New Zealand Horticulture Export Authority Amendment Act 2016

Public Act	2016 No 99
Date of assent	12 December 2016
Commencement	see section 2

Contents

		Page
1	Title	3
2	Commencement	3
3	Principal Act	3
	Part 1 **Substantive amendments**	
4	Section 2 amended (Interpretation)	3
5	New section 2A inserted (Transitional, savings, and related provisions)	4
	2A Transitional, savings, and related provisions	4
6	New cross-heading above section 6 inserted	4
7	New section 8A inserted (Public Bodies Contracts Act 1959 applies to Authority)	4
	8A Public Bodies Contracts Act 1959 applies to Authority	4
8	Section 10 replaced (Membership)	5
	10 Membership	5
9	Section 13 amended (Deputies of members)	5
10	New section 13A inserted (Alternate chairperson)	5
	13A Alternate chairperson	5
11	Section 14 amended (Meetings of Authority)	6
12	Section 20 replaced (Remuneration and travelling allowances)	6
	20 Remuneration and allowances	6
13	Section 23 replaced (Contracts of Authority and members)	6
	23 Meaning of terms used in sections 23AA to 23AC	6

	23AA	Interests that must be disclosed	7
	23AB	How and when interests must be disclosed	7
	23AC	Consequences of being interested in matter	7
	23AD	Consequences of failing to comply with section 23AB or 23AC	8
14	Section 24 amended (Order in Council may declare product to be prescribed product)		9
15	Section 25 replaced (Requirements to be met before product may become a prescribed product)		9
	25	Requirements to be met before prescribed product declared	9
	25A	Product group must demonstrate support for proposal	10
16	Section 26 amended (Export marketing strategy to be formulated where product subject to export licensing)		12
17	New section 27A inserted (Changes to tiers of licence)		12
	27A	Changes to tiers of licence	12
18	Section 30 amended (Notification of approval of strategy or proposal)		13
19	Section 33 amended (Requirements to be met before Minister may recommend revocation of Order in Council)		13
20	Section 34 amended (Exporters of prescribed product to hold export licence)		13
21	Section 35 amended (Application for export licence)		14
22	Section 36 amended (Grant of licence or provisional licence)		14
23	Section 38 amended (Additional conditions may be imposed where prejudice to export marketing strategy)		14
24	Section 39 amended (Revocation, suspension, and cancellation of licences)		14
25	Section 40 amended (Exemption for single operation or trial shipment)		15
26	Section 41 amended (Exemption from compliance with export marketing strategy)		16
27	Section 42 amended (Register of export licences)		16
28	New section 42A inserted (Agreements to share information with Authority)		16
	42A	Agreements to share information with Authority	16
29	Section 43 amended (Appeals to arbitrator)		17
30	Section 58 amended (Annual report and financial statements)		17
31	Section 62 replaced (Regulations)		17
	62	Fee regulations	17
	62A	Levy regulations: levy payable to Authority	18
	62B	Levy regulations: levies payable to recognised product groups	19

62C Application of Commodity Levies Act 1990 to prescribed products for purposes of section 62B 19
62D Other regulations 21
32 Section 63 amended (Offences and penalties) 21
33 Section 64 repealed (Consequential amendments) 21

Part 2
Consequential amendments and transitional provisions

Consequential amendments

34 Consequential amendments to principal Act 21
35 Amendment to Local Authorities (Members' Interests) Act 1968 21

Transitional provisions

36 New Schedule 1 inserted 22

Schedule 1 23
Consequential amendments to principal Act

Schedule 2 24
New Schedule 1 inserted

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the New Zealand Horticulture Export Authority Amendment Act 2016.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the New Zealand Horticulture Export Authority Act 1987 (the **principal Act**).

Part 1
Substantive amendments

4 Section 2 amended (Interpretation)

(1) In section 2, insert in their appropriate alphabetical order:

alternate chairperson means the person specified in section 13A(2)

register means the register of export licences and exemptions set up under section 42

(2) In section 2, definition of **export**, paragraph (a), after "samples", insert "exported only for marketing purposes and not for sale".

