

Reprint  
as at 7 August 2020



## Wine Act 2003

Public Act 2003 No 114  
Date of assent 30 October 2003  
Commencement see section 2

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry for Primary Industries.**

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**1 Title**

This Act is the Wine Act 2003.

**Part 1**  
**Preliminary provisions**

**2 Commencement**

- (1) This Act comes into force on 1 January 2004, except for sections 123(1) and 124(2).
- (2) Section 123(1) comes into force on the close of 30 June 2005, or on such earlier date as the Governor-General may fix by Order in Council.
- (3) Section 124(2) comes into force on the close of 30 June 2004.

Section 2(2): section 123(1) brought into force, on 1 April 2005, by the Wine Act Commencement Order 2005 (SR 2005/28).

**3 Objects of Act**

The objects of this Act are to—

- (a) provide for the setting of standards for identity, truthfulness in labelling, and safety of wine:
- (b) provide for the minimising and management of risks to human health arising from the making of wine and the ensuring of compliance with wine standards:
- (c) facilitate the entry of wine into overseas markets by providing the controls and mechanisms needed to give and safeguard official assurances issued for the purpose of enabling entry into those markets:
- (d) enable the setting of export eligibility requirements to safeguard the reputation of New Zealand wine in overseas markets:
- (e) promote consultation with industry organisations on the regulation of the industry, as an aid to fostering efficiency and growth in the New Zealand wine industry:
- (f) enable levies to be imposed on winemakers for payment to entities representing their interests for the funding of industry-good activities.

**4 Interpretation**

- (1) In this Act, unless the context otherwise requires,—

**automated electronic system** means a system that is the subject of an arrangement under section 118A

**commodity** means any plant material or honey used for the making of wine

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

**export eligibility requirements** means those requirements imposed on exports of any class, kind, or description of wine by regulations made under section 38

**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

**extension product** means a product to which all the following apply:

- (a) it is food, wine vinegar, or commodity-based spirits; and
- (b) it is made by a winemaker; and
- (c) it is made at the place or area covered by the winemaker's wine standards management plan or subject to an exemption under section 6 or 11 from the requirement to have such a plan; and
- (d) it is produced from wine; and
- (e) it has been processed in such a way that it is not wine or a wine product

**financial year** means a period of 12 months beginning on 1 July in any year and ending on 30 June in the following year

**fit for intended purpose**, used in relation to wine, is described in subsection (2)

**Food Act regime** means the regime under the Food Act 2014

**food control plan** has the meaning given to it in the Food Act 2014

**fruit wine or vegetable wine**, subject to subsection (3), means the product prepared from the complete or partial fermentation of any fruit, vegetables, grains, cereals, or preparations of fruit, vegetables, grains, or cereals, other than that produced solely from grapes

**grape wine**, subject to subsection (3), means the product of the complete or partial fermentation of fresh grapes, or a mixture of that product and products derived solely from grapes

**hazard** means a biological, chemical, or physical agent that—

- (a) is in or has the potential to be in wine, or is or has the potential to affect the condition of wine; and
- (b) leads or could lead to an adverse or injurious health effect on humans from consumption of wine

**in writing** means printed, typewritten, or otherwise visibly represented, copied, or reproduced, including by fax or email or other electronic means

**industry organisation** means, as appropriate, all or any of—

- (a) New Zealand Winegrowers Incorporated;
- (b) the New Zealand Fruit Wine and Cider Makers Association;
- (c) *[Repealed]*

- (d) any other body specified as an industry organisation for the purposes of this definition by the Minister by notice in the *Gazette*;
- (e) the successors in title of any of those bodies

**infringement fee**, in relation to an infringement offence, means the amount set out in regulations made under section 96E to be payable for the offence

**infringement offence** means an offence identified in regulations made under section 96E as an infringement offence

**label**, subject to subsection (3), means any tag, brand, mark, or statement in writing or any representation or design or descriptive matter on or attached to or used in connection with or accompanying any wine

**making**, or **made**, in relation to wine, means any or every process or action from receipt of the commodity through to dispatch of the wine, including—

- (a) the crushing or pressing of the commodity for juice;
- (b) the fermentation of the commodity or juice into wine;
- (c) any storage, blending, or mixing of a wine or wines;
- (d) bottling or otherwise packaging wine;
- (e) labelling of wine

**marae** includes the area of land on which all buildings such as wharehau (meeting house), wharekai (dining room), ablution blocks, and any other associated buildings are situated

**mead**, subject to subsection (3), means the product prepared from the complete or partial fermentation of honey

**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

**national programme** has the meaning given to it in the Food Act 2014

**New Zealand food standard** means a food standard issued under the Food Act 2014

**notice of recognition** means, as applicable,—

- (a) a notice of recognition given to a recognised agency or a recognised person in accordance with section 82(1)(b); or
- (b) a notification given to a recognised class in accordance with section 82(1)(c)(i)

**official assurance** has the meaning given by section 42

**operator**, in relation to a wine business, means the owner or other person in control of the business

**partial process product** means a product to which all the following apply:

- (a) it is food, juice, or verjuice; and
- (b) it results from the processing of commodities without their undergoing fermentation; and
- (c) it is made by a winemaker; and
- (d) it is made at the place or area covered by the winemaker's wine standards management plan or subject to an exemption under section 6 or 11 from the requirement to have such a plan

**permissible functions and activities** means specialist functions and activities that may be carried out by a recognised agency, recognised person, or recognised class of persons for the purposes of this Act, and includes—

- (a) verification functions and activities:
- (b) *[Repealed]*
- (c) the provision of independent evaluations of the validity of wine standards management plans for the purposes of section 18(1)(b):
- (d) functions and activities in relation to export eligibility requirements

**place** includes any building, conveyance, moveable facility, or structure; and includes any land where wine or commodities are produced

**public register** means the public register of recognised agencies, recognised persons, and recognised classes maintained by the Director-General in accordance with section 82S

**recognised agency** means—

- (a) a person who is recognised by the Director-General under section 71 or 72; and
- (b) a group of persons who are recognised by the Director-General under section 72

**recognised class** means a class of natural persons that is recognised by the Director-General under section 75

**recognised person** means a natural person who—

- (a) is recognised by the Director-General under section 73 or 74; or
- (b) is a member of a recognised class, but only—
  - (i) to the extent that the person carries out the specified functions and activities for which the class is recognised; and
  - (ii) while the person continues to hold the qualifications or meet the other membership criteria according to which the class is defined in the public register in accordance with section 82(1)(a)

**registered exporter** means an exporter currently registered under section 49

**registered wine standards management plan** means a wine standards management plan that is currently registered under section 19

**regulated person** has the meaning given in section 54A

**regulations** means regulations made under this Act

**risk factors** means—

- (a) risks from false or misleading labelling;
- (b) risks from hazards to human health

**sell** has the same meaning as trade

**specified functions and activities** means the permissible functions and activities that are specified by the Director-General in a notice of recognition in accordance with section 82(2)(a) as functions and activities that—

- (a) a recognised agency is responsible for managing and carrying out; or
- (b) a recognised person may carry out; or
- (c) persons who are members of a recognised class may carry out

**supplementary notice** means a notice issued under section 120(2)

**trade** means sell for consumption or use; and includes—

- (a) selling for resale (including as a constituent part of another product) for consumption or use;
- (b) offering or attempting to sell, or receiving for sale, or having in possession or exposing for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or exposed for sale;
- (c) barter;
- (d) supplying a product under a contract, together with other goods or services or both, in consideration of an inclusive charge for the product and the other goods or services;
- (e) offering as a public prize or reward, or giving away for the purpose of advertisement or in the furtherance of any trade or business;
- (f) every other method of disposition for valuable consideration

**verification** includes the application of methods, procedures, tests, and other checks to confirm—

- (a) in relation to a wine standards management plan,—
  - (i) whether operations that are subject to the plan are being carried out in compliance with it; and
  - (ii) the applicability of the plan to the operations of the relevant wine business; and
  - (iii) the effectiveness of the plan:

- (b) in relation to wine for whose export an official assurance is required, whether the wine has been produced or made in a way that meets the requirements for the official assurance:
- (c) whether a regulated person has complied with a requirement imposed by or under this Act

**verifier** means a recognised person whose specified functions and activities include carrying out verification functions and activities

**verifying agency** means a recognised agency whose specified functions and activities include managing and carrying out verification functions and activities

**wine** means any grape wine, fruit wine, vegetable wine, or mead; and—

- (a) includes—
  - (i) cider and perry:
  - (ii) fortified wines such as sherry, port, and fruit or vegetable-based liqueurs; and
- (b) to the extent specified in sections 12 and 15A, includes wine products, extension products, and partial process products; but
- (c) does not include beer or spirits

**wine business** means a business undertaking that, for reward or for the purposes of trade,—

- (a) makes wine; or
- (b) exports wine

**wine officer**, or **officer**, means a person appointed as a wine officer under section 55; and includes the Director-General

**wine product**, subject to subsection (3), means a food (as defined in the Food Act 2014) containing no less than 700 ml/L of wine which has been formulated, processed, modified, or mixed with other foods such that it is not wine

**wine standard** means a standard prescribed by regulations made under section 33

**wine standards management plan** has the meaning given by section 8, and, except in subpart 1 of Part 2, is to be taken to refer to a registered wine standards management plan

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

- (2) In this Act, **fit for intended purpose**, used in relation to wine, means wine that has been made in accordance with the requirements of this Act and that meets any relevant wine standards and supplementary notices and any relevant New Zealand food standards.

- (3) The Governor-General may, by Order in Council, amend or substitute the definitions of fruit wine or vegetable wine, grape wine, label, mead, and wine product to ensure consistency with New Zealand food standards.
- (4) Nothing in the definitions of fruit wine or vegetable wine, grape wine, mead, or wine product prevents the addition of any foods, food additives, or processing aids to such products if that addition to the particular product is permitted under the Food Act 2014.

Section 4(1) **automated electronic system**: inserted, on 2 March 2018, by section 169(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **extension product**: inserted, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 4(1) **extension product** paragraph (d): amended, on 2 March 2018, by section 169(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **Food Act regime**: replaced, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 4(1) **food control plan**: inserted, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 4(1) **food safety programme**: repealed, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 4(1) **industry organisation** paragraph (a): replaced, on 2 March 2018, by section 169(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **industry organisation** paragraph (c): repealed, on 2 March 2018, by section 169(5) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **infringement fee**: inserted, on 2 March 2018, by section 169(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **infringement offence**: inserted, on 2 March 2018, by section 169(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **national programme**: inserted, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 4(1) **New Zealand food standard**: amended, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 4(1) **notice of recognition**: inserted, on 31 August 2012, by section 4(2) of the Wine Amendment Act 2012 (2012 No 70).

Section 4(1) **partial process product**: inserted, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 4(1) **permissible functions and activities**: inserted, on 31 August 2012, by section 4(2) of the Wine Amendment Act 2012 (2012 No 70).

Section 4(1) **permissible functions and activities**: amended, on 2 March 2018, by section 169(6) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **permissible functions and activities** paragraph (a): amended, on 2 March 2018, by section 169(7) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **permissible functions and activities** paragraph (b): repealed, on 2 March 2018, by section 169(8) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **public register**: inserted, on 31 August 2012, by section 4(2) of the Wine Amendment Act 2012 (2012 No 70).

Section 4(1) **recognised agency**: replaced, on 31 August 2012, by section 4(1) of the Wine Amendment Act 2012 (2012 No 70).

Section 4(1) **recognised class**: inserted, on 31 August 2012, by section 4(2) of the Wine Amendment Act 2012 (2012 No 70).

Section 4(1) **recognised management plan verifier**: repealed, on 2 March 2018, by section 169(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **recognised person**: replaced, on 31 August 2012, by section 4(1) of the Wine Amendment Act 2012 (2012 No 70).

Section 4(1) **recognised verifying agency**: repealed, on 2 March 2018, by section 169(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **regulated person**: inserted, on 2 March 2018, by section 169(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **regulations**: inserted, on 2 March 2018, by section 169(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **specified functions and activities**: inserted, on 31 August 2012, by section 4(2) of the Wine Amendment Act 2012 (2012 No 70).

Section 4(1) **supplementary notice**: inserted, on 2 March 2018, by section 169(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **verification**: replaced, on 2 March 2018, by section 169(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **verifier**: inserted, on 2 March 2018, by section 169(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **verifying agency**: inserted, on 2 March 2018, by section 169(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **wine** paragraph (b): replaced, on 2 March 2018, by section 169(9) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(1) **wine product**: amended, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 4(1) **wine standard**: replaced, on 2 March 2018, by section 169(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(2): amended, on 2 March 2018, by section 169(10) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 4(4): amended, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

#### **4A Transitional, savings, and related provisions relating to amending Acts**

- (1) The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.
- (2) Sections 129 to 132 contain transitional, savings, and related provisions relating to the enactment of this Act.

Section 4A: inserted, on 2 March 2018, by section 170 of the Food Safety Law Reform Act 2018 (2018 No 3).

### *Application of Act generally*

#### **5 Scope of Act**

- (1) This Act applies to the making of all wine for reward or for the purposes of trade or export.



(2) This Act may also apply or be made to apply to wine products, extension products, partial process products, and producers of commodities from which wine is made, to the extent specified in sections 12, 15A, and 32.

(3) Classes, descriptions, and kinds of wine, commodities, winemakers, exporters, and operations may be excluded from the application of this Act to the extent exempted from all or any of its provisions by Order in Council under section 6.

Section 5(2): amended, on 2 March 2018, by section 171(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 5(2): amended, on 2 March 2018, by section 171(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

## **6 Exemptions from application of Act**

(1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, exempt any of the following from all or any of the provisions of this Act:

- (a) any class, description, or kind of wine:
- (b) any commodity or any class, description, or kind of commodity from which wine is made:
- (c) any 1 or more classes or descriptions of winemakers or exporters of wine:
- (d) any 1 or more classes or descriptions of operations, premises, or places in relation to the making or export of wine:
- (e) any combination of the above.

(2) The Minister may not recommend the making of an order under this section unless satisfied, having regard to the matter to be exempted, that the risk to human health and to trade of providing the exemption is negligible.

(3) In determining whether or not to recommend the making of an order the Minister is to have regard to the following:

- (a) the desirability of maintaining consistency between New Zealand wine standards, New Zealand Food Standards, and any relevant standards, requirements, or recommended practices that are accepted internationally:
- (b) the desirability of maintaining consistency with New Zealand's international obligations:
- (c) the desirability of facilitating access to overseas markets:
- (d) the need to protect the health of consumers of wine:
- (e) the relative cost of having the exemption or not having it, who bears the cost, and the positive and negative impacts on New Zealand consumers:
- (f) such other matters as the Minister considers relevant.

(4) *[Repealed]*

- (5) An exemption under this section may have retrospective effect.

Section 6(4): repealed, on 2 March 2018, by section 172 of the Food Safety Law Reform Act 2018 (2018 No 3).

## **Part 2**

### **Winemaking and export of wine**

#### **7 Outline of this Part**

This Part provides for—

- (a) wine standards management plans, under which winemakers must operate, as a main means of—
  - (i) ensuring that wine complies with appropriate standards and is safe for consumption; and
  - (ii) facilitating exports of wine; and
- (b) the setting of wine standards that must be met by any wine intended for trade or export; and
- (c) requirements in relation to the export of wine, and the giving of official assurances where appropriate to meet overseas market access requirements.

Section 7(b): amended, on 2 March 2018, by section 173 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **Subpart 1—Wine standards management plans**

#### **8 What is a wine standards management plan**

- (1) A wine standards management plan is a plan designed to identify, control, manage, and eliminate or minimise hazards and other risk factors in relation to the making of wine in order to ensure that the wine is fit for its intended purpose.
- (2) A wine standards management plan may be individually created by the person or wine business to whom or which it is to apply, or it may be created by some other party but adopted and amended to suit the operations of the person or business concerned. It may also be based on a template, a model, or a code of practice, if in the view of the Director-General the template, model, or code of practice is valid and appropriate for the business concerned.
- (3) A wine standards management plan can relate to any or all matters relating to the making of wine for trade or export.
- (4) A wine standards management plan may also apply to 1 or more wine businesses or parts of businesses in cases where the Director-General has given approval under section 15.

Section 8 heading: amended, on 2 March 2018, by section 174(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 8(4): amended, on 2 March 2018, by section 174(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

## **9 Who must have a wine standards management plan**

The following persons must operate under a registered wine standards management plan for their wine-related operations, unless exempted under section 6 or section 11:

- (a) all winemakers:
- (b) such other persons as may be specified by Order in Council under section 12 as requiring to operate under a wine standards management plan.

Section 9 heading: amended, on 2 March 2018, by section 175 of the Food Safety Law Reform Act 2018 (2018 No 3).

## **10 Winemakers with associated wine products or food business**

*[Repealed]*

Section 10: repealed, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

## **11 Limited exemption from requirement to have wine standards management plan**

- (1) The Director-General may, by notice under section 120(1), exempt in whole or in part any winemaker or person required under section 12 to have a wine standards management plan from the requirement to operate under a wine standards management plan—
  - (a) for the period specified in the notice; and
  - (b) on such conditions (if any) as may be specified in the notice.
- (2) The Director-General may not grant an exemption under subsection (1) unless satisfied that, having regard if appropriate to the period of the exemption or the conditions imposed,—
  - (a) the risk to human health of providing the exemption is negligible; and
  - (b) the risk of damage to trade is also negligible.
- (3) An exemption under subsection (1) may have retrospective effect.

Section 11(1): amended, on 2 March 2018, by section 176 of the Food Safety Law Reform Act 2018 (2018 No 3).

## **12 Certain persons may be required to have wine standards management plan**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, require any 1 or more classes of the following categories of persons to have a wine standards management plan in respect of the wine-related operations specified in the order:
  - (a) exporters of wine:

- (b) transporters of commodities or wine:
  - (c) producers of commodities:
  - (d) persons manufacturing wine products, extension products, or partial process products.
- (2) The persons to whom and operations to which the order applies may be defined by reference to—
- (a) the class, kind, or description of commodity, wine, wine product, extension product, or partial process product:
  - (b) the intended purpose or destination of the commodity, wine, wine product, extension product, or partial process product:
  - (c) the type of operations or processes carried out in relation to the commodity, wine, wine product, extension product, or partial process product:
  - (d) the type of premises or place in which operations or processes are carried out in relation to the commodity, wine, wine product, extension product, or partial process product:
  - (e) any combination of the above.
- (3) The Minister may not recommend the making of an order under this section unless the Minister is satisfied that the order is necessary or desirable—
- (a) in the interests of producing wine, wine products, extension products, or partial process products that are fit for intended purpose; or
  - (b) for the purpose of facilitating access to overseas markets.
- (4) If an order under this section requires a wine standards management plan in respect of operations relating to wine, this Act (including the regulations and any notices under section 120) applies in relation to the wine unless the order provides otherwise.
- (5) If an order under this section requires a wine standards management plan in respect of operations relating to commodities, wine products, extension products, or partial process products, this Act (including the regulations and any notices under section 120) applies to the commodities, wine products, extension products, or partial process products as if they were wine unless the order provides otherwise.

Section 12(1)(d): amended, on 2 March 2018, by section 177(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 12(2)(a): amended, on 2 March 2018, by section 177(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 12(2)(b): amended, on 2 March 2018, by section 177(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 12(2)(c): amended, on 2 March 2018, by section 177(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 12(2)(d): amended, on 2 March 2018, by section 177(5) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 12(3): replaced, on 2 March 2018, by section 177(6) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 12(4): replaced, on 2 March 2018, by section 177(6) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 12(5): inserted, on 2 March 2018, by section 177(6) of the Food Safety Law Reform Act 2018 (2018 No 3).

