

Departmental Disclosure Statement

New Zealand Horticulture Export Authority Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for Primary Industries.

The Ministry for Primary Industries certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

12 November 2015.

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Part One: General Policy Statement

General Policy Statement

The purpose of the New Zealand Horticulture Export Authority Act 1987 (the Act) is to promote the effective export marketing of horticultural commodities. Groups representing growers and exporters of a specific horticultural commodity, e.g. avocados, choose whether or not to export within the framework established by the Act. If a group opts to export under the Act, the group develops an export marketing strategy which contains grade or quality requirements for its products. The New Zealand Horticulture Export Authority (the Authority) then licenses exporters of the specified commodity and monitors exporters' compliance with the relevant requirements.

The Bill does not substantively alter this framework. Rather, it seeks to provide more flexibility for product groups in developing their export strategies and provides additional clarity around processes. Overall, the Bill aims to:

- a. enable product groups to develop more flexible and targeted export marketing strategies;
- b. clarify the requirements for product groups to enter into and to exit from the export framework established by the Act;
- c. clarify the powers of product groups to collect fees and levies to fund their export marketing strategies;
- d. improve the effectiveness of the enforcement provisions in the Act by updating the fines; and
- e. formalise the information sharing activities between the Authority and the Ministry for Primary Industries and the New Zealand Customs Service.

Improving flexibility to enable more targeted marketing

The proposed amendments create flexibility by allowing product groups to develop up to five tiers of requirements that can apply across different markets. The Act currently does not allow product groups to differentiate between markets and market needs; it only provides for a one-size-fits-all approach to all markets, which may impede the development of some high-value markets and may be overly burdensome in secondary markets.

Clarifying entry and exit requirements for product groups

The proposed amendments will specify the mandatory relevant considerations required for a Minister to recommend the making (or revoking) of an Order in Council that brings a product under the framework established by the Act. The amendments will also set out how the product group must demonstrate the required level of support among producers and exporters of the product. . The relevant considerations currently in the Act are very general, which can leave the Minister's decision open to challenge and can impose considerable uncertainty and unnecessary costs on a product group seeking to enter or exit the Act's framework.

Clarifying regulation making powers with respect to fees and levies

The proposed amendments will enable regulations to be made for the Authority to charge fees to product groups and exporters, and for product groups to charge fees to and/or collect levies from producers and exporters. The Act currently only provides for

the Authority to collect fees directly from producers and exporters, but this is not practicable as the Authority works with product groups and exporters, and not with producers.

Updating penalties for offences under the Act

The Bill proposes to raise the current \$4,000 maximum fine to \$10,000, and the \$10,000 maximum fine to \$50,000. The penalties were last set in 1987 and are no longer considered adequate relative to the current export value of the commodities and the costs of investigations and taking actions. Nor do the existing penalties take account of inflation since 1987.

Formalising information sharing between the Authority and the New Zealand Customs Service and between the Authority and the Ministry for Primary Industries

The proposed amendments will formalise information sharing between the Ministry for Primary Industries, New Zealand Customs Service, and the Authority. Information sharing already occurs administratively and is essential for the Authority to monitor exports for compliance with marketing strategies. The amendments allow agencies to enter into agreements setting out the details about information sharing.

Part Two: Background Material and Policy Information.