(3) In section 2, replace the definition of **licence** with:

licence, or **export licence**, in relation to a product,—

(a) means a licence or provisional licence granted in respect of that product under section 36; and

(b) includes any applicable tier of licence (as specified in the export marketing strategy for the product)

(4) In section 2, definition of **processed**, paragraph (a)(ii), replace "by the addition or removal or extraction of any material part" with "by the addition of anything material, or the removal or extraction of any material part".

(5) In section 2, definition of **processed**, replace paragraph (b) with:

(b) excludes—

(i) the adding of sugar or another sweetener to the product; and

(ii) the rendering into a chilled, frozen, concentrated, or pureed state of the genus *Fragaria* (strawberries), the genus *Rubus* (raspberries, boysenberries, and other brambles), the genus *Vaccinium* (which includes blueberries), or the genus *Ribes* (currants and gooseberries)

(6) In section 2, definition of **product**, paragraph (ba), after "organisms", insert "; or".

5 New section 2A inserted (Transitional, savings, and related provisions)

After section 2, insert:

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

6 New cross-heading above section 6 inserted

After section 5, insert:

Functions and powers of Authority

7 New section 8A inserted (Public Bodies Contracts Act 1959 applies to Authority)

After section 8, insert:

8A Public Bodies Contracts Act 1959 applies to Authority

The Authority is a public body for the purposes of the Public Bodies Contracts Act 1959.

8 Section 10 replaced (Membership)

Replace section 10 with:

Members, meetings, officers, and employees

10 Membership

(1) The Authority consists of the following members, who are each appointed by the Minister:

(a) a chairperson, who must not be a member or an office holder of—

(i) Horticulture New Zealand Incorporated; or

(ii) The Horticultural Exporters Council Incorporated:

(b) 2 members nominated by Horticulture New Zealand Incorporated:

(c) 1 member nominated by The Horticultural Exporters Council Incorporated:

(d) 1 other member.

(2) The Minister may appoint a person as a member of the Authority only if the Minister is satisfied that the person has a knowledge of, or experience in, marketing or international trade.

9 Section 13 amended (Deputies of members)

After section 13(3), insert:

(4) Subsection (1) is subject to section 13A.

10 New section 13A inserted (Alternate chairperson)

After section 13, insert:

13A Alternate chairperson

(1) The alternate chairperson may perform the duties and exercise the powers of the chairperson in relation to a matter.

(2) The alternate chairperson is—

(a) the chairperson's deputy appointed under sections 13 and 10 if the chairperson is unavailable or interested in the matter; or

(b) the member appointed under section 10(1)(d) if the chairperson and chairperson's deputy are unavailable or interested in the matter; or

(c) a member appointed by the remaining members of the Authority if the chairperson, the chairperson's deputy, and the member appointed under section 10(1)(d) are unavailable or interested in the matter.

(3) In this section,—

interested has the meaning given in section 23AA

matter has the meaning given in section 23

remaining members of the Authority means the members of the Authority other than the chairperson, the chairperson's deputy, and the member appointed under section 10(1)(d)

unavailable has the meaning given in section 23.

11 Section 14 amended (Meetings of Authority)

Replace section 14(4) with:

(4) The chairperson must preside at all meetings of the Authority at which the chairperson is present. If the chairperson is absent, the alternate chairperson must preside (for the purpose of identifying the alternate chairperson, the term unavailable in section 13A(3) includes absence from the meeting).

12 Section 20 replaced (Remuneration and travelling allowances)

Replace section 20 with:

20 Remuneration and allowances

(1) Members of the Authority (and persons appointed to committees established by the Authority) are entitled, in accordance with the fees framework,—

(a) to receive remuneration from the funds of the Authority for their services at a rate and of a kind determined by the Minister; and

(b) to be reimbursed from the funds of the Authority for actual and reasonable travelling and other expenses incurred in providing their services.

(2) In this section, **fees framework** has the meaning given in section 10(1) of the Crown Entities Act 2004.

13 Section 23 replaced (Contracts of Authority and members)

Replace section 23 with:

Conflicts of interest

23 Meaning of terms used in sections 23AA to 23AC

In sections 23AA to 23AC, unless the context otherwise requires,—

matter means—

(a) the Authority's performance of its functions or exercise of its powers:

(b) an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the Authority

member includes a member of a committee appointed under section 15(1) who is not a member of the Authority

unavailable, in relation to an office holder, includes a situation where that office is vacant.

