

New Zealand Horticulture Export Authority Amendment Bill (No 2)

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the New Zealand Horticulture Export Authority Amendment Bill (No 2) and recommends that it be passed with the amendments shown.

Introduction

The New Zealand Horticulture Export Authority is a statutory Authority established by the New Zealand Horticulture Export Authority Act 1987. The primary function of the Authority is to promote the effective export marketing of horticultural products. The Authority covers the export of products prescribed by Order in Council, and it has the power to approve export marketing strategies and license exporters to implement those strategies. It is predominantly funded by fees imposed on exporters of these products.

The primary objectives of the bill are to provide the kiwifruit industry with an option to co-ordinate the export of kiwifruit for consumption in Australia and to ensure the New Zealand Horticulture Export Authority Act 1987 is consistent with New Zealand's international trade obligations. It also improves the administrative efficiency of the Authority.

Kiwifruit exports to Australia

Kiwifruit exports to Australia are worth \$14 to \$18 million per annum. The Act could already apply to kiwifruit exports generally but this would create a conflict with the Kiwifruit Export Regulations 1999. Of the 353 submissions that commented on clause 3, all but one supported the clause, as it allows kiwifruit exports for consumption in Australia to be regulated under the Act.

Consistency with international trade obligations

One of the primary purposes of the bill is to remove the prospect of any quantitative restrictions, to ensure compliance with international obligations.¹ The principal Act currently contains provisions that allow quantitative restrictions for the number of exporters and the volume of exports.

To achieve the removal of any quantitative restrictions the Government proposed the repeal of section 26(2A). This would remove any ambiguity on whether an export marketing strategy under the Act could impose quantitative restrictions on exports.

Some submitters strongly advocated for the inclusion of 'flow planning' in section 26(2)(a). We were advised that the addition of these words would not be consistent with New Zealand's international trade obligations and consequently do not recommend the addition of these words to section 26(2)(a).

We consider it necessary to our international obligations to reverse the wording in clause 5 and we support two additional amendments. A number of submitters proposed the insertion of the words 'market development' into section 26(2)(a) of the principal Act. We consider market development a key rationale for the Act and it is not adequately covered at present. To unambiguously achieve the objective of removal of any quantitative restrictions on the export of products, we recommend that section 26(2A) should be reversed, instead of repealed, so that it explicitly states that an export marketing strategy cannot impose quantitative restrictions on exports.

¹ Namely the General Agreement on Tariffs and Trade, Australia New Zealand Closer Economic Relations Trade Agreement, and the Agreement between New Zealand and Singapore on a Closer Economic Partnership.

Administrative improvements

The Authority proposed three administrative amendments to the principal Act. The first is the provision of a power to allow the arbitrator, in an appeal under the Act, to award all costs of the appeal. The second amendment proposed by the Authority would enable it to apply the hearing processes for export licence decisions in the Act to other statutory export decisions of the Authority. The last proposal is to empower the Authority to cancel redundant export licences. We consider that the Authority has consulted sufficiently and obtained the relevant support of the industries covered by the Act. We therefore support these administrative amendments to the principal Act and recommend accordingly.

Appendix

Committee process

The New Zealand Horticulture Export Authority Amendment Bill (No 2) was referred to the committee on 1 April 2003. The closing date for submissions was 12 May 2003. We received and considered 21 substantive submissions and 341 form submissions from interested groups and individuals. We heard seven submissions. Hearing of evidence took 1 hour 40 minutes and consideration took 1 hour 15 minutes.

We received advice from the Ministry of Agriculture and Forestry and the Ministry of Foreign Affairs and Trade.

Committee membership

Hon David Carter (Chairperson)

Janet Mackey (Deputy Chairperson)

Clayton Cosgrove

Hon Harry Duynhoven

Gerrard Eckhoff

Ian Ewen-Street

Phil Heatley

Hon Dover Samuels

R Doug Woolerton

Hon Harry Duynhoven replaced Hon Damien O'Connor on 10 June 2003.

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

Hon Damien O'Connor

New Zealand Horticulture Export Authority Amendment Bill (No 2)

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the New Zealand Horticulture Export Authority Amendment Act (No 2) **2003**.
- (2) In this Act, the New Zealand Horticulture Export Authority Act 1987¹ is called “the principal Act”.

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¹ 1987 No 93

Part 1

Preliminary provisions

2 Commencement

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

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3 Interpretation

Section 2 of the principal Act is amended by adding to paragraph (c) of the definition of **product** the word “; or”, and by adding to that definition the following paragraph:

“(d) kiwifruit for export to Australia for consumption in Australia”.

Part 2

Amendments to substantive provisions

- 4 Protection of information supplied to Authority** 5
Section 22(1)(a)(ii) of the principal Act is amended by inserting, after the words “any hearing under”, the words “section 37 or”.
- Struck out (unanimous)**
- 5 Repeal of provisions limiting number of exporters or volume of export product** 10
Sections 26(2A) and (2B) and 27(4) and (5) of the principal Act are repealed.
- New (unanimous)**
- 5 Export marketing strategy to be formulated where product subject to export licensing**
- (1) Section 26(2)(a) of the principal Act is amended by inserting, 15
after the word “promotion,”, the words “market development,”.
- (2) Section 26(2A) of the principal Act is amended by omitting
the words “may include either or both of the following:”, and
substituting the words “must not include—”. 20
- (3) Section 26(2B) of the principal Act is repealed.
- 5A Export marketing strategy to be kept under review**
Section 27(4) and (5) of the principal Act are repealed.
- 6 Grant of licence or provisional licence**
- (1) Section 36(1) of the principal Act is amended by omitting the 25
words “Subject to subsection (4A) of this section,”.
- (2) Section 36(3) of the principal Act is amended by inserting,
after the words “licence or provisional licence,”, the words
“or determines that it should grant a provisional licence
only,”. 30

- (3) Section 36(4A) of the principal Act is repealed.

