The amended HEA Act – what it means

By Simon Hegarty

The New Zealand Horticulture Export Authority (HEA) amendment Act was passed by Parliament on 6 December 2016 and following the Governor General’s assent, effectively passed into law, as of 13 December.

So what does this mean for the nine product groups currently operating under the HEA structure, and those groups outside that might be contemplating a structured approach to exporting?

To recap, the amendments were introduced to Parliament a year earlier to provide clarity and improve the flexibility of the Act.

Specifically the changes applied to the following five areas:

1. Licensing options expanded – e.g. provides for tiered licensing

2. Funding mechanisms updated and levy/fee options expanded

3. System entry and exit provisions clarified

4. Fines/deterrents strengthened

5. Clarification of a range of ‘other’ provisions – e.g. changes in shareholding, enabling joint ventures to obtain a licence exemption, definition of sample, requirements on disclosure of interest

INTRODUCING FLEXIBILITY WHILE RETAINING LICENSING INTEGRITY:

The amended Act retains its fundamental requirement for all exporters to be licensed. However, within this, it provides for increased flexibility by enabling a product group to establish ‘tiers’ of licences. For example, some groups have expressed a desire to establish a specific licence for the Pacific Islands (PI) trade. This trade is often characterised by small volume, frequent consignments of a range of fruit and vegetable products. Many larger exporters do not participate in the PI trade, preferring to focus their resources on the larger Asian, European or North American markets. Another tier option could be for a newly developing market region.

CLARIFICATION AND EXPANDED OPTIONS FOR FUNDING MECHANISMS:

Funding mechanisms will be updated, clarified and more options provided to cover three specific areas:
1. HEA levy on Recognised Product Groups: This will be a formula based on a 2-year average Fob export value. HEA’s total annual income from Product Groups has been relatively static, fluctuating within a narrow range of $195,000 - $223,000 (a 14% spread) since 2005.

2. HEA fees on Licensed exporters: The current fees regulation has operated since 2002 with no review over the 15 years. Income from this area has also been static. A new fees regulation proposal is under development.

3. Enable a Product Group levy on growers and exporters: Existing ‘registration fee mechanisms’ will be reviewed and Product Groups will have the ability to apply a HEA levy to operate their export programmes (e.g. food safety, quality standards, market access and development, information collation) in their Export Marketing Strategy (EMS).

The Ministry for Primary Industries policy division will consult with stakeholders (existing Product Groups, licensed exporters & HEA) on the proposed Fees and Levy Regulation in the March/April 2017 period. This regulation is necessary to enable the Act amendments to be applied. The timeframe for having a new Regulation in place is the end of June 2017.

**SYSTEM ENTRY AND EXIT PROVISIONS CLARIFIED**

Entry to or exit from the HEA structure is voluntary for sector groups. Once a group elects to come into the structure and obtains HEA approval of its EMS, those requirements are mandatory for all exported product.

The amendments to the Act have clarified what is required to either enter or exit the system. Previously a Product Group needed to detail to MPI & Cabinet the issue(s) it was seeking to resolve through regulation. The amended Act now only requires a Product Group (involving both growers and exporters) to show at least 60% support for entering or exiting the system i.e. there is less MPI & Cabinet scrutiny of the rationale for the industry decision.

_**Strengthened fines/deterrents:** There is a four-fold increase in the fines for a breach of the Act by exporting without a licence. The maximum fine (following conviction) is raised from $10,000 to $50,000.

_**Clarification of ‘other’ provisions:** A range of areas on which the Act was previously silent or unclear have been clarified – e.g. requirements when two licence holders formalise a Joint Venture for exporting, definitions of what constitutes a ‘sample’ and clarification on ‘processed’, the enabling of formal agreements for information exchange between HEA, NZ Customs and MPI.

_The HEA’s goal_ is for export values under the structure to reach $600 million by 2020 (which is a doubling of the 2016 figure). This aligns with the wider horticulture sector goal of achieving sales of $10 billion by 2020. The export earnings chart shows export values to have approximately doubled in the 10 years from 2005 to 2015. It is entirely feasible that this could double again in the five year period to 2020. The amendments to the HEA Act increase its flexibility while retaining the core ingredients of having:

- all exported product under a licensing system and
- sectors tailoring the generic export programmes to maintain their market access and achieve their export objectives.

Two independent reviews in 2010 and 2015 considered the HEA structure was functioning effectively and only required modification in some specific areas to maintain its relevance. Now that this has been completed, the challenge is for the wider New Zealand horticulture export industry to realise the value from the structure.

Simon Hegarty is chief executive of the Horticulture Export Authority E: simon@hea.co.nz or www.heaco.nz 🌼