### **13 Duties of operators of wine standards management plans**

An operator of a wine standards management plan has the following duties:

- (a) to ensure that the operations of the business subject to the plan do not contravene the relevant requirements of and under this Act, including the requirements set out in the plan:
- (b) to ensure the plan is consistent with the requirements of regulations and notices in force from time to time under this Act:
- (c) to adequately implement and resource all operations under the plan, including provision for the instruction, competency, and supervision of staff to ensure the making of wine that is fit for its intended purpose:
- (d) to ensure that all operations under the plan are commensurate with the capability and the capacity of the premises or place, facilities, equipment, and staff to make wine that is fit for its intended purpose and, if applicable, complies with any export requirements under subpart 3 of Part 2:
- (e) to give relevant recognised agencies and recognised persons such freedom and access as will allow them to carry out their functions and activities under the Act, including verification functions and activities:
- (f) to notify the Director-General, in advance where practicable, and otherwise as soon as possible, of any change in the operator's verifying agency.

Section 13(e): amended, on 31 August 2012, by section 5 of the Wine Amendment Act 2012 (2012 No 70).

Section 13(f): amended, on 2 March 2018, by section 178 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **14 Contents of and requirements for wine standards management plans**

- (1) A wine standards management plan must—
  - (a) be in writing in a form acceptable to the Director-General:
  - (b) specify the name and address (including the electronic address, if available) of—
    - (i) the business operator whose plan it is; and
    - (ii) the business or businesses covered by the programme:

- (c) identify—
  - (i) the wine being made; and
  - (ii) the premises or place to which the plan applies; and
  - (iii) any other business to which the plan applies (if it does not apply only to the business of the person applying for registration).
- (2) A wine standards management plan must—
  - (a) set out the procedures the operator will use for identifying, controlling, managing, eliminating, or minimising risk factors:
  - (b) describe the steps the operator will take to confirm that the plan is working effectively:
  - (ba) make provision in relation to tracing and recalling wine as required by regulations made under section 54C or any supplementary notice:
  - (c) provide for appropriate corrective actions (including recall) to be undertaken where the wine may not be fit for its intended purpose:
  - (d) provide for appropriate and auditable documentation, record keeping, and reporting, including as required by—
    - (i) regulations made under section 54H(1) or any supplementary notice; or
    - (ii) any notice referred to in section 54H(2):
  - (da) make provision in relation to verification as required by regulations made under section 54F or any supplementary notice:
  - (e) as appropriate to the operations under the plan, contain the matters specified in, and otherwise comply with—
    - (i) any relevant wine standards, other regulations, supplementary notices, and New Zealand food standards; and
    - (ii) any relevant notices issued by the Director-General under section 120 (including location of reference material and documents recording specific procedures):
  - (f) cover all winemaking components and processes, and all premises and equipment:
  - (g) document all processes involved in the making of wine.
- (2A) However, in relation to wine made for export, a wine standards management plan need not comply with a New Zealand food standard to the extent that the standard's labelling requirements conflict with the labelling requirements of the country that imports the wine.
- (2B) A wine standards management plan must comply with any regulations or supplementary notice requiring it to be differentiated from other information kept by the operator and prescribing how this must be done.

- (3) In relation to hazards, a plan must demonstrate that the following matters have also been taken into account in its development:
- (a) systematic identification of any hazards, and determination of the significance of those hazards, involved in the production of commodities and the making of wine:
  - (b) determination of the points at which the hazards of significance identified in paragraph (a) occur, and the processes or procedures to best control them:
  - (c) establishment of acceptable parameters of the processes or procedures at the points determined in paragraph (b):
  - (d) establishment of monitoring procedures to demonstrate control at the points determined in paragraph (b):
  - (e) identification of the action that will be taken if any parameters established for the plan are not achieved:
  - (f) establishment of procedures for the ongoing confirmation that the plan is effective in managing the hazards:
  - (g) appropriate and auditable documentation and record keeping.

(4) *[Repealed]*

Section 14(2)(ba): inserted, on 2 March 2018, by section 179(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 14(2)(d): replaced, on 2 March 2018, by section 179(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 14(2)(da): inserted, on 2 March 2018, by section 179(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 14(2)(e)(i): replaced, on 2 March 2018, by section 179(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 14(2)(e)(ii): amended, on 2 March 2018, by section 179(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 14(2A): inserted, on 5 December 2013, by section 4 of the Wine Amendment Act 2013 (2013 No 139).

Section 14(2B): inserted, on 2 March 2018, by section 179(5) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 14(4): repealed, on 2 March 2018, by section 179(6) of the Food Safety Law Reform Act 2018 (2018 No 3).

## 15 Multi-business wine standards management plans

- (1) A registered wine standards management plan may apply to more than 1 business, if the Director-General approves.
- (2) The Director-General may approve one person's wine standards management plan applying to all or part of the business or businesses of 1 or more other persons if satisfied that—
- (a) the plan is appropriate to the other businesses or parts of businesses, as well as to the business of the person whose plan it is; and

- (b) the registered operator of the plan will have sufficient control, authority, and accountability for all matters covered by the plan in relation to the other businesses or parts of businesses subject to its coverage; and
  - (c) the applicant for the approval has obtained the consent or otherwise taken into account the views of any person whose business or part of whose business is to be covered by the plan.
- (3) The approval may be given subject to conditions.
- (4) Application for approval under this section must be made by the operator of the wine standards management plan, either at the time of application for its registration under section 18, or as an application for amendment under section 22(3).

Section 15(2)(a): amended, on 2 March 2018, by section 180(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 15(2)(b): amended, on 2 March 2018, by section 180(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 15(2)(c): amended, on 2 March 2018, by section 180(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

#### *Relationship between Food Act regime and wine standards management plans*

Heading: inserted, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

#### **15A Persons involved with both food and wine**

- (1) This section applies to winemakers who make extension products, partial process products, or wine products.
- (2) The winemakers may choose to apply subsection (3) or (4).
- (3) Winemakers who choose to apply this subsection must include all their operations in their registered food control plans or register all their operations under a national programme. The Food Act 2014, and its provisions on verification, apply to their products.
- (4) Winemakers who choose to apply this subsection must include all their operations in their registered wine standards management plans. This Act (including the regulations and any notices under section 120) applies to their extension products, partial process products, or wine products as if they were wine.
- (5) Winemakers who also make food, or sell it at retail, must, subject to section 27 of the Food Act 2014, do both the following:
- (a) comply with the Food Act regime for their food operations; and
  - (b) comply with their wine standards management plans for all their wine-making operations.

Section 15A: inserted, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 15A(4): amended, on 2 March 2018, by section 181 of the Food Safety Law Reform Act 2018 (2018 No 3).



**15B Application for intermittent use of food control plan as wine standards management plan**

- (1) An operator of a food control plan may apply to the Director-General to register a food control plan (**food plan**) as a wine standards management plan (**wine plan**) for use intermittently.
- (2) Sections 18 to 20 apply to the application as if it were an application under section 18.
- (3) The Director-General must impose conditions on registration specifying—
  - (a) the times during which the food plan’s operator may use the plan; and
  - (b) the manner in which the food plan’s operator may use the plan; and
  - (c) the notice that the food plan’s operator must give of the food plan’s being in use.
- (4) The Director-General must also impose a condition on registration specifying whether and to what extent the food plan is subject to the verification requirements of this Act or the Food Act 2014. In setting the condition, the Director-General must take into account—
  - (a) the desirability of continuity in verification services, functions, or requirements; and
  - (b) export eligibility requirements and any supplementary notices; and
  - (c) any requirements set out in the regulations or any supplementary notices for determining whether all or any classes of registered food control plans are to be subject to the verification regime of this Act or the Food Act 2014.
- (5) The Director-General must—
  - (a) advise the applicant of the conditions that the Director-General has imposed under subsections (3) and (4) and section 19(2); and
  - (b) give the applicant the opportunity to withdraw the application.
- (6) The Director-General must as soon as practicable after registration notify the following persons of the fact and conditions of registration:
  - (a) the applicant; and
  - (b) the applicant’s verifier or verifying agency (if applicable); and
  - (c) the applicant’s verifier or verification agency under the Food Act 2014; and
  - (d) either—
    - (i) the chief executive of the agency for the time being responsible for the administration of the Food Act 2014; or
    - (ii) the relevant territorial authority.

Compare: 1999 No 93 s 34(1), (2), (4)–(6)

Section 15B: inserted, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 15B(2): replaced, on 2 March 2018, by section 182(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 15B(4)(b): replaced, on 2 March 2018, by section 182(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 15B(4)(c): inserted, on 2 March 2018, by section 182(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 15B(6)(b): amended, on 2 March 2018, by section 182(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

### **15C Intermittent use of food control plan as wine standards management plan**

- (1) This section applies when a food control plan (**food plan**) is registered as a wine standards management plan (**wine plan**) under section 15B.
- (2) While an operator is using the registered food plan, unless the regulations or any supplementary notice provide otherwise, the operator is treated as a person who—
  - (a) is required to have a wine plan for the operations for which the operator is using the registered food plan; and
  - (b) is not required to comply with the Food Act regime for the operations for which the operator is using the registered food plan.
- (3) While an operator is not using the registered food plan, unless the regulations or any supplementary notice provide otherwise,—
  - (a) the operator is treated as a person who is required to comply with the Food Act regime; and
  - (b) this Act does not apply to the operator.

Compare: 1999 No 93 s 34(3)

Section 15C: inserted, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 15C(2): amended, on 2 March 2018, by section 183 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 15C(3): amended, on 2 March 2018, by section 183 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **15D Regulations may grant or provide for exemptions from this Act or Food Act 2014**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations exempting, or providing for the exemption of, persons from specified requirements imposed by or under this Act or the Food Act 2014.
- (2) The Minister may not recommend the making under subsection (1) of regulations that grant an exemption unless satisfied that—
  - (a) granting the exemption is necessary or desirable in the interests of avoiding unnecessary or undesirable duplication of equivalent duties or matters under this Act and the Food Act 2014; and

- (b) the extent of the exemption is not broader than is reasonably necessary for that purpose.
- (3) The Minister may not recommend the making under subsection (1) of regulations that provide for exemptions to be granted unless satisfied that the regulations permit an exemption to be granted only if—
  - (a) granting the exemption is necessary or desirable in the interests of avoiding unnecessary or undesirable duplication of equivalent duties or matters under this Act and the Food Act 2014; and
  - (b) the extent of the exemption is not broader than is reasonably necessary for that purpose.

Section 15D: inserted, on 2 March 2018, by section 184 of the Food Safety Law Reform Act 2018 (2018 No 3).

### *Registration of wine standards management plans*

#### **16 Wine standards management plans must be registered**

A person who is required to operate under a wine standards management plan must apply for registration of the plan in accordance with section 18.

#### **17 Register of wine standards management plans**

- (1) The Director-General must keep and maintain a register of wine standards management plans that records every wine standards management plan registered under this Part.
- (2) The purpose of the register is—
  - (a) to enable members of the public, including persons and businesses operating under this Act, to know what business operations are subject to wine standards management plans, and who is responsible for various functions under those plans; and
  - (b) to facilitate the ability of the Director-General to—
    - (i) ensure that all traded wine is fit for its intended purpose; and
    - (ii) advise winemakers and other persons required to have wine standards management plans under section 12 of overseas market access requirements, and of developments in market access issues; and
    - (iii) to safeguard official assurances for entry of wine into overseas markets, including in emergency situations; and
  - (c) to facilitate the compliance, audit, and other supporting and administrative functions of the Ministry under this Act.
- (3) The register of wine standards management plans must contain the following particulars in respect of each plan registered:

- (a) the name and address (including the electronic address, if available) of the winemaker or other business owner or operator whose plan it is;
  - (b) the name, or the position or designation, of the person who is responsible for the day-to-day management of the plan, as nominated by the winemaker or other business owner or operator;
  - (c) the date on which the plan was registered, and the registration number or other unique identifier allocated to it;
  - (d) the types of wine (whether grape wine, fruit wine or vegetable wine, or other type of wine or wine product) to which the plan applies;
  - (e) the principal categories of winemaking and other operations carried out under the plan;
  - (f) the location and type of premises or place to which the plan applies;
  - (g) the name of the verifying agency responsible for verification of the plan;
  - (h) the date (and period, if appropriate) of any suspension of operations under the plan or any deregistration or surrender of registration of the plan;
  - (i) a brief indication of the reason for any such suspension or deregistration;
  - (j) the date on which the most recent significant amendment to the wine standards management plan has been registered under section 22;
  - (k) the date of any notifications of minor amendments to the wine standards management plan under section 23;
  - (l) any other particulars required by the regulations or any supplementary notice.
- (4) The Director-General must—
- (a) keep the register open for public inspection, free of charge, at all reasonable hours at the head office of the Ministry and at such other places as the Director-General determines as necessary or appropriate; and
  - (b) supply to any person copies of all or part of the register on request and on payment of a reasonable charge for the production of the copy.
- (5) The register may be kept in such manner as the Director-General thinks fit, including, either wholly or partly, by means of a device or facility—
- (a) that records or stores information electronically or by other means; and
  - (b) that permits the information so recorded to be readily inspected or reproduced in usable form; and
  - (c) that permits the information in the register to be accessed by electronic means, including (without limitation) by means of remote log-on access.

Section 17(3)(g): amended, on 2 March 2018, by section 185(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 17(3)(j): replaced, on 2 March 2018, by section 185(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 17(3)(k): replaced, on 2 March 2018, by section 185(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 17(3)(l): inserted, on 2 March 2018, by section 185(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

## **18 Applications for registration of wine standards management plans**

- (1) An application for registration of a wine standards management plan must be made in writing in a form or manner approved by the Director-General, and be accompanied by—
  - (a) either—
    - (i) a copy of the wine standards management plan (or such greater number of copies as may be required by the Director-General); or
    - (ii) if the regulations permit part only of the plan to be lodged, a copy of that part of the plan; and
  - (b) a copy of a report of an independent evaluation, carried out not more than 6 months before the date of the application for registration, of the validity of the wine standards management plan, in terms of sections 8 and 14; and
  - (c) the name of the verifying agency that has indicated it is prepared to undertake verification of the plan; and
  - (d) such further information and other material (including declarations, where appropriate) as may be required by the regulations or any supplementary notice; and
  - (e) the prescribed fee (if any).
- (1A) Despite the requirement in subsection (1)(b), the Director-General may waive or modify the requirement for an independent evaluation report where—
  - (a) a wine standards management plan is fully based on a template, model, or code of practice that the Director-General considers to be valid and appropriate for the business concerned in accordance with section 8(2); or
  - (b) a wine standards management plan is a multi-business wine standards management plan approved by the Director-General in accordance with section 15; or
  - (c) the risks to human health are negligible and the Director-General is satisfied that the nature of the business does not require an independent evaluation report to ensure validity in terms of sections 8 and 14.
- (1B) The information or material accompanying the application must be provided in a way that complies with any requirements prescribed by the regulations or any supplementary notice.

- (2) The Director-General may require an applicant to supply further information or other material before determining whether or not to register a wine standards management plan.
- (3) If the information or material is not supplied within 6 months of the date of the request, or within such further time as the Director-General allows, the application for registration lapses.

Section 18(1)(a)(ii): replaced, on 1 March 2020, by section 187 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 18(1)(c): amended, on 2 March 2018, by section 186(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 18(1)(c): amended, on 2 March 2018, by section 186(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 18(1)(d): amended, on 2 March 2018, by section 186(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 18(1A): inserted, on 15 December 2005, by section 3 of the Wine Amendment Act 2005 (2005 No 119).

Section 18(1B): inserted, on 2 March 2018, by section 186(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

## **19 Registration of wine standards management plans**

- (1) The Director-General must register a wine standards management plan submitted by an applicant if satisfied that—
  - (a) the content of the wine standards management plan—
    - (i) complies with the requirements imposed by or under this Act; and
    - (ii) ensures that, as far as practicable, the wine to be produced under the plan will be fit for its intended purpose; and
    - (iii) is clear enough to be readily understood by the operator, the Director-General, and the operator's verifier; and
  - (b) the applicant is a fit and proper person to operate a wine business, taking into account whether the applicant or any directors or managers of the business concerned have been convicted, whether in New Zealand or overseas, of any offence relating to fraud or dishonesty, or relating to management control or business activities in respect of any wine business (whether in New Zealand or elsewhere); and
  - (c) the business, or its operator, is resident in New Zealand within the meaning of section OE 1 or section OE 2 of the Income Tax Act 1994.
- (2) Registration may be subject to such reasonable conditions as the Director-General may specify, including conditions relating to the commencement of operations under the plan.
- (3) The Director-General must, as soon as practicable after registering a wine standards management plan, supply the applicant with—
  - (a) a notice of registration; and

- (b) a notice of any conditions imposed under subsection (2).
- (4) If a person acting under the delegated authority of the Director-General imposes any conditions under subsection (2), the applicant may seek a review of the imposition of those conditions under section 114.
- (5) Registration of a wine standards management plan under this section continues in force until the plan is deregistered under section 25 or its registration is surrendered under section 27.

Section 19(1)(a)(iii): inserted, on 2 March 2018, by section 188 of the Food Safety Law Reform Act 2018 (2018 No 3).

## **20 Refusal to register wine standards management plan**

- (1) If, after considering an application and any further information or material supplied under section 18, the Director-General proposes to refuse to register a wine standards management plan, the Director-General must give the applicant—
  - (a) a notice containing such particulars as will clearly inform the applicant of the grounds on which the Director-General proposes to refuse to register the plan; and
  - (b) a reasonable opportunity to make written submissions or be heard in respect of the matter.
- (2) Where the Director-General finally determines to refuse to register a plan, the Director-General must as soon as practicable notify that fact to the applicant in writing, giving reasons.
- (3) If a person acting under the delegated authority of the Director-General declines to register a wine standards management plan, the applicant may seek a review of that decision under section 114.

## **21 Registration may not be transferred**

- (1) The registration of a wine standards management plan applies only to the particular operator and premises or place specified in the register, and may not be transferred to a different operator or premises or place.
- (2) Nothing in this section prevents—
  - (a) the registration in the name of a new operator, or in relation to new premises or a new place, of a wine standards management plan in substantially identical terms to those that applied to a former operator or premises or place; or
  - (b) the extension of a plan to the business or part of the business of another person in accordance with an approval given under section 15.
- (3) For the purposes of this section, the following circumstances will, except as otherwise specified by the Director-General by notice under section 120(1), be treated as involving a change in the operator of a wine standards management

plan, and so require registration of a new plan rather than amendment of an existing registered plan:

- (a) a change in the members of a partnership (but not in members' respective shares in the partnership):
- (b) the death, bankruptcy, receivership, or liquidation of the operator of the plan.

Section 21(2)(b): amended, on 2 March 2018, by section 189(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 21(3): amended, on 2 March 2018, by section 189(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

## **22 Registration of significant amendment of wine standards management plan**

- (1) The operator of a registered wine standards management plan must amend that plan, and apply for registration of the amendment, where any change, event, or other matter means that the plan—
  - (a) is no longer appropriate, or will no longer be appropriate, to the wine, processes, or premises or place covered by the plan; or
  - (b) otherwise impacts, or will impact, on the fitness for its intended purpose of the wine concerned or the content of the wine standards management plan.
- (2) The operator must amend the plan, and apply for registration of the amendment, before the event where the operator knows of the change, event, or other matter in advance, and in all other cases must do so without unreasonable delay.
- (3) The operator of a wine standards management plan may at any time apply to the Director-General for registration of an amendment to the plan.
- (3A) An application under this section must be made in writing in a form or manner approved by the Director-General and be accompanied by—
  - (a) any information and other material required by the regulations or any supplementary notice; and
  - (b) the prescribed fee (if any).
- (3B) The information or material accompanying the application must be provided in a way that complies with any requirements prescribed by the regulations or any supplementary notice.
- (3C) Sections 18(2) and (3), 19, and 20 apply to an application under this section, with any necessary modifications, as if it were an application for registration under section 18.
- (4) As soon as practicable after determining to register an amendment, the Director-General must—
  - (a) notify the applicant in writing accordingly; and



- (b) where the amendment relates to future events or matters, specify the date or occasion on which the amendment takes effect or will apply; and
  - (c) give the applicant's verifying agency a copy of the amendment (or, where appropriate, of a redraft of the relevant part of the plan that incorporates the amendment); and
  - (d) make an appropriate entry on the register of wine standards management plans.
- (5) If the Director-General proposes to refuse to register an amendment, the Director-General must give the applicant—
- (a) a notice containing such particulars as will clearly inform the applicant of the grounds on which the Director-General proposes to refuse to register the amendment; and
  - (b) a reasonable opportunity to make written submissions or be heard in respect of the matter.
- (6) Where the Director-General finally determines to refuse to register an amendment, the Director-General must as soon as practicable notify that fact to the applicant in writing, giving reasons.
- (7) If a person acting under the delegated authority of the Director-General refuses to register an amendment, the applicant may seek a review of that decision under section 114.
- (8) *[Repealed]*

Section 22 heading: amended, on 2 March 2018, by section 190(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 22(3): amended, on 2 March 2018, by section 190(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 22(3A): inserted, on 2 March 2018, by section 190(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 22(3B): inserted, on 2 March 2018, by section 190(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 22(3C): inserted, on 2 March 2018, by section 190(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 22(4)(c): amended, on 2 March 2018, by section 190(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 22(8): repealed, on 2 March 2018, by section 190(5) of the Food Safety Law Reform Act 2018 (2018 No 3).

