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An Act to repeal the Ministry of Agriculture and Fisheries Act 1978 and provide for the responsible Ministry to have adequate powers to obtain information and prevent adverse effects on agriculture.

The Parliament of the Cook Islands enacts as follows—

(25 March 2021)

- 1 Title**
This Act is the Agriculture Act 2021.
- 2 Commencement**
This Act comes into force on the day after the date on which it is assented to by the Queen's Representative.

Part 1

Preliminary matters

- 3 Purpose**
The purpose of this Act is to—

- (a) provide for the development of sustainable agricultural practices;
- (b) provide for new data collection powers and procedures to be used in relation to agriculture;
- (c) regulate the agriculture industry;
- (d) provide for inspectors and specify their powers and the procedures they must follow;
- (e) enable the regulatory regime in this Act to apply to all of the Cook Islands;
- (f) enable the establishment of specific advisory committees to assist with the carrying out of functions under this Act.

4 **Application**

This Act applies to all of the Cook Islands.

5 **Interpretation**

In this Act, unless the context otherwise requires,—

adverse effect on agriculture or the agricultural sector, in relation to any thing (including land) or activity,—

- (a) means—
 - (i) the thing or activity, if left alone, will, or is likely to, decrease agricultural production; or
 - (ii) the thing is likely to spread disease among plants or crops, or ruin them; or
 - (iii) the thing is a weed and likely to spread into neighbouring properties; or
 - (iv) the thing is a pest that is not subject to the Biosecurity Act or the Pesticides Act; and
- (b) includes activities that have the effect set out in **paragraph (a)**, even if they are authorised by a licence or permit under another enactment

agricultural production means all production related to the agricultural sector, including the production of crops, livestock, and pollinators

Biosecurity Act means the Biosecurity Act 2008

data collector means a person referred to as a data collector in **section 19**

entity means a person who or thing that is recognised under the laws of the Cook Islands as having a legal personality and is able to sue and be sued in the High Court of the Cook Islands

head of the ministry means the person for the time being in charge of the ministry

input to agriculture includes anything used to grow and harvest agricultural products

inspector means a person referred to as an inspector in **section 28**

Island Government has the meaning given in the Island Government Act 2012-2013

Minister or **responsible Minister** means the Minister of the Crown who is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act

ministry or responsible ministry means the department of State that is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act

Ministry of Finance and Economic Management Act means the Ministry of Finance and Economic Management Act 1995-1996

Pesticides Act means the Pesticides Act 1987

stakeholder, in relation to agriculture or the ministry, includes, without limitation,—

- (a) farmers;
- (b) wholesalers and retailers of agricultural products;
- (c) importers and exporters of agricultural products;
- (d) Island Governments.

- 6 **Act binds the Crown**
This Act binds the Crown.

Part 2 Responsible ministry and its committees

Subpart 1—The ministry

- 7 **Purpose of ministry**
The purpose of the ministry is to manage the agricultural sector in the Cook Islands, and to facilitate sustainable development in that sector, in accordance with—
- (a) this Act, the enactments listed in **Schedule 1**, and any other relevant enactments whether under its administration or not; and
 - (b) relevant policies, strategies, and plans; and
 - (c) the ministry's vision, mission, and values.
- 8 **Functions of ministry**
The ministry has the following functions:
- (a) encouraging sustainable agricultural production, including—
 - (i) the production of crops, livestock, and pollinators; and
 - (ii) managing crop and livestock genetic resources; and
 - (iii) protecting the welfare of livestock and other farmed animals:
 - (b) regulating agricultural health and improving the biosecurity status of the Cook Islands in accordance with the Biosecurity Act;
 - (c) regulating pesticides in accordance with the Pesticides Act; and
 - (d) supporting the relevant ministry with responsibility for food safety legislation, initiatives, and policy;
 - (e) undertaking agricultural research and development;
 - (f) formulating and implementing plans, policies, and strategies for the agricultural sector;

- (g) formulating and implementing agricultural projects, programmes, and initiatives:
- (h) supporting the marketing and use of agricultural inputs, including—
 - (i) pesticides; and
 - (ii) crop seeds; and
 - (iii) fertilisers; and
 - (iv) in co-ordination with other relevant ministries, livestock medicines:
- (i) developing quality certification schemes and value chains for the agricultural sector:
- (j) supporting stakeholders' participation in agriculture:
- (k) managing forestry, including forest plantations:
- (l) providing advisory and extension services and capacity development for ministry personnel and stakeholders:
- (m) facilitating access to finance and investment and partnerships in the agricultural sector:
- (n) facilitating access to domestic and overseas markets for agricultural products:
- (o) monitoring and assessing the agricultural sector, including through the collection, assessment, and reporting of agricultural data and statistics:
- (p) supporting Island Governments with the formulation, implementation, monitoring, and assessment of agricultural policies and strategies (including by the use of memoranda of understanding).