23AA Interests that must be disclosed

(1) A member is **interested** in a matter (for the purposes of this section and sections 23AB and 23AC) if he or she—

(a) may derive a financial benefit from the matter; or

(b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or

(c) may have a financial interest in a person to whom the matter relates; or

(d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or

(e) is otherwise directly or indirectly interested in the matter.

(2) However, a member is not interested in a matter—

(a) if he or she has been appointed under section 10(1)(b) or (c) and all of the persons belonging to the organisation that nominated the member are interested in the matter in the same way as that member; or

(b) only because he or she receives remuneration or other benefits authorised under this Act; or

(c) if his or her interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence him or her in carrying out his or her responsibilities under this Act.

23AB How and when interests must be disclosed

(1) A member who is interested in a matter must disclose details of the nature and extent of the interest (including any monetary value of the interest)—

(a) in a register of interests kept by the Authority; and

(b) to the chairperson of the Authority or, if the chairperson is unavailable or interested, to the alternate chairperson.

(2) The member must disclose his or her interest as soon as practicable after he or she becomes aware of it.

(3) The details of the interest disclosed in accordance with subsection (1) must be recorded in the minutes of the first meeting of the Authority held after the disclosure.

(4) A general notice of an interest in a matter relating to the Authority, or in a matter that may in future relate to the Authority, that is disclosed in accordance with this section is a **standing disclosure** of that interest.

(5) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases.

23AC Consequences of being interested in matter

(1) A member who is interested in a matter must not—

(a) vote or take part in making any decision of the Authority (or any committee appointed by the Authority) relating to the matter, or otherwise participate in any activity of the Authority (or committee) that relates to the matter:

(b) sign any document relating to—

(i) the entry into a transaction in respect of the matter; or

(ii) the initiation of the matter:

(c) be counted for the purpose of forming a quorum for the part of a meeting of the Authority (or committee) during which a decision about the matter is made.

(2) However, the member may—

(a) participate in discussions of the Authority (or any committee appointed by the Authority) relating to the matter; and

(b) do, or be counted for the purposes of, the things described in subsection (1) with the chairperson's permission.

(3) The permission may be given by—

(a) the alternate chairperson, if the chairperson is unavailable or interested; or

(b) the Minister, if the chairperson and alternate chairperson are unavailable or interested.

(4) The permission may be—

(a) given subject to conditions:

(b) amended or revoked in the same way as it is given.

(5) The Authority must, in its minutes, record—

(a) each interest to which a permission relates; and

(b) any conditions on, amendments to, or revocation of the permission.

23AD Consequences of failing to comply with section 23AB or 23AC

(1) The Authority must notify the Minister of a failure to comply with section 23AB or 23AC, and of the acts or matters affected, as soon as practicable after becoming aware of the failure.

(2) A failure to comply with section 23AB or 23AC does not affect the validity of an act or a matter.

(3) However,—

(a) the chairperson may reverse any decision made by the Authority under any of sections 28 and 36 to 41A if the decision was an act affected by a failure to comply with section 23AB or 23AC; and

(b) a person may still apply, in accordance with law, for judicial review.

Performance reviews

14 Section 24 amended (Order in Council may declare product to be prescribed product)

(1) In section 24(1), replace "Subject to section 25, the Governor-General may from time to time, by Order in Council,—" with "The Governor-General may, by Order in Council made on the recommendation of the Minister,—".

(2) After section 24(3), insert:

(4) Subsection (1) is subject to sections 25 and 25A.

15 Section 25 replaced (Requirements to be met before product may become a prescribed product)

Replace section 25 with:

25 Requirements to be met before prescribed product declared

(1) The Minister must not recommend the making of an Order in Council under section 24 unless—

(a) the product group has asked the Minister to make the recommendation; and

(b) the Minister is satisfied, in accordance with section 25A, that the producers and exporters of the product support the making of the recommendation; and

(c) the Minister is satisfied that the group would be suitable to carry out the functions of a recognised product group under this Act; and

(d) the Minister has decided whether 1 or more varieties or cultivars should be excluded from the product.