## **23 Notification of minor amendments to wine standards management plans**

- (1) For the purpose of ensuring that a registered wine standards management plan continues to comply with the requirements of section 14, every operator of a wine standards management plan must from time to time notify the Director-General of all amendments to the wine standards management plan that—
- (a) are of such a nature as not to require registration under section 22; and

- (b) have not been previously notified to the Director-General under this section.
- (2) Notification of the amendments must—
  - (a) be made in a form or manner approved by the Director-General; and
  - (b) be made at the intervals set out in the regulations or any supplementary notice; and
  - (c) be accompanied by—
    - (i) any information and other material required by the regulations or any supplementary notice; and
    - (ii) the prescribed fee (if any); and
  - (d) comply with any requirements in the regulations or any supplementary notice.
- (3) On being satisfied that the requirements of this section have been complied with, and that the registered wine standards management plan concerned continues to comply with the requirements of section 14, the Director-General must register the fact that the plan has been updated under this section.

(4) *[Repealed]*

Section 23 heading: amended, on 2 March 2018, by section 191(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 23(2)(a): amended, on 2 March 2018, by section 191(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 23(2)(b): replaced, on 2 March 2018, by section 191(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 23(2)(c): replaced, on 2 March 2018, by section 191(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 23(2)(d): replaced, on 2 March 2018, by section 191(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 23(4): repealed, on 2 March 2018, by section 191(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

**23A Director-General may require amendment to improve clarity of registered wine standards management plan**

- (1) If the Director-General considers that a registered wine standards management plan is not clear enough to be readily understood by the persons referred to in section 19(1)(a)(iii), the Director-General may require the operator to amend the plan.
- (2) The operator must amend the plan to meet the Director-General's requirements under subsection (1) within 6 months after the date the requirement is received.
- (3) If the operator fails to do so, the Director-General may—
  - (a) suspend operations under the plan in accordance with section 24; or
  - (b) remove the plan from the register in accordance with section 25.

Section 23A: inserted, on 2 March 2018, by section 192 of the Food Safety Law Reform Act 2018 (2018 No 3).

## **24 Suspension of operations under registered wine standards management plan**

- (1) The Director-General may suspend any or all operations under a registered wine standards management plan for a period of up to 3 months if the Director-General has reasonable grounds to believe that—
  - (a) the plan may not be or is no longer effective; or
  - (b) the wine made under the plan does not meet or no longer meets the requirements imposed by or under this Act; or
  - (c) suspension is permitted under section 23A.
- (2) The Director-General may impose conditions and requirements in respect of the implementation and operation of a suspension under this section.
- (3) Where the Director-General suspends all or any operations under a wine standards management plan, he or she must give written notice of that fact to the operator of the plan, specifying—
  - (a) the reason for the suspension; and
  - (b) the period of the suspension; and
  - (c) the date on which or time at which it commences (which may not be earlier than the date or time of notification); and
  - (d) the operations to which the suspension applies; and
  - (e) any conditions or requirements in relation to the suspension.
- (4) If the Director-General considers it necessary in the circumstances, and after having notified the operator of the proposed extension and the reasons for it, and having given the operator a reasonable opportunity to be heard, the period of suspension may be extended once for such further period not exceeding 3 months as the Director-General notifies to the operator in writing before the expiry of the original suspension.
- (4A) The operator of a registered wine standards management plan may suspend all or any operations under the plan for a minimum of 3 months and a maximum of 12 months.
- (4B) An operator who suspends a plan under subsection (4A) must give the Director-General a notice in writing stating—
  - (a) the date on which the suspension starts, which must be a date after the date of the notice; and
  - (b) the date on which the suspension ends; and
  - (c) which operations are suspended; and
  - (d) how the operator intends to deal with any affected product.

- (5) The Director-General must notify the operator's verifying agency of a suspension under this section.
- (6) The Director-General may notify any suspension under this section in the *Gazette*.
- (7) A suspension under this section does not affect any other actions that the Director-General may take under this Act.
- (8) Where operations are suspended under this section, the Director-General may direct the operator or person in charge to take action appropriate to deal with any affected wine, and may exercise any of his or her other powers.
- (9) If a person acting under the delegated authority of the Director-General suspends any operations under this section, the operator of the wine standards management plan or of the business concerned may seek a review of the suspension under section 114.

Section 24(1): amended, on 2 March 2018, by section 193(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 24(1)(b): amended, on 2 March 2018, by section 193(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 24(1)(c): inserted, on 2 March 2018, by section 193(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 24(4A): inserted, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 24(4B): inserted, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 24(5): amended, on 2 March 2018, by section 193(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

## **25 Deregistration of wine standards management plan**

- (1) The Director-General may remove a wine standards management plan from the register if the Director-General is satisfied that—
  - (a) the Director-General would be justified under section 24 in suspending operations under the plan but, in light of repeated suspensions of operations under the wine standards management plan in the past under that section, it would be more appropriate to deregister the plan; or
  - (b) there is or has been such a serious failure of operations or other matters under the plan as to cast doubt on the fitness for its intended purpose of the wine produced under the plan; or
  - (ba) removal of the plan from the register is permitted under section 23A; or
  - (c) whether by reason of the passage of time or changing circumstances, or for any other reason, the wine standards management plan no longer ensures the fitness for its intended purpose of the wine under the plan; or
  - (d) the operator of the plan is no longer a fit and proper person to operate or be responsible for the operation of a wine business, taking into account any conviction of the operator or any director or manager of the wine business concerned, whether in New Zealand or overseas, of any offence

- relating to fraud or dishonesty, or relating to management control or business activities in respect of businesses of a kind (whether in New Zealand or elsewhere) that are regulated under this Act; or
- (e) if the business ceases to be a wine business.
- (2) The Director-General may not deregister a wine standards management plan under this section unless he or she has first—
    - (a) notified the operator of the plan (whether orally or in writing) of the intention to deregister and the reason for deregistration; and
    - (b) given the operator an opportunity to be heard.
  - (3) Where the Director-General finally determines to deregister a wine standards management plan, the Director-General must—
    - (a) give written notice of that fact to the operator of the plan, giving reasons and specifying the date on which the deregistration takes effect (which may not be earlier than the date of notification); and
    - (b) notify the operator's verifying agency of that fact.
  - (4) Where a wine standards management plan is deregistered under this section, the Director-General may direct the operator or person in charge to take action appropriate to deal with any affected wine and may exercise any of his or her other powers under section 59.
  - (5) The Director-General may notify any deregistration under this section in the *Gazette*.
  - (6) The deregistration of a wine standards management plan does not affect any other actions that the Director-General may take under this Act.
  - (7) If a person acting under the delegated authority of the Director-General deregisters a wine standards management plan under this section, the operator of the wine standards management plan or of the wine business concerned may seek a review of the deregistration under section 114.

Section 25(1): amended, on 2 March 2018, by section 194(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 25(1)(ba): inserted, on 2 March 2018, by section 194(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 25(3)(b): amended, on 2 March 2018, by section 194(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

## **26 Removal of business or part of business from coverage of wider wine standards management plan**

- (1) The Director-General may remove any business or part of a business from the coverage of a registered wine standards management plan that applies to more than 1 comparable business if the Director-General is satisfied that deregistration of the plan would be appropriate under section 25(1) if the business or part of a business being removed were the only one operating under the plan.

- (2) Section 25(2) to (7) applies in relation to the removal of the business or part of a business from the coverage of the wine standards management plan as if references in those subsections to deregistration of the plan were references to removal from the coverage of the plan.

Section 26: replaced, on 2 March 2018, by section 195 of the Food Safety Law Reform Act 2018 (2018 No 3).

## **27 Surrender of registration**

- (1) The operator of a registered wine standards management plan may surrender registration of the plan by notice in writing to the Director-General.
- (2) Where the operator or wine business concerned ceases to operate as a wine business, that operator or wine business (or, where appropriate, the liquidator, receiver, executor, or other successor in title of the operator) must, within 20 working days of so ceasing,—
- (a) notify the Director-General in writing of that fact; and
  - (b) surrender the notice of registration to the Director-General; and
  - (c) notify the operator's verifying agency of that fact.
- (3) At the same time as notification under subsection (1) or subsection (2), the operator or other relevant person must also notify the Director-General of how it is proposed to deal with any remaining wine covered by the wine standards management plan.
- (4) The Director-General may approve or agree to any such proposal, but may also, if appropriate, exercise any of his or her powers under section 59.
- (5) On being notified of a surrender by an operator of a wine standards management plan under this section,—
- (a) the Director-General must record the surrender on the appropriate register; and
  - (b) the surrender takes effect from the date stated in the register.

Section 27(1): amended, on 2 March 2018, by section 196(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 27(2)(c): amended, on 2 March 2018, by section 196(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

### *Miscellaneous matters*

## **28 References to verifying agency**

A reference in this subpart to a verifying agency, in relation to a wine standards management plan, must be treated as if it were a reference to a verifier if a recognised person carries out the verification functions and activities for that plan without being employed or engaged by a recognised agency.

Section 28: replaced, on 31 August 2012, by section 6 of the Wine Amendment Act 2012 (2012 No 70).

Section 28 heading: amended, on 2 March 2018, by section 197(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 28: amended, on 2 March 2018, by section 197(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 28: amended, on 2 March 2018, by section 197(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

## **29 Wine standards management plan in conflict with regulations or notices**

If there is any conflict between the requirements of a registered wine standards management plan and those of any regulations or notices made under this Act, whether by reason of a failure to amend or update the plan to reflect any new requirements or otherwise, the requirements of the regulations or notices prevail.

### **Subpart 2—Wine standards**

Subpart 2 heading: amended, on 2 March 2018, by section 198 of the Food Safety Law Reform Act 2018 (2018 No 3).

## **30 Wine standards**

- (1) This subpart provides for the setting of standards that must be met by any wine intended for trade or export.
- (2) The standards may be set by regulations made under section 33, which may be supplemented by supplementary notices.

Section 30: replaced, on 2 March 2018, by section 199 of the Food Safety Law Reform Act 2018 (2018 No 3).

## **31 Application of standards**

Standards set under this subpart may apply in respect of any class, kind, or description of wine, person or business, process or operation, equipment or other thing, premises or place, or area, and may apply regardless of whether or not a wine standards management plan is in place or is required in respect of the relevant wine, person or business, process or operation, premises or place, or area.

Section 31 heading: amended, on 2 March 2018, by section 200(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 31: amended, on 2 March 2018, by section 200(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

## **32 Application to extension products, partial process products, and wine products**

*[Repealed]*

Section 32: repealed, on 2 March 2018, by section 201 of the Food Safety Law Reform Act 2018 (2018 No 3).

**33 Regulations may prescribe standards**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that prescribe—
  - (a) standards in relation to wine identity and label integrity:
  - (b) safety and hygiene standards for wine.
- (2) Without limiting the generality of subsection (1), standards may be prescribed in relation to the following matters:
  - (a) the identification and labelling of wine, including prescribing minimum percentages of inputs required to label or identify wine in terms of its vintage, variety, and country or area of origin:
  - (ab) 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:
  - (b) the keeping of records and the provision of returns to the Director-General in relation to wine and the making of wine, as a means of ensuring the truthfulness and integrity of labelling of wine, and the safety of wine:
  - (c) the imposition of prohibitions, limitations, or requirements in relation to hazards or substances in a wine and the hygiene of all materials, substances, and equipment used in making wine.
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) No standard may be prescribed that conflicts with any New Zealand food standard.
- (7) *[Repealed]*

Section 33(1): amended, on 2 March 2018, by section 202(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 33(2)(ab): inserted, on 2 March 2018, by section 202(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 33(3): repealed, on 2 March 2018, by section 202(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 33(4): repealed, on 2 March 2018, by section 202(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 33(5): repealed, on 2 March 2018, by section 202(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 33(7): repealed, on 2 March 2018, by section 202(3) of the Food Safety Law Reform Act 2018 (2018 No 3).



### **34 Prerequisites for prescribing standards**

- (1) In determining whether to recommend the making of a wine standard under section 33, the Minister must have regard to—
  - (a) the desirability of maintaining consistency between New Zealand wine standards and any relevant standards, requirements, or recommended practices that apply or are accepted internationally;
  - (b) the desirability of maintaining consistency with New Zealand's international obligations;
  - (c) the desirability of facilitating access to overseas markets;
  - (d) the need to protect the health of consumers of wine;
  - (e) such other matters as the Minister considers relevant.

(2) *[Repealed]*

Section 34(1): amended, on 2 March 2018, by section 203(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 34(2): repealed, on 2 March 2018, by section 203(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

### **35 Director-General may issue specifications supplementary to wine standards**

*[Repealed]*

Section 35: repealed, on 2 March 2018, by section 204 of the Food Safety Law Reform Act 2018 (2018 No 3).

## Subpart 3—Export of wine

### **36 Object of subpart 3**

The object of this subpart is to facilitate the access of wine to overseas markets for New Zealand exporters by—

- (a) providing that the requirements of foreign governments, being requirements recognised by New Zealand, are available to, and met by, exporters and others; and
- (b) providing for requirements and systems to be satisfied and maintained to enable confidence in the issuing of assurances that are required by foreign governments for wine; and
- (c) providing for the setting of export eligibility requirements for wine, including processes for demonstrating compliance with those requirements in order to ensure that the reputation of New Zealand wine is not prejudiced; and
- (d) in the case of wine for which no export eligibility requirements are set, providing for the registration of exporters of that wine.

**37 Prerequisites for export**

- (1) No person may export wine from New Zealand unless—
  - (a) in the case of wine that requires an official assurance that the wine meets relevant overseas market access requirements notified or made available under section 41, the appropriate official assurance has been obtained; and
  - (b) either—
    - (i) in the case of wine to which export eligibility requirements set under section 38 apply, compliance with those requirements and any supplementary notices has been demonstrated; or
    - (ii) in the case of wine to which export eligibility requirements do not apply, the person is registered as an exporter under section 49.
- (2) Subsection (1) does not apply to any consignment of wine to the extent it is exempted from the relevant requirements by the regulations or any supplementary notice or by a notice referred to in section 39.

Section 37(1)(b)(i): amended, on 2 March 2018, by section 205(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 37(2): amended, on 2 March 2018, by section 205(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

**38 Export eligibility requirements**

- (1) The purpose of export eligibility requirements is to protect the reputation of New Zealand wine.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations setting out requirements that must be met for wine to be eligible for export from New Zealand.
- (3) *[Repealed]*
- (4) Without limiting the generality of subsection (2), the regulations setting export eligibility requirements may—
  - (a) prohibit the export of wine with an obvious fault (whether due to oxidation, tainting with extraneous flavours, or other fault);
  - (b) set out processes for demonstrating compliance with the export eligibility requirements, whether by way of analysis or assessment of samples or certification by recognised agencies or recognised persons or otherwise;
  - (c) set out procedures and requirements in relation to the export eligibility requirements.
- (5) *[Repealed]*
- (6) The Director-General may issue an export eligibility certificate for any wine if satisfied that the relevant export eligibility requirements and any supplementary notices have been met for that wine.

Section 38(3): repealed, on 2 March 2018, by section 206(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 38(4)(b): amended, on 2 March 2018, by section 206(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 38(4)(c): replaced, on 2 March 2018, by section 206(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 38(5): repealed, on 2 March 2018, by section 206(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 38(6): amended, on 2 March 2018, by section 206(5) of the Food Safety Law Reform Act 2018 (2018 No 3).

### **39 Exemption of certain consignments, wine, or persons**

(1) The Director-General may, by notice under section 120(1), exempt from all or any of the requirements of this subpart any particular consignment or wine or person, or any particular class or description of consignments or wine or persons, if the Director-General is satisfied that the consignment or wine to be exported is—

- (a) to be used for the purposes of research or development; or
- (b) to be used as a trade sample or otherwise to assess any overseas market for the initial development of that market; or
- (c) for the personal use or other non-commercial use of the person travelling with the consignment; or
- (d) wine for consumption during transit as a passenger or crew by sea or air on a vessel or aircraft leaving New Zealand; or
- (e) of a kind that the regulations permit to be exempted under this section.

(2) *[Repealed]*

(3) *[Repealed]*

Section 39 heading: amended, on 2 March 2018, by section 207(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 39(1): amended, on 2 March 2018, by section 207(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 39(1)(e): replaced, on 2 March 2018, by section 207(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 39(2): repealed, on 2 March 2018, by section 207(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 39(3): repealed, on 2 March 2018, by section 207(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

### **40 Duties of exporters**

It is the duty of every exporter of wine to which this subpart applies—

- (a) to ensure that their operations as an exporter do not contravene any relevant requirement of or under this Act; and
- (b) to export only wine that meets—

- (i) the relevant wine standards and any supplementary notices; and
  - (ii) the relevant overseas market access requirements notified or made available by the Director-General under section 41; and
- (c) to notify the Director-General as soon as possible, and in any case not later than 24 hours after the event or first knowledge of the event, of the event and what actions (if any) have been taken in respect of the event in any case where wine exported by the exporter—
- (i) is not fit, or is no longer fit, for its intended purpose; or
  - (ii) is refused entry by the foreign government concerned; or
  - (iii) does not meet or no longer meets the relevant overseas market access requirements as notified or made available by the Director-General under section 41; or
  - (iv) does not have, or no longer has, the required official assurances; and
- (d) to maintain procedures and processes to demonstrate that the record-keeping requirements of and under this Act in relation to the provenance and processing of the wine exported by the exporter are being complied with; and
- (e) in the case where the wine is subject to export eligibility requirements, to ensure that they only export wine that has been shown to comply with those requirements and any supplementary notices.

Section 40(b)(i): amended, on 2 March 2018, by section 208(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 40(e): amended, on 2 March 2018, by section 208(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

### *Market access requirements and official assurances to foreign governments*

#### **41 Director-General to notify or make available access requirements for overseas markets**

- (1) The Director-General must—
- (a) either notify or ensure that there is made available to exporters and wine-makers known to the Director-General any particular access requirements for overseas markets that New Zealand has recognised; and
  - (b) make those requirements available for inspection free of charge, or for purchase at reasonable cost, to exporters and winemakers.
- (2) The Director-General may, where the Director-General considers it necessary or desirable, by notice under section 120(1), specify the manner in which the access requirements may or must be met, and must notify or make the notice available in the same way as requirements are notified or made available under subsection (1).

- (3) Nothing in subsection (1) prevents the Director-General from—
- (a) charging for access to any website, or for 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.