9 Guiding principles

The ministry must, to the extent reasonably practicable and appropriate in the context, have regard to the following principles when performing its functions:

- (a) the desirability of good governance, including transparency, accountability, and non-discrimination; and
- (b) the need for input from stakeholders in agriculture, including—
 - (i) Island Governments and others in the Pa Enua with an interest in agriculture; and
 - (ii) stakeholders in partnership with the ministry, into planning, decision making, and project or programme implementation; and
- (c) the desirability of carrying out statutory functions based on science and evidence-based decision making, including local knowledge; and
- (d) the desirability of adopting a risk-based approach to decision making; and
- (e) the desirability of promoting the use of innovative and appropriate agricultural practices; and
- (f) the desirability of promoting the best interests of Cook Islands society and existing traditions and customary practices and rights; and
- (g) the desirability of providing direct service delivery to stakeholders, especially stakeholders in the Pa Enua; and
- (h) ensuring that agriculture practices are environmentally sustainable, including in relation to native plants; and

- (i) the need to promote human rights and equity, including an equitable development approach that acknowledges and seeks to address the different levels of development across the Cook Islands.

10 **Functions of head of ministry**

The head of the ministry has the following functions:

- (a) ensuring the effective and efficient operation and administration of the ministry, this Act, the enactments listed in **Schedule 1**, and any other relevant enactment;
- (b) providing advice to the Minister on matters relevant to the ministry's purpose;
- (c) assisting or advising the Minister to carry out the Minister's functions and powers;
- (d) managing the formulation, implementation, monitoring, and evaluation of policies and strategies relevant to the ministry's purpose;
- (e) providing annual reports of the ministry for approval by the Minister;
- (f) representing and articulating the views of the Ministry, including on boards, councils, non-government bodies, and international forums, as required by the Minister, this Act, the enactments listed in **Schedule 1**, and any other relevant enactment;
- (g) any other functions of the head of the ministry—
 - (i) given to that head under this Act, the regulations made under this Act, the enactments listed in **Schedule 1**, and any other relevant enactment; or
 - (ii) assigned to the head of the ministry by the Minister and reasonably expected of the head of the ministry to perform, under relevant governance arrangements.

11 **Operation of ministry subject to other Acts**

The ministry, as a department of State, is subject to the provisions of—

- (a) the Public Service Act 2009 (which, among other matters, provides for the appointment of the head and other employees of the ministry and the delegation of powers vested in the head of the ministry; and
- (b) the Ministry of Finance and Economic Management Act 1995-96) (which sets out the rules governing the finances of the ministry).

Subpart 2—Committees of the ministry

12 **Establishment of committees**

- (1) The head of the ministry may establish committees for the purposes of this Act, the enactments listed in **Schedule 1** (other than the Biosecurity Act), and any other relevant enactment.
- (2) The responsibilities of the head of the ministry in carrying out his or her functions are not limited or otherwise affected by the establishment of any committee under this section or by the establishment of 1 or more committees under the Biosecurity Act.

13 Functions and membership of committees

- (1) When a committee is to be established under **section 12**, the head of the ministry must—
- (a) determine the purpose, functions, and membership of the committee; and
 - (b) appoint the members of the committee and determine their tenure and terms of reference; and
 - (c) regulate the procedures of the committee.
- (2) In determining the membership of a committee, the head of the ministry must—
- (a) take into account any relevant policy on the composition of committees; and
 - (b) apply any regulations made under this Act regulating the membership of committees; and
 - (c) ensure that the members of a committee—
 - (i) have the required level of technical expertise necessary for the purpose of the committee to be achieved and its functions to be carried out; and
 - (ii) where feasible, are also representative of the cross section of stakeholder interests relevant to the purpose and functions of the committee.
- (3) A Member of Parliament is not eligible to be appointed to a committee.
- (4) A person is not deemed to be, or entitled to be, employed as a public servant because of their appointment as a member of a committee.
- (5) Unless authorised by the head of the ministry in writing, a member of a committee has no authority to bind or speak on behalf of the ministry, the head of the ministry, or the committee.
- (6) The head of the ministry may at any time dissolve any committee established under this Act or revoke the appointment of its members.

14 Term of office of committee members

A member of a committee must be appointed for a term not exceeding 2 years, and may be reappointed for one further term only not exceeding 2 years.

