Version
as at 10 July 2026

New Zealand Horticulture Export Authority Act 1987

Public Act	1987 No 93
Date of assent	18 June 1987
Commencement	see section 1(2)

Contents

		Page
	Title	4
1	Short Title and commencement	4
2	Interpretation	4
2A	Transitional, savings, and related provisions	7
3	Application and limitation of Act	7
4	Administration of Act	7
	Part 1 **New Zealand Horticulture Export Authority**	
5	Establishment	7
	Functions and powers of Authority	
6	Functions of Authority	8
7	Additional special functions of Authority in relation to prescribed products	8
8	Powers of Authority	9
8A	Public Bodies Contracts Act 1959 applies to Authority	9
9	Authority to implement general policy of Government	9

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry for Primary Industries.

Members, meetings, officers, and employees

10 Membership 10
11 Terms of office 10
12 Vacation of office 11
13 Deputies of members 11
13A Alternate chairperson 12
14 Meetings of Authority 12
15 Authority may appoint committees 13
16 Authority to appoint chief executive officer 13
17 Other officers and employees 14
18 Employment of experts 14
19 Superannuation and retiring allowances 14
20 Remuneration and allowances 14
21 Protection in respect of acts of Authority and members 15
22 Protection of information supplied to Authority 15

Conflicts of interest

23 Meaning of terms used in sections 23AA to 23AC 16
23AA Interests that must be disclosed 16
23AB How and when interests must be disclosed 17
23AC Consequences of being interested in matter 17
23AD Consequences of failing to comply with section 23AB or 23AC 18

Performance reviews

23A Performance reviews 18

Part 2
Prescribed products

24 Order in Council may declare product to be prescribed product 20
25 Requirements to be met before prescribed product declared 21
25A Product group must demonstrate support for proposal 22

Export marketing strategy to be formulated where product subject to export licensing

26 Export marketing strategy to be formulated where product subject to export licensing 24
27 Export marketing strategy to be kept under review 25
27A Changes to tiers of licence 26
28 Approval of export marketing strategy or proposal to replace, amend, or revoke strategy 27
29 Date of coming into force of approved strategy or proposal for purposes of export licensing 28
30 Notification of approval of strategy or proposal 28

Amendment or revocation of Order in Council declaring product to be prescribed product

31 Amendment or revocation of Order in Council 29
32 Requirements to be met before Minister may recommend amendment of Order in Council 30
33 Requirements to be met before Minister may recommend revocation of Order in Council 31

Part 3
Export licensing

34 Exporters of prescribed product to hold export licence 32
35 Application for export licence 33
36 Grant of licence or provisional licence 33
37 Conditions of licences 35
38 Additional conditions may be imposed where prejudice to export marketing strategy 36
39 Revocation, suspension, and cancellation of licences 39
40 Exemption for single operation, trial shipment, or joint venture 41
41 Exemption from compliance with export marketing strategy 42
41A Reconsideration of refusal or revocation of exemption, etc 43
42 Register of export licences 43
42A Agreements to share information with Authority 44

Appeals

43 Appeals to arbitrator 45
44 Appeals to High Court on question of law 47
45 Notice of appeal 47
46 Right to appear and be heard on appeals 47
47 Orders relating to determination of appeals 48
48 Dismissal of appeal 48
49 Extension of time 48
50 Date of hearing 49

Part 4
Financial provisions

51 Funds of Authority 49
52 Bank accounts 49
53 Investment of money 49
54 Borrowing powers 50
55 Financial year 50
56 Unauthorised expenditure 50
57 Financial statements must be prepared 50
57A Financial statements must be audited 50
58 Annual report and financial statements 51
59 Taxation *[Repealed]* 51

Part 5
Miscellaneous provisions

60	Act not to derogate from or limit Commerce Act 1986	51
61	Service of notices	52
62	Fee regulations	52
62A	Levy regulations: levy payable to Authority	54
62B	Levy regulations: levies payable to recognised product groups	55
62C	Application of Commodity Levies Act 1990 to prescribed products for purposes of section 62B	56
62D	Other regulations	57
63	Offences and penalties	58
64	Consequential amendments *[Repealed]*	58
	Schedule 1	59
	Transitional, savings, and related provisions	

An Act to establish the New Zealand Horticulture Export Authority and to provide for its powers and functions

1 Short Title and commencement

(1) This Act may be cited as the New Zealand Horticulture Export Authority Act 1987.

(2) This Act shall come into force on the 28th day after the day on which it receives the Governor-General's assent.

2 Interpretation

In this Act, unless the context otherwise requires,—

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

Authority means the New Zealand Horticulture Export Authority established under section 5

current export marketing strategy, in relation to a prescribed product, means the latest export marketing strategy for that product approved by the Authority under section 28 and in force in accordance with section 29; and includes any approved amendments to any such strategy that are in force in accordance with section 29

export means the export of any product for the purpose of sale; but does not include the export of—

(a) product samples exported only for marketing purposes and not for sale:

(b) gifts of product:

(c) product which forms part of the personal baggage of a passenger

financial statements has the same meaning as in section 6 of the Financial Reporting Act 2013

generally accepted accounting practice has the same meaning as in section 8 of the Financial Reporting Act 2013

grade means an indication of the degree of refinement of a product

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)

licensed exporter, in relation to a product, means a person who holds an export licence for that product

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

prescribed product means a product declared by Order in Council made under section 24 to be a prescribed product

processed, in relation to a product,—

(a) means an applied change to the natural state of the product by—

(i) an alteration to the chemical structure of the product, whether by blanching, cooking, the addition of preservatives, or by other means; or

(ii) a physical change to the product by the addition of anything material, or the removal or extraction of any material part, whether the chemical structure of the product is altered or not; but

(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)

product means—

(a) plants of any cultivar, species, or variety; or

(b) the unprocessed bulbs, corms, flowers, fruit, leaves, roots, seeds, stems, or tubers, of plants of any cultivar, species, or variety; or

(ba) any moss, algae, fungi, or related organisms; or

(c) any growing material used in horticultural production composed (wholly or substantially) of bark, ponga, or a mixture of both; or

(d) kiwifruit for export to Australia for consumption in Australia

product group, in relation to a product, means an association or body of persons consisting of producers, or both producers and exporters, of that product

recognised product group means a product group—

(a) recognised for a prescribed product by an Order in Council under section 24; or

(b) declared (by such an Order in Council made before the commencement of the New Zealand Horticulture Export Authority Amendment Act 1992) to be a product group recognised under section 25 as suitable to carry out the functions of a recognised product group in relation to a product;—

and, in relation to a prescribed product, means the product group recognised for or declared in relation to that product

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

sale includes every method of disposition for valuable consideration including barter; and includes the disposition to an agent for sale on consignment; and also includes offering or attempting to sell, or receiving or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or exposed for sale; and **sell** and **sold** have corresponding meanings.

Section 2 **alternate chairperson**: inserted, on 13 December 2016, by section 4(1) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 2 **export** paragraph (a): amended, on 13 December 2016, by section 4(2) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 2 **financial statements**: inserted, on 1 April 2014, by section 125 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 2 **generally accepted accounting practice**: inserted, on 1 April 2014, by section 125 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 2 **licence**, or **export licence**: replaced, on 13 December 2016, by section 4(3) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 2 **Minister**: substituted, on 19 December 2002, by section 3(1) of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 2 **processed** paragraph (a)(ii): amended, on 13 December 2016, by section 4(4) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 2 **processed** paragraph (b): replaced, on 13 December 2016, by section 4(5) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 2 **product**: substituted, on 27 October 1992, by section 2 of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 2 **product** paragraph (ba): inserted, on 19 December 2002, by section 3(2) of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 2 **product** paragraph (ba): amended, on 13 December 2016, by section 4(6) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 2 **product** paragraph (c): amended, on 31 October 2003, by section 3 of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 2 **product** paragraph (d): added, on 31 October 2003, by section 3 of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 2 **register**: inserted, on 13 December 2016, by section 4(1) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 2 **recognised product group**: substituted, on 27 October 1992, by section 5(3) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

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.