7 Conditions of licences

Section 37 of the principal Act is amended by adding the following subsections:

- “(3) A licensed exporter who is dissatisfied with any condition imposed under subsection (1)(b) or (c), or any variation of a condition under subsection (2), may, within 30 days of receiving notice of the condition or variation concerned, request the Authority to reconsider its imposition or variation of the condition, and if necessary afford the exporter a hearing. 5 10
- “(4) If the exporter requests a hearing on the matter, the Authority must appoint a time and place for the hearing and give reasonable notice of the appointed time and place to the exporter.
- “(5) For the purposes of any hearing under this section,— 15
- “(a) no person (other than the exporter and any person representing the exporter) is entitled to appear and be heard on the matter; and
- “(b) the Authority may seek and receive such information as it thinks fit, and consider information obtained from any source; and 20
- “(c) if the Authority proposes to take into account any information that is or may be prejudicial to the exporter’s case, the Authority must first disclose that information to the exporter and give the exporter a reasonable opportunity to rebut or comment on it. 25
- “(6) After hearing the exporter (or, if appropriate, considering the exporter’s submissions), the Authority—
- “(a) may confirm, revoke, or vary the condition or variation of condition concerned; and
- “(b) must notify the exporter in writing of its decision (giving reasons if the decision is adverse to the exporter).” 30

8 Revocation, suspension, and cancellation of licences

- (1) Section 39(5)(b) of the principal Act is amended by omitting the word “accordingly”, and substituting the words “of its decision (giving reasons if the decision is adverse to the exporter)”. 35
- (2) Section 39(6) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

- “(b) the Authority is satisfied, after proper inquiries, that—
 - “(i) the exporter has died or otherwise ceased to exist;
or
 - “(ii) the exporter is no longer exporting the product to
which the licence relates; or 5
 - “(iii) the licence has otherwise become unnecessary or
redundant.”

- 9 Exemption for single operation or trial shipment**
Section 40(2) of the principal Act is amended by adding the
words “If the Authority determines not to grant the exemption 10
applied for, it must notify the applicant of that fact in writing
as soon as practicable.”

- 10 New section 41A inserted**
The principal Act is amended by inserting, after section 41,
the following section: 15
- “41A Reconsideration of refusal or revocation of exemption,
etc**
 - “(1) An applicant for or holder of an exemption under section 40 or
section 41 who is dissatisfied with a decision of the Authority
to refuse to grant or to revoke the exemption, or to impose or 20
vary any conditions in relation to an exemption, may, within
30 days of receiving notice of the decision concerned, request
the Authority to reconsider its decision, and if necessary
afford the applicant or the holder a hearing.
 - “(2) If the person requests a hearing on the matter, the Authority 25
must appoint a time and place for the hearing and give reason-
able notice of the appointed time and place to the person.
 - “(3) For the purposes of any hearing under this section,—
 - “(a) no person (other than the applicant or holder concerned
and any person representing that person) is entitled to 30
appear and be heard on the matter; and
 - “(b) the Authority may seek and receive such information as
it thinks fit, and consider information obtained from any
source; and
 - “(c) if the Authority proposes to take into account any infor- 35
mation that is or may be prejudicial to the person’s case,
the Authority must first disclose that information to the

person and give the person a reasonable opportunity to rebut or comment on it.

- “(4) After hearing the person (or, if appropriate, considering the person’s submissions), the Authority—
- “(a) may confirm its original decision, or revoke or vary it; 5
and
 - “(b) may confirm, revoke, or vary any condition or variation of condition concerned; and
 - “(c) must notify the person in writing of its decision (giving reasons if the decision is adverse to the person).” 10

11 Appeals to arbitrator

- (1) Section 43(1) of the principal Act is amended by inserting, after the words “who is dissatisfied with any decision of the Authority”, the words “arrived at after a reconsideration or a hearing under any of **sections 37, 38, 39, and 41A**”. 15
- (2) Section 43(2) of the principal Act is amended by inserting, after the words “who is dissatisfied with any decision of the Authority”, the words “arrived at after a reconsideration or a hearing under any of **sections 36 or section 41A**”.
- (3) Section 43 of the principal Act is amended by repealing sub-section (6), and substituting the following subsections: 20
- “(6) On hearing the appeal, the arbitrator may affirm or reverse or vary the decision given by the Authority.
- “(6A) The arbitrator may also—
- “(a) award any of the costs of the appeal, as between the Authority and the appellant, as the arbitrator thinks fit; and 25
 - “(b) order either party to the appeal to pay the costs, or part of the costs, of the other party in connection with the appeal.” 30

Legislative history

11 February 2003

Introduction (Bill 31—1)

1 April 2003

First reading and referral to Primary Production Committee