15 Extraordinary vacancies

- (1) Any member of a committee may at any time be removed from office by the head of the Ministry—
- (a) for a lack of capacity, or misconduct proved to the satisfaction of the head of the Ministry; or
 - (b) on conviction of the member for an offence punishable by imprisonment for a term not exceeding 12 months.
- (2) A member of a committee may at any time resign from office by giving 14 days' written notice to the head of the Ministry.
- (3) If a member of a committee dies, resigns, is removed from office, or ceases to hold office by operation of law, the vacancy created is an extraordinary vacancy.
- (4) An extraordinary vacancy must be filled in the same manner as the appointment of the vacating member.

- (5) Every person appointed to fill an extraordinary vacancy must be appointed for the balance of the term for which that vacating member was appointed.
- (6) For the purpose of subsection (1), misconduct, without limitation, includes conduct by a member that brings the Committee or the Ministry into disrepute.
- 16 Committee not affected by vacancy in membership**
The powers of a committee are not affected by a vacancy in the membership of the committee.
- 17 Remuneration**
- (1) A committee member is entitled to fees, allowances, and other expenses related to his or her work as a committee member that are approved by the head of the ministry and payable from the ministry's funds.
- (2) A committee member is not entitled to fees or allowances if he or she is concurrently a public servant, or is employed by, or is a member of, a board of a public body.
- 18 Notice of establishment and dissolution**
- (1) Notice of the establishment or dissolution of a committee must be in the prescribed form and published by the ministry in the Cook Islands Government *Gazette* and a newspaper circulating at least once a week in the Cook Islands.
- (2) Any notice of a decision to establish or dissolve a committee must specify the name of the committee, and the purpose of its establishment or dissolution, as the case may be.
- (3) The establishment or dissolution of a committee is valid even if a notice is not published under **subsection (1)**.

Part 3 Data collection

- 19 Role and appointment of data collectors**
- (1) The head of the ministry may carry out all the functions and exercise all the powers of a data collector under this Act.
- (2) The role of a data collector is to collect data for the ministry for 1 or more of the purposes set out in **section 20**.
- (3) The head of the ministry may appoint, under the Public Service Act 2009, any employee of the ministry, to be a data collector and may revoke any appointment.
- (4) The head of the ministry may appoint any public servant or other person who is not an employee of the ministry to be a data collector, but that person is not to be treated as an employee of the ministry by reason of that appointment.
- (5) The head of the ministry may designate any office within the ministry so that any person holding that office can act as a data collector.
- (6) All data collectors must—
- (a) carry their formal identification, as issued by the ministry, when performing their duties; and
 - (b) must produce that identification when reasonably requested to do so by any person.

20 Purpose of data collection

The purpose of data collection is to enable the collection of information to enable the ministry to—

- (a) measure agricultural production;
- (b) identify or measure a risk to agricultural production;
- (c) take informed responses to invasive species outbreaks or other plant or animal emergencies.

21 Collection of data

(1) Subject to **subsection (3)**, a data collector may—

- (a) require any person or entity to provide or produce information or records owned by, held by, or in the knowledge of that person or entity that are reasonably necessary to be provided or produced for 1 or more of the purposes in **section 20**; and
- (b) make notes and take copies of the information and records.

(2) A data collector must return the information or records to the relevant person or entity—

- (a) immediately after making notes or taking copies of the information or records; or
- (b) in cases where notes or copies of the information or records are not yet made or taken, immediately after the expiry of the period that is reasonably necessary to make notes or take copies.

(3) This section does not apply to information and records that are—

- (a) commercially confidential; or
- (b) subject to any privilege recognised in a court of law.

(4) A data collector may, for 1 or more of the purposes in **section 20** and subject to **section 22**, enter into any place (other than a dwelling house) without consent and do 1 or more of the following:

- (a) collect data;
- (b) install a data collection device;
- (c) retrieve a data collection device.

22 Obligations on data collector when entering place

(1) A data collector who enters a place under **section 21(4)** must comply with this section.

(2) The data collector must, before initial entry into the place,—

- (a) identify the data collector by name;
- (b) announce the data collector's intention to enter the place; and
- (c) specify the purpose for which the data collector is entering.

(3) The data collector is not required to comply with **subsection (2)** if he or she has reasonable grounds to believe that no person is lawfully present in the place but must first make reasonable efforts to locate the owner or occupier of the place and provide to him or her the information described in **subsection (2)**.

(4) If, despite reasonable efforts, the data collector cannot locate the owner or occupier, the data collector must leave a notice at the place entered setting out the information in **subsection (2)** and the date and time of the entry.

