

# NEW ZEALAND HORTICULTURE EXPORT AUTHORITY AMENDMENT BILL

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## EXPLANATORY NOTE

*Clause 1* relates to the Bill's Short Title.

### PART I

#### INTERPRETATION

*Clause 2* redefines the term "product". The redefinition has 2 effects. First, it makes clear that a product can be a plant, or merely a part or product of a plant. Secondly, it broadens the definition so as to include growing materials containing bark or ponga.

### PART II

#### NEW ZEALAND HORTICULTURE EXPORT AUTHORITY

*Clause 3* repeals section 10 of the principal Act, which relates to the membership of the New Zealand Horticultural Export Authority, and replaces it with a redrafted section altering the size and membership of the Board, and the qualifications needed for appointment as a member.

At present the Board comprises 9 members—a chairman, 6 members representing producer and export interests nominated by various bodies, and 2 government members with knowledge of and experience in marketing.

In future, the Board is to comprise 5 members—a president, 3 members nominated by various bodies, and a government member; and all members must have knowledge of and experience in marketing.

All existing members of the Authority will go out of office on the commencement of the Bill, but will (if they have knowledge of and experience in marketing) be eligible for reappointment.

*Clause 4* inserts into the principal Act a new *section 23A*, requiring periodic reviews of how efficiently and effectively the Authority is performing. The Authority will determine whether the first review is carried out in 1992, 1993, or 1994; and later reviews will be carried out every 5 years.

The terms of reference for a performance review will be determined by the Authority, after consulting the Ministers and taking into account the Ministers' views; but if the Authority fails to consult the Ministers, the terms of reference will be specified by Order in Council, made on the Ministers' recommendation.

The person conducting a performance review must prepare a written report, and give copies to the Ministers and the Authority.

The Authority will bear the costs of every performance review.

### PART III

#### PRESCRIBED PRODUCTS

*Clause 5* amends section 25 of the principal Act so as to require every new recognised product group to be a body corporate.

*Clause 6* amends section 26 of the principal Act so as to allow export marketing strategies to contain limitations on the volume of a specified product exported to a particular market, or the number of exporters to be licensed to export to a particular market.

*Clause 7* empowers the Authority to require a product group to review its export marketing strategy, if the Authority is satisfied that an application for a licence should be granted but the export marketing strategy for the prescribed product concerned contains a limitation that makes it impossible for the Authority to grant the applicant a licence.

*Clause 8* amends section 28 (2) of the principal Act, which provides that the Authority “may” approve an export marketing strategy if certain specified criteria are met. The amendment has 2 effects. First, in future the Authority “shall” approve the strategy if the criteria are met. Secondly, one of the criteria (relating to an absence of real and substantial opposition) is deleted.

### PART IV

#### EXPORT LICENSING

*Clause 9* makes a number of amendments to section 36 of the principal Act.

It is made clear that it is up to an applicant for an export licence to put before the Authority evidence sufficient to satisfy it of the matters it is required by section 36 (1) to be satisfied of; and the Authority is now to be satisfied of 2 new matters. First, the applicant must be likely to be competent in handling, exporting, and marketing the product concerned. Secondly, the applicant must be familiar with the current export marketing strategy for the produce, and willing and able to act in a way that does not prejudice it.

The Authority is required not to grant a licence to an applicant until it has asked the recognised group for the product concerned for its views on the applicant’s suitability as an exporter and the likelihood that the exporter will act in a way that does not prejudice the current export marketing strategy for the product, and considered the views it receives.

The Authority is given power to refuse a licence to export a product (or grant a licence subject to conditions) where the export marketing strategy for the product contains a limitation on the volume to be exported or the number of exporters to be licensed, and the Authority is satisfied that it is necessary to refuse the licence (or impose the conditions) to preserve the limitation and its effect.

A 5 year limitation is imposed on all licences. Licences granted before the commencement of the Bill will expire 5 years after that commencement. Licences granted after that commencement will expire 5 years after granting. It is made clear that a holder of a licence that has expired or is about to expire may apply for another.

*Clause 10* amends section 38 of the principal Act, which relates to the imposition of conditions on a licensed exporter whose operations prejudice an export marketing strategy. At present the exporter must be given at least 30 days after being told of the Authority’s concerns within which to make

submissions to or ask for a hearing of the Authority. The Authority is now to be empowered to allow as little as 7 days if rapid action is needed to avoid prejudicing the strategy.

PART V  
OTHER MATTERS

*Clause 11* provides that a product that was declared to be a prescribed product before the commencement of the Bill will cease to be a prescribed product 12 months (or a longer period allowed by the Ministers) after that commencement, unless the product group concerned has become a body corporate.

*Clause 12* relates to nashi (otherwise known as asian pears). At present there is doubt as to whether or not it is possible to declare nashi to be a prescribed product under the principal Act, because of the application of the Apple and Pear Marketing Act 1971 to all pears. The clause amends the latter Act so that it no longer applies to nashi.