Section 41(2): amended, on 2 March 2018, by section 209(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 41(2): amended, on 2 March 2018, by section 209(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **42 Director-General may issue official assurances**

- (1) For the purposes of meeting the overseas market access requirements of any foreign government that are notified or made available by the Director-General under section 41 in respect of any wine to be exported, the Director-General, or a person authorised by the Director-General under section 46, may, in appropriate cases, issue an official assurance in respect of that wine if satisfied that the relevant requirements of the importing country have been met.
- (2) Without limiting the matters to which an official assurance may apply, an official assurance is a statement to a foreign government, or an agent of a foreign government, attesting that, as appropriate, any 1 or more of the following applies in respect of any wine:
- (a) any specified process has been completed under this Act with respect to the wine concerned;
  - (b) the wine concerned meets the relevant wine standards and any supplementary notices and any relevant New Zealand food standards for that wine;
  - (c) any overseas market access requirements of any foreign government that are recognised by New Zealand, and that are stated in the assurance, have been met by the system under which the wine was made;
  - (d) the situation in New Zealand, in relation to any matter concerning wine, is as stated in the assurance.
- (3) An official assurance is not a guarantee that the contents of all or any of a particular consignment of wine to which it relates—
- (a) necessarily meet the commercial requirements of the importer; or
  - (b) are fit for the intended purpose of the wine no matter what the status or description of the consumer, or what has happened to the consignment since it left New Zealand; or
  - (c) are fit for a purpose other than that for which they were intended.

- (4) 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.

Section 42(2)(b): amended, on 2 March 2018, by section 210 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **43 Form and content of official assurance**

- (1) An official assurance may be in the form of a certificate or declaration or in such other form as may be determined by the Director-General.
- (2) An official assurance may relate to—
- (a) 1 or more consignments of wine; or
  - (b) 1 or more makers or exporters of wine; or
  - (c) 1 or more export destinations; or
  - (d) any combination of the above.
- (3) An official assurance may be communicated to its appropriate destination by writing, fax, electronic means, or any other form of communication that is accurate, clear, and verifiable.

- (4) *[Repealed]*

Section 43(4): repealed, on 2 March 2018, by section 211 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **44 Obtaining of official assurance**

- (1) A person who wishes to obtain an official assurance in respect of any wine for export may apply in a manner approved by the Director-General, and must—
- (a) supply such information as is required; and
  - (b) pay any relevant fee.
- (2) The Director-General must not issue an official assurance unless satisfied that the information obtained from the applicant justifies the giving of the assurance.
- (3) The Director-General may, by notice under section 120(1), do either or both of the following:
- (a) set out requirements and procedures for the issue and control of official assurances;
  - (b) set out other matters in relation to the obtaining of official assurances.
- (4) Matters set out in notices under subsection (3) are in addition to matters (if any) prescribed by regulations made under section 119(1)(g).

Section 44(3): inserted, on 2 March 2018, by section 212 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 44(4): inserted, on 2 March 2018, by section 212 of the Food Safety Law Reform Act 2018 (2018 No 3).

**45 Official assurance may be withdrawn, and reissued**

- (1) An official assurance may be withdrawn by the Director-General or other authorised person if the Director-General or person is satisfied that—
  - (a) the assurance was incorrectly or inappropriately given; or
  - (b) events or circumstances occurring since the assurance was given mean that it no longer holds true, or is misleading.
- (2) The Director-General or person authorised by the Director-General may, on application in a manner approved by the Director-General, and on payment of any fee required under subpart 2 of Part 3, reissue the official assurance (with any modifications, if appropriate) as a new official assurance.

**46 Persons who may be authorised to issue official assurances**

The Director-General may designate 1 or more persons employed within the Ministry as authorised persons who may issue official assurances for the purposes of this subpart.

*Registration of exporters*

**47 Register of exporters**

- (1) The Director-General must keep and maintain a register of exporters that records persons authorised under this subpart to export wine to which the export eligibility requirements do not apply.
- (2) The purpose of the register is—
  - (a) to enable members of the public, including persons and businesses operating under this Act, to know who is authorised to export wine of a kind that is not subject to export eligibility requirements; and
  - (b) to facilitate the ability of the Director-General to—
    - (i) ensure that all exported wine is fit for its intended purpose;
    - (ii) advise exporters of overseas market access requirements, and of developments in market access issues;
    - (iii) to safeguard official assurances for entry of wine into overseas markets, including in emergency situations; and
  - (c) to facilitate the compliance, audit, and other supporting and administrative functions of the Ministry under this Act.
- (3) The register of exporters must contain the following particulars in relation to each exporter:
  - (a) the name and address (including the electronic address, if available) of—
    - (i) the exporter; and
    - (ii) if appropriate, the exporter's New Zealand agent:

- (b) the date on which the exporter was registered, and the date of expiry of that registration:
  - (c) the date of any deregistration under section 52:
  - (d) any other particulars required by the Director-General by notice under section 120(1).
- (4) The Director-General must—
- (a) keep the register open for public inspection, free of charge, at all reasonable hours at the head office of the Ministry and at such other places as the Director-General determines as necessary or appropriate; and
  - (b) supply to any person copies of all or part of the register on request and on payment of a reasonable charge for the production of the copy.
- (5) The register may be kept in such manner as the Director-General thinks fit, including, either wholly or partly, by means of a device or facility—
- (a) that records or stores information electronically or by other means; and
  - (b) that permits the information so recorded to be readily inspected or reproduced in usable form; and
  - (c) that permits the information in the register to be accessed by electronic means, including (without limitation) by means of remote log-on access.

Section 47(3)(d): replaced, on 2 March 2018, by section 213 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **48 Applications for registration as exporter**

- (1) A person who intends to export any wine (other than wine to which export eligibility requirements apply, or wine exempted under section 39 or by the regulations) must apply to the Director-General, in a manner approved by the Director-General, for registration on the register of exporters.
- (2) On receipt of a properly made application accompanied by the prescribed fee (if any), the Director-General must register the applicant as an exporter unless the Director-General considers that—
- (a) the applicant is not a fit and proper person to be registered as an exporter, having regard to any conviction of the applicant or any director or manager of the applicant, whether in New Zealand or overseas, for any offence relating to fraud or dishonesty, or relating to management control or business activities in respect of wine businesses (whether in New Zealand or elsewhere); or
  - (b) there has in the past been a serious or repeated failure by the applicant to comply with duties of the type specified in section 40; or
  - (c) there are other good grounds for considering that the applicant is likely in the future to fail to comply with the duties specified in section 40; or
  - (d) subsection (3) applies to disqualify the person.



- (3) No person may be registered as an exporter unless—
  - (a) they are a New Zealand resident within the meaning of section OE 1 or section OE 2 of the Income Tax Act 1994; or
  - (b) they have an agent who is a New Zealand resident within the meaning of those sections.
- (4) For the purpose of assessing the matters specified in subsection (2), the Director-General may require an applicant to supply information additional to that contained in the application.
- (5) If the applicant fails to supply the information within 3 months after the request, or within such further time as the Director-General may allow, the application lapses.

Section 48(1): amended, on 2 March 2018, by section 214 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **49 Registration as exporter**

Where the Director-General determines to register an applicant as an exporter, the Director-General must—

- (a) register the person as an exporter on the register, showing the date of registration; and
- (b) notify the person in writing accordingly.

#### **50 Refusal to register exporter**

- (1) If the Director-General proposes to refuse to register a person as an exporter, the Director-General must give the applicant—
  - (a) a notice containing such particulars as will clearly inform the applicant of the substance of the grounds on which the Director-General proposes to refuse to register the applicant; and
  - (b) a copy of any information on which the Director-General relies in proposing to refuse to register the applicant; and
  - (c) a reasonable opportunity to make written submissions or be heard in respect of the matter.
- (2) Where the Director-General finally determines to refuse to register a person as an exporter, the Director-General must as soon as practicable notify the person, in writing, of—
  - (a) the decision; and
  - (b) the reasons for the decision, and the facts or assumptions on which it is based.

**51 Registration fee payable**

- (1) Every registered exporter is liable to pay, either annually or at such greater interval as may be prescribed, the prescribed fee (if any) in respect of their confirmed registration.
- (2) Any failure to pay the fee by the due date that persists for more than 20 working days may result in deregistration under section 52.

**52 Deregistration of exporters**

- (1) The Director-General may remove a person from the register of exporters if satisfied that—
  - (a) there has been a serious or repeated failure by the registered exporter to comply with the duties specified in section 40; or
  - (b) the person is disqualified from being registered as an exporter by virtue of section 48, or is not a fit and proper person to be registered as an exporter having regard to any conviction of a kind referred to in section 48(2) that—
    - (i) arose after the person's registration as an exporter; or
    - (ii) first came to the attention of the Director-General after the person's registration as an exporter; or
  - (c) any failure to pay the annual fee or other fee prescribed for the purposes of section 51 by the due date has persisted for more than 20 working days.
- (2) Before removing a person from the register, the Director-General must—
  - (a) notify the person in writing of his or her intention, giving the reasons for that intention and the facts and assumptions on which it is based; and
  - (b) give the person a reasonable opportunity, within the time specified in the written notice, to provide evidence, information, and submissions as to why the person should not be removed from the register.
- (3) Where the Director-General considers it urgently necessary in the interests of human health, or the integrity or reputation of New Zealand exports,—
  - (a) the Director-General may direct the exporter to suspend all export operations, or such operations as the Director-General may specify, pending a final determination as to whether the exporter should be deregistered, and may also give such directions under section 59 as appear to the Director-General to be reasonable in relation to any wine under the control of the exporter at the time the direction is given; and
  - (b) any such direction takes effect from the date of the notification under subsection (2), or such later date as the Director-General specifies; and
  - (c) the exporter must comply with the direction.

- (4) After considering the material (if any) supplied by a person under subsection (2)(b), the Director-General must—
- (a) make a final decision as to whether or not to remove the person from the register; and
  - (b) as soon as practicable, notify the person of the decision in writing, giving reasons and the facts or assumptions on which the decision is based in the case of an unfavourable decision.

Section 52(1): amended, on 2 March 2018, by section 215(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 52(1)(c): amended, on 2 March 2018, by section 215(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

### **53 Surrender of registration**

- (1) A registered exporter may surrender registration by notice in writing to the Director-General.
- (2) The Director-General must record the surrender on the register of exporters, and the surrender takes effect from the date stated in the register.

Section 53(1): amended, on 2 March 2018, by section 216 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **54 Refusal to register or decision to deregister may be reviewed in certain cases**

If a person acting under the delegated authority of the Director-General refuses an application to register a person as an exporter, or deregisters the person, the person may seek a review of that decision under section 114.

## **Subpart 4—General obligations**

Subpart 4: inserted, on 2 March 2018, by section 217 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **54A Interpretation**

In this Part, **regulated person** means any of the following:

- (a) the operator of a wine business:
- (b) the operator of a registered wine standards management plan:
- (c) an exporter:
- (d) a person who is in charge of wine for the purposes of a wine business:
- (e) any other person—
  - (i) who has, or is in a class of persons who have, any obligation under this Act; and
  - (ii) who is, or is in a class of persons that is, specified by the regulations.

Section 54A: inserted, on 2 March 2018, by section 217 of the Food Safety Law Reform Act 2018 (2018 No 3).

### *Tracing and recall*

Heading: inserted, on 2 March 2018, by section 217 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **54B Tracing and recall requirements**

A regulated person must, as and when required by the regulations or any supplementary notice,—

- (a) have in place any procedures for tracing and recalling wine; and
- (b) conduct simulations or other tests of those procedures; and
- (c) implement those procedures to trace or recall wine.

Section 54B: inserted, on 2 March 2018, by section 217 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **54C Regulations relating to tracing and recall**

- (1) The Governor-General may, by Order in Council, make regulations prescribing requirements that apply to regulated persons in relation to tracing and recalling wine.
- (2) The regulations may (without limitation) do any or all of the following:
  - (a) identify the regulated persons who are required to have procedures for tracing and recalling wine:
  - (b) set requirements relating to—
    - (i) the content of those procedures:
    - (ii) the conducting of simulations and other tests of those procedures:
    - (iii) the implementation of those procedures to trace or recall wine:
  - (c) specify matters in relation to tracing and recall that must be included in wine standards management plans (*see* section 14).

Section 54C: inserted, on 2 March 2018, by section 217 of the Food Safety Law Reform Act 2018 (2018 No 3).

### *Verification*

Heading: inserted, on 2 March 2018, by section 217 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **54D Verification**

A regulated person must comply with any requirements relating to verification that are prescribed by regulations made under section 54F or any supplementary notice.

Section 54D: inserted, on 2 March 2018, by section 217 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **54E Obligation of persons subject to verification requirements**

A person who is subject to verification requirements under this Act must—

- (a) give the verifier—
  - (i) the access to places, things, and information that the verifier reasonably needs to undertake the verification; and
  - (ii) any reasonable assistance requested by the verifier to undertake the verification; and
- (b) comply with any other requirements relating to the verification set out in any of the following:
  - (i) regulations made under section 54F or any supplementary notice:
  - (ii) if the person is the operator of a wine standards management plan, that plan:
  - (iii) if the person is subject to a notice made under section 120(1), that notice.

Section 54E: inserted, on 2 March 2018, by section 217 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **54F Regulations relating to verification**

- (1) The Governor-General may, by Order in Council, make regulations prescribing requirements in relation to verification of any or all of the following:
  - (a) wine standards management plans:
  - (b) wine for whose export an official assurance is required:
  - (c) compliance by regulated persons with requirements imposed by or under this Act.
- (2) The regulations may (without limitation) do any or all of the following:
  - (a) in relation to verification of wine standards management plans, specify the operations, or the parts of the operations, that must be verified:
  - (b) set requirements relating to the frequency, intensity, and cost of verification:
  - (c) specify matters in relation to verification that must be included in wine standards management plans (*see* section 14):
  - (d) set out matters relating to the rights of verifiers and verifying agencies in relation to the undertaking of verification activities:
  - (e) set reporting requirements for verifiers (*see* section 82H):
  - (f) set out requirements relating to the exercise, carrying out, and managing of verification functions and activities (*see* sections 82G and 82H).

Section 54F: inserted, on 2 March 2018, by section 217 of the Food Safety Law Reform Act 2018 (2018 No 3).

*Record keeping and reporting*

Heading: inserted, on 2 March 2018, by section 217 of the Food Safety Law Reform Act 2018 (2018 No 3).

**54G Record keeping and reporting requirements**

- (1) A regulated person, recognised person, or recognised agency must—
  - (a) collect the required information; and
  - (b) keep that information in the required manner and for the required period; and
  - (c) give that information to—
    - (i) the Director-General or a wine officer at all reasonable times on request; and
    - (ii) any other person as required.
- (2) In this section,—

**give**, in relation to information, includes—

  - (a) to give access to the information; and
  - (b) to permit the inspection of the information; and
  - (c) to permit the making of copies of the information

**required** means required by any of the following:

  - (a) this Act;
  - (b) the regulations or any supplementary notice;
  - (c) a notice referred to in section 54H(2).

Section 54G: inserted, on 2 March 2018, by section 217 of the Food Safety Law Reform Act 2018 (2018 No 3).

**54H Regulations and notices relating to record keeping and reporting**

- (1) The Governor-General may, by Order in Council, make regulations prescribing requirements in relation to record keeping and reporting by regulated persons, recognised persons, and recognised agencies.
- (2) The Director-General may, by notice under section 120(1), prescribe requirements in relation to record keeping and reporting by regulated persons, recognised persons, and recognised agencies (in addition to requirements (if any) prescribed by the regulations).
- (3) The regulations or a notice may (without limitation) do any or all of the following:
  - (a) set requirements relating to—
    - (i) what information must be collected;
    - (ii) how, and for how long, the information must be kept;

- (iii) what information must be given under section 54G(1)(c) and when, how, and to whom it must be given:
- (b) specify matters in relation to record keeping and reporting that must be included in wine standards management plans (*see* section 14).

Section 54H: inserted, on 2 March 2018, by section 217 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **Part 3**

#### **Officers, cost recovery, etc**

##### Subpart 1—Officers, powers, and persons with specialist functions

###### *Appointment of officers*

###### **55 Wine officers**

- (1) The Director-General may from time to time appoint persons as wine officers for the purposes of this Act.
- (2) Persons appointed under subsection (1) must be employed under the Public Service Act 2020.
- (3) A wine officer may be authorised, on his or her appointment, to exercise and perform all of the powers and functions conferred on wine officers under this Act, or only those powers and functions specified in the officer's instrument of appointment or subsequent written notice from the Director-General to the officer.

Section 55(2): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

###### *Powers of Director-General*

###### **56 Director-General may issue notices**

The Director-General may issue notices under section 120.

Section 56: amended, on 2 March 2018, by section 218 of the Food Safety Law Reform Act 2018 (2018 No 3).

###### **57 Director-General may give directions**

- (1) The Director-General may, by notice in writing, give directions to any or all wine officers, recognised persons, recognised agencies, or recognised classes as to the exercise of their functions under this Act.
- (2) The Director-General may, by notice in writing, give such directions to the following persons as may be appropriate and reasonable concerning the taking of preventative or corrective action in respect of wine that the Director-General cannot be reasonably satisfied will meet the requirements of this Act in the absence of such action:

- (a) any operator or person in charge of a wine standards management plan:
  - (b) any operator or person in charge of a wine business subject to this Act:
  - (c) any exporter:
  - (d) any person in control of, or reasonably appearing to be in control of, any wine, including a transporter, retailer, or storeperson:
  - (e) any producer or transporter of a commodity.
- (3) A direction must be given to a recognised class by notifying the class in accordance with section 82W.

Section 57(1): amended, on 31 August 2012, by section 7(1) of the Wine Amendment Act 2012 (2012 No 70).

Section 57(3): inserted, on 31 August 2012, by section 7(2) of the Wine Amendment Act 2012 (2012 No 70).

## 58 Recall of wine

- (1) The Director-General may, for the purpose of examining, reclassifying, rectifying, or disposing of any wine that is not fit for its intended purpose or that he or she has good reason to believe is not fit for its intended purpose, or that is mislabelled or incorrectly identified, issue a notice in writing directing the recall of that wine and requiring the wine to be taken to a place specified in the notice, or a place agreed to between the Director-General and the recipient of the notice.
- (2) A notice under this section (a **recall notice**) may also specify any requirements that may be imposed under section 59.
- (3) A recall notice may be directed to any 1 or more persons who own or have control over the wine in question.
- (4) On receipt of a recall notice, the person on whom it is served must as soon as practicable—
- (a) advise the Director-General of the details of the manner in which the notice is to be complied with; and
  - (b) give written notice to the Director-General when the recall, and any specified requirement associated with the recall, has been completed.
- (5) If a person who owns or has control of the wine fails or refuses to comply with a recall notice, the Director-General may—
- (a) take any reasonable steps necessary to ensure control of the wine (including entry by wine officers into premises under a warrant); and
  - (b) recover the costs and expenses reasonably incurred in assuming control of the wine as a debt due from that person.
- (6) Nothing in this section affects the power of the Director-General to issue a statement of a kind referred to in section 60.



**59 Power to direct disposal, etc, of wine in certain circumstances**

- (1) This section applies in relation to a situation where the Director-General—
  - (a) suspends operations under a registered wine standards management plan in accordance with section 24; or
  - (b) deregisters a wine standards management plan in accordance with section 25; or
  - (c) removes a wine business from the coverage of a registered wine standards management plan under section 26; or
  - (d) accepts a surrender of registration under section 27, in circumstances where no agreement has been reached on how it is proposed to deal with any remaining wine covered by the wine standards management plan; or
  - (e) suspends export operations of an exporter in accordance with section 52(3); or
  - (f) has reasonable grounds to believe that a person who is required to be registered as an exporter under subpart 3 of Part 2 is exporting, has exported, or is about to export wine without being so registered; or
  - (g) has reasonable grounds to believe that a person is exporting, has exported, or is about to export wine that does not meet relevant export eligibility requirements or any supplementary notice.
- (2) In a situation to which this section applies, the Director-General may, whether immediately before, at the same time as, or after taking any relevant action referred to in subsection (1),—
  - (a) give directions to the relevant operator, person in charge (or person who reasonably appears to be in charge), owner of the wine, or exporter, or any of them, on the handling, storage, further processing, transport, identification, classification, reclassification, verification, condemnation, destruction, or disposal of the wine affected by the deregistration, surrender, suspension, or failure to register; and
  - (b) if the directions are not complied with, undertake the appropriate directed activities himself or herself (through wine officers or other Ministry officers or employees) in relation to the affected wine.
- (3) The Director-General may recover all actual and reasonable costs of any activities undertaken under subsection (2)(b) from the person to whom the direction in question was given under subsection (2)(a) and who failed to comply with the direction.