23 Protection from disclosure

- (1) The ministry may use the notes or copies of information or records made under this Act only for the purpose for which those notes or copies were made.
- (2) The ministry may not disclose to any member of the public—
 - (a) the identity of any person who or entity that provides or produces information or records, except with the written consent of that person or entity; or
 - (b) the notes or copies of information or records made or taken.
- (3) In the event of any inconsistency between this section and the Official Information Act 2008, this section prevails to the extent of the inconsistency.
- (4) This section is subject to any contrary order of the High Court.

24 Privilege

- (1) Except for the purpose of a prosecution for an offence against this Act, any information or records provided or produced under this Act, or notes or copies of that information or those records taken under this Act, are privileged and cannot be used in evidence in any proceedings before any court, tribunal, or other body.
- (2) No information or records provided or produced under this Act, or copies of that information or those records taken under this Act, may be used for, or in connection with, the assessment or levying of any tax or be used as evidence of the assessment or levying of any tax.

25 Notice to provide or produce information or records

- (1) A data collector may issue a notice to a person or entity to provide or produce information or records owned by, held by, or in the knowledge of that person or entity, if that person or entity refuses an oral request from a data collector to provide or produce that information or those records.
- (2) A notice issued under **subsection (1)** must—
 - (a) be in writing; and
 - (b) be addressed to the person who or entity that is to provide or produce the information or records; and
 - (c) specify—
 - (i) the information or records to be provided or produced;
 - (ii) the reasons for requiring the information or records to be provided or produced;
 - (iii) the date by which that information or those records must be provided or produced;
 - (iv) whether notes or copies, or both, will be made or taken of the information or records; and
 - (d) explain—
 - (i) that the person or entity issued with the notice is not required to provide or produce information or records that are commercially confidential or subject to a privilege available in a court of law; and
 - (ii) the provisions relating to protection from disclosure and privilege set out in **sections 23 and 24**.

- (3) A person or an entity required by notice to provide or produce information or records under this section must be given a reasonable period of time to provide or produce that information or those records.

26 Offences and penalties

- (1) A person who or entity that fails to comply with a notice issued under **section 25** commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$10,000; or
 - (b) in any other case, to a fine not exceeding \$50,000.
- (2) A failure to comply with a notice includes the provision or production of incorrect or incomplete information or records either—
- (a) knowingly; or
 - (b) without due regard for whether the information or records provided or produced are correct or complete.

**Part 4
Inspectors**

27 Application of this Part

- (1) The application of this Part is subject to the Pesticides Act and the Biosecurity Act.
- (2) If any matter can be dealt with under the Biosecurity Act or the Pesticides Act, it must be dealt with under that Act rather than this Act.

28 Appointment of inspectors

- (1) The head of the ministry may appoint, under the Public Service Act 2009, any employee of the ministry to be an inspector, and may revoke any appointment.
- (2) The head of the ministry may appoint any public servant or other person who is not an employee of the ministry to be an inspector under this section, but a person is not to be treated as an employee of the ministry because of that appointment.
- (3) The head of the ministry may, with the approval of the Minister, designate any office within the ministry so that any person holding that office can act as an inspector for the purposes of performing the functions of the Ministry.
- (4) All inspectors appointed under this section must act in accordance with any direction given by the head of the ministry and, if they are full-time officers or employees of the Public Service, are not entitled to any additional remuneration in respect of their appointment under this section.
- (5) All inspectors must—
- (a) carry their formal identification, as issued by the ministry, when performing their duties; and
 - (b) produce that identification when reasonably requested to do so by a member of the public.

29 Powers of inspectors

- (1) An inspector may,—

- (a) after notifying the owner and occupier of their intention to do so, and only with the consent of the owner or occupier, enter onto any place and take, for the purpose of testing and analysis, samples and photographs of anything that may be reasonably considered to have had, to be having, or to be likely to have an adverse effect on agriculture or the agricultural sector:
 - (b) enter (with or without the consent of the owner or occupier) any place (other than a dwelling house) to undertake—
 - (i) an investigation of an agricultural incident:
 - (ii) a damage assessment:
 - (iii) remediation:
 - (c) require any person apparently doing any act or controlling anything that may be reasonably considered to have had, be having, or likely to have an adverse effect on agriculture or the agricultural sector to state his or her full name and usual place of residence:
 - (d) require the production of information or records held by any person or entity relating to any of the following:
 - (i) anything that may be reasonably considered to have had, be having, or to be likely to have an adverse effect on agriculture or the agricultural sector:
 - (ii) any licence, permit, or authority relating to any activity or enterprise that may be reasonably considered to have had, to be having, or to be likely to have an adverse effect on agriculture or the agricultural sector:
 - (iii) any other matter or thing involving the lawful performance by the ministry of its functions:
 - (e) order that anything that may be reasonably considered to have had, be having, or to be likely to have an adverse effect on agriculture or the agricultural sector be dealt with in a certain manner so as to remove, prevent, or minimise its adverse effects:
 - (f) if there are reasonable grounds to do so, order that certain things—
 - (i) be treated as having had, having, or likely to have an adverse effect on agriculture or the agricultural sector; and
 - (ii) be removed from the place and deposited at an approved place.
- (2) Any person who or entity that complies with an order issued under **subsection (1)** is entitled to be compensated or reimbursed for reasonable costs or expenses incurred in complying with that order.