Section 2A: inserted, on 13 December 2016, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

3 Application and limitation of Act

This Act applies to the extent that it does not conflict with any other enactment (being an Act or a legislative instrument made by Order in Council) relating to the export of any particular product.

Section 3: replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

4 Administration of Act

This Act shall be administered by the Ministry of Agriculture and Forestry.

Section 4: amended, on 1 March 1998, pursuant to section 5(1)(c) of the Ministries of Agriculture and Forestry (Restructuring) Act 1997 (1997 No 100).

Part 1
New Zealand Horticulture Export Authority

5 Establishment

(1) There is hereby established an authority to be called the New Zealand Horticulture Export Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall be capable of acquiring, holding, and disposing of real and personal property, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may do and suffer.

Functions and powers of Authority

Heading: inserted, on 13 December 2016, by section 6 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

6 Functions of Authority

(1) The primary function of the Authority shall be to promote the effective export marketing of horticultural products.

(2) Without limiting the generality of the Authority's primary function, the Authority shall also have the following functions:

(a) to act as a forum for the exchange of information and for the discussion of matters of common concern between horticultural organisations, product groups, producers, exporters, and the Government in respect of the export marketing of horticultural products:

(b) to encourage and undertake market analysis and research or experimental work into the export marketing of horticultural products:

(c) to collect, co-ordinate, and disseminate, in such manner as the Authority considers appropriate, information received or obtained by the Authority through research or other activities of the Authority:

(d) to liaise with horticultural groups and other interested persons and organisations (including any appropriate departments of State) on matters such as the following:

(i) the distribution, transportation, and packaging of horticultural products:

(ii) trade barriers and their removal:

(iii) the fostering and development of a co-ordinated strategy for the export of horticultural products:

(iv) participation in international trade exhibitions:

(e) to report to and advise the Minister on such matters relating to its functions as the Authority thinks appropriate:

(f) such other functions as may be conferred on the Authority by or under this or any other Act.

Section 6(2)(e): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

7 Additional special functions of Authority in relation to prescribed products

The Authority shall, in addition to its functions under section 6, have in relation to prescribed products the following special functions:

(a) to assist in the formulation of, and approve, an export marketing strategy for any prescribed product that is subject to export licensing:

(b) where appropriate, to administer the export licensing of prescribed products in accordance with Part 3:

(c) to promote compliance with such grade standards relating to prescribed products as may be prescribed by regulations made under this or any other Act:

(d) *[Repealed]*

(e) such other functions as may be conferred on the Authority in relation to prescribed products by or under this or any other Act.

Section 7(d): repealed, on 13 December 2016, by section 34 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

8 Powers of Authority

(1) The Authority shall have all the powers that are reasonably necessary or expedient to enable it to carry out its functions.

(2) Without limiting the generality of its powers under subsection (1), the Authority may—

(a) make grants or advances of money, on such terms and conditions as it thinks fit, to any product group or any person or body engaged in any activity which has the purpose or effect of promoting the export marketing of horticultural products:

(b) purchase, take on lease, hire, or otherwise acquire any real or personal property, and improve, manage, and develop such property:

(c) sell, lease, hire, or otherwise dispose of any real or personal property or any interest in any real or personal property vested in the Authority:

(d) solicit and accept for the purposes of the Authority any money, land, or other property from any person or body by way of grant, subsidy, donation, gift, subscription, charge for the provision of services or information, or otherwise.

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.

Section 8A: inserted, on 13 December 2016, by section 7 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

9 Authority to implement general policy of Government

(1) In the exercise of its functions and powers under this Act, the Authority shall give effect to the general policy of the Government in relation to those functions and powers as communicated to it from time to time by notice in writing by the Minister.

(1A) However, the Authority must give effect to the policy of Government in relation to international trade matters as communicated to it by notice in writing by

the Minister of the Crown who (under the authority of any warrant or with the authority of the Prime Minister) is in charge of international trade.

(2) Where a notice is given to the Authority under subsection (1), the Ministers shall, as soon as practicable after the giving of the notice, publish in the *Gazette* and lay before the House of Representatives a copy of the notice.

Section 9(1): amended, on 19 December 2002, by section 4(1) of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 9(1A): inserted, on 19 December 2002, by section 4(2) of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Members, meetings, officers, and employees

Heading: inserted, on 13 December 2016, by section 8 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

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.

Section 10: replaced, on 13 December 2016, by section 8 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

11 Terms of office

(1) Each member of the Authority shall be appointed for a term of—

(a) 3 years; or

(b) where a nominating body specifies a period of less than 3 years when making the nomination for appointment, that lesser period.

(2) Every member shall be eligible for reappointment from time to time.

(3) Where the term for which a member has been appointed expires, that member, unless sooner vacating or removed from office under section 12, shall continue to hold office, by virtue of the appointment for the term that has expired, until—

(a) that member is reappointed; or

(b) a successor to that member is appointed; or

(c) that member is informed in writing by the Minister that he or she is not to be reappointed and is not to hold office until a successor is appointed.

Section 11(3)(c): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

12 Vacation of office

(1) Any member may at any time be removed from office by the Minister for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(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.

(3) Any member may at any time resign the office of member by notice in writing addressed to the Minister.

(4) Where any member of the Authority dies or ceases to hold office under this section, the office shall become vacant, and the vacancy shall be filled in the manner in which the appointment to the vacant office was originally made.

(5) The functions and powers of the Authority shall not be affected by any vacancy in its membership.

Section 12(1): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 12(1): amended, on 1 January 2002, by section 70(1) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 12(2): replaced, on 13 December 2016, by section 34 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 12(3): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

13 Deputies of members

(1) The Minister may, either at the time of the appointment of a member to the Authority or at any later time, appoint a deputy for that member in the same way as the member was appointed, and that deputy may act for the member whenever the member is prevented by illness, absence, or other sufficient cause from performing the duties of the member's office.

(2) An appointment as a deputy under this section may be revoked by the Minister at any time.

(3) Any person appointed as a deputy under this section shall, while so acting, be deemed to be a member of the Authority appointed under the same conditions as the member for whom that person is deputising.

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

Section 13(1): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 13(2): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 13(4): inserted, on 13 December 2016, by section 9 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

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.

Section 13A: inserted, on 13 December 2016, by section 10 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

14 Meetings of Authority

(1) The first meeting of the Authority shall be held at a time and place to be appointed by the Minister.

(2) Subsequent meetings of the Authority shall be held at such times and places as the Authority, or the chairperson with the general or specific authorisation of the Authority, from time to time appoints.

(3) The quorum at any meeting of the Authority shall be 3 members.

(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).

(5) All questions arising at any meeting of the Authority shall be decided by a majority of votes of the members present and voting. The presiding member

shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(6) A resolution in writing signed, or assented to by letter, telegram, or telex, by all members of the Authority shall be as valid and effective as if it had been passed at a meeting of the Authority duly called and constituted.

(7) Subject to this Act, the Authority may regulate its own procedure.

Section 14(1): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 14(2): amended, on 13 December 2016, by section 34 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 14(3): amended, on 27 October 1992, by section 3(2) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 14(4): replaced, on 13 December 2016, by section 11 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

15 Authority may appoint committees

(1) The Authority may from time to time appoint, and also alter, discharge, and reconstitute, committees consisting of such number of persons as it thinks fit to investigate and advise the Authority on such matters relating to its functions and powers as are referred to them by the Authority.

(2) A person may be appointed to be a member of any committee under this section whether or not that person is a member of the Authority, but where a person who is not a member is appointed chairperson of a committee, the Authority shall either confirm or reject that appointment.

(3) Subject to the provisions of this Act and to any directions given by the Authority, every such committee may regulate its own procedure.

Section 15(2): amended, on 13 December 2016, by section 34 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

16 Authority to appoint chief executive officer

(1) The Authority shall appoint and employ a suitably qualified person to act as the chief executive officer to the Authority.

(2) The chief executive officer shall be appointed for a term of not more than 5 years and shall be eligible for reappointment.

(3) The chief executive officer shall carry out such duties as may be assigned to that officer by the Authority, and shall be responsible for the supervision of officers and employees appointed pursuant to section 17 and of persons appointed pursuant to section 18.