Section 59(1)(g): amended, on 2 March 2018, by section 219 of the Food Safety Law Reform Act 2018 (2018 No 3).

**60 Statements by Director-General**

- (1) The Director-General may from time to time, for the purpose of protecting or informing the public, publish under this section statements relating to any wine.
- (2) The Director-General is protected from civil liability for a statement published under this section, unless the statement was not made in good faith or was made recklessly.

**61 Delegations by Director-General**

The Director-General may delegate under clauses 2 and 3 of Schedule 6 of the Public Service Act 2020 all or any of his or her functions, powers, or duties under this Act.

Section 61: amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 61: amended, on 2 March 2018, by section 220 of the Food Safety Law Reform Act 2018 (2018 No 3).

*Powers of wine officers***61A Power to issue improvement notice**

- (1) A wine officer may issue an improvement notice to any person if the officer reasonably believes that the person is failing, or has failed, to comply with 1 or more requirements imposed by or under this Act.
- (2) An improvement notice must state—
  - (a) the requirement that the officer reasonably believes the person is failing, or has failed, to comply with; and
  - (b) the reasons for the officer's reasonable belief; and
  - (c) the nature and extent of the failure to comply with the requirement; and
  - (d) the date by which the person must comply with the requirement; and
  - (e) the person's right, under section 61B, to seek a review of the decision to issue the improvement notice.
- (3) A wine officer may, by written notice, withdraw an improvement notice, but may reissue it if subsection (1) applies.
- (4) An improvement notice must be served in accordance with section 117.
- (5) A person to whom an improvement notice is issued must comply with the notice, subject to any extension of the date by which the person must comply with the applicable requirement that the wine officer may grant on the person's request.

Section 61A: inserted, on 2 March 2018, by section 221 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **61B Review of improvement notice**

- (1) A person to whom an improvement notice is issued under section 61A may apply to the Director-General to have the decision to issue it reviewed.
- (2) Section 114(2) to (8) applies in relation to the application and review as if the decision to issue the notice were a decision to which that section applies.
- (3) The Director-General may initiate a review of a decision to issue an improvement notice on the Director-General's own initiative and without an application for review being made.
- (4) For the purposes of subsection (3), section 114(3A), (4), (6), (7), and (8) applies in relation to the review as if—
  - (a) the decision to issue the notice were a decision to which that section applies and the person to whom it was issued had applied for a review; and
  - (b) the maximum time allowed under section 114(4) were 80 days from the date on which the improvement notice was issued.

Section 61B: inserted, on 2 March 2018, by section 221 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **62 Power of entry**

- (1) A wine officer may, for the purpose of determining whether or not any person is complying with this Act, or any requirements made under this Act, or whether any wine is in compliance with the requirements of this Act or any requirements made under this Act, without a warrant enter any place (other than a dwelling house or marae) at, in, or from which—
  - (a) any winemaker operates, or any business that is subject to a wine standards management plan or that processes or sells food that is or includes wine, is operated; or
  - (b) any exporter operates; or
  - (c) any recognised agency or recognised person operates; or
  - (d) the books or records, or other business information kept in writing or electronic form, of any such winemaker, wine business, exporter, recognised agency, or recognised person, are kept.
- (2) A wine officer may, pursuant to and in accordance with the conditions of a search warrant issued under section 65, enter any place (including a dwelling house or a marae) specified in the warrant.
- (3) The provisions of subparts 1, 4, 7, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply in respect of the exercise of any powers under this section.
- (4) *[Repealed]*

Section 62(1): amended, on 1 October 2012, by section 310(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 62(2): amended, on 1 October 2012, by section 310(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 62(3): replaced, on 1 October 2012, by section 310(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 62(4): repealed, on 1 October 2012, by section 310(4) of the Search and Surveillance Act 2012 (2012 No 24).

### **63 Power to examine, etc**

- (1) A wine officer may, so far as is reasonably necessary for the purpose of determining compliance with this Act or any requirements made under this Act at any place that the officer may enter under section 62,—
  - (a) examine all things, and open containers, packages, and other things to inspect their contents:
  - (b) examine, inquire about, and copy any documents or other records (including records held in electronic or other form) relating to the obligations and duties under this Act, and for this purpose may—
    - (i) remove documents or records to another place for the purpose of copying them; and
    - (ii) require a person who has control of or knowledge of the documents or records to reproduce or assist in reproducing in usable form information recorded or stored in a computer or other device or system:
  - (c) use or require the use of any reasonable means to identify the kind or description of any wine, equipment, package, container, or other relevant thing:
  - (d) identify or mark any wine, equipment, package, container, or other relevant thing:
  - (e) take samples of any wine, or any other input, substance, or thing that has been, is, or may be in contact with, or in the vicinity of, any wine, and test or analyse or arrange for the testing or analysis of the samples:
  - (f) direct the operator or person in charge of the place to identify and hold any wine, substance, equipment, package, container, or other relevant thing until—
    - (i) the results of tests and analysis have been assessed; or
    - (ii) any lawful direction of a wine officer has been complied with.
- (2) A wine officer must return any documents or records removed under subsection (1)(b)(i) within such time as is reasonable to allow for their copying.
- (2A) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subparts 2, 3, and 8, and sections 118 and 119) apply.

- (3) A wine officer may call on any person to assist him or her in the exercise of his or her powers under any of paragraphs (c) to (f) of subsection (1). Any such person may act only under the supervision and in accordance with the instructions of the wine officer.

Section 63(2A): inserted, on 1 October 2012, by section 310(5) of the Search and Surveillance Act 2012 (2012 No 24).

Section 63(3): amended, on 1 October 2012, by section 310(6) of the Search and Surveillance Act 2012 (2012 No 24).

#### **64 Power to interrupt operations, etc**

- (1) For the purposes of determining or ensuring the compliance of wine with the requirements of this Act or any requirements made under this Act, a wine officer may—
- (a) interrupt any operations involved in the making or export of any wine;
  - (b) restrict or prohibit the use of any process, product, substance, equipment, or other relevant thing;
  - (c) direct the operator or the person in charge of the relevant operations to do any reasonable thing, at the cost of the operator.
- (2) Where practicable in all the circumstances, the wine officer must consult with the operator or person in charge of the operations before exercising any powers under this section.

#### **65 Issue of search warrant**

- (1) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may issue a search warrant, in respect of any place (including any dwelling house or marae), if satisfied, on an application by a constable or a wine officer made in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012, that there are reasonable grounds for believing that there is at that place any thing—
- (a) in respect of which an offence under this Act has been or is being committed; or
  - (b) that has been, is being, or is intended to be used by any person for the commission of an offence under this Act; or
  - (c) that is or may be evidence of the commission of an offence under this Act by any person.
- (2) Subject to section 66, the provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply.
- (3) A search warrant must be directed to a constable by name, or to every constable, or to a wine officer by name, but, in any of these cases, the warrant may be executed by any constable.

Section 65(1): amended, on 1 October 2012, by section 310(7)(a) of the Search and Surveillance Act 2012 (2012 No 24).

Section 65(1): amended, on 1 October 2012, by section 310(7)(b) of the Search and Surveillance Act 2012 (2012 No 24).

Section 65(2): replaced, on 1 October 2012, by section 310(8) of the Search and Surveillance Act 2012 (2012 No 24).

Section 65(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

## **66 Powers of Police and wine officers under warrant**

- (1) Without limiting the powers conferred by any search warrant issued under section 65(1), every warrant issued under that section authorises the constable or wine officer who is executing it, and any person called on by that constable or officer to assist, to exercise—
  - (a) all the powers of a wine officer under sections 63 and 64; or
  - (b) only such of those powers as are specified in the warrant.
- (2) *[Repealed]*
- (3) A constable must be present if the search warrant is executed at a dwelling house or marae.
- (4) *[Repealed]*

Section 66(1): replaced, on 1 October 2012, by section 310(9) of the Search and Surveillance Act 2012 (2012 No 24).

Section 66(2): repealed, on 1 October 2012, by section 310(10) of the Search and Surveillance Act 2012 (2012 No 24).

Section 66(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 66(4): repealed, on 1 October 2012, by section 310(10) of the Search and Surveillance Act 2012 (2012 No 24).

## **67 Requirements when executing warrant**

- (1) *[Repealed]*
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) A constable or wine officer who is exercising a power of entry in relation to a marae or a building associated with a marae must have regard to the kawa of the marae so far as is practicable in the circumstances.

Section 67(1): repealed, on 1 October 2012, by section 310(11) of the Search and Surveillance Act 2012 (2012 No 24).

Section 67(2): repealed, on 1 October 2012, by section 310(11) of the Search and Surveillance Act 2012 (2012 No 24).

Section 67(3): repealed, on 1 October 2012, by section 310(11) of the Search and Surveillance Act 2012 (2012 No 24).

Section 67(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

**68 Disposal of property seized under search warrant**

Subparts 1, 5, 6, 7, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply in respect of any property seized by a constable under a search warrant and, with any necessary modifications, in respect of property seized under a search warrant by a wine officer, subject to the following provisions:

- (a) *[Repealed]*
- (b) *[Repealed]*
- (c) *[Repealed]*
- (d) if any person is convicted of an offence to which the item relates, the court may, if it thinks fit, order that the item be forfeited to the Crown or disposed of as the court directs at the expense of the convicted person, and may order that the person pay any reasonable costs incurred by the Commissioner of Police or the Director-General in retaining the item.

Section 68: amended, on 1 October 2012, by section 310(12)(a) of the Search and Surveillance Act 2012 (2012 No 24).

Section 68(a): repealed, on 1 October 2012, by section 310(12)(b) of the Search and Surveillance Act 2012 (2012 No 24).

Section 68(b): repealed, on 1 October 2012, by section 310(12)(b) of the Search and Surveillance Act 2012 (2012 No 24).

Section 68(c): repealed, on 1 October 2012, by section 310(12)(b) of the Search and Surveillance Act 2012 (2012 No 24).

**68A Matters may be continued by different wine officer**

- (1) An action initiated or taken under this Act by a wine officer may be continued by another wine officer.
- (2) Without limiting subsection (1), if an officer has given any notice, authorisation, or consent under this Act (whether or not subject to conditions), any wine officer may—
  - (a) take further action in relation to that notice, authorisation, or consent; or
  - (b) revoke or withdraw it; or
  - (c) vary it; or
  - (d) revoke or vary any condition on or subject to which it was given.

Section 68A: inserted, on 2 March 2018, by section 222 of the Food Safety Law Reform Act 2018 (2018 No 3).

**68B Opinion or belief of wine officer**

If this Act requires a wine officer to hold a particular opinion or belief about something before exercising a power, it is sufficient if a more senior wine officer or the Director-General holds that opinion or belief and directs the wine officer to exercise the power.

Section 68B: inserted, on 2 March 2018, by section 222 of the Food Safety Law Reform Act 2018 (2018 No 3).

*Recognised agencies, persons, and classes of persons*

Heading: replaced, on 31 August 2012, by section 8 of the Wine Amendment Act 2012 (2012 No 70).

**69 Outline of sections 70 to 82Z**

Sections 70 to 82Z—

- (a) establish a procedure for the recognition of agencies (including verifying agencies) that are responsible for managing and carrying out specified functions and activities for the purposes of this Act; and
- (b) establish a procedure for the recognition of persons (including verifiers) or classes of persons who are to carry out specified functions and activities for the purposes of this Act; and
- (c) set out the duties of recognised agencies, recognised persons, and recognised classes, and when their recognition can be suspended or withdrawn; and
- (d) provide for the establishment and maintenance of a public register of recognised agencies, recognised persons, and recognised classes, and for the public to access the register.

Section 69: replaced, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

Section 69(a): amended, on 2 March 2018, by section 223(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 69(b): amended, on 2 March 2018, by section 223(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

**70 Interpretation**

In sections 71 to 82Z,—

**requirements of this Act** means any requirements or procedures specified in—

- (a) this Act; or
- (b) the regulations or any supplementary notice; or
- (c) a notice issued under section 120(1)

**specified conviction** means—

- (a) a conviction for an offence against this Act; or
- (b) a conviction (whether in New Zealand or in another country) for any offence relating to fraud or dishonesty; or
- (c) a conviction (whether in New Zealand or in another country) for any offence relating to management control or business activities in respect of businesses of a kind (whether in New Zealand or in another country) that—
  - (i) are regulated under this Act or any other Act administered by the Ministry; or



- (ii) are subject to an overseas regulatory regime similar to that set out in this Act.

Section 70: replaced, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

Section 70 **requirements of this Act** paragraph (b): replaced, on 2 March 2018, by section 224 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 70 **requirements of this Act** paragraph (c): replaced, on 2 March 2018, by section 224 of the Food Safety Law Reform Act 2018 (2018 No 3).

### *Recognition of agencies, persons, and classes of persons*

Heading: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

## **71 Recognition of agencies**

- (1) The Director-General may, on the application of a person, recognise that person as an agency that is responsible for the management and carrying out of specified functions and activities.
- (2) Before recognising an applicant, the Director-General must—
  - (a) consider whether to impose a condition under section 81(1) requiring the applicant to manage or supply recognised persons to carry out some or all of the permissible functions and activities for which recognition is sought; and
  - (b) be satisfied that the applicant is a fit and proper person to manage and carry out the permissible functions and activities for which recognition is sought.
- (3) In determining whether an applicant is a fit and proper person, the Director-General—
  - (a) must take into account the following matters:
    - (i) the competencies and resources of the applicant to manage and carry out the permissible functions and activities for which recognition is sought; and
    - (ii) any specified conviction entered against the applicant or any director or manager of the applicant; and
    - (iii) the applicant's character and reputation, including, if appropriate, the character and reputation of the directors of the applicant or of those responsible for its management or control; and
    - (iv) the applicant's ability to maintain an appropriate degree of impartiality and independence in managing and carrying out the permissible functions and activities for which recognition is sought; and
    - (v) any applicable requirements of this Act; and
  - (b) may take into account any other matters that the Director-General considers relevant.

Section 71: replaced, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

## **72 Recognition of certain agencies without application**

- (1) The Director-General may, without receiving an application under section 71(1), recognise any of the persons set out in subsection (2) as an agency that is responsible for the management and carrying out of specified functions and activities.
- (2) The persons are—
  - (a) the Ministry;
  - (b) any group of persons within the Ministry that is designated by the Director-General for the purpose.
- (3) Section 71(2) and (3) apply to subsection (1) accordingly, with all necessary modifications.

Section 72: replaced, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

## **73 Recognition of persons**

- (1) The Director-General may, on the application of a natural person, recognise that person to carry out specified functions and activities.
- (2) Before recognising an applicant, the Director-General must—
  - (a) consider whether to impose a condition under section 81(1) requiring the applicant to be managed, employed, or engaged by a recognised agency to carry out some or all of the permissible functions and activities for which recognition is sought; and
  - (b) be satisfied that the applicant is a fit and proper person to carry out the permissible functions and activities for which recognition is sought.
- (3) In determining whether an applicant is a fit and proper person, the Director-General—
  - (a) must take into account the following matters:
    - (i) the competency of the applicant to carry out the permissible functions and activities for which recognition is sought; and
    - (ii) any specified conviction entered against the applicant; and
    - (iii) the applicant's character and reputation; and
    - (iv) the applicant's ability to maintain an appropriate degree of impartiality and independence in carrying out the permissible functions and activities for which recognition is sought; and
    - (v) any applicable requirements of this Act; and
  - (b) may take into account any other matters that the Director-General considers relevant.

Section 73: replaced, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

#### **74 Recognition of certain persons without application**

- (1) The Director-General may, without receiving an application under section 73(1), recognise any of the following natural persons to carry out specified functions and activities:
  - (a) any officer or employee of the Ministry;
  - (b) any officer or employee of any department as defined in section 5 of the Public Service Act 2020.
- (2) Section 73(2) and (3) apply to subsection (1) accordingly, with all necessary modifications.

Section 74: replaced, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

Section 74(1)(b): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

#### **75 Recognition of classes of persons**

- (1) The Director-General may recognise a class of natural persons to carry out specified functions and activities.
- (2) The Director-General may recognise a class of natural persons—
  - (a) on the application of any person who the Director-General is reasonably satisfied—
    - (i) represents that class of persons; or
    - (ii) is an appropriate person to make an application on behalf of that class of persons; or
  - (b) without receiving an application.
- (3) Before recognising a class of natural persons, the Director-General must—
  - (a) consult the members of the class and the applicant (if any) in accordance with section 82X about the application for recognition of the class; and
  - (b) be satisfied that the class is an appropriate class to carry out the permissible functions and activities for which the class is proposed to be recognised.
- (4) In determining whether a class is an appropriate class, the Director-General—
  - (a) must take into account the following matters:
    - (i) whether the class can be defined with appropriate accuracy and specificity; and
    - (ii) the degree to which members of the class share common characteristics (for example, qualifications, skills, and experience); and
    - (iii) the degree to which the ordinary qualifications, skills, functions, and activities of members of the class correspond with, and dem-

- onstrate adequate competency to carry out, the permissible functions and activities for which the class is proposed to be recognised; and
- (iv) whether the class is supervised, regulated, governed, or controlled by or under a professional or regulatory body or system (for example, a disciplinary body or system), or an enactment; and
  - (v) whether the class is subject to a code of ethics or standards of professional conduct to which members must adhere; and
  - (vi) any applicable requirements of this Act; and
- (b) may take into account any other matters that the Director-General considers relevant.
- (5) If the Director-General recognises a class of persons under this section, the Director-General may, if he or she considers on reasonable grounds that it is appropriate to do so, exclude 1 or more members of the class, or categories of members of the class, from the recognised class (*see* section 80).

Section 75: replaced, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

## **76 Interrelationship between sections 71 to 75**

To avoid doubt, a natural person may be recognised under any 1 or more of sections 71 to 75 despite already being recognised in another capacity under any 1 or more of those sections.

Section 76: replaced, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

### *Recognition process*

Heading: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

## **77 Application for recognition**

An application for recognition under section 71, 73, or 75 must—

- (a) be in the appropriate form and manner provided or approved by the Director-General for that purpose; and
- (b) be accompanied by the prescribed application fee (if any).

Section 77: replaced, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

## **78 Director-General may require further information**

- (1) The Director-General may require a person who applies for recognition to supply further information or material before determining whether to grant the recognition.
- (2) An application for recognition lapses if the additional information or other material is not supplied—

- (a) within 3 months after the date of the requirement; or
- (b) within any further time that the Director-General allows by notice in writing.

Section 78: replaced, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

**79 Proposal to refuse application to recognise agency, person, or class of persons**

- (1) If the Director-General proposes to refuse an application for recognition in whole or in part, the Director-General must consult the applicant in accordance with section 82X about the proposed refusal.
- (2) The notification given to the applicant in accordance with section 82X(a)(i) must—
  - (a) specify the grounds for proposing to refuse the application; and
  - (b) include a copy (or an adequate summary) of all material information the Director-General relies on in proposing to refuse the application.
- (3) If the Director-General finally determines to refuse the application (in whole or in part), the Director-General must, as soon as practicable, give the applicant written notice of—
  - (a) the decision and the Director-General’s reasons for it; and
  - (b) if applicable, the applicant’s right to seek a review of that decision under section 114.