30 Precautionary notices

- (1) This section applies if an inspector reasonably considers that an activity, matter, or other thing has had, is having, or is likely to have an adverse effect on agriculture or the agricultural sector.
- (2) If this section applies the inspector may issue a notice requiring compliance, as specified in **subsection (4)**, by any person who or entity that is apparently in control of, or associated with, the activity, matter, or other thing.
- (3) A notice issued under this section must—
 - (a) be in writing; and

- (b) be addressed to the person who or entity that is apparently in control of, or associated with, the activity, matter, or other thing; and
 - (c) state the date by which the person or entity is to comply with the notice.
- (4) A notice issued under this section may require any or all of the following:
- (a) that the person or entity issued with the notice provide information in relation to the activity, matter, or other thing to satisfy the head of the ministry that no adverse effect has occurred, is occurring, or is likely to occur to agriculture or the agriculture sector from the activity, matter, or other thing:
 - (b) that alternative activities or operating techniques be considered and employed to avoid, or decrease the adverse or likely adverse effect on agriculture or the agricultural sector:
 - (c) that improvements or alterations be made in relation to the activity, matter, or other thing, to the satisfaction of the head of the ministry, to cease, avoid or decrease the adverse or likely adverse effect on agriculture or the agricultural sector:
 - (d) any other requirement, as determined by the head of the ministry, to ensure that the activity, matter, or other thing is not adversely affecting or likely to adversely affect agriculture or the agriculture sector.
- (5) The person who or entity that is issued with a notice under this section must be given a reasonable time specified in the notice to comply with the notice.
- (6) A notice may be issued under this section despite any approval, licence, or permit having been granted for the activity, matter, or other thing.

31 Notice to cease

- (1) A notice may be issued under this section regardless of whether a notice has been served under **section 30**.
- (2) The head of the ministry may issue a notice under this section if he or she reasonably considers that an act or activity is adversely affecting or likely to adversely affect agriculture or the agriculture sector.
- (3) A notice issued under this section must—
- (a) be in writing;
 - (b) be directed to any person who or entity that the head of the ministry believes is carrying out or has some control over the act or activity;
 - (c) specify the act or activity, and the adverse or likely adverse effect on agriculture or the agricultural sector;
 - (d) require that the act or activity cease until the head of the ministry is satisfied that the adverse effect, or likelihood of adverse effect, no longer exists.
- (4) A notice may be issued under this section despite any approval, licence, or permit having been granted for the act or activity.

32 Offences and penalties

- (1) A person or an entity commits an offence if that person or entity—
- (a) hinders or obstructs a data collector or an inspector in the performance of his or her duties under this Act or in the exercise of any lawful power; or

- (b) induces or incites any other person to hinder or obstruct a data collector or an inspector acting in accordance with this Act; or
 - (c) falsely represents by words or conduct to be a data collector or an inspector or who otherwise impersonates a data collector or inspector; or
 - (d) fails to comply with a lawful requirement, direction, or order made or given by a data collector or an inspector; or
 - (e) provides false or misleading information when required to provide information under this Act.
- (2) A person who or entity that commits an offence under **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$10,000;
 - (b) in all other cases, to a fine not exceeding \$50,000.
- (3) A person or an entity that fails to comply with a notice issued under **section 30** commits an offence and is liable on conviction,—
- (a) if there is no adverse effect on agriculture or the agricultural sector, to a fine not exceeding \$10,000;
 - (b) if there is an adverse effect on agriculture or the agricultural sector, to a fine not exceeding \$50,000.
- (4) A person or entity commits an offence if that person or entity—
- (a) has been served with a notice issued under **section 31** and fails to comply with its terms; or
 - (b) has been served with a notice issued under **section 31** and causes or permits any other person or entity to act in breach of its requirements; or
 - (c) knowingly acts in breach of the requirements of a notice issued under **section 31**, whether or not that person or entity has been served with the notice.
- (5) A person who or entity that commits an offence under **subsection (4)** is liable on conviction—
- (a) in the case of an individual, to a fine not exceeding \$10,000, and, if the offence is a continuing offence, an additional fine not exceeding \$100 per day;
 - (b) in all other cases, to a fine not exceeding \$50,000, and, if the offence is a continuing offence, an additional fine not exceeding \$500 per day.
- (6) If a company commits an offence under this Act, any officer or agent of the company who authorised, assented to, or participated in, or by his or her neglect or omission contributed to, the commission of the offence—
- (a) is a party to and may be found guilty of the offence; and
 - (b) is liable to the penalty provided for the offence.

