

State Sector Amendment Act 2003

Public Act 2003 No 41
Date of assent 1 August 2003

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the State Sector Amendment Act 2003.
- (2) In this Act, the State Sector Act 1988 is called “the principal Act”.

**Part 1
Preliminary**

2 Commencement

- (1) Sections 6 to 12(1) and 13 to 16, and Schedule 1, so far as they relate to the Department of Work and Income, the Department of Social Welfare, or the Ministry of Social Development, are deemed to have come into force on 1 October 2001.
- (2) Sections 6 to 11 and 14 to 16, so far as they relate to the Department for Courts or to the Ministry of Justice, come into force on 1 October 2003.
- (3) Section 12(2) and (3), and Schedules 2 and 3 come into force on 1 October 2003.
- (4) The rest of 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 and into the Public Service (including by enabling the restriction of compensation for technical redundancies arising from reorganisations); and
- (b) reflect and provide for—
 - (i) the change of the Department of Work and Income’s name to the Ministry of Social Development; and
 - (ii) the abolition of the Department of Social Welfare and the transfer of its functions to the Ministry of Social Development; and
 - (iii) the abolition of the Department for Courts and the transfer of its functions to the Ministry of Justice.

Part 2

Reorganisations within Public Service

Reorganisations generally

4 New sections 30A to 30L 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

“(1) The Governor-General may, by Order in Council, amend Schedule 1 if a Department is abolished or its name is changed or a new department is established.

“(2) To avoid doubt, this section does not limit the need for a Department that has been established by an Act of Parliament to be abolished or have its name changed by an Act of Parliament.

“30B Effect of reorganisations within Public Service on employees

A transfer of functions from one Department (**Department A**) to another Department (**Department B**) does not transfer a chief executive or employee of Department A to Department B, despite sections 30H(2) and (3) and 30I(2) and (3).

“30C Application of employee provisions to reorganisations between Departments

Each of sections 30E to 30G applies to a transfer of functions from Department A to Department B only if the Governor-General, by Order in Council, declares that that section applies to that transfer of functions.

“30D Application of employee provisions to transfers from Crown entities to Departments

“(1) The Governor-General may, by Order in Council, declare that all or any of the following provisions apply to a transfer of functions from a Crown entity (within the meaning of section 2(1) of the Public Finance Act 1989) to a Department:

“(a) sections 30E and 30F:

“(b) sections 30G to 30I in so far as—

“(i) those sections relate to a collective employment agreement that binds the chief executive of the Crown entity before the transfer of the functions; and

“(ii) that collective employment agreement applies to an employee whose position in the Crown entity ceases to exist as a result of the transfer of functions.

“(2) On the commencement of an Order in Council under subsection (1), the sections declared to apply in respect of the Crown entity named in the order apply—

“(a) as if a reference to Department A in that section were a reference to that Crown entity; and

“(b) with all other necessary modifications.

“30E Restriction of compensation for technical redundancy arising from reorganisations

“(1) An employee is not entitled to receive any payment or other benefit on the ground that his or her position in Department A has ceased to exist if—

“(a) the position ceases to exist as a result of a transfer of functions from Department A to Department B; and

“(b) in connection with that transfer of functions,—

- “(i) the employee is offered equivalent employment in Department B (whether or not the employee accepts the offer); or
 - “(ii) the employee is offered, and accepts, other employment in Department B.
- “(2) **Equivalent employment** to the employee’s employment in Department A is employment in Department B—
- “(a) in substantially the same position; and
 - “(b) in the same general locality; and
 - “(c) on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and
 - “(d) on terms that treat the period of service with Department A (and any other period of service recognised by Department A as continuous service) as if it were continuous service with Department B.

“**30F Reappointment of employees following reorganisations**

Sections 60 to 61B and 65 do not apply to the appointment of an employee 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 from Department A to Department B.

“**30G Application of collective agreements to employees following reorganisations**

- “(1) This section limits which employees may be bound by a collective agreement that—
- “(a) binds the chief executive of Department A before a transfer of functions from Department A to Department B and that, as a consequence of sections 30H and 30I, binds the chief executive of Department B after that transfer of functions (**collective agreement A**); or
 - “(b) binds the chief executive of Department B before that transfer of functions (**collective agreement B**).
- “(2) After that transfer of functions,—

- “(a) the only employees of Department B who are entitled to be bound by or enforce collective agreement A are those employees who are appointed to a position in Department B that has been established (whether or not previously existing in Department A) to enable Department B to perform the transferred functions; and
- “(b) the only employees of Department B who are entitled to be bound by or enforce collective agreement B are those employees who hold, or are appointed to, a position other than a position referred to in paragraph (a).
- “(3) Subsection (2) does not bind an employee to a collective agreement, or entitle an employee to be bound by or enforce a collective agreement, if the employee would not otherwise be bound by, or be entitled to be bound by or enforce, that agreement.
- “(4) This section limits which employees may be bound by collective agreements (including collective employment contracts), and the coverage of those agreements, under Part 6 of this Act and sections 56(1), 57, 62(3), 63(3), and 243 of the Employment Relations Act 2000.
- “(5) This section does not apply to a collective agreement to the extent that the parties agree otherwise.