(2) For the purposes of subsection (1)(c), the Minister must have regard to—

(a) the size and nature of the product group's membership; and

(b) the extent to which the membership of the group fairly represents the full range of producer interests in the product concerned; and

(c) the extent to which exporters of the product concerned are represented on the group; and

(d) the existence, size, and nature of other product groups for the product, and the relationship between any such groups and the product group; and

(e) the views of the Authority on the suitability of the group to be a recognised product group for the purposes of this Act; and

(f) any other matters that appear relevant to the Minister.

(3) For the purposes of subsection (1)(d), the Minister must have regard to—

(a) whether there is opposition that is real and of substance from producers or exporters of the variety or cultivar to its inclusion within the proposed order; and

(b) the extent to which exclusion of the variety or cultivar would prejudice the export marketing, as a prescribed product, of the product in question.

25A Product group must demonstrate support for proposal

(1) The condition described in section 25(1)(b) is met if the Minister is satisfied that—

(a) the product group has properly and fairly conducted the process decided on by the Minister under this section (*see* subsection (5)); and

(b) that process has demonstrated that the producers and exporters of the product support the proposal (*see* subsection (6)).

Minister must determine process for demonstrating support

(2) The Minister must, after a product group asks the Minister to recommend the making of an Order in Council under section 24, decide whether it is more appropriate for the group to demonstrate support for the proposal through—

(a) a vote by postal ballot of the producers and exporters of the product; or

(b) a vote at a meeting of the product group—

(i) at which every producer or exporter of the product is entitled to speak and to vote (whether or not the producer or exporter is a member of the group); but

(ii) that is otherwise an annual general meeting or special meeting held in accordance with the group's rules.

(3) In deciding on the more appropriate process, the Minister must have regard to—

(a) the number of producers and exporters of the product; and

(b) the extent (if any) to which the ability of producers to attend a meeting may be adversely affected by the geographic distribution of producers'—

(i) principal places of business (in the case of producers that are bodies corporate); or

(ii) principal places of residence (in the case of producers who are natural persons).

Product group must demonstrate support by conducting process

(4) After the Minister has decided on the process, the product group must conduct that process and then give to the Minister—

(a) the results of the votes cast; and

(b) any information requested by the Minister that he or she reasonably needs to be satisfied that the process—

(i) was properly and fairly conducted; and

(ii) has demonstrated that the producers and exporters of the product support the proposal.

(5) A process is properly and fairly conducted if—

(a) the proposal and its implications are clearly and accurately communicated to the producers and exporters of the product; and

(b) the producers and exporters are given a reasonable and equal opportunity to vote and, if the vote is held at a meeting of the product group, also to speak at that meeting.

(6) A process demonstrates that the producers and exporters of the product support the proposal if the following persons vote in support of the proposal:

(a) 60% or more of the producers of the product; and

(b) 60% or more of the exporters of the product; and

(c) producers of 60% or more of the product; and

(d) exporters of 60% or more of the product.

(7) For the purposes of subsection (6),—

(a) the percentage specified in subsection (6)(a) must be calculated as a percentage of the total number of voters who produced the product for export at any time during the 2 years immediately before the date of the vote:

(b) the percentage specified in subsection (6)(b) must be calculated as a percentage of the total number of voters who exported the product at any time during the 2 years immediately before the date of the vote:

(c) the percentage specified in subsection (6)(c) must be calculated as a percentage of the total value of product that was—

(i) produced by the producers who voted; and

(ii) produced for export in the 2 years immediately before the date of the vote:

(d) the percentage specified in subsection (6)(d) must be calculated as a percentage of the total value of product that was—

(i) exported by the exporters who voted; and

(ii) exported in the 2 years immediately before the date of the vote.

(8) In this section,—

proposal means the proposal that the Minister recommend the making of an Order in Council under section 24

value means the free on board value of the product as specified in the declaration attached to, or forming part of, the customs entry for the product.

16 Section 26 amended (Export marketing strategy to be formulated where product subject to export licensing)

Replace section 26(2) with:

(2) The export marketing strategy must set out—

(a) the general marketing objectives for the export of the product and the means by which those objectives are to be achieved; and

(b) the anticipated costs of giving effect to the strategy and how those costs are to be funded.

(2AA) The export marketing strategy may also do 1 or both of the following:

(a) specify up to 5 tiers of licence that are distinguished on the basis of—

(i) the markets to which a licensed exporter may export the product; and

(ii) the requirements that apply to licensed exporters exporting to those markets:

(b) include matters relating to—

(i) the distribution, transport, form (including grade standards), production, promotion, market development, selling, and export price reporting of the product; and

(ii) the provision of export market information, and product and market research; and

(iii) the auditing of compliance with, and the effectiveness of, the strategy.