Part 5 Minor offences

33 Minor offences

- (1) If an inspector or data collector has reason to believe that a person has committed a minor offence, the inspector or data collector may issue a minor

offence notice requiring the person to pay a fine of the relevant amount prescribed by regulations.

- (2) The notice must—
 - (a) be in the form prescribed by regulations; and
 - (b) be issued by delivering the notice, or a copy of it, personally to the person who is alleged to have committed the offence.
- (3) Every person who is required to pay a fine under **subsection (1)** may either—
 - (a) elect to pay the fine within 28 days, in which case a receipt must be issued and the person is not liable to any further prosecution of any kind in respect of that offence; or
 - (b) elect not to pay the fine either immediately or within 28 days of the minor offence notice having been issued, in which event that person is liable to prosecution under **section 34**.
- (4) Every minor offence notice must contain—
 - (a) those particulars of the alleged minor offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged offence together with any other details that are prescribed; and
 - (b) the amount of the fine in respect of the minor offence; and
 - (c) a statement of the consequences if the person served with the notice does not pay the fine within 28 days;
 - (d) the date on which a prosecution in the High Court will be commenced, being a date not less than 28 days from the date of the alleged offence.
- (5) In this section and **section 34**, **minor offence** means an offence against this Act prescribed in regulations as a minor offence.

34 Prosecution of minor offences

- (1) Every person served with a minor offence notice who does not pay the fine within 28 days of being served is liable to prosecution in respect of the offence to which the notice relates and on conviction is liable to a fine not exceeding \$500.
- (2) Despite anything to the contrary in any other Act, every prosecution of a minor offence may be commenced by an inspector or data collector against a person served with a minor offence notice by filing the notice in the High Court and without further service of any documents on the offender.
- (3) Every prosecution commenced under this section may be proceeded with in accordance with the provisions of the Criminal Procedure Act 1980-81.

Part 6 Miscellaneous

35 Island Governments

- (1) In accordance with its functions, and subject to the Island Government Act 2012-13, the ministry must work co-operatively, collaboratively, or in partnership with Island Governments.

- (2) The functions, powers and duties of the following persons may, subject to any conditions or limitations that are prescribed, be performed in the Pa Enuā by other persons in accordance with regulations made under this Act:
- (a) data collectors;
 - (b) inspectors.
- (3) When performing any work in accordance with this section, an employee or representative of an Island Government is entitled to all legal protections and indemnities provided by this Act, the Public Service Act 2009, or any other applicable law.

36 Notices in English and Maori

Any notice issued by the responsible ministry under this Act must be in the English and Maori languages, and where there is any inconsistency between the two, the notice in the English language applies.

37 Inquiries

- (1) The head of the ministry may conduct an inquiry into any matter connected with the functions of the ministry.
- (2) For the purposes of conducting an inquiry, the head of the ministry may, in writing, order any person or entity to—
- (a) produce, for inspection by the ministry, any documents or information relevant to the matter of the inquiry;
 - (b) permit the ministry to make copies of any document or information produced under **paragraph (a)**;
 - (c) provide the ministry with a written statement relevant to the matter of the inquiry;
 - (d) permit the ministry to enter upon the lands, premises, or assets of the person or entity to conduct inspections and assessments that are relevant to the matter of the inquiry;
 - (e) do some act or thing that is relevant to the matter of the inquiry and within the reasonable power of the person or entity to do.
- (3) The ministry must apply to the High Court for a warrant to enter onto the lands, premises, or assets of a person or an entity that does not consent to an order addressed to the person or entity, as the case may be, under **subsection (2)(d)**.
- (4) All inquiries and orders of the head of the ministry made under **subsection (2)** must be reasonably necessary.
- (5) The head of the ministry must ensure that an inquiry is conducted—
- (a) in a reasonable manner; and
 - (b) in good faith; and
 - (c) with due regard to the privacy and operational requirements of the person who or entity that is the subject of the inquiry; and
 - (d) in accordance with the rules of natural justice.
- (6) A person or entity commits an offence if the person or entity—
- (a) fails to comply with an order of the head of the ministry issued under this section; or
 - (b) deceives or obstructs an inquiry, or attempts to do so.