(4) Subject to any contract of service, the Authority may at any time, for reasonable cause, remove the chief executive officer from office.

(5) The chief executive officer shall be paid such salary, allowances, and expenses as the Authority from time to time determines.

17 Other officers and employees

(1) The Authority may from time to time appoint a Registrar and such other officers and employees as it thinks necessary for the efficient performance and exercise of its functions and powers.

(2) Persons appointed under subsection (1) shall be employed on such terms and conditions of employment, and shall be paid such salaries and allowances, as the Authority thinks fit.

(3) Subject to any contract of service, the Authority may at any time, for reasonable cause, remove any officer or employee from office or employment.

18 Employment of experts

(1) The Authority may from time to time appoint any person with expert knowledge or other attributes of value to the Authority to carry out any specified activity that will assist the Authority in performing and exercising its functions and powers.

(2) Any person appointed under subsection (1) shall be appointed on such terms and conditions, and shall be paid such remuneration and allowances, as the Authority thinks fit.

19 Superannuation and retiring allowances

The Authority may, for the purpose of providing superannuation or retiring allowances for its officers or employees appointed under section 16 or section 17, from time to time pay sums of money by way of subsidy into any retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013).

Section 19: substituted, on 1 April 1991, by section 80 of the National Provident Fund Restructuring Act 1990 (1990 No 126).

Section 19: amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

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.

Section 20: replaced, on 13 December 2016, by section 12 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

21 Protection in respect of acts of Authority and members

(1) No member of the Authority or any of its committees, and no officer or employee of the Authority or person appointed under section 18, shall be personally liable for any liability of the Authority or for any act done or omitted by the Authority or any of its committees, or by any member, officer, or employee of the Authority or person so appointed, in good faith in pursuance or intended pursuance of the functions or powers of the Authority.

(2) No appointment of a person as a member or deputy under section 10 or section 12 or section 13, and no act done by such person while acting as a member of the Authority, shall in any proceedings be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

22 Protection of information supplied to Authority

(1) This section applies to commercial information of a sensitive nature, being information—

(a) that is supplied to the Authority by—

(i) an applicant for a licence or an exemption under Part 3, for the purposes of the application or any hearing on the application; or

(ii) a licensed exporter, pursuant to any condition attached to that exporter's licence or for the purposes of any hearing under section 37 or section 38 or section 39; and

(iii) *[Repealed]*

(b) the disclosure of which would reveal a trade secret, or would be likely unreasonably to prejudice the commercial position of the person who supplied the information.

(2) Every member of the Authority or of any committee of the Authority and every officer or employee of the Authority who—

(a) uses any information to which this section applies other than for the purposes of carrying out that person's functions under this Act; or

(b) discloses any such information other than for the purposes of carrying out that person's functions under this Act, or in accordance with the Official Information Act 1982 or any other enactment,—

commits an offence and shall be liable on conviction to a fine not exceeding $10,000.

Section 22(1)(a)(ii): amended, on 13 December 2016, by section 34 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 22(1)(a)(ii): amended, on 31 October 2003, by section 4 of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 22(1)(a)(iii): repealed, on 13 December 2016, by section 34 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 22(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Conflicts of interest

Heading: inserted, on 13 December 2016, by section 13 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

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.

Section 23: replaced, on 13 December 2016, by section 13 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

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.

Section 23AA: inserted, on 13 December 2016, by section 13 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

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.

Section 23AB: inserted, on 13 December 2016, by section 13 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

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.

Section 23AC: inserted, on 13 December 2016, by section 13 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

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.

Section 23AD: inserted, on 13 December 2016, by section 13 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Performance reviews

Heading: inserted, on 13 December 2016, by section 13 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

23A Performance reviews

(1) As at 1 October in a year determined under subsections (2) and (3), and in every fifth year thereafter, there shall be carried out, in accordance with this section, a review of how effectively and efficiently the Authority is performing in terms of the policies, procedures, and strategies of the Authority (in this section referred to as a performance review).

(2) If, more than 4 months before 1 October in 1992 or 1993 the Authority decides that the first performance review is to be carried out as at that day, it shall be carried out as at that day.

(3) Subject to subsection (2), the first performance review shall be carried out as at 1 October 1994.

(4) While a performance review shall relate to—

(a) the Authority's performance at the day as at which the review is carried out; and

(b) the Authority's prospective future performance,—

the person carrying it out shall have regard to its performance during the 5 years before that day.

(5) The terms of reference for every performance review shall be—

(a) agreed by the Minister and the Authority; or

(b) subject to subsection (6), specified by the Governor-General by Order in Council, made on the recommendation of the Minister.

(6) The Minister shall not recommend the making of an order under subsection (5) in relation to any performance review unless the Minister—

(a) has (at least 2 months before the day as at which the review is to be carried out) consulted the Authority as to the terms of reference for the review; and

(b) is satisfied that he or she and the Authority are unlikely to be able to agree terms of reference before that day.

(7) Subject to subsection (8), every performance review shall be carried out by a person appointed by the Minister and the Authority jointly.

(8) Where the Minister and the Authority have not appointed a person to carry out a performance review at least 1 month before the day as at which it is to be carried out, it shall be carried out by a person appointed by the Minister.

(9) For the purposes of this section, how efficiently and effectively the Authority is performing includes—

(a) the extent (if any) to which the Authority has established objectives for the performance of its functions; and

(b) any such objectives established; and

(c) the extent (if any) to which the Authority has achieved any such objectives established; and

(d) the extent (if any) to which the Authority has put in place policies and strategies to use its resources effectively and efficiently for the purpose of achieving its objectives; and

(e) any such policies and strategies put in place; and

(f) the manner in which any such policies and strategies put in place were put in place;—

but the fact that any other matter is agreed or specified under subsection (5) is conclusive evidence that it relates to how efficiently and effectively the Authority is performing.

(10) Every person who carries out a performance review shall, after carrying it out, prepare a written report on the conclusions the person reached as a result of

carrying it out; and shall give copies of the report to the Minister and the Authority.

(11) The Authority shall pay the reasonable costs of every performance review; and the person carrying it out may recover those costs accordingly as a debt due to the person.

(12) The reasonable costs of a performance review are—

(a) the remuneration agreed on the appointment by the Minister and the Authority (or, as the case may be, by the Minister) of the person carrying it out to be paid to the person for carrying it out and reporting to the Minister and the Authority; and

(b) the person's reasonable costs in doing so.

Section 23A: inserted, on 27 October 1992, by section 4 of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 23A(5)(a): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 23A(5)(b): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 23A(6): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 23A(6)(a): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 23A(6)(b): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 23A(7): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 23A(8): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 23A(10): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 23A(12)(a): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Part 2
Prescribed products

24 Order in Council may declare product to be prescribed product

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

(a) declare any product to be a prescribed product; and

(b) recognise for the product any product group that is a body corporate.

(2) The Order in Council—

(a) shall specify whether the product is to be subject to export licensing in accordance with Part 3; and

(b) *[Repealed]*

(c) where the product is a species that contains a number of varieties or cultivars, may exclude from that product any specified variety or cultivar.

(3) An Order in Council made under this section may be amended or revoked only in accordance with section 31(2) or section 32 or section 33.

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

(5) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 24(1): substituted, on 27 October 1992, by section 5(1) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 24(1): amended, on 13 December 2016, by section 14(1) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 24(2)(b): repealed, on 27 October 1992, by section 5(2) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 24(4): inserted, on 13 December 2016, by section 14(2) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 24(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

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.

Section 25: replaced, on 13 December 2016, by section 15 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

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.

Section 25A: inserted, on 13 December 2016, by section 15 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Export marketing strategy to be formulated where product subject to export licensing

26 Export marketing strategy to be formulated where product subject to export licensing

(1) The recognised product group for a product that is specified by Order in Council to be subject to export licensing shall, as soon as practicable after the making of that order, formulate an export marketing strategy for the product.

(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.

(2A) The export marketing strategy must not include—

(a) a limitation on the volume of the product to be exported to any market, or to any part of a market:

(b) a limitation on the number of exporters to be licensed to export to any market, or to any part of a market.