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Regulatory Impact Statement - Proposed amendments to the New Zealand Horticulture Export Authority Act 1987. Ministry for Primary Industries 15 April 2014. Access: https://mpi.govt.nz/law-and-policy/legal-overviews/regulatory-impact-statements/</p> <p>‘Statutory Review of the N Z Horticulture Export Authority’, March 2010</p> <p>‘Statutory Review of the N Z Horticulture Export Authority’, April 2015</p> <p>Discussion Paper on the Proposed Amendments to the New Zealand Horticulture Export Authority Act 1987, November 2012</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Regulatory Impact Statement - Proposed amendments to the New Zealand Horticulture Export Authority Act 1987. Ministry for Primary Industries 15 April 2014. Access: https://mpi.govt.nz/law-and-policy/legal-overviews/regulatory-impact-statements/</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The Regulatory Impact Statement did not meet the threshold for a RIA Team assessment though general comments from Treasury on the Regulatory Impact Statement were provided in early 2014.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
<p>A new proposal has been added to the Bill to enable the Authority and the New Zealand Customs Service (Customs) to develop a memorandum of understanding, in consultation with the Office of the Privacy Commissioner, for Customs to provide information to the Authority to enable the Authority to monitor exporters' compliance with the Act. The Bill has similar information sharing provision for the Ministry for Primary Industries to provide information to the Authority. The new proposal will formalise the information sharing that already occurs between these two agencies and the Authority.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
No. As the new proposal described above in 2.3.2 will formalise existing practice, no further impact analyses have been completed.	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
Information can be accessed from the Regulatory Impact Statement from 15 April 2014. Access: https://mpi.govt.nz/law-and-policy/legal-overviews/regulatory-impact-statements/	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

MPI considers that this policy is not in any way inconsistent with New Zealand's international obligations. The Ministry of Foreign Affairs and Trade (MFAT) was consulted during the policy development stage of this Bill. MFAT did not raise any concerns with respect to consistency with New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

MPI considers that this policy is not in any way inconsistent with the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by Crown Law, or a Bill of Rights Act 1990 section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon a Bill's introduction. Any such advice or reports will be accessible on the Ministry's website at:

<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>It is proposed to amend the Act to:</p> <ul style="list-style-type: none"> a) increase fines for exporting without a valid licence from \$10,000 to a maximum of \$50,000. This fine will also apply to an exporter who exports to a market for which the exporter does not have the required export licence under the proposed multi-tier licensing regime; and b) increase fines for breaching the Act from \$4,000 to a maximum of \$10,000. <p>Fines were set over 25 years ago. The current fines no longer reflect the increased export value of the commodities and their export potential, increased investments in market development by the product groups, and the increased costs of investigations and taking actions. The proposed new fines will also take inflation into account over those years. The current fines are at much lower levels than comparable organisations with similar offences.</p> <p>Increasing the fines will make the Act more effective and credible by ensuring there is sufficient deterrent to non-compliance.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>Yes. The Ministry of Justice (MoJ) considered the proposed fines to be within its framework for similar offences (for example, exporting without a licence). A maximum fine of \$50,000 is comparable to the \$50,000 fine under the Kiwifruit Export Regulations 1999 for a similar offence.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>The proposed amendments will provide for a new provision to enable the Authority and the New Zealand Customs Service (Customs) to develop a memorandum of understanding (MOU), in consultation with the Office of the Privacy Commissioner, for Customs and MPI to provide information to the Authority to enable the Authority to monitor exporters' compliance with the Act.</p> <p>This information sharing will be restricted to export information, including name and contact details of the exporter, and only information that will be required by the Authority to monitor exporters' compliance with the Act. As part of this information collection and where an exporter is a sole proprietor some information collected may be classified personal. The MOU will take this into consideration, including what information is collected and how the information is used and stored.</p> <p>The proposed amendments will formalise the information sharing that already occurs between the above agencies and the Authority.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Ministry for Primary Industries (MPI) consulted the following departments and agencies, and their views have been incorporated into the development of the proposed amendments: The Treasury; the Ministry of Business, Innovation, and Employment; the Ministry of Foreign Affairs and Trade; the New Zealand Customs Service; the Ministry of Justice; Te Puni Kokiri; the Office of the Privacy Commissioner and the Government Chief Privacy Officer. The Department of the Prime Minister and Cabinet was also informed. No significant issues were raised.</p> <p>The proposals contained in this Bill were first initiated by the Authority. They were later endorsed by growers and exporters through a public consultation process in late 2012 and early 2013, including release of a discussion paper and workshops in Mt Maunganui and Wellington with the Authority and industry representatives. The Board of the Authority was given the opportunity to review the Bill prior to its finalisation.</p> <p>The New Zealand Customs Service was consulted specifically on the multi-tier licensing system, and the Office of the Privacy Commissioner and the Government Chief Privacy Officer on the proposed information sharing provision.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The proposed amendments were initiated by the Authority, who have had responsibility for implementing this Act since 1987. These amendments were also among the recommendations in the March 2010 and April 2015 Statutory Review of the Authority reports where the reviewer interviewed a cross section of horticulture industry producers and exporters, and the Authority. The Authority has also discussed the proposals with its product groups over the last four years, including discussions at workshops organised by the Authority. MPI also met with representatives of the product groups to discuss the new fees and levies proposals.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>Clause 31 of the Bill amends the regulation making powers in section 62 of the Act.</p> <p>Section 62 currently enables regulations to be made that allow the Authority to collect fees directly from producers and exporters. The Authority works with product groups and exporters, but not with producers, and therefore it is not practicable and efficient for the Authority to collect fees directly from producers.</p> <p>The Authority currently collects fees, via contractual obligations, from product groups who in turn recover from growers and exporters. Without guaranteed funding there is a high risk of the Authority being unable to perform its legislated functions.</p> <p>The proposed amendments will enable regulations to be made to enable the Authority to charge fees from exporters and product groups, and for product groups to charge fees and/or collect levies from producers and exporters.</p> <p>The proposed change to introduce multi-tier licensing will increase the Authority's costs and will impact on the amount of fees and levies charged by the Authority. The product groups, made up of growers and exporters, can choose to retain the current one strategy to all markets to keep the Authority's costs down. The proposed changes will clarify the fees and levies collection mechanism and guarantee the Authority's and the product groups' funding. The proposed multi-tier licencing regime will enable the Authority and the product groups to charge higher fees for higher valued markets and lower fees for other markets. This will better reflect the Authority's and the product groups' costs in the different markets.</p> <p>The proposed changes will also introduce a number of safeguards for payers of the proposed fees and levies. It is proposed that provisions similar to those in the Commodity Levies Act 1990 apply for any levies on producers and exporters, including annual consultation on levy rates and levy spending. This will impose significant accountability requirements on the Authority and the product groups to the levy payers.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>As discussed under 4.2 above, it is proposed that the regulation making powers in section 62 of the Act be amended to clarify the fees and levies provisions in the Act.</p> <p>Also the current New Zealand Horticulture Export Authority (Fees) Regulations 2002 will be replaced as a consequence of the proposed multi-tier licensing provision (as described in Part One above). With multi-tier licensing, different export licence fee rates may be set to reflect the different services that will be provided in different markets.</p> <p>MPI will undertake the required consultation when developing the policies for any new fees regulations.</p> <p>New regulations for product group fees will also be required if the proposal to enable the Authority to charge product group fees is enacted. This will replace the current contractual agreements negotiated between the Authority and the product groups. The scope of the proposed product group fee will be limited to funding the product group fee charged by the Authority for services provided, and funding the respective product group's export marketing programmes.</p> <p>New levy orders may also be required if the proposal to enable the product groups to collect levies from their producers are enacted. As discussed above under 4.2, the provisions will be similar to the requirements under the Commodity Levies Act 1990. The Act currently provides that regulations may be made allowing the Authority to charge fees for certain matters and to collect levies from producers and exporters. It is not practical for the Authority to charge fees to and collect levies from producers as the Authority does not interact directly with producers. Product groups have the infrastructure and relationships to collect fees and levies from producers and exporters in a more efficient manner than would the Authority¹.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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¹ The Authority also charges exporter's licence application fees and monitoring and compliance fees. The product group fee is used to fund the Authority's operational costs in applying the Act with respect to the export marketing strategies.