

Wine Makers Amendment Bill

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee recommends that the provisions included in this bill be passed. These provisions have been divided from the Wine Bill pursuant to Standing Order 285.

Introduction

Part 5 of the Wine Bill provides interim amendments to the Wine Makers Act 1981 that facilitate continued entry of grape-wine into overseas markets. The amendments will significantly reinforce the current administrative export system and are a stepping stone to the commencement of the export provisions in Parts 1 to 4 of the Wine Bill. It is proposed that the amendments take effect as soon as is possible.

The amendments are necessary before the Wine Bill is enacted and commences in order to relieve the commercial uncertainty that New Zealand's wine exporters currently face. The international trade of grape-wine is highly regulated by most of the countries to which New Zealand grape-wine is exported. New Zealand has only limited means of regulating exports of wine, and the requirements of importers like the European Union (EU) are increasingly specific.

The European Commission's new labelling regulation 753/2002 is an example of such an export regulation. It clearly requires New Zealand to regulate the conditions of use of particular statements on grape-wine labels. It is to apply to wine imported into the EU from a

date to be specified. The regulation effectively merges the myriad of current European Commission wine labelling regulations into one. While much of the criteria the regulation requires is not new, enforcement may be very rigorous. Elements of the European Commission's current wine labelling regulations also present potential difficulties if the EU's member states begin to enforce them at the border more rigorously than in the past.

Support for reporting Part 5 separately

All of the submissions commenting on Part 5 support it being reported separately for enactment as soon as is possible. Many of the 111 submissions see the EU regulation as a potentially costly non-tariff barrier that breaches the World Trade Organisation's Technical Barriers to Trade Agreement. The submitters are opposed to the EU regulation, but support the passage of Part 5 as they accept the need of regulating certain matters in order to ensure continued access to the EU.

We have decided to divide the bill and report back Part 5, which contains the interim amendments to the Wine Makers Act 1981, as the Wine Makers Amendment Bill. The remainder of the Wine Bill will be reported back to the House at a later date.

Appendix

Committee process

The Wine Bill was referred to the committee on 17 October 2002. The closing date for submissions was 18 November 2002. We received and considered 111 submissions from interested groups and individuals in relation to Part 5. We heard one submission in relation to Part 5. Hearing of evidence took 20 minutes and consideration took 43 minutes.

We received advice from the Ministry of Agriculture and Forestry.

Committee membership

Hon David Carter (Chairperson)

Janet Mackey (Deputy Chairperson)

Dr Ashraf Choudhary

Clayton Cosgrove

Gerrard Eckhoff

Ian Ewen-Street

Phil Heatley

Hon Damien O'Connor

R Doug Woolerton

Hon Jim Sutton

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Wine Makers Amendment Act **2002**.
- (2) In this Act, the Wine Makers Act 1981¹ is called the “principal Act”.

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¹ 1981 No 125

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

146 Interpretation

Section 2 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions: 10

“**Director-General** means the chief executive of the Ministry

“**exporter** means a person who exports any wine from New Zealand for reward or for purposes of trade; and includes the New Zealand agent or representative of that exporter 15

“**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

“**Ministry** means the Ministry that has, with the authority of the Prime Minister, for the time being assumed responsibility for the administration of this Act

“**notice** means a notice given under **section 26A**

“**official assurance** has the meaning given by **section 26B** 5

“**wine maker** means a person who, for reward (otherwise than as an employee) or for purposes of trade, makes wine.”

147 New sections 26A and 26B inserted

The principal Act is amended by inserting, after section 26, the following sections: 10

“**26A Director-General may notify or make available access requirements for overseas markets for grape wine**

“(1) The Director-General must either notify or make available to exporters and makers of grape wine known to the Director-General any particular market access requirements for overseas markets for grape wine that New Zealand has recognised. 15

“(2) Where overseas market access requirements are notified or made available under **subsection (1)**, the Director-General may, where he or she considers it necessary or desirable, issue notices that specify the manner in which the access requirements may or must be met. 20

“(3) Where the Director-General notifies or makes requirements available under **subsection (1)** or **subsection (2)**, the Director-General must make those requirements available for inspection free of charge, or for purchase at reasonable cost, to the exporters and wine makers concerned. 25