- (7) A person or entity who commits an offence under **subsection (6)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$10,000; or
 - (b) in every other case, to a fine not exceeding \$50,000.

38 Warrant to enter dwelling house

- (1) The High Court may issue a search warrant, in relation to a place (including a dwelling house), vehicle, or other thing on application by a data collector or an inspector if the court is satisfied that there are reasonable grounds—
- (a) to suspect that an offence against this Act specified in the application has been committed, or is being committed, or will be committed; and
 - (b) to believe that the search will find evidential material in respect of the offence in or on the place, vehicle, or other thing specified in the application.
- (2) Every search warrant issued under **subsection (1)** authorises the person executing it—
- (a) to enter and search the place, vehicle, or other thing that the person is authorised to enter and search, and any item or items found in that place or vehicle or thing, at any time that is reasonable;
 - (b) to request any person to assist with the entry and search;
 - (c) to use any force in respect of any property that is reasonable for the purposes of carrying out the search and any lawful seizure;
 - (d) to seize anything that is the subject of the search or anything else that may be lawfully seized;
 - (e) to bring and use in or on the place, vehicle, or other thing searched any equipment, to use any equipment found on the place, vehicle, or other thing, and to extract any electricity from the place, vehicle, or other thing to operate the equipment that it is reasonable to use in the circumstances, for the purposes of carrying out the entry and search;
 - (f) to copy any document, or part of a document, that may lawfully be seized;
 - (g) to use any reasonable measures to access a computer system or other data storage device located (in whole or in part) at the place, vehicle, or other thing if any intangible material that is the subject of the search may be in that computer system or other device;
 - (h) if any intangible material accessed under **paragraph (g)** is the subject of the search or may otherwise be lawfully seized, to copy that material (including by means of previewing, cloning, or other forensic methods either before or after removal for examination);
 - (i) to take photographs, sound and video recordings, and drawings of the place, vehicle, or other thing searched, and of any thing found in or on that place, vehicle, or other thing, if the person exercising the power has reasonable grounds to believe that the photographs or sound or video recordings or drawings may be relevant to the purposes of the entry and search.

39 Evidence by certificate

- (1) The head of the ministry, and any officer of the ministry authorised in writing by the head of the ministry, may provide a certificate—
 - (a) stating any fact known to the ministry;
 - (b) providing the result of any test, inspection, or analysis undertaken by or on behalf of the ministry;
 - (c) indicating the content of any record or register maintained by or on behalf of the ministry.
- (2) Despite any other enactment or rule of law, a certificate issued under **subsection (1)** is admissible as evidence of the facts or information stated in the certificate for any of the following purposes:
 - (a) the proceedings of a court or tribunal;
 - (b) any determination by any ministry or other government agency or any other person exercising judicial or administrative authority in accordance with law.
- (3) A certificate purporting to comply with the requirements of **subsection (1)** is presumed to be duly and lawfully issued unless the contrary is proved.

40 Validity of acts

All actions and decisions of the head of the ministry, or any ministry employee acting under the authority of the head of the ministry under this Act, the enactments listed in the Schedule, or any other relevant enactment, are deemed to have been validly done or made despite any defect, expiry, error, or lapse in the appointment of the person taking the action or making the decision.

41 Protection from liability

- (1) This section applies in relation to the following:
 - (a) the head and all other employees of the ministry;
 - (b) all data collectors and inspectors appointed under this Act;
 - (c) all members of committees established under this Act;
 - (d) all persons acting under the authority of the ministry, including under delegated authority, for the purposes of this Act or any other enactment that the ministry, with the authority of the Prime Minister, for the time being administers.
- (2) A person referred to in **subsection (1)** is not civilly or criminally liable in respect of any loss or damage arising from an act or omission by that person in good faith (whether or not the act or omission was negligent) in the performance of a function or purported function, or exercise or purported exercise of any function or power, under this Act or any other enactment that the ministry, with the authority of the Prime Minister, for the time being administers.