(2B) *[Repealed]*

(3) In formulating the export marketing strategy, the recognised product group shall consult with—

(a) all other associations or bodies representing producers or exporters, or both producers and exporters, of the prescribed product; and

(b) where practicable, other persons or bodies who are likely to be specially affected by the provisions of the export marketing strategy; and

(c) such other persons or bodies involved with the carrying out of research into the product, or the provision of transport or packaging or other export-related services for the product, as the product group thinks fit.

(4) The recognised product group shall, after formulating the export marketing strategy, submit it to the Authority for approval under section 28, together with details of its consultations with the associations, persons, and bodies referred to in subsection (3).

Section 26(2): replaced, on 13 December 2016, by section 16 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 26(2AA): inserted, on 13 December 2016, by section 16 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 26(2AB): inserted, on 13 December 2016, by section 16 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 26(2AC): inserted, on 13 December 2016, by section 16 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 26(2A): inserted, on 27 October 1992, by section 6 of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 26(2A): amended, on 31 October 2003, by section 5(2) of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 26(2B): repealed, on 31 October 2003, by section 5(3) of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

27 Export marketing strategy to be kept under review

(1) The recognised product group for a prescribed product shall keep its export marketing strategy under review with a view to determining whether, in light of changing circumstances or new developments, it is necessary or desirable to replace or amend or revoke the strategy.

(2) The recognised product group may, after such consultation with the persons specified in section 26(3) as is reasonable having regard to the extent of any proposed change, submit to the Authority for approval any proposal to replace or amend the export marketing strategy, together with details of the consultations carried out on the proposal.

(3) The Authority may at any time, of its own motion or at the request of any producer, exporter, or other interested party,—

(a) require the recognised product group to carry out a general review of its export marketing strategy; or

(b) recommend to the recognised product group that any particular provision or part of the strategy be reviewed or amended or revoked.

(4) *[Repealed]*

(5) *[Repealed]*

Section 27(2): amended, on 27 October 1992, by section 7(1) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 27(4): repealed, on 31 October 2003, by section 6 of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 27(5): repealed, on 31 October 2003, by section 6 of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

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.

Section 27A: inserted, on 13 December 2016, by section 17 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

28 Approval of export marketing strategy or proposal to replace, amend, or revoke strategy

(1) After considering a strategy or a proposal submitted to it under section 26 or section 27, the Authority may, if it considers that—

(a) there has been insufficient consultation; or

(b) the provisions of the strategy or proposal are in any way unreasonable or defective; or

(c) there is opposition that is real and of substance to any of the provisions of the strategy or proposal,—

refer the strategy or proposal, together with any recommendation of the Authority, back to the recognised product group for review or further consultation.

(2) The Authority shall not approve an export marketing strategy or proposal unless satisfied that—

(a) the consultations referred to in section 26(3) or section 27(2) have taken place; and

(b) having regard to the general requirement under Part 3 for licensed exporters to carry out their operations in such a way as not to prejudice the strategy, the terms of the strategy or proposal are reasonable; and

(c) the long-term effectiveness of the marketing for export of the product concerned would be enhanced by (as the case may be)—

(i) conducting it in accordance with the strategy proposed (rather than have no strategy at all); or

(ii) conducting it in accordance with the proposed replacement strategy (rather than in accordance with the current strategy); or

(iii) conducting it in accordance with the current strategy as proposed to be amended (rather than in accordance with that strategy in its present form).

Section 28(2): amended, on 27 October 1992, by section 8(1) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 28(2)(c): substituted, on 27 October 1992, by section 8(2) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

29 Date of coming into force of approved strategy or proposal for purposes of export licensing

(1) Where the Authority approves a strategy or a proposal under section 28, it shall fix a date on which the strategy or proposal will come into force for the purposes of Part 3.

(2) In fixing any date under this section, the Authority shall—

(a) consult with the recognised product group; and

(b) ensure that the date fixed allows for such notice of the terms of the strategy or proposal to exporters of the product as is reasonable having regard to the content of the strategy or proposal; and

(c) where practicable, and unless there is good reason to the contrary, ensure that any strategy or proposal for change comes into force at a time that falls between the main export seasons for the product.

(3) The Authority may at any time, after consultation with the recognised product group, amend any date fixed under this section to a later date, and where this occurs the strategy or proposal shall not come into force until that later date.

30 Notification of approval of strategy or proposal

(1) Where the Authority first approves an export marketing strategy for a prescribed product, it shall—

(a) by notice published in the *Gazette*, specify—

(i) the date on which it approved the strategy; and

(ii) the date fixed under section 29 for the coming into force of the strategy; and

(iii) that, from the date fixed for the coming into force of the strategy, any person who wishes to export the prescribed product will be required to hold an export licence that allows the licence holder to export the product to the intended market; and

(iv) the method by which application may be made for an export licence; and

(b) supply a copy of the written notice to the Minister, the recognised product group, and those associations, persons, and bodies notified to the Authority under section 26(4) as having taken part in consultations on the formulation of the strategy; and

(c) cause the notice to be published in such trade journals or other publications as the Authority thinks fit; and

(d) as soon as is practicable in the circumstances, supply a copy of the strategy to every licensed exporter of the product.

(2) Where the Authority approves any proposal to replace, amend, or revoke an export marketing strategy, it shall—

(a) notify the recognised product group accordingly; and

(b) supply a copy of the terms of the proposal to every licensed exporter of the product, and notify every such exporter of—

(i) the fact and date of its approval; and

(ii) the date fixed under section 29 of the coming into force of the proposal.

(3) Where the Authority amends any date fixed for the coming into force of a strategy or proposal under section 29(3), it shall—

(a) where the date relates to the first approved marketing strategy for the product,—

(i) publish the amended date in the *Gazette*, and such trade journals or other publications as the Authority thinks fit; and

(ii) notify the persons and bodies specified in subsection (1)(b); and

(b) in every case, notify the amended date as soon as possible to the recognised product group and to all licensed exporters of the product.

Section 30(1)(a)(iii): amended, on 13 December 2016, by section 18 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 30(1)(b): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Amendment or revocation of Order in Council declaring product to be prescribed product

31 Amendment or revocation of Order in Council

(1) The Governor-General may from time to time, on the recommendation of the Minister in accordance with section 32 or section 33,—

(a) amend an Order in Council made under section 24 by—

(i) adding or deleting any specification that the product is to be subject to export licensing; or

(ii) substituting a different recognised product group for that named in the order; or

(iii) excluding any specified variety or cultivar of the product to which the order relates; or

(b) revoke any such Order in Council.

(2) Notwithstanding subsection (1), or anything in sections 32 and 33, the Governor-General may from time to time, by Order in Council, amend any Order in Council made under section 24 for the purpose of correcting any error or making any minor or technical amendment.

(3) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):

(a) an amendment under this section:

(b) a revocation under this section.

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 31(1): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 31(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

32 Requirements to be met before Minister may recommend amendment of Order in Council

(1) The Minister shall not recommend any amendment of an Order in Council made under section 24 that would render the product concerned subject to export licensing unless the requirements specified in section 25 in relation to the original Order in Council are also met in relation to the proposed amendment.

(2) The Minister shall not recommend any amendment of an Order in Council made under section 24 that would delete any specification that the product is subject to export licensing unless—

(a) the recognised product group so requests; or

(b) the Minister, after consultation with the Authority, the recognised product group, and any other persons that the Minister thinks fit, is satisfied that it is not in the interests of the export marketing of the product that the product continue to be subject to export licensing.

(3) The Minister shall not recommend any amendment of an Order in Council made under section 24 that would substitute a different recognised product group for that named in the order unless—

(a) the product group named in the order so requests; or

(b) the Minister, having regard to the matters specified in section 25(2), considers that another product group would be more suitable to carry out the functions of a recognised product group in respect of the product,

and that other product group is willing to be named as the recognised product group.

(4) Before recommending any amendment of an Order in Council made under section 24 that would exclude any specified variety or cultivar from the order, the Minister shall—

(a) consult with the Authority and the recognised product group; and

(b) have regard to the matters specified in section 25(3).