Section 79: replaced, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

**80 Proposal to exclude members, or categories of members, from recognition of class**

- (1) If the Director-General proposes to exclude any members, or categories of members, from the recognition of a class, the Director-General must consult those members and the applicant (if any) in accordance with section 82X about the exclusion of the members.
- (2) The notification given to the members and the applicant (if any) in accordance with section 82X(a) must—
  - (a) specify the grounds for proposing to exclude the members; and
  - (b) include a copy (or an adequate summary) of all material information the Director-General relies on in proposing to exclude the members.
- (3) If the Director-General finally determines to exclude any members, or categories of members, from the recognition of a class, the Director-General must, as soon as practicable, give those members and the applicant (if any) written notice of—
  - (a) the decision and the Director-General’s reasons for it; and

- (b) if applicable, the members' and the applicant's right to seek a review of that decision under section 114.

Section 80: replaced, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

### **81 Director-General may impose or vary conditions of recognition**

- (1) The Director-General may impose any conditions the Director-General thinks fit when he or she recognises an agency, a person, or a class of persons under any of sections 71 to 75.
- (2) The Director-General may vary any conditions by, as appropriate,—
  - (a) giving a recognised agency or a recognised person written notice of the variation; or
  - (b) notifying a recognised class of the variation in accordance with section 82W.
- (3) However, before varying a condition the Director-General must consult the recognised agency, recognised person, or recognised class in accordance with section 82X about the proposed variation, unless the agency is, or is within, the Ministry or the person is within the Ministry.
- (4) If a person acting under the delegated authority of the Director-General varies a condition, the recognised agency, the recognised person, or a member of the recognised class to whom the condition applies may seek a review of the variation under section 114.
- (5) Subsections (3) and (4) do not apply if the variation is made on the application of the recognised agency, recognised person, or recognised class in accordance with the terms of that application.
- (6) In this section, **vary** means—
  - (a) to impose additional conditions; or
  - (b) to revoke or amend any conditions.

Section 81: replaced, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

### **82 Grant of recognition**

- (1) If the Director-General recognises an agency, a person, or a class of persons, the Director-General must, as soon as practicable,—
  - (a) enter the name of the recognised agency or recognised person, or a definition of the class that allows the class to be accurately and readily identified, in the public register; and
  - (b) for a recognised agency or a recognised person, give the agency or person a notice of recognition; and
  - (c) for a recognised class,—

- (i) notify the class in accordance with section 82W of its recognition; and
  - (ii) if there was an applicant, give the applicant written notice of the recognition of the class.
- (2) A notice of recognition must specify—
  - (a) the permissible functions and activities for which the recognition is granted; and
  - (b) for a recognised class, any members or categories of members that are excluded from the recognised class in accordance with section 75(5); and
  - (c) any conditions of recognition imposed under section 81(1); and
  - (d) the duration of the recognition under section 82B.

Section 82: replaced, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

### **82A Scope, effect, and transfer of recognition**

- (1) Recognition of a recognised agency or a recognised person applies only to the particular agency or particular person specified in the notice of recognition.
- (2) If a class of persons is recognised,—
  - (a) that recognition applies—
    - (i) to the class as defined in the public register; and
    - (ii) to each member of that class, but only—
      - (A) to the extent that the member carries out the specified functions and activities for which the class is recognised; and
      - (B) while the member continues to hold the qualifications or meet the other membership criteria according to which the class is defined in the public register in accordance with section 82(1)(a); and
  - (b) each member of the class—
    - (i) is a recognised person; and
    - (ii) is subject to the duties of recognised persons set out in section 82H; and
    - (iii) may independently carry out the specified functions and activities for which the class is recognised; and
    - (iv) may have the recognition of the class of which he or she is a member suspended or withdrawn for him or her only; and
  - (c) all conditions of recognition imposed on the class under section 81, and all directions or other requirements that apply to the class, also apply to,

- and must be complied with by, each member of the class individually;  
and
- (d) a suspension or withdrawal of the recognition of the class, and any condition or corrective action imposed under section 82J(3) on the suspension of the class, also applies to each member of the class individually;  
and
  - (e) each member of the class who carries out the specified functions and activities for which the class is recognised—
    - (i) does so on his or her own account; and
    - (ii) is personally responsible for his or her own actions or omissions.
- (3) Further to subsection (2), sections 70 to 82Z apply to a recognised person who is recognised by virtue of being a member of a recognised class, as far as applicable and with all necessary modifications, as if—
- (a) a reference to a recognised person's specified functions and activities were a reference to the specified functions and activities of the recognised class of which he or she is a member; and
  - (b) a reference to a recognised person's recognition were a reference to the class's recognition; and
  - (c) a reference to a recognised person's notice of recognition were a reference to the class's notice of recognition.
- (4) Recognition may not be transferred to a different agency, person, or class of persons, and may not vest by operation of law in any person other than the agency, person, or class of persons specified in the notice of recognition.

Section 82A: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

### **82B Duration of recognition**

- (1) Recognition has effect for—
- (a) a specified period commencing and ending on the dates stated in a notice of recognition in accordance with section 82(2)(d); or
  - (b) if no period is specified, an indefinite period.
- (2) However,—
- (a) recognition ends if it is withdrawn under section 82N or 82O or surrendered under section 82Q; and
  - (b) recognition has no effect while it is suspended under section 82J or 82K.

Section 82B: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

### **82C Renewal of recognition before expiry**

- (1) If an agency, a person, or a class of persons is recognised for a specified period, then no later than 1 month before the end of that period—



- (a) the agency, the person, or an appropriate representative may apply to the Director-General for renewal of the recognition; or
  - (b) the Director-General may renew the recognition without application if the agency, person, or class was initially recognised by the Director-General without application.
- (2) In determining whether to renew the recognition of an agency, a person, or a class of persons, the Director-General must consider the matters set out in (as applicable) section 71(2) and (3), 73(2) and (3), or 75(3)(b) and (4) unless the Director-General is satisfied that—
- (a) either—
    - (i) the circumstances of the agency, person, or class have not changed; or
    - (ii) if the circumstances of the agency, person, or class have changed, those changes do not adversely affect the current recognition; and
  - (b) the reasons why the Director-General recognised the agency, person, or class still apply; and
  - (c) the agency or person has, or a sufficient proportion of the members of the class have, complied with all applicable conditions of recognition imposed under section 81 and requirements of this Act during the period of recognition.
- (3) If the Director-General proposes to vary any conditions of recognition imposed on the agency, person, or class of persons under section 81 when the Director-General renews the recognition, the Director-General—
- (a) must vary the conditions in accordance with section 81(2) to (6); and
  - (b) may, by notice in writing to the agency, person, or class, temporarily extend the specified period of the existing recognition in order to allow consultation in accordance with section 81(3) (if required) to be completed before the period of recognition ends.
- (4) Sections 78 to 82B apply with all necessary modifications to applications under this section.
- (5) An application under this section that is received by the Director-General after the deadline specified in subsection (1) must be treated as if it were a new application for recognition under section 71, 73, or 75, as applicable.
- (6) In this section, **appropriate representative** means any person who the Director-General is reasonably satisfied—
- (a) represents the recognised class; or
  - (b) is an appropriate person to make an application on behalf of the class.

Section 82C: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

**82D Application for renewal of recognition**

An application for renewal of recognition under section 82C must—

- (a) be in the appropriate form and manner provided or approved by the Director-General for that purpose; and
- (b) be accompanied by the prescribed application fee (if any).

Section 82D: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

**82E Substituted notice of recognition**

- (1) A recognised agency or a recognised person may apply to the Director-General for a new notice of recognition to be issued in substitution for an existing notice of recognition if—

- (a) any conditions of recognition imposed on the agency or person are varied under section 81(2); or
- (b) the existing notice has become disfigured or dilapidated, or contains a mistake; or
- (c) the existing notice has been lost or destroyed.

- (2) The Director-General must cancel the existing notice of recognition and give a new notice of recognition in substitution for it if—

- (a) an application for a substituted notice of recognition is made to the Director-General in the appropriate form and manner provided or approved by the Director-General for that purpose; and
- (b) the application is accompanied by the prescribed application fee (if any).

Section 82E: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

**82F Ongoing recognition fees, charges, or levies**

Recognised agencies and recognised persons must pay the prescribed fee, charge, or levy (if any) for ongoing recognition for the prescribed period on or before the date provided or approved by the Director-General for that purpose.

Section 82F: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

*Performance of specified functions and activities*

Heading: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

**82G Duties of recognised agencies**

- (1) When carrying out its specified functions and activities, a recognised agency must ensure that it—
  - (a) carries out only functions and activities that are within the scope of those specified; and

- (b) is adequately resourced and its systems are maintained to a level that ensures it is able to carry out those functions and activities; and
  - (c) has documented policies and procedures to safeguard the confidentiality of the information obtained or created while carrying out those functions and activities; and
  - (d) has systems, processes, and procedures to manage appropriately any conflict of interest that might arise while carrying out those functions and activities; and
  - (e) complies with all conditions of recognition imposed under section 81; and
  - (f) complies with all applicable directions given under section 57; and
  - (g) complies with all other applicable requirements of this Act.
- (2) When carrying out its specified functions and activities, a recognised agency must also ensure that each recognised person that the agency manages and supplies (if any)—
- (a) maintains all competency requirements applicable to his or her recognition; and
  - (b) is not placed in a position or a situation that compromises his or her impartiality and independence in carrying out his or her specified functions and activities.
- (3) The duties in section 82H apply to a recognised agency (in addition to the duties in subsection (1)), but only to the extent that the agency is recognised to carry out its specified functions and activities itself (instead of being recognised to manage or supply a recognised person to carry out its specified functions and activities).

Section 82G: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

Section 82G(1)(g): amended, on 2 March 2018, by section 225 of the Food Safety Law Reform Act 2018 (2018 No 3).

## **82H Duties of recognised persons**

When carrying out his or her specified functions and activities, a recognised person must ensure that he or she—

- (a) carries out only functions and activities that are within the scope of those specified; and
- (b) maintains all competency requirements applicable to his or her recognition; and
- (c) maintains an appropriate degree of impartiality and independence; and
- (d) maintains appropriate confidentiality (particularly in respect of commercially sensitive matters) relating to operations and activities the person comes into contact with in the course of carrying out those functions and

- activities (except to the extent that the person is required to report under paragraph (e) or otherwise for the purposes of this Act), including matters relating to design, technology, systems, personnel, and practices; and
- (e) reports to the Ministry (or any other specified authority), in accordance with any applicable requirements of this Act,—
    - (i) any matter that a recognised person is required to report; and
    - (ii) for a verifier, any failure to comply with, or any inadequacy in, a wine standards management plan; and
  - (f) complies with all conditions of recognition imposed under section 81; and
  - (g) complies with all applicable directions given under section 57; and
  - (h) complies with all applicable requirements of this Act.

Section 82H: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

Section 82H(e)(ii): amended, on 2 March 2018, by section 226 of the Food Safety Law Reform Act 2018 (2018 No 3).

## **82I Recognised agency or person may act in other capacities**

Nothing in section 82G or 82H prevents a recognised agency or a recognised person from carrying out functions and activities that are outside the scope of the agency's or person's specified functions and activities, provided that the agency or person does not do so—

- (a) in the agency's or person's capacity as a recognised agency or a recognised person; or
- (b) while purporting to act as a recognised agency or a recognised person.

Section 82I: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

## **82IA Recognised agency and recognised person accountable to Director-General**

- (1) A recognised agency is, in carrying out its specified functions and activities, accountable to the Director-General.
- (2) A recognised person is, in carrying out his or her specified functions and activities, accountable to the Director-General.

Section 82IA: inserted, on 2 March 2018, by section 227 of the Food Safety Law Reform Act 2018 (2018 No 3).

*Suspension of recognition*

Heading: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

**82J Suspension of recognition of recognised agency, recognised person, or recognised class**

- (1) The Director-General may suspend all or part of the recognition of a recognised agency, recognised person, or recognised class if the Director-General has reasonable grounds to believe that—
  - (a) the performance of the agency, person, or a significant proportion of the members of the class is unsatisfactory, taking into account the requirements of the recognition; or
  - (b) the agency, person, or a significant proportion of the members of the class no longer meets 1 or more of the criteria on which that agency, person, or class was recognised under whichever of sections 71 to 75 applies; or
  - (c) the agency, person, or a significant proportion of the members of the class has failed to comply with section 82G or 82H or any other applicable requirements of this Act, and that failure causes the Director-General to question the ability of the agency, person, or class to carry out the specified functions or activities of the agency, person, or class; or
  - (d) for an agency or a person, the agency or person has failed to pay an ongoing recognition fee, charge, or levy within 30 days after the date on which it was due and payable.
- (2) The maximum period of suspension is 3 months.
- (3) The Director-General may do either or both of the following:
  - (a) impose conditions that must be satisfied before the suspension is lifted:
  - (b) require a suspended agency, person, or class to take appropriate corrective action to remedy the deficiency or failure that resulted in the suspension.

Section 82J: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

**82K Director-General may extend suspension of recognition**

- (1) The Director-General may extend the period of a suspension under section 82J if the Director-General has reasonable grounds to believe that—
  - (a) any conditions imposed under that section have not been satisfied within the suspension period; or
  - (b) any corrective actions imposed under that section have not been fulfilled within the suspension period.
- (2) The period of extension—

- (a) may be for any further period that the Director-General notifies in writing to the agency or the person, or notifies to the class in accordance with section 82W, before the expiry of the original suspension; but
  - (b) must not exceed a further 3 months.
- (3) The Director-General may (in addition to any conditions or requirements imposed under section 82J(3)) do either or both of the following:
- (a) impose conditions that must be satisfied before the extended period of suspension is lifted:
  - (b) require a suspended agency, person, or class to take appropriate corrective action to remedy the deficiency or failure that resulted in the suspension.

Section 82K: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

#### **82L Method of suspension of recognition**

- (1) The Director-General must, as soon as practicable after deciding to suspend, or extend the suspension of, a recognised agency, recognised person, or recognised class, notify—
- (a) a recognised agency or recognised person of the suspension of the agency or person; and
  - (b) a recognised agency of the suspension of a recognised person for whom the agency is responsible; and
  - (c) a recognised person of the suspension of any recognised agency that is responsible for that person; and
  - (d) a recognised class of the suspension of the class.
- (2) A notice of suspension must—
- (a) be given to a recognised agency or a recognised person by notice in writing; and
  - (b) be given to a recognised class by notifying the class in accordance with section 82W; and
  - (c) specify—
    - (i) the reason for the suspension; and
    - (ii) the date and time the suspension starts; and
    - (iii) the period of the suspension; and
    - (iv) the specified functions and activities that the suspension relates to; and
    - (v) any conditions or corrective actions imposed under section 82J(3) or 82K(3); and

- (d) if applicable, set out the right of the recognised agency, recognised person, or recognised class (under section 114) to seek a review of the decision to suspend the recognition of the agency, person, or class.
- (3) The Director-General may notify any suspension of recognition in the *Gazette*.
- (4) In subsections (1) to (3), **suspension** includes an extension of a suspension.

Section 82L: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

### **82M Suspension does not limit other actions**

A suspension under section 82J or an extension of a suspension under section 82K does not affect any other actions that the Director-General may take under this Act.

Section 82M: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

### *Withdrawal of recognition*

Heading: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

### **82N Withdrawal of recognition of recognised agency or recognised person**

- (1) The Director-General may withdraw all or part of the recognition of a recognised agency or a recognised person if the Director-General has reasonable grounds to believe that—
  - (a) suspending all or part of the agency's or person's recognition under section 82J (or extending a suspension under section 82K) would be justified, but repeated suspensions in the past have been ineffective; or
  - (b) the agency or person is no longer a fit and proper person to carry out the agency's or person's specified functions and activities; or
  - (c) the agency or person has failed to comply with section 82G or 82H or any other applicable requirements of this Act, and that failure causes the Director-General to question the agency's or the person's ability to carry out the agency's or person's specified functions or activities; or
  - (d) the agency or person has ceased to operate as a recognised agency or a recognised person; or
  - (e) the agency or person has continued to fail to pay an ongoing recognition fee, charge, or levy after the agency's or person's recognition has been suspended on the ground set out in section 82J(1)(d); or
  - (f) the agency or person has failed to comply with or maintain any criteria or competencies that led to the recognition of the agency or person; or
  - (g) the agency is no longer the appropriate agency to hold the recognition, but only if the agency is, or is within, the Ministry or a public service agency as defined in section 5 of the Public Service Act 2020.

- (2) However, before withdrawing recognition, the Director-General must consult the agency or person in accordance with section 82X about the proposed withdrawal of recognition, unless the agency is, or is within, the Ministry or the person is within the Ministry.
- (3) The notification given to the agency or person in accordance with section 82X(a)(i) must—
  - (a) specify the grounds for the proposed withdrawal; and
  - (b) include a copy (or an adequate summary) of all material information the Director-General relies on in proposing to withdraw the recognition.

Section 82N: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

Section 82N(1)(g): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

### **82O Withdrawal of recognition of recognised class**

- (1) The Director-General may withdraw all or part of the recognition of a recognised class if the Director-General has reasonable grounds to believe that a significant proportion of the members of the class—
  - (a) have ceased to hold a qualification or meet 1 or more other membership criteria according to which the class is defined in the public register in accordance with section 82(1)(a); or
  - (b) have failed to comply with section 82H or any other applicable requirements of this Act, and that failure causes the Director-General to question the class's ability to carry out the class's specified functions or activities.
- (2) However, before withdrawing recognition on the ground set out in subsection (1)(b), the Director-General must consult the recognised class in accordance with section 82X about the proposed withdrawal of recognition.
- (3) The notification given to the recognised class in accordance with section 82X(a)(ii) must—
  - (a) specify the grounds for the proposed withdrawal; and
  - (b) include a copy (or an adequate summary) of all material information the Director-General relies on in proposing to withdraw the recognition.

Section 82O: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

### **82P Method of withdrawal of recognition**

- (1) The Director-General must, as soon as practicable after deciding to withdraw all or part of the recognition of a recognised agency, recognised person, or recognised class, notify—
  - (a) a recognised agency or recognised person of the withdrawal of recognition of the agency or person; and



- (b) a recognised agency of the withdrawal of recognition of a person for whom the agency is responsible; and
  - (c) a recognised person of the withdrawal of recognition of any recognised agency that is responsible for that person; and
  - (d) a recognised class and, if there was an applicant on behalf of the class, the applicant of the withdrawal of recognition of the class.
- (2) A notice of withdrawal must—
- (a) be given to a recognised agency, a recognised person, or an applicant by notice in writing; and
  - (b) be given to a recognised class by notifying the class in accordance with section 82W; and
  - (c) specify—
    - (i) the reason for the withdrawal; and
    - (ii) the date and time the withdrawal takes effect; and
    - (iii) the specified functions and activities that the withdrawal relates to; and
  - (d) if applicable, set out the right of the recognised agency, recognised person, or recognised class (under section 114) to seek a review of the decision to withdraw the recognition.
- (3) The Director-General may notify any withdrawal of recognition in the *Gazette*.
- (4) An agency or a person who is recognised under any of sections 71 to 74 and whose recognition is withdrawn must return the agency's or person's notice of recognition to the Director-General as soon as practicable after the withdrawal of recognition takes effect.
- (5) An agency or a person whose recognition is withdrawn must, as soon as practicable after the withdrawal of recognition takes effect, take reasonable steps to notify each person who was a client of the agency or person immediately before the withdrawal that the agency's or person's recognition has been withdrawn.

Section 82P: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

### *Surrender of recognition*

Heading: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

#### **82Q Surrender of recognition**

- (1) A recognised agency or recognised person may—
- (a) surrender his, her, or its recognition by written notice to the Director-General; and

- (b) specify in the notice a future date on which the surrender is to take effect.
- (2) Before the date on which a surrender takes effect, the recognised agency or recognised person that is surrendering his, her, or its recognition must,—
  - (a) for a recognised agency, notify the surrender to any recognised persons for whom the agency is responsible; and
  - (b) for a recognised person, notify the surrender to any recognised agency that is responsible for that person; and
  - (c) take reasonable steps to notify each person who will be a client of the agency or person immediately before the surrender that the agency's or person's recognition is surrendered.

