the company will have a turnover exceeding \$35 million annually. SOE Meat is by far the larger of the two new companies. SOE Food will provide bovine tuberculosis screening and other services to the livestock industry and quality assurance for food.

MAF Quality Management has developed a range of commercial services driven by the "user pays" principle and these services conflict with MAF's policy and regulatory roles according to the Minister. MAF Quality Management already operates in a semi-independent manner from MAF. This reflects the usual aim of Government policy to separate regulatory functions from service delivery functions. MAF Quality Management is the service provider and the MAF Regulatory Authority (MAFRA) sets technical and operational standards for the biosecurity and regulatory functions for which the Crown is ultimately responsible.

The 1997 review recommended greater contestability in the supply of biosecurity and regulatory services with the recognition that this would require "a more arms-length relationship between MAFRA and MAF Quality Management than currently exists". Separation is favoured by the Government. Activities required by MAFRA would be carried out by MAF Quality Management and other organisations by contract after competitive tendering processes. For instance, core meat inspection services may become contestable as early as 2001.

Issues considered by the committee

Date of transfer of employees

During our consideration we identified a need to amend the bill to provide for the contingency that the employee transfer process is not fully completed by 1 November. As a result amendments to the bill are recommended. Clause 2 defines the two State-owned enterprises to take over certain activities of MAF Quality Management.

We consider that clause 2 should be amended by inserting a new definition defining the 'transfer period' as being the month of November 1998. This means that an employee to be transferred will be transferred at a date, within the transfer period, agreed between the SOE and the Chief Executive of MAF. We recommend that clause 2 be amended accordingly.

Clause 3 provides for the transfer of employees from MAF Quality Management to the two new State-owned enterprises. We asked the Minister how many staff will be affected by the restructuring and heard that approximately 1350 staff are to be transferred between the old and new entities.

The bill provides that every person who is employed by MAF immediately before the commencement of the Act, and who is carrying out duties to be carried out by a new company, and whose transfer is agreed between the Chief Executive of MAF and the new company, is deemed to have transferred to the relevant new company at the date of commencement.

We consider that the clause should be amended to provide for the transfer to occur on a date agreed by the Chief Executive and the SOE, but within the 'transfer period'. Presently the transfer is to occur on 1 November. The same issue

means a similar amendment to clause 5 (a) of the bill is required. We recommend that the bill be amended accordingly.

Contracts of employment

Clauses 4, 5 and 7 deal with provisions relating to the continuity of employment, conditions of employment and the issue of technical redundancies. Under the legislation existing contracts of employment will continue on terms at least as favourable to employees as at present. All employment under MAF would be treated as continuous employment in the company to which an employee is transferred. There would be no right of compensation for transferred employees merely because they have ceased to be employed by MAF.

Meat inspectors are statutory officers

Meat inspectors are statutory officers appointed under the Meat Act 1981. Clause 8 saves the appointments of inspectors under the Meat Act. It provides that they would continue to be appointed using existing processes and could exercise their statutory powers until their terms of appointment expire, their appointments are revoked, or they cease employment in a new company.

The Minister told us there is to be a transition phase to full contestability in the meat services area. Some of us questioned the Minister on the cost of this phase. Additional costs could be imposed on the meat industry. The Minister believed the new system will benefit the industry through lower costs.

We asked if meat inspectors will continue to be independent of the meat works they inspect following restructuring. The Minister told us this situation could change if our overseas trading partners adopt a different approach to meat inspection. However, whatever occurs in the future, inspectors will be fully audited and their risk management plans closely assessed by MAF.

All MAF employees are forestry officers

We note that through statutory interpretation all employees of MAF are automatically Forestry Officers. Given the powers of Forestry Officers this is not appropriate. For instance, Forestry Officers have wide-ranging powers allowing them access to private property. Consequently, we consider that the bill should be amended to provide for the appointment of Forestry Officers by the Chief Executive of MAF and the termination of the automatic recognition of any employee of the Ministry as a Forestry Officer.

We consider it may be necessary to apply the savings provision in clause 8 to Forestry Officers who may also be employed by one of the State-owned enterprises or a Crown Research Institute. This means amendment to the Forests Act 1949 is required. We recommend that a new clause 9 should be added to the bill.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon John Luxton

**MINISTRY OF AGRICULTURE AND FORESTRY
(RESTRUCTURING)**

ANALYSIS

Title	
1. Short Title and commencement	6. Membership of Government Superannuation Fund
2. Interpretation	7. No compensation for technical redundancy
3. Transfer of employees	8. Saving of appointments of Inspectors under Meat Act 1981
4. Protection of terms and conditions of employment on transfer	9. Forests Act 1949 amended in relation to Forestry Officers
5. Employment of transferred employees deemed to be continuous	

A BILL INTITULED

An Act to provide for the transfer of employees from the Ministry of Agriculture and Forestry to 2 State-owned enterprises to be established under the State-Owned Enterprises Act 1986 with the intention of taking over certain commercial activities of the Ministry

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 Forestry (Restructuring) Act 1998.

(2) This Act comes into force on 1 November 1998.