Section 32 heading: amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 32(1): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 32(2): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 32(2)(b): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 32(3): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 32(3)(b): amended, on 13 December 2016, by section 34 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 32(3)(b): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 32(4): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 32(4)(b): amended, on 13 December 2016, by section 34 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

33 Requirements to be met before Minister may recommend revocation of Order in Council

The Minister shall not recommend the revocation of an Order in Council made under section 24 unless—

(a) the recognised product group so requests 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; or

(b) the Minister is satisfied that the recognised product group is no longer in existence; or

(c) the Minister, after consultation with the Authority, the recognised product group, and any other persons that the Minister thinks fit, is satisfied that—

(i) the recognised product group is no longer able or suitable to carry out its functions under this Act; or

(ii) it is not in the interests of the export marketing of the product that it continue to be a prescribed product; or

(iii) it is not in the wider public interest that the product continue to be a prescribed product.

Section 33 heading: amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 33: amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 33(a): amended, on 13 December 2016, by section 19 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 33(b): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 33(c): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Part 3
Export licensing

34 Exporters of prescribed product to hold export licence

(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) However, subsection (1) does not apply to the export of a product—

(a) which is not specified by Order in Council made under this Act to be subject to export licensing; or

(b) before the date fixed in accordance with section 29 as that on which the first approved export marketing strategy for the product will come into force; or

(c) in accordance with the conditions of a certificate of exemption issued under section 40.

(3) For the purposes of this section, any person who has applied for an export licence before the date referred to in subsection (2)(b) shall be deemed to hold an export licence until the date on which the Authority notifies that person of its determination of the application.

(4) Every person who exports any prescribed product in contravention of this section commits an offence and shall be liable on conviction to a fine not exceeding $50,000.

Section 34(1): replaced, on 13 December 2016, by section 20(1) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 34(2): amended, on 13 December 2016, by section 20(2) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 34(4): amended, on 13 December 2016, by section 20(3)(a) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 34(4): amended, on 13 December 2016, by section 20(3)(b) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 34(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

35 Application for export licence

(1) Every application for an export licence shall—

(a) be made in writing addressed to the Authority on a form to be provided for that purpose by the Authority, and signed by or on behalf of the applicant; and

(b) be accompanied by the prescribed fee (if any).

(2) An application may be accompanied by any evidence the applicant thinks fit relating to the matters referred to in section 36(1).

(3) An applicant may make a statement in writing to the Authority, setting forth such information or comment as the applicant considers will assist the Authority in its consideration of the application.

Section 35(2): substituted, on 27 October 1992, by section 9(7) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 35(2): amended, on 13 December 2016, by section 21 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

36 Grant of licence or provisional licence

(1) As soon as practicable after receiving an application under section 35, the Authority shall consider it and shall grant an export licence to the applicant if, and only if, the Authority is satisfied (on the basis of evidence put before it by the applicant) that the applicant—

(a) has adequate experience and competence in international marketing and in handling export product; and

(b) is of sound financial standing and of sound business repute; and

(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

(bb) understands the current export marketing strategy for the product, and is willing and able to carry on its business in a way that does not prejudice that strategy; and

(c) either—

(i) has not been convicted of an offence relating to the export of the product for which the licence is sought, or to exporting generally, and has not had any previous licence revoked; or

(ii) having been convicted of such an offence, or having had any previous export licence revoked, is nevertheless likely to carry out exporting operations properly.

(1A) The Authority shall not grant an export licence to an applicant without first—

(a) asking the recognised product group concerned for its views on—

(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

(ii) the likelihood that the applicant would carry on export operations in a way that would not prejudice the current export marketing strategy for the product; and

(b) considering all views received from the group within a reasonable time of asking.

(2) Where an applicant lacks experience in international marketing or in handling export product, but otherwise fulfils the criteria set out in paragraphs (b) to (c) of subsection (1), the Authority shall grant the applicant a provisional licence valid for such period (being a period of not less than 2 years) as may be specified in the licence.

(3) Where, after considering an application, the Authority is not satisfied that it should grant a licence or provisional licence, or determines that it should grant a provisional licence only, it shall appoint a convenient time and place for hearing the application, and shall give at least 14 days' notice of the hearing to the applicant.

(4) For the purposes of any hearing under this section,—

(a) no person (other than the applicant and any person representing the applicant) shall be 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 applicant's case, the Authority shall first disclose that information to the applicant and give the applicant a reasonable opportunity to rebut or comment on it.

(4A) *[Repealed]*

(5) After determining an application, the Authority shall—

(a) give written notice to the applicant of its decision, including the reasons for its decision in any case where it refuses to grant a licence or grants a provisional licence only; and

(b) where it has determined to grant a licence, issue the licence to the applicant on payment of the prescribed fee (if any).

(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.

(7) Nothing in subsection (6) limits or affects the ability of—

(a) the former holder of an export licence that has expired; or

(b) the holder of a current export licence,—

to apply for and be granted another.

Section 36(1): amended, on 31 October 2003, by section 7(1) of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 36(1): amended, on 27 October 1992, by section 9(1)(a) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 36(1): amended, on 27 October 1992, by section 9(1)(b) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 36(1)(ba): replaced, on 13 December 2016, by section 22(1) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 36(1)(bb): inserted, on 27 October 1992, by section 9(2) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 36(1A): inserted, on 27 October 1992, by section 9(3) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 36(1A)(a)(i): replaced, on 13 December 2016, by section 22(2) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 36(2): amended, on 27 October 1992, by section 9(4) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 36(3): amended, on 31 October 2003, by section 7(2) of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 36(4A): repealed, on 31 October 2003, by section 7(3) of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 36(6): replaced, on 13 December 2016, by section 22(3) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 36(7): added, on 27 October 1992, by section 9(6) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

37 Conditions of licences

(1) Every export licence shall be subject to—

(a) a general requirement that the licensee will carry out exporting operations in such a way as not to prejudice the current export marketing strategy for the product to which the licence relates; and

(b) such reasonable conditions as may be prescribed by the Authority relating to the keeping of such records and the furnishing of such information to the Authority as may be necessary to enable the Authority to carry out its functions; and

(c) in the case of a provisional licence, such reasonable conditions as the Authority may determine to be necessary or desirable having regard

to the licensee's lack of experience in international marketing or in handling export product.

(2) The Authority may at any time revoke or vary a condition imposed under paragraph (b) or paragraph (c) of subsection (1) after giving such notice to the licensed exporter as is reasonable in all the circumstances.

(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).

Section 37(3): added, on 31 October 2003, by section 8 of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 37(4): added, on 31 October 2003, by section 8 of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 37(5): added, on 31 October 2003, by section 8 of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 37(6): added, on 31 October 2003, by section 8 of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

38 Additional conditions may be imposed where prejudice to export marketing strategy

(1) Where the Authority believes on reasonable grounds that—

(a) a licensed exporter is conducting, or has conducted, export operations (other than operations carried out in accordance with the conditions of

an exemption granted under section 41) in such a manner as to prejudice the current export marketing strategy for the product to which the licence relates; and

(b) it is necessary or desirable to impose conditions on that exporter's licence to prevent any repetition or continuance of that prejudice,—

the Authority shall inform the exporter in writing accordingly.

(2) Any written notice under subsection (1) shall specify—

(a) the operations in respect of which it is claimed that the prejudice to the export marketing strategy is occurring or has occurred; and

(b) the nature of any conditions that the Authority considers would be necessary or desirable to prevent any further prejudice; and

(c) a day by which the exporter may make submissions to the Authority on the matter, or request the Authority for a hearing.

(2A) The day referred to in subsection (2)(c) shall be—

(a) a day not less than 7 days after the day on which the notice concerned was served, if the Authority is satisfied (on reasonable grounds) that, in the light of—

(i) the manner in which the exporter concerned has conducted or is conducting export operations; and

(ii) the period for which the exporter has conducted or has been conducting those operations in that manner; and

(iii) the effect in the marketplace of the exporter's conduct of those operations in that manner for that period; and

(iv) the total length of the export season; and

(v) the length of the export season remaining,—

rapid action must be taken to reduce or eliminate prejudice to the export marketing strategy concerned:

(b) a day not less than 30 days after the day on which the notice concerned was served, in any other case.