(2AB) Requirements of the kind referred to in subsection (2AA)(a)(ii) may relate only to the matters specified in subsection (2AA)(b)(i) to (iii).

(2AC) An export marketing strategy that specifies more than 1 tier of licence must rank the tiers of licence from the lowest to the highest tier.

17 New section 27A inserted (Changes to tiers of licence)

After section 27, insert:

27A Changes to tiers of licence

How tiers of licence may be changed

(1) The recognised product group for a prescribed product may propose 1 or both of the following when submitting a proposal to replace or amend an export marketing strategy under section 27:

(a) that new tiers of licence be added:

(b) that existing tiers of licence be removed or amended (including by amending matters of the kind specified in section 26(2AA)(a)(i) and (ii)).

(2) The recognised product group must not submit the proposal until at least 1 year after the later of the following dates:

(a) the date on which the Authority first approved the export marketing strategy:

(b) the date on which the Authority most recently approved a proposal to amend or replace the export marketing strategy in a way that included adding, removing, or amending tiers of licence.

Effect of change on existing licences

(3) On and from the date that the proposal comes into force, the holder of an existing licence for the prescribed product must be treated as if the person holds—

(a) the lowest tier or tiers of licence needed to export the product to the market or markets covered by the existing licence immediately before the proposal came into force; or

(b) any lower tier or tiers of licence notified in writing to the Authority by the holder of the existing licence.

(4) As soon as practicable after a proposal comes into force or notice is given in accordance with subsection (3)(b),—

(a) the Authority must provide the holder of an existing licence with written confirmation of the new tier or tiers of licence; and

(b) the Registrar appointed under section 17 must amend the register so that it records the new tier or tiers of licence.

18 Section 30 amended (Notification of approval of strategy or proposal)

In section 30(1)(a)(iii), after "an export licence", insert "that allows the licence holder to export the product to the intended market".

19 Section 33 amended (Requirements to be met before Minister may recommend revocation of Order in Council)

In section 33(a), after "requests", insert "and the Minister is satisfied, in accordance with section 25A (which applies with any necessary modifications), that the producers and exporters of the product support the making of the recommendation".

20 Section 34 amended (Exporters of prescribed product to hold export licence)

(1) Replace section 34(1) with:

(1) A person may export a prescribed product only if the person holds an export licence that allows the licence holder to export the product to the intended market.

(2) In section 34(2), replace "Subsection (1) does not apply to the export of any product—" with "However, subsection (1) does not apply to the export of a product—".

(3) In section 34(4), replace—

(a) "subsection (1)" with "this section"; and

(b) "$10,000" with "$50,000".

21 Section 35 amended (Application for export licence)

In section 35(2), replace "section 36(2)" with "section 36(1)".

22 Section 36 amended (Grant of licence or provisional licence)

(1) Replace section 36(1)(ba) with:

(ba) is likely to be competent in handling, exporting, and marketing the product for which the licence is sought, having regard to any relevant requirements that—

(i) are specified in the current export marketing strategy for the product; and

(ii) apply in relation to that licence; and

(2) Replace section 36(1A)(a)(i) with:

(i) the applicant's suitability as an exporter of the product for which the licence is sought, having regard to any requirements that—

(A) are specified in the current export marketing strategy for the product; and

(B) apply in relation to that licence; and

(3) Replace section 36(6) with:

(6) An export licence expires at the end of the fifth anniversary of the date on which it was granted, unless the licence is revoked or cancelled earlier.

23 Section 38 amended (Additional conditions may be imposed where prejudice to export marketing strategy)

In section 38(7)(a)(i), delete "and export pricing".

24 Section 39 amended (Revocation, suspension, and cancellation of licences)

(1) Replace section 39(1)(a) with:

(a) the licensed exporter has—

(i) failed to comply with any condition attached to the licence; or

(ii) exported to a market for which the exporter does not hold the required tier of licence; or

(2) In section 39(1)(b), after "properly", insert "; or".

