

New Zealand Horticulture Export Authority Amendment Act 2003

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Date of assent 30 October 2003

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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 2003.
- (2) In this Act, the New Zealand Horticulture Export Authority Act 1987 is called “the principal Act”.

Part 1

Preliminary provisions

2 Commencement

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

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

Section 22(1)(a)(ii) of the principal Act is amended by inserting, after the words “any hearing under”, the words “section 37 or”.

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, 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—”.
- (3) Section 26(2B) of the principal Act is repealed.

6 Export marketing strategy to be kept under review

Section 27(4) and (5) of the principal Act are repealed.

7 Grant of licence or provisional licence

- (1) Section 36(1) of the principal Act is amended by omitting the 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,”
- (3) Section 36(4A) of the principal Act is repealed.

8 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.
- “(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,—
 - “(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
 - “(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.
- “(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).”

9 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)”.
- (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
 - “(iii) the licence has otherwise become unnecessary or redundant.”

10 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 applied for, it must notify the applicant of that fact in writing as soon as practicable.”

11 New section 41A inserted

The principal Act is amended by inserting, after section 41, the following section:

“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 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 must appoint a time and place for the hearing and give reasonable 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 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 information 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; 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).”

12 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”.
- (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 section 36 or section 41A”.
- (3) Section 43 of the principal Act is amended by repealing subsection (6), and substituting the following subsections:
- “(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
- “(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.”

Legislative history

11 February 2003	Introduction (Bill 31-1),
1 April 2003	First reading and referral to Primary Production Committee
19 August 2003	Reported from Primary Production Committee (Bill 31-2)
21 October 2003	Second reading, committee of the whole House, third reading