Section 82Q: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

#### **82R Effective date of surrender of recognition**

A surrender takes effect on the later of—

- (a) the date specified in the notice given in accordance with section 82Q(1); or
- (b) the date on which the Director-General records the surrender in the public register in accordance with section 82T(1)(b)(v) or removes the agency or person from the public register in accordance with section 82V(3).

Section 82R: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

#### *Public register of recognised agencies, recognised persons, and recognised classes*

Heading: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

#### **82S Public register of recognised agencies, recognised persons, and recognised classes to be kept**

- (1) The Director-General must keep and maintain a public register of each—
  - (a) recognised agency;
  - (b) recognised person;
  - (c) recognised class.
- (2) The public register may be kept in any manner the Director-General thinks fit, including, either wholly or partially, by means of a device or facility—
  - (a) that records or stores information electronically or by other means; and
  - (b) that permits the information so recorded to be readily inspected or reproduced in usable form; and

- (c) that permits the information to be accessed by electronic means, including by means of remote log-on access.
- (3) The purpose of the public register is to—
  - (a) enable members of the public and persons operating industries regulated under this Act to know who is recognised to carry out particular functions and activities for the purposes of this Act; and
  - (b) facilitate the compliance, audit, and other supporting and administrative functions of the Ministry under this Act.

Section 82S: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

### **82T Contents of public register**

- (1) The public register must contain all of the following information:
  - (a) for each recognised agency and recognised person,—
    - (i) the full name and the business or other contact address (including the electronic address, if available) of the agency or person; and
    - (ii) any suspension of the agency’s or person’s recognition; and
  - (b) for each recognised class,—
    - (i) a definition of the class that allows the class to be accurately and readily identified; and
    - (ii) 1 or more of the following:
      - (A) a list of the members of the class;
      - (B) a statement specifying where a copy of a list of the members of the class may be obtained;
      - (C) a statement specifying where information about the membership of the class may be obtained; and
    - (iii) a list of any members, or a description of any categories of members, within the class that are excluded from the recognised class in accordance with section 75(5); and
    - (iv) any suspension of the class’s recognition; and
    - (v) a list of any members of the class whose recognition has been suspended, withdrawn, or surrendered and the date on which the suspension, withdrawal, or surrender takes effect; and
  - (c) the specified functions and activities of each recognised agency, recognised person, and recognised class; and
  - (d) the date on which each agency, person, and class was recognised and the duration of that recognition; and
  - (e) any other particulars required by the regulations or any supplementary notice.

- (2) A suspension of recognition that is recorded on the public register must specify—
- (a) the date and time the suspension starts; and
  - (b) the period of the suspension; and
  - (c) the specified functions and activities that the suspension relates to.
- (3) If a person is recognised as both a recognised agency and a recognised person, the information referred to in subsection (1)(a)(i) and (c) to (e) must either—
- (a) be recorded twice, once in the recognised person part of the register, and again in the recognised agency part of the register; or
  - (b) be recorded in one of those areas of the register and cross-referenced in the other area of the register.

Section 82T: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

Section 82T(1)(e): replaced, on 2 March 2018, by section 228 of the Food Safety Law Reform Act 2018 (2018 No 3).

## **82U Inspection of public register**

The Director-General must—

- (a) make the public register available for public inspection, free of charge, at reasonable hours at the head office of the Ministry; and
- (b) supply to any person, on request and on payment of a reasonable charge (if any), a copy of any entries on the public register.

Section 82U: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

## **82V Removal from public register**

- (1) The Director-General must, as soon as practicable, remove the name of a recognised agency, recognised person, or recognised class from the public register if the period for which the recognition is granted expires and is not extended under section 82C(3)(b) or renewed.
- (2) Subsection (3) applies if the recognition of a recognised agency, a person who is recognised under section 73, or a recognised class is—
- (a) withdrawn under section 82N or 82O; or
  - (b) surrendered under section 82Q.
- (3) The Director-General must, as soon as practicable after withdrawing the recognition or being notified of the surrender,—
- (a) record the withdrawal or surrender and the date on which it takes effect; and
  - (b) remove that agency, person, or class from the public register.

Section 82V: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

*Miscellaneous matters relating to recognition*

Heading: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

**82W Notification to category or class of persons**

- (1) If any matter is required to be notified to a category or class of persons or a recognised class under sections 70 to 82Z, it must be notified in 1 or more of the following ways:
  - (a) by notice in the *Gazette*;
  - (b) by publication in all major metropolitan daily newspapers on at least 2 occasions;
  - (c) by notifying a person who the Director-General is reasonably satisfied represents the category or class or is an appropriate person to receive a notification on behalf of the category or class;
  - (d) if there was an applicant for the recognition of the class, by notifying that applicant;
  - (e) by publication, either temporarily or permanently, on the Ministry's public Internet site;
  - (f) by mail or email to all members of the category or class;
  - (g) in any other manner that the Director-General is reasonably satisfied will ensure that the matter is sufficiently notified to the category or class.
- (2) In deciding which methods of notification are most appropriate in any particular case, the Director-General must consider—
  - (a) the nature and significance of the matter required to be notified; and
  - (b) the size and type of the category or class of persons and its characteristics, geographical spread, and degree of representation and organisation.

Section 82W: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

**82X Means of consultation**

If the Director-General is required to consult a person or a category or class of persons under sections 70 to 82Z, the Director-General must—

- (a) notify the person or persons of the matter to be consulted on (the **matter**) by, as applicable,—
  - (i) giving the person written notice; or
  - (ii) notifying the category or class of persons in accordance with section 82W; and
- (b) give all persons who are notified of the matter a reasonable opportunity to make a written submission on the matter; and

- (c) if provided for in the notice (at the discretion of the Director-General), give all persons who are notified of the matter a reasonable opportunity to make an oral submission on the matter; and
- (d) consider any submissions that he or she receives on the matter from any person who was notified of the matter.

Section 82X: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

### **82Y Director-General may require notification of termination of contracts**

- (1) The Director-General may, by notice under section 120(1), require any verifier or verifying agency to notify the Director-General of the termination of any contract with the operator of a wine standards management plan for managing or carrying out verification functions and activities.
- (2) *[Repealed]*
- (3) The verifier or verifying agency must notify the Director-General in writing of the termination as soon as practicable, and in no case later than 7 days after it occurs.

Section 82Y: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

Section 82Y(1): amended, on 2 March 2018, by section 229(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 82Y(2): repealed, on 2 March 2018, by section 229(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 82Y(3): amended, on 2 March 2018, by section 229(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

### **82Z Director-General must consider exemption, waiver, or refund of fees**

- (1) The Director-General must consider whether an exemption, a waiver, or a refund of all or part of a prescribed fee, charge, or levy is appropriate if—
  - (a) an application is made under section 77 by 1 person for more than 1 type of recognition (for example, if a person applies to be recognised as both a recognised agency and a recognised person); or
  - (b) an application is made under section 82C by 1 person to renew more than 1 type of recognition; or
  - (c) 1 person is liable under section 82F to pay a prescribed fee, charge, or levy for ongoing recognition under more than 1 of sections 71 to 75.
- (2) However, subsection (1) only applies if regulations prescribing the relevant fee, charge, or levy authorise the Director-General to grant an exemption, waiver, or refund in these circumstances (*see* section 92).

Section 82Z: inserted, on 31 August 2012, by section 9 of the Wine Amendment Act 2012 (2012 No 70).

*Protection of persons acting under Act*

**83 Protection of persons acting under authority of Act, etc**

No wine officer, no person called on to assist a wine officer, and no recognised person who does any act or omits to do any act in pursuance of any of the functions or powers conferred on that officer or person by or under this Act is under any civil or criminal liability in respect of that act or omission, unless the officer or person has acted, or omitted to act, in bad faith or without reasonable cause.

Subpart 2—Cost recovery

**84 Principles of cost recovery**

- (1) The Minister and the Director-General must take all reasonable steps to ensure that so many of the direct and indirect costs of administering this Act as are not provided for by money appropriated by Parliament for the purpose are recovered under this subpart, whether by way of fees, levies, or otherwise.
- (2) In determining the most appropriate method of cost recovery under section 85, and its level, in any particular case or class of cases of wine, business, person, or other matter, the Minister and Director-General must have regard, as far as is reasonably practicable, to the following criteria:
  - (a) equity, in that funding for a particular function, power, or service, or a particular class of functions, powers, or services, should generally, and to the extent practicable, be sourced from the users or beneficiaries of the relevant function, power, or service at a level commensurate with their use or benefit from the function, power, or service:
  - (b) efficiency, in that costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost:
  - (c) justifiability, in that costs should be collected only to meet the reasonable costs (including indirect costs) for the provision or exercise of the relevant function, power, or service:
  - (d) transparency, in that costs should be identified and allocated as closely as practicable in relation to tangible service provision for the recovery period in which the service is provided.
- (3) Costs should not be recovered under this subpart unless there has been consultation with affected parties and relevant industry organisations in accordance with section 115, and the parties involved have been given sufficient time and information to make an informed contribution.
- (4) Nothing in subsection (3) or in section 87 or section 115 requires consultation in relation to specific fees or charges, or the specific levels of fees or charges, so long as the fees or charges set are reasonably within the purview of any general consultation or any consultation carried out for the purposes of section

115, and a failure to comply with subsection (3) does not affect the validity of any regulations made for the purposes of this subpart.

- (5) Nothing in this section requires a strict apportionment of the costs to be recovered for a particular function or service based on usage; and, without limiting the way in which fees or charges may be set, a fee or charge may be set at a level or in a way that—
- (a) is determined by calculations that involve an averaging of costs or potential costs:
  - (b) takes into account costs or potential costs of services that are not directly to be provided to the person who pays the fee or charge but which are an indirect or potential cost arising from the delivery of the service in question to a class of persons or all persons who use the service.

Section 84(3): amended, on 2 March 2018, by section 230 of the Food Safety Law Reform Act 2018 (2018 No 3).

## **85 Methods of cost recovery**

The methods by which costs may be recovered under this subpart are as follows:

- (a) fixed fees or charges:
- (b) fees or charges based on a scale or formula or at a rate determined on an hourly or other unit basis:
- (c) use of a formula or other method of calculation for fixing fees and charges:
- (d) the recovery by way of fee or charge of actual and reasonable costs expended in, or associated with, the performance of a service or function:
- (e) estimated fees or charges, or fees or charges based on estimated costs, paid before the provision of the service or function, followed by reconciliation and an appropriate further payment or refund after provision of the service or function:
- (f) refundable or non-refundable deposits paid before provision of the service or performance of the function:
- (g) fees or charges imposed on users of services or third parties:
- (h) levies:
- (i) any combination of the above.

## **86 Cost recovery to relate generally to financial year**

- (1) Except as provided in subsection (2), any regulations that set a fee, charge, or levy that applies in any financial year—
- (a) must have been made before the start of that financial year; but



- (b) except as the regulations may otherwise provide, apply in that year and all subsequent years until revoked or replaced.
- (2) Subsection (1) does not prevent the alteration or setting during any financial year of a fee, charge, or levy payable in that year if either—
  - (a) the fee, charge, or levy is reduced, removed, or restated without substantive alteration; or
  - (b) in the case of an increase or a new fee, charge, or levy,—
    - (i) consultation in accordance with section 115 has been carried out with persons or representatives of persons substantially affected by the alteration or setting; and
    - (ii) the Minister is satisfied that those persons, or their representatives, agree or do not substantially disagree with the alteration or setting.
- (3) Subsection (1) does not prevent the amendment of any regulation setting a fee, charge, or levy if any substantive alteration effected by the amendment is for the purpose of correcting an error.
- (4) Recovery may be made in any financial year of any shortfall in cost recovery for any of the preceding 4 financial years, and allowance may be made for any over-recovery of costs in those years (including any estimated shortfall or over-recovery for the immediately preceding financial year).

Section 86(1): amended, on 2 March 2018, by section 231(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 86(2)(b)(i): amended, on 2 March 2018, by section 231(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

### **87 Three-yearly review of cost recovery**

- (1) The Minister must cause to be reviewed, at least once in every 3-year period occurring since the original setting of, or latest change to, the levels and methods of cost recovery in relation to any class of wine, business, person, or other matter, the levels and methods of cost recovery in the relevant area that are likely to be appropriate for the following financial year or years.
- (2) The Minister must ensure that consultation in accordance with section 115 takes place in relation to any such review.
- (3) A review may make provision for recovery in any relevant financial year of any shortfall in cost recovery for any of the preceding 4 financial years, or make allowance for any over-recovery of costs in those years (including any estimated shortfall or over-recovery for the immediately preceding financial year).
- (4) Subsection (1) does not require all areas of cost recovery to be reviewed at the same time, nor does it impose any time limit on the making of regulations to implement the results of a review.

Section 87(2): amended, on 2 March 2018, by section 232 of the Food Safety Law Reform Act 2018 (2018 No 3).

## **88 Fees and charges to be prescribed by regulations**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing fees and charges for the purposes of this Act, including fees and charges—
  - (a) for applications, renewals, or related matters under this Act (for example, for applications for registration under subpart 1 or 3 of Part 2 or for applications for recognition under sections 70 to 82Z); and
  - (b) payable on an ongoing basis by a person given a particular status under this Act (for example, for ongoing registration under subpart 3 of Part 2 or for ongoing recognition under sections 70 to 82Z).
- (2) The fees and charges may be prescribed using any 1 or more of the methods specified in section 85, or any combination of those methods.
- (3) Different fees and charges, or different rates or types of fee or charge, may be prescribed in respect of different classes or descriptions of wine, persons or businesses, operations, or other matters, or any combination of them.
- (4) Without limiting subsection (3), the fees and charges prescribed may—
  - (a) differ depending on whether or not a special or urgent service is provided:
  - (b) include more than 1 level of fee or charge for the same service provided in different ways, or provided in or in respect of different places:
  - (c) differ for otherwise similar services provided in different ways:
  - (d) differ for otherwise similar services provided to different categories of person:
  - (e) differ depending on the amount of service required or the components of the service required for the particular person or class of person.
- (5) Where regulations prescribe a formula for determining a fee or charge, the formula may specify the value of 1 or more of its components as being an amount or amounts notified for these components by the Director-General by notice under section 120(1).
- (6) The Minister may not recommend the making of regulations under this section unless satisfied that, to the extent appropriate in the circumstances, the requirements of sections 84 and 86 have been met.

Section 88(1): replaced, on 2 March 2018, by section 233(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 88(5): amended, on 2 March 2018, by section 233(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

**89 Regulations may impose levies**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing levies for the purposes of this Act, including levies payable on an ongoing basis by a person given a particular status under this Act (for example, for ongoing registration under subpart 3 of Part 2 or for ongoing recognition under sections 70 to 82Z).
- (2) Different levies or rates of levy or bases on which an amount of levy is to be calculated or ascertained may be prescribed for different purposes, and different levies or rates of levy or bases for calculation may be set for different classes or descriptions of wine, persons or businesses, operations, or other matters, or any combination of them.
- (3) Without limiting the generality of subsection (1), regulations imposing levies may—
  - (a) specify when and how any levy is to be paid:
  - (b) require that any levy, or estimated amount of levy, be paid in advance of performance of the services or functions to which it relates:
  - (c) specify persons, other than persons primarily responsible for paying the levy, who are to be responsible for collecting a levy, and provide for retention of any part of the levy money collected as a fee for that service:
  - (d) require, or empower the Director-General to require, the provision of information and returns in relation to levies:
  - (e) require the keeping of separate trust accounts for levy money received or deducted by persons responsible for collecting levies, and prescribe matters in relation to those trust accounts:
  - (f) prescribe a method of arbitration or mediation in the case of disputes as to—
    - (i) whether or not any person is required to pay, or collect, the levy concerned; or
    - (ii) the amount of levy any person is required to pay or collect—and provide for related matters, including procedures and remuneration for arbitrators or mediators.
- (4) The Minister may not recommend the making of regulations under this section unless satisfied that, to the extent appropriate in the circumstances, the requirements of sections 84 and 86 have been met.
- (4A) Where regulations prescribe a formula for determining a levy, the formula may specify the value of 1 or more of its components as being an amount or amounts notified for those components by the Director-General by notice under section 120(1).

- (5) Nothing in this section or in this subpart affects the power of persons within the winemaking industry to determine to introduce and impose a levy on wine in accordance with section 111.

Section 89(1): replaced, on 2 March 2018, by section 234(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 89(4A): inserted, on 2 March 2018, by section 234(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

## **90 Trust accounts required to be kept by persons collecting levies**

- (1) If regulations made under section 89 require the operation of a trust account for any levy money by the person responsible for collecting the levy,—
- (a) any amount held in such an account that is due to be paid to the Director-General by the levy collector is to be treated as levy money held on trust for the Director-General; and
  - (b) any amount so held on trust is not available for the payment of any creditor (other than the Director-General) of the levy collector, and is not liable to be attached or taken in execution at the instance of any such creditor; and
  - (c) a person who ceases to be a person responsible for collecting a levy must continue to maintain the trust account until all the levy money payable to the Director-General in respect of the period during which the person was responsible for collecting the levy has been paid.
- (2) Nothing in subsection (1)(c) affects any obligation or liability under this Act of any other person who has become responsible for collecting the levy concerned.

## **91 Other charges not requiring to be prescribed**

- (1) Nothing in this subpart or in any other provision of this Act prevents the Director-General from requiring a reasonable charge to be paid for any of the services the Ministry provides in relation to the administration of this Act, or any actual and reasonable expenses incurred in providing the services, other than services in respect of which a fee or charge or levy is prescribed under this subpart.
- (2) Without limiting subsection (1), and for the avoidance of doubt, the Director-General may—
- (a) operate a telephone information service for which each caller pays according to their usage or on some averaged basis;
  - (b) charge persons for the cost of mailing, faxing, emailing, or couriering information to them;
  - (c) charge for the cost of written material, unless that material is required by an Act or by regulations made under this Act to be provided free of charge:

- (d) charge for access to any website, or for information or services provided by any website, operated by the Ministry:
  - (e) charge for access to any library or research services provided in relation to matters pertaining to wine, or associated things:
  - (f) charge any person for services provided in relation to a wine business or otherwise under this Act.
- (3) All money received by the Ministry as a result of such charges must be paid into the Departmental Bank Account.

## **92 Exemptions, waivers, and refunds**

- (1) The regulations may provide for exemptions from, or waivers or refunds of, any fee, levy, or charge payable under this Act, in whole or in part, in any class of case.
- (2) Any such regulations may authorise the Director-General to grant an exemption, waiver, or refund in any particular case or class of case.
- (3) An exemption or a waiver granted under this section expires on the date specified in it, which must not be more than 5 years after the exemption is granted.

Section 92(1): amended, on 2 March 2018, by section 235(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 92(3): inserted, on 2 March 2018, by section 235(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

## **93 Fees, levies, and charges to constitute debt due to Director-General**

Any fee, levy, or charge that has become payable is a debt due to the Director-General, and is recoverable as a debt by the Director-General in any court of competent jurisdiction. Until paid in full, it remains a debt due to the Crown.

## **94 Penalties for failure to pay fee, levy, or charge**

- (1) If a person has failed to pay to the Director-General by the due date any fee, levy, or charge payable under this subpart,—
- (a) section 14 of the Ministries of Agriculture and Forestry (Restructuring) Act 1997 applies to increase the amount payable; and
  - (b) section 15 of that Act applies to allow the Director-General, in appropriate cases, to waive the payment of all or any of the amount of any such increase; and
  - (c) section 16 of that Act applies to allow the Director-General to withdraw, or refuse to provide the person in default with, any service of the kind to which the debt relates.
- (2) For the purposes of subsection (1)(c) of this section and section 16 of the Ministries of Agriculture and Forestry (Restructuring) Act 1997, and without limiting the generality of that section 16, the references in those provisions to the

withdrawal or refusal to provide any service are to be treated as also authorising the Director-General, in an appropriate case, to—

- (a) withhold or suspend any approval under this Act, or refuse to perform any function under this Act in relation to the person in default:
  - (b) withhold the registration of any exporter or wine standards management plan under this Act, or require the suspension of any relevant operations of the exporter or operator of the wine standards management plan:
  - (c) withhold any official assurance:
  - (d) withhold any export eligibility certificate.
- (3) Where the withdrawal of any approval or registration under this section, or any suspension of operations, requires the Director-General to provide any further service, or perform any further function involved in the withdrawal or suspension, the Director-General may recover any reasonable amount for the additional service, function, or costs as a debt due from the person who owns or is responsible for the operation concerned.