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*Hon. J. H. Falloon*

**NEW ZEALAND HORTICULTURE EXPORT  
AUTHORITY AMENDMENT**

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A BILL INTITULED

**An Act to amend the New Zealand Horticulture Export  
Authority Act 1987**

BE IT ENACTED by the Parliament of New Zealand as follows:

- 5      **1. Short Title**—This Act may be cited as the New Zealand Horticulture Export Authority Amendment Act 1992, and shall be read together with and deemed part of the New Zealand Horticulture Export Authority Act 1987\* (hereinafter referred to as the principal Act).

\*1987, No. 93  
Amendments: 1990, No. 11; 1990, No. 47

PART I

INTERPRETATION

**2. Interpretation**—Section 2 of the principal Act is hereby amended by repealing the definition of the term “product”, and substituting the following definition: 5

“‘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 10

“(c) Any growing material used in horticultural production composed (wholly or substantially) of bark, ponga, or a mixture of both:”.

PART II

NEW ZEALAND HORTICULTURE EXPORT AUTHORITY 15

**3. Membership**—(1) The principal Act is hereby amended by repealing section 10, and substituting the following section:

“10. (1) Subject to **subsection (2)** of this section, the Authority shall comprise the following members, appointed by the Ministers: 20

“(a) A president, who shall not be a member or office-holder of any of the bodies specified in **subsection (2)** of this section:

“(b) Two members, each of whom has been nominated by one or more of the bodies specified in **subsection (2)** of this section: 25

“(c) One member nominated by the Horticulture Exporters Council Incorporated:

“(d) One other member.

“(2) The Ministers shall not appoint any person a member of the Authority unless satisfied that the person has a knowledge of and experience in marketing. 30

“(3) The bodies referred to in **paragraphs (a) and (b) of subsection (1)** of this section are the bodies that, on the commencement of the New Zealand Horticulture Export Authority Amendment Act 1992, were known, respectively, as New Zealand Fruitgrowers Federation, the New Zealand Vegetable and Potato Growers’ Federation Incorporated, the New Zealand Berryfruit Growers Federation Incorporated, and the New Zealand Nurserymens Association Incorporated.” 40

(2) On the commencement of this Act, the people holding office as members of the Authority immediately before that commencement shall go out of office.

5     **4. Performance reviews**—The principal Act is hereby amended by inserting, after section 23, the following section:

10     “23A. (1) As at the 1st day of October in a year determined under **subsections (2) and (3)** of this section, and in every 5th 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).

15     “(2) If, more than 4 months before the 1st day of 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.

20     “(3) Subject to **subsection (2)** of this section, the first performance review shall be carried out as at the 1st day of 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

25     “(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) At least 2 months before the day as at which a performance review is to be conducted, the Authority shall consult the Ministers as to the terms of reference for the review.

30     “(6) No more than one month after the consultation the Ministers shall give the Authority written notice of the Minister’s views on the terms of reference for the review.

   “(7) The terms of reference for the review shall be determined by the Authority.

35     “(8) Notwithstanding **subsection (7)** of this section, where the Authority has failed to comply with **subsection (5)** of this section in relation to any performance review, the terms of reference for the review shall be prescribed by the Governor-General by Order in Council, made on the recommendation of the  
40 Ministers.

   “(9) The Ministers shall not recommend the making of an Order in Council under **subsection (8)** of this section without consulting the Authority.

“(10) Subject to **subsection (11)** of this section, every performance review shall be carried out by a person appointed by the Ministers and the Authority jointly.

“(11) Where the Ministers 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 Ministers. 5

“(12) 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 10

“(b) Any such objectives established; and

“(c) The extent (if any) to which the Authority has achieved any such objectives established; and 15

“(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 20

“(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 (8)** of this section is conclusive evidence that it relates to how efficiently and effectively the Authority is performing. 25

“(13) 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 Ministers and the Authority. 30

“(14) 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.

“(15) The reasonable costs of a performance review are—

“(a) The remuneration agreed on the appointment by the Ministry and the Authority (or, as the case may be, by the Ministers) of the person carrying it out to be paid to the person for carrying it out and reporting to the Ministers and the Authority; and 35

“(b) The person’s reasonable costs in doing so.” 40

PART III

PRESCRIBED PRODUCTS

5 **5. Requirements to be met before product may become a prescribed product**—Section 25 (1) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) The product group is a body corporate; and”.

10 **6. Export marketing strategy to be formulated where product subject to export licensing**—Section 26 of the principal Act is hereby amended by inserting, after subsection (2), the following subsections:

“(2A) The export marketing strategy may include either or both of the following:

15 “(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.

20 “(2B) A product group may at any time insert into its export marketing strategy a limitation of a kind described in **paragraph (a) or paragraph (b) of subsection (2A)** of this section, whether or not such a limitation has previously been included in or inserted into it; but in that case—

25 “(a) Subsections (3) and (4) of this section and sections 28 to 30 of this Act shall apply to the limitation as if it is an export marketing strategy; and

“(b) Unless the strategy is earlier amended by the omission of the limitation, or is earlier revoked, the limitation shall expire 3 years after it was approved under section 28 of this Act.”