(3) After section 39(1)(b), insert:

(c) the licensed exporter is a participant in a joint venture that has breached a condition attached to a certificate of exemption issued to the joint venture under section 40.

(4) In section 39(6)(b)(iii), after "redundant", insert "; or".

(5) After section 39(6)(b)(iii), insert:

(iv) there has been, in relation to an exporter that is a company,—

(A) a significant change in the shareholding of the company; or

(B) a change in more than 50% of the directors or senior managers of the company as a result of a change in shareholding; or

(v) there has been, in relation to an exporter that is a limited partnership,—

(A) a change in more than 50% of the general partners; or

(B) a significant change in the shareholding of more than 50% of the general partners.

(6) After section 39(6), insert:

(7) For the purposes of subsection (6)(b)(iv)(A) and (v)(B), a change in the shareholding of a company or other body corporate is **significant** if a person who did not satisfy any of paragraphs (i) to (iv) of section 5(1)(a) of the Companies Act 1993 before the change in shareholding does satisfy 1 or more of those provisions after the change.

(8) In this section,—

director has the meaning given in section 126 of the Companies Act 1993

senior manager means a person who is not a director of a company but who occupies a position that allows him or her to exercise significant influence over the management or administration of that company (for example, a chief executive or a chief financial officer).

25 Section 40 amended (Exemption for single operation or trial shipment)

(1) Replace the heading to section 40 with "**Exemption for single operation, trial shipment, or joint venture**".

(2) Replace section 40(1) with:

(1) The following persons may apply to the Authority for an exemption from the requirement to hold an export licence:

(a) a person who wishes to export 1 particular consignment or series of consignments of a prescribed product:

(b) a person who wishes to make a trial shipment of a prescribed product:

(c) a joint venture formed for the purpose of exporting a prescribed product.

(1A) A joint venture may apply for an exemption only if each participant in the joint venture is licensed to export the product to the intended market.

(3) After section 40(2), insert:

(2A) A certificate of exemption issued to a joint venture must specify the date on which it expires (which must be no more than 1 year after the date on which the certificate is issued).

26 Section 41 amended (Exemption from compliance with export marketing strategy)

In section 41(3)(b), replace "market" with "marketing".

27 Section 42 amended (Register of export licences)

After section 42(2)(a)(ii), insert:

(iia) if applicable, the tier of licence granted:

28 New section 42A inserted (Agreements to share information with Authority)

After section 42, insert:

42A Agreements to share information with Authority

(1) The purpose of this section is to enable the making of agreements under which the following people may share information about the export of prescribed products with the Authority:

(a) the chief executive of the New Zealand Customs Service (the **chief executive**):

(b) the Director-General of the Ministry for Primary Industries (the **Director-General**).

Agreements and their effect

(2) The Authority may enter into 1 or more agreements with the chief executive or the Director-General.

(3) While an agreement is in force, the chief executive or the Director-General may provide to the Authority information that is—

(a) held by the New Zealand Customs Service or the Ministry for Primary Industries; and

(b) of a kind specified in the agreement; and

(c) provided for the specified purpose.

(4) The **specified purpose** is to enable the Authority to determine whether the exporter of a prescribed product—

(a) holds a licence that allows the exporter to export the product to the intended market or is exempt from the requirement to hold a licence:

(b) is complying with the conditions on the exporter's licence.

Consultation on agreements

(5) Before entering into or amending an agreement, the Authority must consult on the proposed agreement or amendment with—

(a) the Privacy Commissioner; and

(b) any person or organisation (such as a recognised product group) that it considers represents the interests of the exporters whose personal information will be shared under the proposed agreement.

Agreements must be published

(6) The Authority must publish on its Internet site the current version of any agreement made under this section.

29 Section 43 amended (Appeals to arbitrator)

In section 43(6A)(b), replace "to the pay" with "to pay".

30 Section 58 amended (Annual report and financial statements)

(1) In section 58(1), replace "a general report" with "an annual report".

(2) In section 58(2), replace "the general report" with "the annual report".

31 Section 62 replaced (Regulations)

Replace section 62 with:

62 Fee regulations

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing fees—

(a) that the Authority may charge to exporters or recognised product groups in relation to the carrying out of its functions under this Act:

(b) that a recognised product group may charge to producers or exporters of the product in relation to the carrying out of its functions under this Act, including activities required to give effect to the group's export marketing strategy.