“30H Consequential changes to references to Departments following reorganisations

- “(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.
- “(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.

“(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.

“**30I 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).

“(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.

“(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.

“(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.

“**30J Application of consequential changes to references**

“(1) Sections 30H and 30I—

“(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.

- “(2) Regulations made under section 30K may apply sections 30H and 30I to things also coming into force, entered into, or created during a transitional period after the relevant name change, abolition, or transfer of functions that is specified in those regulations.
- “(3) To avoid doubt, sections 30H and 30I do not limit the need for a Department that has been established by an Act of Parliament to have its name changed, be abolished, or have statutory functions transferred by an Act of Parliament, and sections 30H and 30I apply in respect of that name change, abolition, or transfer only on and after that Act has given effect to it.
- “(4) Sections 30H(1) and (2) and 30I(1) and (2) apply only on and after the First Schedule is amended in respect of the relevant name change or abolition.
- “(5) Sections 30H and 30I—
- “(a) apply to collective employment agreements subject to sections 30B and 30G; but
 - “(b) do not apply to individual employment agreements.

“30K 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.

“30L 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—
- “(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
 - “(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.
- “(3) This section does not limit sections 30A to 30K.
- “(4) This section applies for the avoidance of doubt.”

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

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

Specific reorganisations

6 Interpretation

- (1) In sections 8 to 16,—
- abolished** department means—
- (a) the Department of Social Welfare; or
 - (b) the Department for Courts
- appropriate successor department** means,—
- (a) in relation to the Department of Social Welfare, the Ministry of Social Development; and
 - (b) in relation to the Department for Courts, the Ministry of Justice.
- (2) In subsection (1) and in sections 7 to 16, a reference to—
- (a) the Department of Social Welfare includes a reference to the Department known as the Ministry of Social Policy; and
 - (b) a reference to the Department of Work and Income includes a reference to the Department known as Work and Income New Zealand.

7 Schedule 1 amended

- (1) The Schedule 1 of the principal Act is amended—
- (a) by omitting the item “Department for Courts.”; and
 - (b) by inserting, after the item “Serious Fraud Office.”, the item “Ministry of Social Development.”; and
 - (c) by omitting the item “Department of Social Welfare.”; and

- (d) by omitting the item “Department of Work and Income.”.
- (2) To avoid doubt, it is declared that the amendments made by subsection (1)(b) and (d) are made solely to facilitate the change in name of the Department of Work and Income, which continues to exist under the name of the Ministry of Social Development.

8 Effect of reorganisation on employees

The transfer of functions from an abolished department to the appropriate successor department does not transfer the chief executive or an employee of the abolished department to the appropriate successor department, despite section 14.

9 Restriction of compensation for technical redundancy arising from reorganisations

- (1) An employee is not entitled to receive any payment or other benefit on the ground that his or her position in an abolished department has ceased to exist if—
 - (a) the position ceases to exist as a result of the transfer of the abolished department’s functions to the appropriate successor department; and
 - (b) in connection with that transfer of functions,—
 - (i) the employee is offered equivalent employment in the appropriate successor department (whether or not the employee accepts the offer); or
 - (ii) the employee is offered, and accepts, other employment in the appropriate successor department.
- (2) **Equivalent employment** to the employee’s employment in the abolished department is employment in the appropriate successor department—
 - (a) in substantially the same position; and
 - (b) in the same general locality; and
 - (c) on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and

- (d) on terms that treat the period of service with the abolished department (and any other period of service recognised by the abolished department as continuous service) as if it were continuous service with the appropriate successor department.

10 Reappointment of employees following reorganisations

Sections 60 to 61B and 65 of the principal Act do not apply to the appointment of an employee of an abolished department to a position in the appropriate successor department if the employee's position in the abolished department ceases to exist as a result of the transfer of its functions to the appropriate successor department.