42 Regulations

- (1) The Queen's Representative, by Order in Executive Council, may make regulations necessary or desirable to give effect to the provisions, or for the purposes, of this Act.
- (2) Without limiting **subsection (1)**, regulations made under that subsection may—
 - (a) regulate data collection:

- (b) regulate the procedures to be used by committees:
 - (c) regulate the procedures to be used by inspectors:
 - (d) apply, incorporate by reference, or authorise the head of the Ministry to apply or issue, standards to be complied with relating to—
 - (i) agriculture generally:
 - (ii) any particular kind of agriculture:
 - (e) regulate the requirements for different kinds of agriculture:
 - (f) regulate the requirements to facilitate access to domestic and overseas markets for agricultural products:
 - (g) prescribe minor offences, penalties for minor offences, and minor offence notices to be used for proceedings under this Act:
 - (h) prescribe offences for non-compliance with any regulation, and penalties for the offences which may be fines not exceeding \$10,000.
- (3) Regulations may incorporate by reference any standard, code, or similar instrument issued by another agency in the Cook Islands or by an agency in another country or an international body if—
- (a) the regulations clearly identify the instrument, including its version or date of issue; and
 - (b) copies of that instrument are readily available at no more than a reasonable cost, either in hard copy or electronically, in the Cook Islands.
- (4) Regulations may relate to—
- (a) agriculture generally, or to any class of agriculture (for example, agriculture using organic methods), or to any particular kind of location of the agriculture or class of agriculture:
 - (b) all or any specified part of the Cook Islands or location within the Cook Islands:
 - (c) any combination of the matters described in **paragraphs (a) and (b)**.
- (5) Without limiting **subsection (4)(b)** and to give effect to the purpose of this Act, regulations about agriculture may be made that incorporate in relation to each island the local law and customs of that island (as determined by the relevant Aronga Mana).

43 Repeal

The Ministry of Agriculture and Fisheries Act 1978 is repealed.

44 Amendments to other Acts

The Acts specified in **Schedule 2** are amended in the manner set out in that schedule.

45 Savings and transitional provisions

- (1) At the commencement of this Act,—
- (a) the Ministry of Agriculture becomes the ministry:
 - (b) the head of the Ministry of Agriculture and employees of that ministry become the head and employees respectively of the responsible ministry under their respective contracts of employment:

- (c) existing divisions, units, and other sections of the responsible ministry continue until they are discontinued or reformed under the Public Service Act 2009:
- (d) existing regulations made under the former Act continue as if they had been made under this Act until they are amended, revoked, or replaced under this Act:
- (e) rights, entitlements, obligations, and liabilities applying to the Ministry of Agriculture, including all monies owed to or owed by it, continue to apply to the ministry:
- (f) contracts and legal proceedings to which the Ministry of Agriculture was a party continue to have valid effect:
- (g) references to the Ministry of Agriculture in any law or document may be taken as references to the ministry.

Schedule 1
Other Acts administered by the ministry

Biosecurity Act 2008

Copra Act 1970

Pesticides Act 1987

Wandering Animals Act 1976

Schedule 2 Amendments to other Acts

Biosecurity Act 2008 (2008 No 14)

In section 2, replace the definition of “**Director**” with:

“**Director**—

- “(a) means the Director of Biosecurity designated under section 24 who is the person for the time being acting as the Secretary of the Ministry; and
- “(b) includes in relation to any particular function of the Director, a person to whom the function has been delegated under section 26”

In section 2 replace the definition of “**Minister**” and “**Ministry**” with:

“**Minister** means the Minister who, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

“**Ministry** means the Ministry that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act”

In section 2 replace the definition of “**Secretary**” with:

“**Secretary** means the Secretary of the Ministry”

Copra Act 1970

In section 2, replace the definition of “**Director**” with:

“**Director** means the Secretary of the Ministry that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

In section 2, insert in its appropriate alphabetical order:

“**Ministry** means the Ministry that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act”

Pesticides Act 1987 (1987 No 22)

In section 2, replace the definition of “**Minister**” with:

“**Minister** means the Minister who, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act”

In section 2, insert in their appropriate alphabetical order:

“**Ministry** means the Ministry that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act”

“**Secretary** means the head of the Ministry”

In section 5(2)(a), replace “Secretary of Agriculture” with “Secretary”.

In section 5(2)(e), replace “Ministry of Agriculture” with “Ministry”.

In section 18, replace “Ministry of Agriculture” with “Ministry”.

In section 21(1), replace “Ministries of Agriculture or Health” with “the Ministry or the Ministry of Health”.

In section 21(3), replace “Secretary of Agriculture” with “Secretary”.

Wandering Animals Act 1976 (1976 No 24)

In section 2, replace the definition of “**Minister**” with:

“**Minister** means the Minister who, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act”

In section 2, insert in its appropriate alphabetical order:

“**Ministry** means the Ministry that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act”

In section 2, replace the definition of “**Secretary**” with:

“**Secretary** means the head of the Ministry”

Replace section 8(c) with:

“(c) employees of the Ministry.”

This Act is administered by the Ministry of Agriculture.
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