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

“Ministry” means the Ministry of Agriculture and Forestry:

“New company”, or “company”, means a State enterprise within the meaning of the State-Owned Enterprises Act 1986 that is intended to take over, in whole or in part, duties or activities performed or carried on by the business group within the Ministry of Agriculture

and Forestry that is known as MAF Quality
Management:

New (Unanimous)

<p style="text-align: center;">“Transfer period” means the period from 1 November 1998 to 30 November 1998 (both dates inclusive).</p>	5
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3. Transfer of employees—(1) Every person—

(a) Who is employed in the Ministry immediately before the date of commencement of this Act; and

(b) Who is carrying out duties that on or after that date are to be carried out, in whole or in part, by a new company; and 10

(c) Whose transfer to the relevant new company is agreed to by the company and the chief executive of the Ministry—

is deemed to have transferred to the relevant new company on the date (of commencement of this Act) within the transfer period that is specified by the company and the chief executive as the date of transfer for that person. 15

(2) The transfer of any employee by this section is subject to any relevant transfer provisions of the employment contract applying to that employee. 20

(3) This section applies notwithstanding section 61A of the State Sector Act 1988.

4. Protection of terms and conditions of employment on transfer—(1) The employment of any person deemed by **section 3** to have been transferred to a new company is to be on terms and conditions no less favourable to the transferred employee than those applying to the employee at the date of transfer. 25

(2) Any unexpired collective employment contract which covers transferred employees is deemed, as from the date of transfer, to continue to apply on the same terms— 30

(a) As if it were a contract that had been made in respect of the relevant new company; and

(b) As if it were binding both on those employees and on the company. 35

(3) **Subsections (1) and (2)** cease to apply to a transferred employee if the terms and conditions of employment that apply under the employment contract applying to the

employee at the date of the transfer are varied by agreement between the employee and the new company.

5 (4) **Subsection (1)** ceases to apply to a transferred employee who, after the transfer, receives any subsequent appointment within the new company.

10 **5. Employment of transferred employees deemed to be continuous**—Every employee deemed by **section 3** to have been transferred to a new company becomes an employee of the relevant company on the date of the transfer, but, for the purposes of every enactment, law, contract, and agreement relating to the employment of each such employee,—

15 (a) The contract of employment of that employee that applied immediately before the (*commencement of this Act*) transfer in respect of that person's employment in the Ministry is deemed to have been unbroken; and

20 (b) The employee's period of service with the Ministry, and every other period of service of that employee that is recognised by the Ministry as continuous service, is deemed to have been a period of service with the relevant company.

25 **6. Membership of Government Superannuation Fund**—Where a person deemed by **section 3** to have been transferred to a new company was a contributor to the Government Superannuation Fund under the Government Superannuation Fund Act 1956 immediately before that transfer,—

30 (a) That person is deemed for the purposes of that Act to be employed in the Government service for so long as the person continues to be employed by the new company; and

(b) That Act is deemed to apply to the person in all respects as if the person's service with the Government service were continuous.

35 **7. No compensation for technical redundancy**—No person who is deemed by **section 3** to have transferred to a new company is entitled to any compensation for redundancy by reason only of the person ceasing to be employed by the Ministry.

8. Saving of appointments of Inspectors under Meat Act 1981—

(1) The appointment of every Inspector appointed under the Meat Act 1981 who is deemed by **section 3** of this Act to have transferred to a new company continues, and each such Inspector continues to have all the functions and powers of his or her office, until the earliest of the following occurs: 5

- (a) The term of appointment expires;
- (b) The person ceases employment in the new company;
- (c) The appointment is revoked.

(2) No person is to be treated as employed in the State services for the purposes of the State Sector Act 1988 by reason only of that person's continuance in office under **subsection (1)**. 10

(3) This section applies notwithstanding anything in section 10 of the Ministries of Agriculture and Forestry (Restructuring) Act 1997. 15

New (Unanimous)

9. Forests Act 1949 amended in relation to Forestry Officers—

(1) Section 2 (1) of the Forests Act 1949 is amended by repealing the definition of the term "Forestry Officer", and substituting the following definition: 20

“ ‘Forestry Officer’ means—

“(a) The chief executive of the Ministry:

“(b) Any person appointed as a Forestry Officer under **section 11**.”.

(2) The Forests Act 1949 is amended by inserting, after section 10, the following section: 25

“**11. Forestry Officers—**(1) There may from time to time be appointed under the State Sector Act 1988 such Forestry Officers as may be required for the purposes of this Act.

“(2) The Minister may from time to time appoint as a Forestry Officer for the purposes of this Act any person employed in a State enterprise within the meaning of the State-Owned Enterprises Act 1986 or in a Crown Research Institute within the meaning of the Crown Research Institutes Act 1992, and may prescribe the functions and powers of a person so appointed. 30 35

“(3) No person is to be treated as employed in the State services for the purposes of the State Sector Act 1988, or in the Government service for the purposes of the Government

New (Unanimous)

Superannuation Fund Act 1956, by reason only of the person's appointment under **subsection (2)**."

- 5 (3) A person who, immediately before the commencement of this Act, was a Forestry Officer by virtue of paragraph (b) or paragraph (c) of the definition of that term (as in force before its repeal by **subsection (1)**) ceases to be a Forestry Officer on the commencement of this Act.