(2) Regulations made under this section—

(a) must specify the amount or maximum amount of a fee, or the method of calculating a fee; and

(b) may specify different amounts or maximum amounts of a fee, or methods of calculating a fee, for different categories of person; and

(c) may provide for the Authority or recognised product group charging the fee to determine which category a person belongs to based on prescribed criteria or after following a prescribed process; and

(d) may prescribe requirements for notifying the amount of a fee—

(i) for which a maximum amount is specified; or

(ii) that is determined by a method of calculation; and

(e) may exempt persons from having to pay a fee by reference to—

(i) a category of persons; or

(ii) the type or quantity of product, service, or matter in respect of which the fee would otherwise be payable.

(3) If the regulations exempt persons from having to pay a fee, the reasons for the exemption must be set out in the explanatory note of the regulations.

(4) Before recommending that regulations be made under this section, the Minister must take reasonable steps to consult the persons who may have to pay the fee.

62A Levy regulations: levy payable to Authority

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the payment of a levy by recognised product groups to the Authority to fund the costs of carrying out its functions under this Act.

(2) Regulations made under this section must—

(a) specify which recognised product groups or categories of group are responsible for paying the levy; and

(b) specify either—

(i) the amount of, or method of calculating, the levy; or

(ii) the different amounts of, or methods of calculating, the levy payable by different recognised product groups or categories of group; and

(c) prescribe requirements for notifying the amount of the levy if it is determined by a method of calculation; and

(d) specify when and how the levy must be paid; and

(e) prescribe a requirement for the Minister to review the levy at specified intervals.

(3) The regulations may do 1 or more of the following:

(a) require the Authority to keep records relating to the receipt and use of levy funds:

(b) if the levy is determined by a method of calculation,—

(i) require recognised product groups to make returns to the Authority for use in calculating the amount of the levy:

(ii) allow the Authority to determine the amount of the levy payable by a recognised product group if the information needed to calculate the levy for that group is unavailable:

(c) exempt recognised product groups or categories of group from having to pay the levy or any part of it.

(4) If the regulations allow the Authority to determine the amount of levy payable by a recognised product group, the regulations must prescribe—

(a) criteria for determining the amount; and

(b) a process for resolving any dispute about the amount determined by the Authority.

(5) If the regulations exempt product groups from having to pay the levy, the reasons for the exemption must be set out in the explanatory note of the regulations.

(6) Before recommending that regulations be made under this section, the Minister must take reasonable steps to consult the recognised product groups that will be responsible for paying the levy.

(7) A levy imposed by regulations made under this section must be reasonable having regard to—

(a) the costs incurred by the Authority in carrying out its functions under this Act; and

(b) the amount of any income received by the Authority from any other source.

62B Levy regulations: levies payable to recognised product groups

(1) The purpose of this section and section 62C is to allow levies to be imposed for the purpose of funding—

(a) the functions of recognised product groups under this Act, including activities required to give effect to a group's export marketing strategy:

(b) the payment of any fee or levy payable by recognised product groups to the Authority.

(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations imposing levies in accordance with the provisions of the Commodity Levies Act 1990, as applied by section 62C.

(3) Regulations made under subsection (2) are to be administered under this Act.

62C Application of Commodity Levies Act 1990 to prescribed products for purposes of section 62B

(1) For the purposes of section 62B, the provisions of the Commodity Levies Act 1990 apply to prescribed products as if they were commodities within the meaning of that Act.

(2) However,—

(a) an Order in Council may be made only on the Minister's recommendation:

(b) a levy may be imposed only—

(i) on a prescribed product that is produced for export; and

(ii) on the basis of the amount or value of the product produced for export or exported:

(c) if a levy is to be imposed on the basis of the amount or value of the product produced for export,—

(i) the support referendum must be conducted on that basis; and

(ii) section 5(2)(ah) and (ai) of the Commodity Levies Act 1990 must be read as if references to the amount or value of the commodity produced were references to the amount or value of the commodity produced for export:

(d) if a levy is to be imposed on the basis of the amount or value of the product exported,—

(i) the support referendum must be conducted on that basis; and

(ii) section 5(2)(ah) and (ai) of the Commodity Levies Act 1990 must be read as if references to the amount or value of the commodity produced were references to the amount or value of the commodity exported:

(e) the regulations imposing a levy may provide for it to be paid only by producers or exporters to a recognised product group:

(f) different levies may be prescribed for different—

(i) products; or

(ii) grades of a product; or

(iii) varieties or cultivars of a product:

(g) a levy must be reasonable having regard to—

(i) the costs incurred by a recognised product group in carrying out its functions under this Act in relation to the product on which the levy is imposed; and

(ii) the amount of any income received by the recognised product group from any other source.