(3) Where the exporter requests a hearing on the matter, the Authority shall appoint a time and place for the hearing and give reasonable notice of the appointed time and place to the exporter.

(4) For the purpose of any hearing under this section,—

(a) no person (other than the exporter and any person representing the exporter) shall be 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 shall first dis-

close that information to the exporter and give the exporter a reasonable opportunity to rebut or comment on it.

(5) In determining whether or not it is necessary or desirable to impose conditions on an exporter's licence to prevent any repetition or continuance of prejudice to the export licensing strategy, the Authority shall have regard to the following matters:

(a) the seriousness or otherwise of any prejudice:

(b) the reasonableness of the relevant provisions of the strategy:

(c) the date at which such provisions came into force, and whether or not the provisions have been reviewed in light of changing circumstances or new developments:

(d) the extent of notice given to the exporter of the relevant provisions:

(e) the financial and business circumstances of the exporter:

(f) such other matters as appear to the Authority to be relevant.

(6) Where the Authority is satisfied both that prejudice to the export marketing strategy has occurred, and that it is appropriate to impose conditions on the exporter's licence to prevent any repetition or continuance of that prejudice, the Authority may attach to the exporter's licence such reasonable conditions as the Authority considers necessary or desirable to ensure that the exporter carries out export operations in compliance with the current export marketing strategy.

(7) Any conditions imposed under subsection (6)—

(a) may, notwithstanding that the export marketing strategy deals with such matters in a general way rather than imposing obligations on individual exporters, set requirements relating to—

(i) the distribution of the product by the exporter; and

(ii) the markets or market segments to which the exporter may export the product; and

(iii) the quantities and grade of product that may be exported; and

(iv) the form in which the product may be exported; and

(v) such other matters as will ensure compliance with the export marketing strategy; and

(b) may require the exporter to make returns or provide information to the Authority relating to all or any export operations of the exporter in respect of the product; and

(c) shall specify the date on which the conditions are to come into force and the period (being a period of not more than 3 years) for which they are to remain in force.

(8) The Authority may at any time revoke or vary a condition imposed under this section after giving such notice to the licensed exporter as is reasonable in all the circumstances.

Section 38(2)(c): amended, on 27 October 1992, by section 10(2) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 38(2A): inserted, on 27 October 1992, by section 10(1) of the New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100).

Section 38(7)(a)(i): amended, on 13 December 2016, by section 23 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

39 Revocation, suspension, and cancellation of licences

(1) Subject to the provisions of this section, the Authority may revoke, or suspend for a specified period not exceeding 2 years, a licence granted under this Act if—

(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

(b) since the licence was granted, the exporter has been convicted of an offence relating to the export of the product for which the licence was granted or to exporting generally, and in the opinion of the Authority the offence is of such a nature as to cast doubt on the ability of the applicant to carry out exporting operations properly; or

(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.

(2) Where the Authority proposes to revoke or suspend a licence, it shall—

(a) give the licensed exporter written notice of its intention, and of the grounds on which it proposes to revoke or suspend the licence; and

(b) in the written notice, specify a date (being a date not less than 30 days after the date of service of the notice) by which the exporter may make submissions to the Authority on the matter, or request the Authority for a hearing.

(3) Where the exporter requests a hearing on the matter, the Authority shall appoint a time and place for the hearing and give reasonable notice of the appointed time and place to the exporter.

(4) For the purposes of any hearing under this section,—

(a) no person (other than the exporter and any person representing the exporter) shall be 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 shall first disclose that information to the exporter and give the exporter a reasonable opportunity to rebut or comment on it.

(5) If, after hearing the exporter (or, as the case may be, considering any submissions made by the exporter within the time specified in the written notice or within such longer time as the Authority may allow), the Authority is satisfied of the matters specified in subsection (1), the Authority—

(a) may revoke or suspend the licence as from a specified date; and

(b) shall notify the exporter in writing of its decision (giving reasons if the decision is adverse to the exporter).

(6) The Authority may cancel the licence of a licensed exporter where—

(a) the exporter so requests the Authority by notice in writing; or

(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; or

(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.

(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).

Section 39(1)(a): replaced, on 13 December 2016, by section 24(1) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 39(1)(b): amended, on 13 December 2016, by section 24(2) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 39(1)(c): inserted, on 13 December 2016, by section 24(3) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 39(5)(b): amended, on 31 October 2003, by section 9(1) of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 39(6)(b): substituted, on 31 October 2003, by section 9(2) of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 39(6)(b)(iii): amended, on 13 December 2016, by section 24(4) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 39(6)(b)(iv): inserted, on 13 December 2016, by section 24(5) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 39(6)(b)(v): inserted, on 13 December 2016, by section 24(5) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 39(7): inserted, on 13 December 2016, by section 24(6) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 39(8): inserted, on 13 December 2016, by section 24(6) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

40 Exemption for single operation, trial shipment, or joint venture

(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.

(2) The Authority may, where it is satisfied that the grant of the exemption would not prejudice the current export marketing strategy for the product, issue to the applicant a certificate of exemption subject to such conditions as it thinks fit. 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.

(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).

(3) The Authority may at any time, for reasonable cause, revoke a certificate of exemption issued under this section, or revoke or vary any conditions attached to any such certificate, after giving such notice to the holder of the certificate as is reasonable in all the circumstances.

Section 40 heading: replaced, on 13 December 2016, by section 25(1) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 40(1): replaced, on 13 December 2016, by section 25(2) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 40(1A): inserted, on 13 December 2016, by section 25(2) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 40(2): amended, on 31 October 2003, by section 10 of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 40(2A): inserted, on 13 December 2016, by section 25(3) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

41 Exemption from compliance with export marketing strategy

(1) Any licensed exporter may apply to the Authority for an exemption from the general requirement that exporting operations be carried out in such a way as not to prejudice the current export marketing strategy for the product to which the licence relates.

(2) Any such application shall specify the operation or operations in respect of which the exemption is sought, and the reasons why the exemption should be granted.

(3) The Authority, or any member or officer of the Authority authorised by it in that behalf, may, where satisfied that—

(a) the granting of the exemption would not unduly prejudice the current export marketing strategy for the product; or

(b) notwithstanding any prejudice to the current export marketing strategy, the granting of the exemption could benefit the export marketing of that product, or of horticultural products generally, or would otherwise be in the interests of New Zealand; or

(c) failure to grant the exemption would cause undue hardship to the applicant,—

grant an exemption from compliance with the export marketing strategy subject to such conditions as the Authority, or the member or officer, thinks fit.

(4) Subject to subsection (5), every application for and every grant of an exemption shall be in writing.

(5) Where in all the circumstances it is not practicable for the application to be made or the exemption to be granted in writing, the application or grant may be made orally, but shall be reduced to writing as soon as possible.

(6) The Authority, or any member or officer authorised by the Authority in that behalf, may at any time revoke an exemption granted under this section, or revoke or vary any conditions attached to any such exemption, after giving such notice to the licensed exporter as is reasonable in all the circumstances.

Section 41(3)(b): amended, on 13 December 2016, by section 26 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

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).

Section 41A: inserted, on 31 October 2003, by section 11 of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

42 Register of export licences

(1) The Registrar appointed under section 17 shall set up and maintain a register of export licences and exemptions granted under this Act.

(2) The following matters shall be recorded in the register:

(a) in respect of a licence or provisional licence granted under this Act—

(i) the name and principal business address of the licensee:

(ii) the product or products in respect of which the licence was granted:

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

(iii) the date on which the licence was granted and where appropriate, the period for which it is valid:

(iv) any condition attached by the Authority to the licence, and, where appropriate, the period for which the condition is in force:

(v) any exemption granted to the licensee under section 41, and the particulars (not being information to which section 22 applies) of any such exemption:

(vi) any revocation, suspension, or cancellation of the licence, and the grounds for and date of the revocation, suspension, or cancellation:

(b) in respect of a certificate of exemption issued under section 40—

(i) the name and principal business address of the person to whom the certificate was issued:

(ii) the date on which the certificate was issued and, where appropriate, the period for which it is valid:

(iii) the matter in respect of which the certificate was issued:

(iv) any conditions attached to the certificate:

(c) such other particulars as may be prescribed by the Authority.

