



NEW ZEALAND WINE
PURE DISCOVERY

NEW ZEALAND WINEGROWERS' SUBMISSION:

**MBIE Consultation on
Exposure Draft: Incorporated Societies Bill**

30 June 2016

EXECUTIVE SUMMARY

New Zealand Winegrowers

New Zealand Winegrowers (**NZW**) is the organisation that provides strategic leadership for, and researches, promotes and represents the interests of, New Zealand grape growers and winemakers. Established in 2002 as a joint venture between the New Zealand Grape Growers Council Incorporated and Wine Institute of New Zealand Incorporated, NZW has approximately 700 winery and over 800 independent grape grower members. Every grape grower and winemaker in New Zealand is a member of NZW. Accordingly, NZW is recognised as New Zealand's peak wine industry organisation.

NZW will, on 1 July 2016, complete a reorganisation transaction whereby those three entities are combined into a new incorporated society, New Zealand Winegrowers Incorporated.

NZW welcomes the opportunity to provide a submission for the Ministry's consideration.

Our key messages

NZW's submission contains the following key messages, which will be expanded on in the body of the submission:

1. NZW strongly supports the content of the exposure draft of the bill. This is a welcomed update of the law governing this important category of corporate entity.
2. For members who are compelled to pay levies to incorporated societies by the Commodity Levies Act 1990 or the Wine Act 2003, those levies serve as membership dues. Those levy payers should not *also* have to provide a separate consent to becoming a member of that incorporated society.
3. The definition of "officer" seems overly broad, given the duties that are imposed on officers. In particular, for incorporated societies with substantial operations and staff, it would appear to capture senior staff, and officers of a non-governance nature.
4. The conflict of interest provisions should be more fully aligned with those of the Companies Act.
5. Incorporated societies should have flexibility to determine the extent of their financial reporting.
6. The ability for incorporated societies to amalgamate is a very welcome addition.
7. Incorporated societies should be able to choose how they describe committees and committee members in their constitution/rules.

Table of Contents

NZ WINEGROWERS' SUBMISSIONS.....	3
Background: Incorporated Societies are the most common wine industry body structure	3
Consent to become a member – clause 24(1)(c) and 67	4
Definition of Officer – clauses 36, 51-55.....	4
Conflicts of interest – clauses 56-58, 60-62	5
Financial Reporting – clauses 83 & 84	5
Amalgamations – clauses 143-154.....	5
Terminology	6

NZ WINEGROWERS' SUBMISSIONS

Background: Incorporated Societies are the most common wine industry body structure

1. New Zealand Winegrowers strongly supports the content of the exposure draft of the bill, which is thorough and considered. This is a welcomed, and long overdue, update of the law governing this important category of corporate entity.
2. New Zealand Winegrowers is a significant industry-good operation, controlling a budget of around \$10 million per year, and providing its members (the members of Wine Institute of New Zealand Inc and New Zealand Grape Growers Council Inc) with a broad range of industry-good services, to create value for them in their businesses as grape growers and winemakers.
3. Each of NZW's constituent bodies, Wine Institute of New Zealand Inc and New Zealand Grape Growers Council Inc is an incorporated society, as are most of the regional winegrowers associations around New Zealand:
 - a. Central Otago Winegrowers' Association
 - b. Gisborne Wine Growers Society
 - c. Hawke's Bay Winegrowers Association
 - d. Marlborough Winegrowers Association
 - e. Matakana Winegrowers
 - f. Nelson Winegrowers Association
 - g. Northern Winegrowers & Grapevine Improvement Association
 - h. Northland Winegrowers Association
 - i. Waiheke Island Winegrowers Association
 - j. Waipara Valley North Canterbury Winegrowers
 - k. Wairarapa Winegrowers Association
 - l. Wairarapa Wines
 - m. Waitaki Valley Winegrowers
 - n. West Auckland Wine Growers
 - o. Wines from Martinborough
 - p. Wines of Canterbury

4. Each of our 1,500 members is typically a member of two or more different incorporated societies related to their winegrowing business.

Consent to become a member – clause 24(1)(c) and 67

5. We note that Clause 67 codifies case law. There has been no case law addressing membership consent for those incorporated societies operating under a commodity levy order. The Act should therefore make allowance for this particular situation. We submit that where an incorporated society is funded through a levy order made under the Commodity Levies Act 1990 or the Wine Act 2003, the need for each levy payer to *also* provide express consent to becoming a member of the levying society should be waived or deemed to be satisfied.
6. As noted above, the use of incorporated societies is common amongst wine industry representative bodies. These incorporated societies are funded either by membership subscriptions or – directly or indirectly – under a commodity levy. The Commodity Levies Act 1990 and the Wine Act 2003 enable the imposition of levies on grapes and wine, payable to organisations that are representative of the levy payers. Levy payers can only be producers of that commodity or good. Levies are imposed by Order-in-Council, signed by the Governor-General on the recommendation of the Minister for Primary Industries. For a commodity levy to be imposed, the levy payers must agree to it. The voting process is undertaken every six years. Implicit in this process is the maintenance of a register of all levy payers so that they can vote on the levy and be regularly consulted.
7. In addition, the Commodity Levies Act and Wine Act (and the levy orders under them) impose:
 - a. requirements on the levy collecting organisation to provide benefits to the levy payers (ie services to members);
 - b. reporting and regular communications obligations with the levy paying members; and
 - c. a requirement that the levy-collecting organisation, by virtue of its membership and structure, adequately represents the levy payers