(3) The provisions of the Commodity Levies Act 1990 must also be read with the following modifications:

(a) a recognised product group that receives a levy may spend it only for a purpose specified in section 62B(1):

(b) section 13 of the Commodity Levies Act 1990 (levy orders to expire after 6 years) does not apply:

(c) a levy imposed in relation to a prescribed product ceases to be payable on and from the date that the product ceases to be a prescribed product:

(d) a reference to a levy order must be read as a reference to regulations made under section 62B(2):

(e) a reference to a body corporate or an industry organisation must be read as a reference to a recognised product group:

(f) any other necessary modifications.

62D Other regulations

The Governor-General may, by Order in Council, make regulations for 1 or more of the following purposes:

(a) prescribing grade standards for prescribed products, recognition symbols or marks for those grade standards, and offences relating to the unauthorised or fraudulent use of those symbols or marks:

(b) prescribing offences for breaching regulations made under this Act and the fines for the offences, up to a maximum of $10,000:

(c) providing for matters contemplated by, or necessary for giving full effect to, the provisions of this Act and for its due administration.

32 Section 63 amended (Offences and penalties)

In section 63(2), replace "$4,000" with "$10,000".

33 Section 64 repealed (Consequential amendments)

Repeal section 64.

Part 2
Consequential amendments and transitional provisions

Consequential amendments

34 Consequential amendments to principal Act

Amend the principal Act as set out in Schedule 1.

35 Amendment to Local Authorities (Members' Interests) Act 1968

(1) This section amends the Local Authorities (Members' Interests) Act 1968.

(2) In Schedule 1, Part 2, repeal the item relating to the New Zealand Horticulture Export Authority.

Transitional provisions

36 New Schedule 1 inserted

Insert the Schedule 1 set out in Schedule 2 of this Act as the first schedule to appear after the last section of the principal Act.

Schedule 1
Consequential amendments to principal Act

s 34

Section 7

Repeal section 7(d).

Section 12

Replace section 12(2) with:

(2) The office of the chairperson of the Authority becomes vacant if the person appointed to that office becomes an office holder or a member of Horticulture New Zealand Incorporated or The Horticultural Exporters Council Incorporated.

Section 14

In section 14(2), replace "Chairman" with "chairperson".

Section 15

In section 15(2), replace "chairman" with "chairperson".

Section 22

In section 22(1)(a)(ii), replace "; or" with "; and".

Repeal section 22(1)(a)(iii).

Section 32

In section 32(3)(b), replace "section 25(3)" with "section 25(2)".

In section 32(4)(b), replace "section 25(2)" with "section 25(3)".

Section 51

In section 51(b), delete "levies or".

In section 51(b), delete "imposed or".

Section 61

In section 61(3), replace "Chairman" with "chairperson of the Authority".

Schedule 2
New Schedule 1 inserted

s 36

Schedule 1
Transitional, savings, and related provisions

s 2A

Part 1
Provision relating to New Zealand Horticulture Export Authority Amendment Act 2016

1 Transitional provision: holder of existing export licence to be treated as holding all tiers of licence

The holder of an export licence for a product is to be treated as holding each tier of licence specified in the export marketing strategy for that product if—

(a) the Authority granted the licence before the commencement of the New Zealand Horticulture Export Authority Amendment Act 2016; and

(b) the export marketing strategy specifies 2 or more tiers of licence for that product.

Legislative history

1 December 2015	Introduction (Bill 104–1)
29 March 2016	First reading and referral to Primary Production Committee
31 August 2016	Reported from Primary Production Committee (Bill 104–2)
18 October 2016	Second reading
15 November 2016	Committee of the whole House (Bill 104–3)
6 December 2016	Third reading
12 December 2016	Royal assent

This Act is administered by the Ministry for Primary Industries.

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2016