(3) Any person may, on application to the Registrar and on payment of the prescribed fee (if any), search, inspect, and obtain particulars of any entry in the register during ordinary office hours.

Section 42(2)(a)(iia): inserted, on 13 December 2016, by section 27 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

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.

Section 42A: inserted, on 13 December 2016, by section 28 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Appeals

43 Appeals to arbitrator

(1) The holder of an export licence who is dissatisfied with any decision of the Authority arrived at after a reconsideration or a hearing under any of sections 37, 38, 39, and 41A—

(a) to revoke or suspend the licence; or

(b) to impose or vary any condition of the licence; or

(c) to refuse to grant to that holder an exemption under section 41, or to revoke any such exemption, or to impose or vary any condition of any such exemption,—

may, within 28 days after receiving written notice of the decision, appeal in writing, setting out the grounds for the appeal, to the Authority.

(2) Any applicant for a licence or for a certificate of exemption under section 40, or any person who has obtained a certificate of exemption, who is dissatisfied with any decision of the Authority arrived at after a reconsideration or a hearing under section 36 or section 41A—

(a) to refuse to grant the licence or certificate of exemption; or

(b) to grant a provisional licence rather than the licence applied for; or

(c) to impose or vary any condition of the licence or certificate of exemption; or

(d) to revoke the certificate of exemption,—

may, within 28 days after receiving written notice of the decision, appeal in writing, setting out the grounds for the appeal, to the Authority.

(3) On receipt of any notice of appeal, the Authority shall refer its decision together with that notice to the arbitrator appointed pursuant to subsection (4).

(4) For the purposes of hearing any appeal under this section, the Minister shall appoint as an independent arbitrator a barrister or solicitor of the High Court of at least 7 years standing who shall be nominated by the President of the New Zealand Law Society.

(5) The arbitrator shall appoint a time and place for hearing the appeal, shall give reasonable notice of the appointed time and place to the appellant and to the Authority, and shall regulate the procedure to be followed on appeal.

(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.

(7) The decision of the arbitrator shall be notified in writing to the appellant and the Authority.

(8) The decision of the arbitrator shall be final, and shall bind both the appellant and the Authority.

(9) Where the decision of the Authority appealed against is a decision to revoke or suspend a licence or an exemption, or to impose conditions on a licence under section 38, the operation of that decision shall be suspended until the final determination of the appeal by the arbitrator.

Section 43(1): amended, on 31 October 2003, by section 12(1) of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 43(2): amended, on 31 October 2003, by section 12(2) of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 43(4): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 43(6): substituted, on 31 October 2003, by section 12(3) of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 43(6A): inserted, on 31 October 2003, by section 12(3) of the New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117).

Section 43(6A)(b): amended, on 13 December 2016, by section 29 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

44 Appeals to High Court on question of law

(1) Where a party to proceedings before the arbitrator is dissatisfied with any decision of the arbitrator as being erroneous in point of law, that party may appeal to the High Court on that question of law.

(2) Every such appeal shall be heard and determined by the High Court, the decision of which shall be final.

(3) Subject to this Act, the procedure in respect of any such appeal shall be in accordance with the rules of court.

Section 44(2): amended, on 15 August 1991, pursuant to section 3(5) of the Judicature Amendment Act 1991 (1991 No 60).

45 Notice of appeal

(1) Every appeal under section 44 shall be instituted by the appellant lodging a notice of appeal within 1 month after the date of the decision with—

(a) the Registrar of the court in Wellington; and

(b) the arbitrator.

(2) Either before or immediately after the lodging of the notice of appeal, the appellant shall serve a copy of the notice of appeal, either personally or by post, on every other party to the proceedings before the arbitrator.

(3) Service under subsection (2), if by post, shall be by registered letter and shall be deemed in the absence of proof to the contrary, for the purposes of this section, to be effected at the time when the letter would be delivered in the ordinary course of post.

(4) Every notice of appeal shall specify—

(a) the decision or the part of the decision appealed from; and

(b) the error of law alleged by the appellant; and

(c) the question of law to be resolved; and

(d) the grounds of the appeal, which grounds shall be specified with such reasonable particularity as to give full advice to both the court and the other parties of the issues involved.

(5) The arbitrator shall, as soon as practicable after receiving a copy of the notice of appeal, send a copy of the whole of the decision appealed from to the Registrar of the court in Wellington.

46 Right to appear and be heard on appeals

(1) Any party to the proceedings before the arbitrator who wishes to appear and be heard on the hearing of the appeal shall, within 10 days after the date of the service on that party of a copy of the notice of appeal, give notice to the Registrar of the court in Wellington of that party's intention to appear and be heard.

(2) Any party who gives a notice of intention to appear and be heard, and the appellant, shall be parties to the appeal and shall be entitled—

(a) to be served with every document relating to the appeal which is filed or lodged with the Registrar of the court in Wellington; and

(b) to receive a notice of the date set down for the hearing of the appeal.

47 Orders relating to determination of appeals

(1) Subject to subsections (2) and (3), the court may, of its own motion or on the application of any party, make all or any of the following orders:

(a) an order directing the arbitrator to lodge with the Registrar of the court in Wellington any document or other written material or any exhibit in the arbitrator's possession or custody:

(b) an order directing the arbitrator to lodge with the Registrar a report recording, in respect of any matter or issue which the court may specify, any findings of fact which are not fully set out in the arbitrator's determination:

(c) an order directing the arbitrator to lodge with the Registrar a report setting out, in respect of any matter or issue which the court may specify, any reasons or considerations to which the arbitrator had regard but which are not set out in the determination.

(2) An application under subsection (1) shall be made,—

(a) in the case of the appellant, within 1 month of the date of the lodging of the notice of appeal; or

(b) in the case of any other party, within 1 month after the date of the service on that party of a copy of the notice of appeal.

(3) The court may make an order under subsection (1) only if it is satisfied that a proper determination of the point of law in issue so requires, and the order may be made subject to such conditions as the court thinks fit.

48 Dismissal of appeal

The court may dismiss any appeal under section 44—

(a) if the appellant does not appear at the time appointed for the hearing of the appeal; or

(b) if the appellant does not prosecute the appeal with all due diligence and any party applies to the court for the dismissal of the appeal.

49 Extension of time

The court or a Judge may, in the court's or the Judge's discretion, on the application of the appellant, or intending appellant, or any other party, extend any time prescribed or allowed under sections 43 to 48 for the lodging of any notice, application, or other document.

50 Date of hearing

When a party to the appeal notifies the Registrar of the court in Wellington—

(a) that the notice of appeal has been served on all parties to the proceedings; and

(b) that any application lodged under section 47 has been heard and that any order under that section has been complied with,—

the appeal shall be, in all respects, ready for hearing and the Registrar shall arrange a date and place for the hearing as soon as is practicable.

Part 4
Financial provisions

51 Funds of Authority

The funds of the Authority shall consist of—

(a) any money appropriated by Parliament for the purposes of the Authority and paid to the Authority for the purposes of the Authority:

(b) any money received by the Authority from fees prescribed by regulations made under this Act:

(c) all other money received by the Authority for the purposes of the Authority:

(d) all accumulations of income derived from any such money.

Section 51(b): amended, on 13 December 2016, by section 34 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

52 Bank accounts

(1) For the purposes of this Act, there shall be maintained at any trading bank, bank accounts into which shall be paid all money received by the Authority.

(2) The Authority may from time to time open with the bank at which its accounts are kept, or with any branch or agency of that bank, such imprest or subsidiary accounts as it thinks necessary for the exercise of its functions and powers.

(3) The Authority may also from time to time establish such special funds or reserves as it thinks necessary for the exercise of its functions and powers.

(4) Every account under this section shall be operated upon only by cheque or other instrument (not being a bill or promissory note) signed by such person or persons as may from time to time be authorised by the Authority for that purpose.

53 Investment of money

The Authority may invest any of its money not immediately required in the exercise of its functions and powers in any investment.

Section 53: amended, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

54 Borrowing powers

(1) The Authority may, with the consent of the Minister of Finance and upon and subject to such conditions as the Minister of Finance, after consultation with the Minister, thinks fit, borrow money, issue debentures, and mortgage or charge any of its real or personal property.