“(4) Nothing in **subsection (3)** prevents the Director-General from—
 “(a) charging for access to any website, or information or services provided by any website; or
 “(b) in the case of overseas market access requirements that are commercially sensitive, limiting access to those requirements to persons who satisfy the Director-General that their specific export or processing activities cannot be properly undertaken under this Act unless they have that access. 30
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“(5) Before issuing a notice under **subsection (2)**, the Director-General must do everything practicable on his or her part to consult with the Wine Institute and with wine makers and

exporters that appear to the Director-General to be likely to be substantially affected by the contents of the notice.

- “(6) **Subsection (5)** does not apply if the Director-General considers it necessary or desirable in the public interest that the notice be issued as a matter of urgency, and a failure to comply with that subsection does not affect the validity of a notice issued under **subsection (2)**. 5
- “(7) A notice under **subsection (1)** or **subsection (2)** must—
- “(a) where it affects only 1 person or a small number of persons, and the identity of those persons is known, be notified by the Director-General individually to those persons, either personally or by post or fax addressed to that person, or by electronic means acceptable to the person, at— 10
- “(i) the person’s address or electronic address, as supplied by the person for the purposes of this Act; 15
- or
- “(ii) the person’s last known business or residential address, if no address has been supplied by them for the purposes of this Act. 20
- “(b) where it is not possible or practicable to give notification in accordance with **paragraph (a)**, be notified by the Director-General—
- “(i) by notice in the *Gazette* (whether by way of publication of the notice itself, or by notification of its existence together with a statement of where it may be inspected or obtained); and 25
- “(ii) where the Director-General considers it practical, by publication or notification in any newspaper or appropriate trade journal or other practicable means (including electronic means). 30
- “26B **Director-General may issue official assurances**
- “(1) For the purposes of meeting the market access requirements of any foreign government that are notified or made available by the Director-General under **section 26A** in respect of any wine to be exported, the Director-General or a person authorised by the Director-General may, in appropriate cases, issue an official assurance in respect of the wine if satisfied that the relevant requirements of the importing country have been met. 35

- “(2) An official assurance is a statement to a foreign government, attesting, as appropriate, matters in relation to the wine concerned, and that the situation in New Zealand in relation to the wine is as stated in the assurance.
- “(3) An official assurance may— 5
 “(a) be in the form of a certificate or declaration or in such other form as the Director-General determines:
 “(b) relate to any 1 or more consignments, makers, or exporters of wine, or 1 or more export destinations:
 “(c) be communicated to its appropriate destination by writing, fax, electronic means, or any other form of communication that is accurate, clear, and verifiable. 10
- “(4) An official assurance is not a guarantee that the contents of all or any particular consignment of wine to which it relates— 15
 “(a) necessarily meet the commercial requirements of the importer; or
 “(b) are fit for consumption or use no matter what the status or description of the consumer or user, or what has happened to the consignment since it left New Zealand.
- “(5) The Crown is not liable to any person in respect of the provision of any official assurance given in good faith and with reasonable care as to the compliance of wine with the requirements of an importing country.” 20

148 New sections 31 and 31A substituted

The principal Act is amended by repealing section 31, and substituting the following sections: 25

“31 **Regulations**

- “(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 30
 “(a) prescribing the procedure to be followed in respect of applications and objections to and proceedings before the Licensing Authority:
 “(b) prescribing the procedure to be followed in relation to applications to the Director for certificates under section 25, and the issue of those certificates: 35
 “(c) prescribing the procedure for the institution, hearing, and determination of appeals to the High Court under this Act:

- “(d) providing for the keeping of records and the filing of returns and reports relating to the making, sale, and export of wine:
- “(e) prescribing forms of applications, licences, and other documents made or issued under or for the purposes of this Act: 5
- “(f) providing for the appointment of reviewing panels for the purposes of section 25(2), and prescribing the procedure to be followed by such panels:
- “(g) specifying obvious faults in wine for the purposes of section 25(5): 10
- “(h) prescribing the information or other matters that must be specified, or that may or may not be specified, in any label on any bottle or other container of wine or any class or description of wine, and the requirements that must be met for that information or other matter to be specified or not specified: 15
- “(i) providing for a system for the provision of official assurances as to the compliance of wine with the requirements of an importing country, and for the withholding of official assurances if wine does not qualify for them: 20
- “(j) imposing and prescribing duties relating to the export of wine or any class of wine:
- “(k) prescribing fees and charges, or a means by which fees and charges may be calculated, in respect of— 25
- “(i) applications and objections to and proceedings before the Licensing Authority:
- “(ii) applications to the Director for the issue of certificates under section 25, and the issue of those certificates: 30
- “(iii) the notification or making available of overseas market access requirements under **section 26A**:
- “(iv) applications for official assurances and the provision of official assurances: 35
- “(l) prescribing offences in respect of the contravention of or non-compliance with any regulations made under this section or notices made under section 26A, and prescribing the amount of any fine that may be imposed in respect of an offence, being an amount not exceeding \$20,000: 40

- “(m) providing for such other matters as are contemplated by or necessary for giving full effect to this Act or for its due administration.
- “(2) No regulation may be made under any of **paragraphs (b), (d), and (f) to (k) of subsection (1)** except on the advice of the Minister tendered after consultation with the Wine Institute. 5
- “(3) Fees and charges prescribed under **subsection (1)(k)** may be prescribed having regard to both the direct and indirect costs of administering sections 25 to 26B, and may—
- “(a) prescribe the matters in respect of which fees or charges, or both, are payable, which may include (without limitation)— 10
- “(i) additional fees or charges, or both, for services or work provided or carried out outside normal working hours, at weekends, or on statutory holidays: 15
- “(ii) charges for reimbursement of travelling time and other expenses:
- “(b) prescribe the amounts of the fees or charges, or the methods by which they are to be assessed or calculated: 20
- “(c) specify the persons by whom, and to whom, any fees or charges, or both, are payable:
- “(d) provide for the refund, waiver, or rebate, or enable the refund, waiver, or rebate, of any fee or charge, or both:
- “(e) fix, or enable the fixing, of a date by which any fee or charge is to be paid: 25
- “(f) provide a discount for early payment of any fee or charge or a penalty for late payment, or both:
- “(g) prescribe different rates of fees or charges (or both), or different methods by which fees or charges (or both) are to be assessed, in respect of different classes of wine makers, exporters, persons, wines, or other matters. 30
- “31A **Incorporation of material by reference into regulations and notices**
- “(1) The following material may be incorporated by reference into any regulations or notice (or both referred to in this section as instruments) made or given under this Act: 35
- “(a) standards, requirements, or recommended practices published by or on behalf of any body or person in New Zealand or in any other country: 40

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- “(b) standards or requirements of international or national organisations:
- “(c) standards or requirements of any country or jurisdiction:
- “(d) any other material that, in the opinion of the Minister (or, as appropriate, the Director-General), is too large or impractical to be printed as part of the instrument concerned. 5
- “(2) Any such material may be incorporated in an instrument in whole or in part, and either unmodified or with such additions, omissions, or variations as are specified in the instrument. 10
- “(3) Any such material so incorporated by reference in an instrument is to be treated for all purposes as forming part of that instrument.
- “(4) Every reference in an instrument to the current edition of any standard work of reference is, unless the instrument otherwise specifies, to be construed at any particular time as the latest edition of that work available at that time, together with any amendments, additions, and deletions made to or from it up to that time. 15 20
- “(5) If any amendment to material incorporated by reference under this section (other than to any standard work of reference) is made, that amendment does not take effect until the date specified for that purpose by the Director-General by notification in the *Gazette*. 25
- “(6) The Director-General must—
- “(a) make available for inspection free of charge, at the head office of the Ministry, the head office of the Wine Institute and at such other places as the Director-General determines as necessary or appropriate, copies of all material incorporated in an instrument by reference under this section; and 30
- “(b) either make copies of such material available for purchase, at reasonable cost, or advise where copies of the material may be obtained.” 35
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Legislative history

28 November 2002

Divided from Wine Bill (Bill 8-1) by Primary Production Committee