Together, these effectively mandate that the levy payers be members of the levy collecting organisation, and so achieve the same purpose as clause 67.

8. We note that for levy payers, the requirement to consent to membership is perplexing: they are mandated to pay the levy to the incorporated society, but need to provide their consent to be a member. Any member must, of course, still be able to resign their membership (even though they would retain the obligation to pay the levy).

Definition of Officer – clauses 36, 51-55

9. The definition of “officer” in clause 36 appears likely to include key staff employed by the larger incorporated societies such as the Chief Executive Officer. In most societies with staff, the Contact Officer would be likely to be an employee.
10. The effect of this definition is that staff will take on the duties of officers who are actual committee members of the incorporated society. Although this is appropriate where they are exercising a similar level of control or influence to that of a committee member, we submit that whether or not employees should be regarded as officers should depend on the nature of the duties they undertake, and in particular whether they exercise decision-making power akin to that of committee members.

11. The definition of “officer” also extends to any other office provided for in the society’s constitution whether or not such officer has a governance role that is similar to that of a committee member. For example, a society may wish its constitution to provide for an important office of “flag bearer” which may have a ceremonial function but no role at all in the governance on the society. It does not seem appropriate that such persons have the duties of committee members imposed on them merely because they are defined in the constitution; the definition in clause 36(1)(b) should be narrowed to exclude such non-governance offices. Alternatively, provision should be made for a type of officer to be specified in a constitution to which such duties expressly do not attach.

Conflicts of interest – clauses 56-58, 60-62

12. Cause 57 provides that committee members must disclose their interests and under clause 65 the disclosures are to be listed in an interests register. The Bill’s provisions for the management of a conflict of interest are partly taken from the Companies Act. Under the Companies Act, a transaction in which a director is interested can be avoided by the company within three months after the transaction is disclosed to shareholders. It cannot, however, be avoided if the company received fair value. In the case of the Companies Act, this makes some sense because directors are allowed to vote notwithstanding that they have an interest (effectively overriding the common law).
13. The Bill has provisions which are nearly the same – that is, that the transaction cannot be avoided by the society within three months after it is disclosed to members if the society received fair value. However, under the Bill, not only can committee members not vote, but if 50% or more of the members of the committee are prevented from voting on the matter, then the matter must be determined by a special general meeting of the society. We submit that this provision is neither pragmatic nor warranted.
14. We submit the full regime from the Companies Act should be incorporated not just part of the provisions including the full avoidance provisions from the Companies Act. The Companies Act allows the conflicted director to vote and has a provision for avoiding the transaction. However the Bill provides that committee members are prohibited from voting and taking part in the discussion. In addition calling a meeting of members is, for large commercially active organisations particularly, costly and impractical. We submit that the Bill should mirror the Companies Act provisions in all respects permitting conflict members to vote and avoidance be permitted where there is fair value.

Financial Reporting – clauses 83 & 84

15. It is accepted that societies should as a minimum report meeting the XRB’s simple format reporting standards for not-for-profit entities (tiers 3 or 4). We submit that it should be a matter for the members of a society whether they report under tiers 1 or 2. A society having met the tiers 3 or 4 standards ensures that appropriate financial standards are met. To require more without the agreement of the members imposes cost and, what the members would consider to be, unnecessary bureaucracy. Leaving audit for the membership of each incorporated society is supported.

Amalgamations – clauses 143-154

16. NZW strongly supports the inclusion of clauses 143-154, which provide for a modern regime for the amalgamation of incorporated societies. Wine Institute of New Zealand Inc and New

Zealand Grape Growers Council Inc have just completed what is effectively an amalgamation, whereby – by purely contractual means – they transferred all of their assets and liabilities to a new incorporated society. The cost, expense, and administrative effort involved was very significant. We welcome these new amalgamation provisions.

Terminology

17. A number of incorporated societies – particularly the more substantial ones – have adopted company terminology, having “directors” and “boards”. We submit that each incorporated society should be able to determine the terminology used to describe its committee and committee members.

We appreciate the opportunity to provide input to the development of this Bill.

We do not wish to be heard in support of our submission, but are happy to expand on any points raised.

Yours sincerely

Withheld

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New Zealand Winegrowers**