(2) The Minister of Finance may, from time to time,—

(a) advance money to the Authority:

(b) give, in respect of any amounts borrowed by the Authority, a guarantee, indemnity, or security pursuant to the Public Finance Act 1989.

(3) All money advanced by the Minister of Finance under subsection (2)(a) shall be paid from money appropriated by Parliament for the purpose.

Section 54(1): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 54(2)(b): amended, on 1 July 1989, by section 86(1) of the Public Finance Act 1989 (1989 No 44).

55 Financial year

The financial year of the Authority shall end with 30 September or with such other day in any calendar year as the Authority may determine.

56 Unauthorised expenditure

The Authority may, in any financial year, expend out of the funds of the Authority for purposes not authorised by this Act or any other enactment any sum or sums not amounting in the whole to more than $5,000.

57 Financial statements must be prepared

The Authority must ensure that, within 5 months after the end of the financial year, financial statements that comply with generally accepted accounting practice are—

(a) completed in relation to the Authority and that financial year; and

(b) dated and signed on behalf of the Authority by 2 members of the Authority.

Section 57: replaced, on 1 April 2014, by section 125 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

57A Financial statements must be audited

(1) The Authority must ensure that the financial statements of the Authority are audited.

(2) The Authority is a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.

Section 57A: inserted, on 1 April 2014, by section 125 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

58 Annual report and financial statements

(1) As soon as reasonably practicable after the end of each financial year the Authority shall deliver to the Minister an annual report of its operations during the year together with a copy of its duly audited financial statements for that year and the report of the Auditor-General on those financial statements.

(2) A copy of the annual report and of the financial statements of the Authority, together with a copy of the report of the Auditor-General on the financial statements, shall be laid before the House of Representatives as soon as practicable after their receipt by the Minister.

Section 58 heading: amended, on 1 April 2014, by section 125 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 58(1): amended, on 13 December 2016, by section 30(1) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 58(1): amended, on 1 April 2014, by section 125 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 58(1): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 58(1): amended, on 1 July 2001, pursuant to section 52 of the Public Audit Act 2001 (2001 No 10).

Section 58(2): amended, on 13 December 2016, by section 30(2) of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 58(2): amended, on 1 April 2014, by section 125 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 58(2): amended, on 19 December 2002, by section 5 of the New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70).

Section 58(2): amended, on 1 July 2001, pursuant to section 52 of the Public Audit Act 2001 (2001 No 10).

59 Taxation

[Repealed]

Section 59: repealed, on 31 July 1989 (applying with respect to the land tax for the year of assessment commencing on 1 April 1990 and for every subsequent year), by section 10 of the Land Tax Amendment Act 1989 (1989 No 50).

Part 5
Miscellaneous provisions

60 Act not to derogate from or limit Commerce Act 1986

(1) Nothing in this Act shall derogate from or limit any of the provisions of the Commerce Act 1986.

(2) Nothing in the provisions of any export marketing strategy, or in section 37(1)(a) or section 38, shall, for the purposes of section 43(1) of the Commerce Act 1986, be taken to specifically authorise the doing of any act, matter, or thing in contravention of the provisions of Part 2 of that Act.

61 Service of notices

(1) Any notice or other document to be given to or served on any person for the purposes of this Act may be given or served—

(a) by causing it to be delivered to that person personally; or

(b) by causing it to be left at that person's usual or last known place of residence or business or at the address stated by that person in any application or other document under this Act; or

(c) by causing it to be sent by registered letter addressed to that person at that place of residence or business.

(2) Where any notice or document is sent to any person by registered letter, the notice or document shall be deemed to be given or served at the time when the letter would have been delivered in the ordinary course of post.

(3) Every notice or other document shall be signed by the chairperson of the Authority, or by such other officers as may from time to time be authorised by the Authority to sign notices; and every notice purporting to be signed shall, in the absence of proof to the contrary, be deemed to have been duly signed by the person or persons purporting to have signed it.

Section 61(3): amended, on 13 December 2016, by section 34 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

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 provide for exemptions from, or waivers or refunds of, a fee, in whole or in part, in any particular case or class of case; and

(f) may authorise the Authority or another person to grant an exemption, waiver, or refund, in whole or in part, in any particular case or class of case, if the Authority is satisfied that—

(i) a climatic or other event has resulted in a loss of export produce for a fee payer; and

(ii) as a result, the fee payer has been unable to benefit from the services provided by the Authority.

(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.

(4A) If regulations made under this section authorise the Authority or another person to grant an exemption, waiver, or refund, in whole or in part in any class of case,—

(a) an instrument exercising that authority is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to 1 or more named persons; and

(b) the regulations must contain a statement to that effect.

(5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4A)

Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021, unless it is published by PCO	LA19 ss 69, 73, 74(1)(aa)
Presentation	The Minister must present it to the House of Representatives, unless it is excluded by section 114(2) of the Legislation Act 2019	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives, unless it is excluded by section 115 of the Legislation Act 2019	LA19 ss 115, 116

This note is not part of the Act.

Section 62: replaced, on 13 December 2016, by section 31 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 62(2)(e): replaced, on 10 July 2026, by section 316(1) of the Regulatory Systems (Primary Industries) Amendment Act 2026 (2026 No 41).

Section 62(2)(f): inserted, on 10 July 2026, by section 316(1) of the Regulatory Systems (Primary Industries) Amendment Act 2026 (2026 No 41).

Section 62(4A): inserted, on 10 July 2026, by section 316(2) of the Regulatory Systems (Primary Industries) Amendment Act 2026 (2026 No 41).

Section 62(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

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.

(8) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 62A: inserted, on 13 December 2016, by section 31 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 62A(8): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

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.

(4) Regulations under this section—

(a) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and

(b) must be confirmed by an Act (*see* subpart 3 of Part 5 of the Legislation Act 2019).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 62B: inserted, on 13 December 2016, by section 31 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 62B(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

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.

Section 62C: inserted, on 13 December 2016, by section 31 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

62D Other regulations

(1) 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.

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 62D: inserted, on 13 December 2016, by section 31 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 62D(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

63 Offences and penalties

(1) Every person commits an offence against this Act who, with intent to deceive, makes any false or misleading statement or any material omission in any application, statement, or other communication made to the Authority or to any other person for the purposes of this Act.

(2) Every person who commits an offence against this Act or against any regulations made under this Act for which no penalty is provided elsewhere than in this subsection shall be liable on conviction to a fine not exceeding $10,000.

Section 63(2): amended, on 13 December 2016, by section 32 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Section 63(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

64 Consequential amendments

[Repealed]

Section 64: repealed, on 13 December 2016, by section 33 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

Schedule 1
Transitional, savings, and related provisions

s 2A

Schedule 1: inserted, on 13 December 2016, by section 36 of the New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99).

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.

Notes

1 General

This is a consolidation of the New Zealand Horticulture Export Authority Act 1987 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Regulatory Systems (Primary Industries) Amendment Act 2026 (2026 No 40): Part 17

Secondary Legislation Act 2021 (2021 No 7): section 3

Trusts Act 2019 (2019 No 38): section 161

New Zealand Horticulture Export Authority Amendment Act 2016 (2016 No 99)

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): section 125

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Legislation Act 2012 (2012 No 119): section 77(3)

Criminal Procedure Act 2011 (2011 No 81): section 413

New Zealand Horticulture Export Authority Amendment Act 2003 (2003 No 117)

New Zealand Horticulture Export Authority Amendment Act 2002 (2002 No 70)

Human Rights Amendment Act 2001 (2001 No 96): section 70(1)

Public Audit Act 2001 (2001 No 10): sections 52, 53

Ministries of Agriculture and Forestry (Restructuring) Act 1997 (1997 No 100): section 5(1)(c)

New Zealand Horticulture Export Authority Amendment Act 1992 (1992 No 100)

Judicature Amendment Act 1991 (1991 No 60): section 3(5)

National Provident Fund Restructuring Act 1990 (1990 No 126): section 80

Land Tax Amendment Act 1989 (1989 No 50): section 10

Public Finance Act 1989 (1989 No 44): section 86(1)

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2026