11 Application of collective agreements to employees following reorganisations

- (1) This section limits which employees may be bound by a collective agreement that—
 - (a) binds the chief executive of an abolished department before the transfer of its functions to the appropriate successor department and that, as a consequence of section 14, binds the chief executive of the appropriate successor department after that transfer of functions (**collective agreement A**); or
 - (b) binds the chief executive of the appropriate successor department before that transfer of functions (**collective agreement B**).
- (2) After that transfer of functions,—
 - (a) the only employees of the appropriate successor department who are entitled to be bound by or enforce collective agreement A are those employees who are appointed to a position in the appropriate successor department that has been established (whether or not previously existing in the abolished department) to enable the appropriate successor department to perform the transferred functions; and
 - (b) the only employees of the appropriate successor department who are entitled to be bound by or enforce collective agreement B are those employees who hold, or are

appointed to, a position other than a position referred to in paragraph (a).

- (3) Subsection (2) does not bind an employee to a collective agreement, or entitle an employee to be bound by or enforce a collective agreement, if the employee would not otherwise be bound by, or be entitled to be bound by or enforce, that agreement.
- (4) This section limits which employees may be bound by collective agreements (including collective employment contracts), and the coverage of those agreements, under Part 6 of the principal Act and sections 56(1), 57, 62(3), 63(3), and 243 of the Employment Relations Act 2000.
- (5) This section does not apply to a collective agreement to the extent that the parties agree otherwise.

12 Consequential amendments to other enactments

- (1) The enactments specified in Schedule 1 (which include references to the Department of Social Welfare or to the Department of Work and Income) are amended in the manner indicated in that schedule.
- (2) The enactments specified in Schedule 2 (which include references to the Department for Courts) are amended in the manner indicated in that schedule.
- (3) Schedule 5 of the Privacy Act 1993 is amended in the manner indicated in Schedule 3.

13 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 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.
- (2) If any other enactment or other thing refers to the chief executive of the Department of Work and Income 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.

14 Consequential changes to other references to abolished departments and to their chief executives

- (1) If any other enactment or other thing refers to an abolished department and that reference is no longer appropriate because the department has been abolished, the reference must be read as a reference to the appropriate successor department.
- (2) If any other enactment or other thing refers to the chief executive of an abolished department 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 appropriate successor department.

15 Application of consequential changes to references

- (1) Sections 13 and 14—
 - (a) apply to things that are in force or existing at the time of the name change or abolition or that come into force, are entered into, or are created during the transitional period (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.
- (2) Section 14—
 - (a) applies to collective employment agreements subject to sections 8 and 11; but
 - (b) does not apply to individual employment agreements.
- (3) The **transitional period**, in relation to any department, ends on 1 October 2004 unless it is extended, under subsection (4), in relation to the department.
- (4) The Governor-General may, by Order in Council, extend the transitional period in relation to the Department of Work and Income or any abolished department to any date specified in the order, and different dates may be specified in respect of different departments.

16 Effect of reorganisations

- (1) The change of name of the Department of Work and Income to the Ministry of Social Development and the abolition of each abolished department and transfer of its functions to the appropriate successor department 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
 - (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.
- (3) This section does not limit sections 7 to 15.
- (4) This section applies for the avoidance of doubt.

Schedule 1

s 12(1)

**Consequential amendments to enactments
arising out of the reorganisation resulting
in Ministry of Social Development**

1

Acts

Housing Restructuring Act 1992 (1992 No 76)

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”.

Omit from section 55(b) the word “Department”, and substitute the word “department”.

1—*continued***Immigration Act 1987 (1987 No 74)**

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)

Omit from Part 1 of Schedule 1 the item “The Department of Social Welfare.”

Omit from Part 1 of Schedule 1 the item “The Department of Work and Income.”

Insert in Part 1 of Schedule 1, after the item “The Serious Fraud Office.”, the item “The Ministry of Social Development.”

2

Regulations

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

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:

“**responsible department** means the department that is, with the authority of the Prime Minister, for the time being 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”.

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”.

2—continued

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”.

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”.

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”.

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”.

Omit from form F.P.34 in Schedule 1 the words “Department of Social Welfare” and substitute the words “Ministry of Social Development”.

Omit from form F.P.71 in the Schedule 1 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)

Omit from clause 2 of the Schedule 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”.

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”.

2—*continued*

State Sector Order 1998 (SR 1998/171)

Revoke.

Schedule 2

s 12(2)

**Consequential amendments to enactments
arising out of abolition of Department for
Courts**

1

Acts

District Courts Act 1947 (1947 No 16)

Repeal section 11B(2)(c)(iii).

Hazardous Substances and New Organisms Act 1996 (1996 No 30)

Omit from section 3(8) the words “the Minister of Justice and the Minister of the Crown who is responsible for the Department for Courts” and substitute the words “the Minister of the Crown who is responsible for the Ministry of Justice”.