30 **7. Export marketing strategy to be kept under review**—Section 27 of the principal Act is hereby amended by adding the following subsections:

“(4) Where—

35 “(a) The Authority is satisfied that an applicant for a licence should be licensed; but

“(b) The export marketing strategy of the product group concerned contains a limitation of the kind described in **section 26 (2A) (b)** of this Act,—

40 the Authority may ask the product group to review the strategy with a view to its amendment in a manner that will allow the applicant to be licensed.



“(5) **Subsection (4)** of this section does not limit or affect the generality of subsection (3) of this section.”

**8. Approval of export marketing strategy or proposal to replace, amend, or revoke strategy**—Section 28 (2) of principal Act is hereby amended—

- (a) By omitting the words “may approve an export marketing strategy or proposal if”, and substituting the words “shall approve an export marketing strategy or proposal if, and only if,”; and
- (b) By repealing paragraph (c).

#### PART IV

##### EXPORT LICENSING

**9. Grant of licence or provisional licence**—(1) Section 36 (1) of the principal Act is hereby amended—

- (a) By omitting the word “As”, and substituting the words “Subject to **subsection (4A)** of this section, as”; and
- (b) By omitting the words “the Authority is satisfied”, and substituting the words “, and only if, the Authority is satisfied (on the basis of evidence put before it by the applicant)”.
- (2) The said section 36 (1) is hereby further amended by inserting, after paragraph (b), the following paragraphs:
- “(ba) Is likely to be competent in handling, exporting, and marketing the product for which the licence is sought; 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”.
- (3) The said section 36 is hereby further amended by inserting, after subsection (1), the following subsection:
- “(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 produce for which the licence is sought; 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,

(4) The said section 36 is hereby further amended by inserting, after subsection (4), the following subsection:

5 “(4A) Where the export marketing strategy relating to a product includes—

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

10 “(b) A limitation on the number of exporters to be licensed to export to any market, or to any part of a market,—

the Authority may, to the extent that it seems necessary to do so to preserve the limitation and its effect, refuse a licence to export the product to the market, or grant such a licence subject to conditions.”

15 (5) The said section 36 is hereby further amended by adding the following subsections:

“(7) Unless earlier revoked or cancelled,—

20 “(a) Every export licence granted before the commencement of the New Zealand Horticulture Export Authority Amendment Act 1992 shall expire with the close of the 5th anniversary of that commencement; and

25 “(b) Every other export licence shall expire with the close of the 5th anniversary of the day on which it was granted.

“(8) Nothing in subsection (7) of this section limits or affects the ability of—

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

30 “(b) The holder of a current export licence,—  
to apply for and be granted another.”

(6) Section 34 of the principal Act is hereby consequentially amended by repealing subsection (2), and substituting the following subsection:

35 “(2) An application may be accompanied by any evidence the applicant thinks fit relating to the matters referred to in section 36 (2) of this Act.”

**10. Additional conditions may be imposed where prejudice to export marketing strategy—**(1) Section 38 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

40 “(2A) The day referred to in subsection (2) (c) of this section 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 5

“(ii) The period for which the exporter has conducted or has been conducting those operations in that manner; and 10

“(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,— 15  
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.” 20

(2) Subsection (2)(c) of the said section 38 is hereby consequentially amended by omitting the words “date (being a day not less than 30 days after the date of service of the notice)”, and substituting the word “day”.

## PART V

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### OTHER MATTERS

**11. Product to cease to be prescribed product where product group not body corporate**—An order under section 24 of the principal Act made before the commencement of this Act shall be deemed to have been 30  
revoked on the day 12 months (or any longer period the Ministers and the product group agree before that day) after the commencement of this Act if the product group named in it is not at the close of the day before a body corporate.

**12. Control of export of nashi**—(1) The Apple and Pear 35  
Marketing Act 1971 is hereby amended by inserting, after section 2, the following section:

“2A. (1) This Act shall have effect as if the fruit of plants of the following kinds are not pears:

“(a) Plants of the species *Pyrus pyrifolia*: 40

“(b) Plants that are a hybrid of the species *Pyrus pyrifolia* and the species *Pyrus ussuriensis*.

“(2) Nothing in **subsection (1)** of this section shall so be interpreted as to have any effect in relation to the question of whether or not fruit of plants of either of the kinds specified in that subsection are in fact pears.”

5 (2) Regulation 2(1) of the Apple and Pear Marketing Regulations 1975 is hereby consequentially amended by omitting from the definition of the term “fruit” the words “and pears or either of them; but does not include fruit of any plant of the species *Pyrus pyrifolia*, or of any plant that is a hybrid of  
10 that species with the species *Pyrus ussuriensis*” (as substituted by regulation 2(1) of the Apple and Pear Marketing Regulations 1975, Amendment No. 1), and substituting the words “or pears or both”.

15 (3) The following regulations are hereby consequentially revoked:

(a) Regulations 2(3), 2A, and 5A of the Apple and Pear Marketing Regulations 1975; and

(b) Regulations 2(1), 2(3), 3, and 4 of the Apple and Pear Marketing Regulations 1975, Amendment No. 1.

20 (4) The Apple and Pear Marketing Regulations 1975 may be amended or revoked as if the amendments effected by **subsections (2) and (3)** of this section had been effected by Order in Council.