Juries Act 1981 (1981 No 23)

Repeal section 8(h)(iii).

Ombudsmen Act 1975 (1975 No 9)

Omit from Part 1 of Schedule 1 the item “The Department for Courts.”

2

Regulations

Disputes Tribunals Rules 1989 (SR 1989/34)

Repeal rule 35A(5) and substitute:

- “(5) An assessment panel must consist of the Chief District Court Judge or a District Court Judge named by the Chief District Court Judge, who is the chairperson of the panel, and—
- “(a) a person appointed by the Secretary for Justice; and
 - “(b) a person appointed by the head of the Ministry of Consumer Affairs.”

Jury Rules 1990 (SR 1990/226)

Omit from rule 24 the words “the chief executive of the Department for Courts, after consultation with the Secretary for Justice” and substitute the words “the Secretary for Justice”.

Schedule 3

s 12(3)

Consequential amendments to Schedule 5 of Privacy Act 1993 arising out of abolition of Department for Courts**Heading “Department for Courts Records” and items related to that heading**

Omit from the third column the items that relate to the Ministry of Justice.

Omit the heading “Department for Courts Records” and substitute the heading “Ministry of Justice Records”.

Items related to heading “Police Records”

Omit from the item relating to the Ministry of Justice in the third column, opposite the item “Details of overseas hearings”, all the words after the words “Ministry of Justice”.

Omit from the third column, opposite the item “Details of overseas hearings”, the item “Department for Courts”.

Omit from the third column, opposite the item “Police temporary file index”, the words “Department for Courts” and substitute the words “Ministry of Justice”.

Omit from the third column, opposite the item “Offender identity”, the item relating to the Department for Courts.

Omit from the third column, opposite the item “Offender identity”, the item relating to the Ministry of Justice and substitute:

“Ministry of Justice (access is limited to—

“(a) identity details for the purposes of—

“(i) entering information relating to prosecutions initiated otherwise than by the Police or the Land Transport Safety Authority of New Zealand; or

“(ii) providing assistance to victims in accordance with the Criminal Justice Act 1985, the Sentencing Act 2002, the Parole Act 2002, and the Victims’ Rights Act 2002; or

“(iii) updating an existing database of court proceedings; or

“(b) obtaining information for the purpose of research conducted by the Ministry, and with the limitation that information so obtained must not be published in a form that could reasonably be expected to identify the individual concerned).”

Omit from the third column, opposite the item “Victim identity”, the words “Department for Courts” and substitute the words “Ministry of Justice”.

Omit from the third column, opposite the item “Medical details”, the item “Department for Courts”.

Omit from the item relating to the Ministry of Justice in the third column, opposite the item “Medical details”, all the words after the words “Ministry of Justice”.

Omit from the third column, opposite the item “Traffic offence and infringement enforcement and document processing” the words “Department for Courts” and substitute the words “Ministry of Justice”.

Omit from the third column, opposite the item “Wanted persons”, the words “Department for Courts” and substitute the words “Ministry of Justice”.

Omit from the third column, opposite the item “Missing persons”, the words “Department for Courts” and substitute the words “Ministry of Justice”.

Omit from the third column, opposite the item “Firearm licences”, the words “Department for Courts” and substitute the words “Ministry of Justice”.

Items related to heading “Land Transport Safety Authority Records”

Omit from the third column, opposite the item relating to the Driver licences register, the item “Department for Courts”.

Omit from the item relating to the Ministry of Justice in the third column, opposite the item relating to the Driver licences register, all the words after the words “Ministry of Justice”.

Items related to heading “Ministry of Transport Records”

Omit from the third column, opposite the item “Motor vehicles register”, the item “Department for Courts” and substitute the item “Ministry of Justice”.

Items related to heading “Department of Corrections Records”

Omit from the third column, opposite the item relating to community-based sentences, the item “Department for Courts”.

Omit from the item relating to the Ministry of Justice in the third column, opposite the item relating to community-based sentences, all the words after the words “Ministry of Justice”.

Omit from the third column, opposite the item “Records of inmates”, the item “Department for Courts”.

Omit from the item relating to the Ministry of Justice in the third column, opposite the item “Records for inmates”, all the words after the words “Ministry of Justice”.

Legislative history

23 July 2001	Introduction (Bill 143-1)
31 July 2001	First reading and referral to Government Administration Committee
4 September 2001	Discharged from Government Administration Committee
11 September 2001	Second reading
23, 24 July 2003	Committee of the whole House (Bill 143-2)
29 July 2003	Third reading