**95 Obligation to pay fee, levy, or charge not suspended by dispute**

The obligation of a person to pay any fee, levy, or charge under this Act (including any penalty referred to in section 94), and the right of the Director-General to receive and recover the fee, levy, charge, or penalty, are not suspended by any dispute between the person and the Director-General regarding the person's liability to pay the fee, levy, or charge, or the amount of the fee, levy, or charge.

**96 Levy regulations are confirmable instruments**

The explanatory note of regulations made under section 89 must indicate that—

- (a) they are a confirmable instrument under section 47B of the Legislation Act 2012; and
- (b) they are revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
- (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

Section 96: replaced, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

## **Part 4**

### **Offences, penalties, and miscellaneous provisions**

#### *Infringement offences*

Heading: inserted, on 2 March 2018, by section 236 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **96A Proceedings for infringement notices**

- (1) This section applies when a person is alleged to have committed an infringement offence.
- (2) The person may—
  - (a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or
  - (b) be served with an infringement notice as provided in section 96B and, in that case, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.
- (3) Proceedings commenced in the way described in subsection (2)(a) do not require leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.

Section 96A: inserted, on 2 March 2018, by section 236 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **96B Issue and cancellation of infringement notices**

- (1) An infringement notice may be served on a person if a wine officer—
  - (a) observes the person committing an infringement offence; or
  - (b) reasonably believes that the person is committing an infringement offence; or
  - (c) reasonably believes that the person has committed an infringement offence.
- (2) An infringement notice may be cancelled by a wine officer if—
  - (a) the interests of justice require cancellation; and
  - (b) neither the particulars of a reminder notice nor a notice of hearing relating to the infringement notice has been filed in a District Court.
- (3) An infringement notice is cancelled by the service of a cancellation notice.
- (4) An infringement notice or a cancellation notice may be served by a wine officer personally delivering it to the person alleged to have committed the infringement offence.
- (5) Alternatively, an infringement notice or a cancellation notice may be served by post addressed to,—
  - (a) if the person is a natural person,—

- (i) the address of the person's last-known place of residence; or
  - (ii) the address on the person's driver licence; or
  - (iii) the person's address on the latest electoral roll; or
  - (iv) the person's last-known registered address, if the person has or has had a registered address for any purpose; or
  - (v) the person's address in the latest telephone directory; or
  - (vi) the address of the person's last-known place of business; or
- (b) if the person is not a natural person,—
- (i) the person's last-known registered address, if the person has or has had a registered address for any purpose; or
  - (ii) the person's address in the latest telephone directory; or
  - (iii) the address of the person's last-known place of business.
- (6) For the purposes of the Summary Proceedings Act 1957, an infringement notice or a cancellation notice served under subsection (5) is treated as having been served on the person when it was posted.

Section 96B: inserted, on 2 March 2018, by section 236 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **96C Form of infringement notice**

- (1) An infringement notice must be in the form set out in the regulations.
- (2) The form must contain the following details:
- (a) sufficient details to inform the person served with the notice of the time, place, and nature of the alleged offence; and
  - (b) the amount of the infringement fee for the offence; and
  - (c) the time within which the infringement fee must be paid; and
  - (d) the address of the place at which the infringement fee must be paid; and
  - (e) a statement of the person's right to ask for a hearing; and
  - (f) a statement of the person's right to ask for cancellation of the notice; and
  - (g) a statement of what will happen if the person does not pay the infringement fee or ask for a hearing or ask for cancellation of the notice; and
  - (h) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957.

Section 96C: inserted, on 2 March 2018, by section 236 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **96D Payment of infringement fees**

All infringement fees paid for infringement offences must be paid to the Ministry.



Section 96D: inserted, on 2 March 2018, by section 236 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **96E Regulations about infringement offences**

The Governor-General may, by Order in Council, make regulations to do all or any of the following:

- (a) identify the offences in or under this Act that are infringement offences:
- (b) identify as an infringement offence an offence against section 103 for failing to comply with a specified provision, direction, condition, notice, or requirement:
- (c) set out notices and forms required for the purposes of sections 96A to 96D:
- (d) set out the amounts, up to \$1,000, of infringement fees that are payable for infringement offences, including different fees for a first offence, a second offence, and subsequent offences.

Section 96E: inserted, on 2 March 2018, by section 236 of the Food Safety Law Reform Act 2018 (2018 No 3).

### *Offences, penalties, and proceedings*

### **97 Offences involving deception**

- (1) A person commits an offence who, with intent to deceive and for the purpose of obtaining any material benefit or avoiding any material detriment,—
  - (a) makes any false or misleading statement or any material omission in any communication, application, record, or return for the purpose of this Act, or destroys, cancels, conceals, alters, obliterates, or fails to provide any document, record, return, or information required to be kept or communicated under this Act; or
  - (b) falsifies, removes, misuses, alters, misapplies, misrepresents, or fails to apply any label, brand, material, or product description of wine required or authorised to be used under this Act; or
  - (c) misrepresents, substitutes in whole or in part, adulterates, or otherwise tampers with wine to which this Act applies so that it no longer matches or complies with its description, certificate, label, or official assurance; or
  - (d) falsifies, alters, or misapplies any certificate or declaration or other statutory form attached or relating to wine that is required or authorised to be used under this Act, or any official assurance, or tampers with any wine that is subject to such a certificate, declaration, form, or assurance; or
  - (e) falsifies, removes, suppresses, or tampers with any samples, test procedures, test results, or evidence taken or seized by a wine officer or by a recognised agency or a recognised or otherwise authorised person in the performance or exercise of their functions or powers under this Act; or

- (f) falsifies, removes, suppresses, or tampers with any samples, test procedures, or test results taken by or for an operator of a wine standards management plan for the purposes of that plan or this Act, or by or for a person subject to the requirements of a wine standards management plan for the purposes of that wine standards management plan or this Act; or
  - (g) aids, abets, incites, counsels, procures, or conspires with any other person to commit an offence under this section.
- (2) *[Repealed]*
- (3) A person who commits an offence against subsection (1) is liable on conviction—
- (a) in the case of a body corporate, to a fine not exceeding \$500,000;
  - (b) in the case of an individual, to imprisonment for a term not exceeding 5 years and a fine not exceeding \$100,000.

Section 97(2): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 97(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **98 Offences involving endangerment of human health**

- (1) A person commits an offence who, being a winemaker, or an exporter of wine, or a transporter of commodities or wine, or a producer of commodities, contravenes or fails to comply with any provision of this Act or of regulations made or any notice given under this Act, knowing that the contravention or failure would or is likely to endanger the health of the public, or the health of any individual.
- (2) A person commits an offence who, being the operator of a wine standards management plan or a person who is required to operate under a wine standards management plan, contravenes or fails to comply with any provision of this Act or of regulations made or any notice given under this Act, knowing that the contravention or failure—
- (a) may create, directly or indirectly, a risk to human health; or
  - (b) may, directly or indirectly, increase the likelihood of an existing risk to human health.
- (3) *[Repealed]*
- (4) A person who commits an offence against subsection (1) is liable on conviction—
- (a) in the case of a body corporate, to a fine not exceeding \$500,000;
  - (b) in the case of an individual, to imprisonment for a term not exceeding 5 years and a fine not exceeding \$100,000.
- (5) A person who commits an offence against subsection (2) is liable—
- (a) in the case of a body corporate, to a fine not exceeding \$300,000;

- (b) in the case of an individual, to imprisonment for a term not exceeding 2 years and a fine not exceeding \$75,000.

Section 98(3): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 98(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **99 Sale of non-complying wine**

- (1) A person commits an offence who sells or offers for sale, or has in the person's possession for sale, any wine to which Part 2 applies that, to the person's knowledge, has not been made in accordance with the requirements of that Part that apply to the wine, or is not otherwise fit for its intended purpose.
- (2) A person commits an offence who sells or offers for sale, or has in possession for sale, any wine that purports or is represented to have been made in accordance with subparts 1 and 2 of Part 2, but that, to the person's knowledge, has not been made in accordance with those subparts.
- (3) *[Repealed]*
- (4) A person who commits an offence against this section is liable on conviction—
- (a) in the case of a body corporate, to a fine not exceeding \$250,000;
- (b) in the case of an individual, to a fine not exceeding \$50,000.

Section 99(3): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 99(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **100 Offence to export unless registered or in compliance with export eligibility requirements**

- (1) A person commits an offence who, being a person who is required to be registered as an exporter in relation to the wine concerned, without being so registered exports any wine to which subpart 3 of Part 2 applies other than in accordance with an exemption granted under section 6 or section 39 or by the regulations or any supplementary notice.
- (2) A person commits an offence who exports any wine that does not comply with any relevant export eligibility requirements or any supplementary notice.
- (3) *[Repealed]*
- (4) A person who commits an offence against this section is liable on conviction to a fine not exceeding—
- (a) \$250,000, in the case of a body corporate; or
- (b) \$50,000, in the case of an individual.

Section 100(1): amended, on 2 March 2018, by section 237(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 100(2): amended, on 2 March 2018, by section 237(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 100(3): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 100(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **101 Obstruction of officers, etc**

- (1) A person commits an offence who threatens, assaults, or intentionally obstructs or hinders—
  - (a) any wine officer; or
  - (b) an assistant of a wine officer; or
  - (c) any recognised agency, recognised person, or other authorised person—  
who is acting in the performance or exercise of a function, power, or duty under this Act or under any wine standards management plan.
- (2) A person commits an offence who, with intent to deceive, personates or pretends to be a wine officer or an agency or a person referred to in subsection (1)(c).
- (3) A person who commits an offence against this section is liable,—
  - (a) for a body corporate, to a fine not exceeding \$250,000;
  - (b) for an individual, to—
    - (i) imprisonment for a term not exceeding 3 months; and
    - (ii) a fine not exceeding \$50,000.

Section 101(2): amended, on 2 March 2018, by section 238 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 101(3): replaced, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

### **101A Offences involving automated electronic system**

- (1) A person commits an offence who intentionally obstructs or hinders an automated electronic system that is doing an action under section 118A.
- (2) A person commits an offence who knowingly damages or impairs an automated electronic system.
- (3) A person who commits an offence against this section is liable on conviction,—
  - (a) for a body corporate, to a fine not exceeding \$250,000;
  - (b) for an individual, to imprisonment for a term not exceeding 3 months and a fine not exceeding \$50,000.

Section 101A: inserted, on 2 March 2018, by section 239 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **101B Breach of compliance order**

- (1) A person commits an offence who, without reasonable excuse, breaches or fails to comply with the terms of a compliance order or an interim compliance order issued under section 110A or 110F.
- (2) A person who commits an offence against this section is liable on conviction to—
  - (a) a fine not exceeding—
    - (i) \$300,000, in the case of a body corporate; or
    - (ii) \$50,000, in the case of an individual; and
  - (b) an additional fine not exceeding \$2,000 for every day on which the breach or failure continues.

Section 101B: inserted, on 2 March 2018, by section 239 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **102 Offence of breach of duty**

- (1) A person commits an offence who, without reasonable excuse,—
  - (a) being the operator of a wine standards management plan, breaches or fails to carry out any of the duties specified in section 13; or
  - (b) being an exporter, breaches or fails to carry out any of the duties specified in section 40; or
  - (c) being a recognised agency, breaches or fails to carry out any of the duties specified in section 82G; or
  - (d) being a recognised person, breaches or fails to carry out any of the duties specified in section 82H.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding—
  - (a) \$100,000, in the case of a body corporate; or
  - (b) \$20,000, in the case of an individual.

Section 102(1)(c): amended, on 31 August 2012, by section 10(1) of the Wine Amendment Act 2012 (2012 No 70).

Section 102(1)(d): amended, on 31 August 2012, by section 10(2) of the Wine Amendment Act 2012 (2012 No 70).

Section 102(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **103 Failure to comply with Act, etc**

- (1) A person commits an offence who, without reasonable excuse, fails to comply with—
  - (a) any provision of this Act; or
  - (b) any provision of the regulations the failure to comply with which is identified in the regulations as an offence; or

- (c) any direction, condition, notice, or requirement lawfully given, made, or imposed by or under this Act.
- (2) A person who commits an offence against this section for which no other penalty is specified is liable on conviction to a fine not exceeding—
  - (a) \$100,000, in the case of a body corporate; or
  - (b) \$20,000, in the case of an individual.

Section 103(1)(b): replaced, on 2 March 2018, by section 240 of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 103(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **104 Defence for persons charged with breach of duty or failure to comply**

- (1) In any prosecution for an offence against section 102 or section 103, it is a defence if the defendant proves that—
  - (a) the breach or failure concerned was due to the act or omission of another person, or to an accident or some other cause outside the defendant's control; and
  - (b) the defendant took reasonable precautions and exercised due diligence to avoid the breach or failure, or breaches or failures of that kind.
- (2) A defence under subsection (1) is available only if, at least 14 days before the date on which the hearing of the proceedings commences or within such further time as the court may allow, the defendant delivers to the prosecutor a written notice that—
  - (a) states that the defendant intends to rely on the relevant defence; and
  - (b) specifies the nature of the act or omission constituting the relevant breach or failure and the precautions taken against such breaches or failures.

#### **105 Evidence in proceedings**

- (1) In any proceedings for an offence under this Act, a certificate or document (including electronic copy) of any of the following kinds is admissible in evidence and, in the absence of proof to the contrary, is sufficient evidence of the matter stated in the certificate or of the contents of the document, as the case may require:
  - (a) a certificate purporting to be signed by the Director-General, or by a delegate of the Director-General, to the effect that, at any specified date or period,—
    - (i) a named person or body is or was, or is not or was not, a wine officer, a verifier, a verifying agency, a recognised person, a recognised agency, or an employee of the Ministry; or

- (ii) a specified wine standards management plan was or was not registered or was or was not amended, deregistered, or surrendered under subpart 1 of Part 2; or
  - (iii) a named person was or was not registered as an exporter under subpart 3 of Part 2, or the person's registration was or was not removed or surrendered; or
  - (iv) a class, kind, or description of wine is or was, or is not or was not, subject to export eligibility requirements; or
  - (v) a specified operation was or was not suspended under subpart 1 or subpart 3 of Part 2; or
  - (vi) any official assurance, or any statement under section 60, had or had not been given in respect of any wine or consignment; or
  - (vii) a specified document was or was not a copy of an official assurance given under this Act; or
  - (viii) a specified document was or was not a copy of a registered wine standards management plan; or
  - (ix) a specified document was or was not a copy of a notice or direction given under this Act; or
  - (x) a specified document was a copy of an extract from a register kept under this Act:
- (b) a certificate purporting to be signed by any person authorised by this Act or the Public Service Act 2020 to delegate to any person, or to persons of any kind or description, the exercise or performance of any power or function under this Act, stating that—
- (i) the person has delegated the exercise or performance of the power or function specified in the certificate to the person specified in the certificate; or
  - (ii) the person has delegated the exercise of the power or function specified in the certificate to persons of a kind or description specified in the certificate, and that a named person specified in the certificate is a person of that kind or description:
- (c) a certificate purporting to be signed by an analyst, a recognised agency, or a recognised person stating the results of an analysis, test, or examination of a sample taken under or for the purposes of this Act:
- (d) a document purporting to be a copy of any material incorporated by reference into any regulation or notice or order under section 121:
- (e) a document purporting to be a copy of a registered wine standards management plan:
- (f) a document purporting to be a copy of an official assurance or a statement given under section 60:

- (g) a document purporting to be a copy of a notice or direction or approval or specification (including a copy of any material incorporated by reference) or requirement given under this Act.
- (2) The production of a certificate or document purporting to be a certificate or document to which subsection (1) applies is prima facie evidence that it is such a certificate or document, without proof of the signature of the person purporting to have signed it or of its nature.
- (3) No certificate of an analyst, a recognised agency, or a recognised person, and no other evidence of an analysis, test, or examination under this Act, is to be ruled inadmissible or disregarded by reason only of the fact that any of the provisions of this Act or of any regulations, notices, or orders made under this Act relating to the taking, analysing, testing, or examining of samples have not been strictly complied with, if there has been reasonable compliance with those provisions.
- (4) A certificate or document to which subsection (1) applies is not admissible in evidence unless—
- (a) at least 14 days before the hearing at which the certificate or document is to be tendered, a copy is served, by or on behalf of the prosecutor, on the defendant or the defendant's agent or counsel, and that person is at the same time informed in writing that the prosecutor does not propose to call the person who signed the certificate or document as a witness at the hearing or to call evidence as to the nature of the document; and
- (b) the court has not, on the application of the defendant made not less than 7 days before the hearing, ordered, not less than 4 days before the hearing (or such lesser period as the court in the special circumstances of the case thinks fit), that the certificate or document should not be admissible as evidence in the proceedings.
- (5) The court may not make an order under subsection (4)(b) unless it is satisfied that there is a reasonable doubt as to the accuracy or validity or identity of a certificate or document.

Section 105(1)(a)(i): amended, on 2 March 2018, by section 241(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 105(1)(b): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 105(1)(c): amended, on 31 August 2012, by section 11(1) of the Wine Amendment Act 2012 (2012 No 70).

Section 105(3): amended, on 2 March 2018, by section 241(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 105(3): amended, on 31 August 2012, by section 11(2) of the Wine Amendment Act 2012 (2012 No 70).



### **106 Presumption as to authority**

- (1) A return, record, transaction, form, application, or other information purporting to be completed, kept, or provided by or on behalf of a person is for the purposes of this Act to be presumed to have been completed, kept, or provided by that person unless the contrary is proved.
- (2) The production of—
  - (a) a document presented by a wine officer purporting to be a notice or an extract from a notice issued by the Director-General in accordance with section 116 or section 120, or a copy of any such notice or extract; and
  - (b) a copy of the *Gazette* in which the notice was notified—is in all courts and in all proceedings sufficient evidence, until the contrary is proved, of the existence, notification, and contents of the notice.

### **107 Liability of body corporate**

If, in the course of proceedings against a body corporate for an offence under this Act, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, employee, or agent of the body corporate, acting within the scope of that person's actual or apparent authority, had that state of mind.

### **108 Liability of directors and managers of companies**

Where a body corporate is convicted of an offence under this Act, every director and every person concerned in the management of the body corporate is also guilty of a like offence if it is proved that—

- (a) the act or omission that constituted the offence took place with the authority, permission, or consent of the director or person; or
- (b) the director or person knew that the offence was to be or was being committed, and failed to take all reasonable steps to prevent or stop it.

### **109 Liability of companies and persons for actions of agent or employee**

- (1) Any act or omission on behalf of a body corporate or other person (each called the **principal**) by a director, agent, or employee (each called the **agent**) of the principal is to be treated for the purposes of this Act as being also the act or omission of the principal.
- (2) Despite subsection (1), where a principal is charged under this Act in relation to the act or omission of an agent for an offence against any of sections 97, 98, 99, and 100, it is a defence to the charge if the principal proves that the principal took all reasonable steps to prevent the commission of the offence or the commission of offences of that kind.

**109A Order to pay amount because of commercial gain**

- (1) This section applies to a person convicted of an offence against any of sections 97 to 100 and 101A to 103.
- (2) The court may make an order under subsection (4) or (5) if it is satisfied that the offence was committed in the course of producing a commercial gain.
- (3) The court may make the order in addition to, or instead of, a penalty that the court may impose under the relevant offence provision.
- (4) The court may make an order under this subsection whether or not the person is a body corporate. The order is that the person pay an amount up to 3 times the value of the commercial gain resulting from committing the offence.
- (5) The court may make an order under this subsection if the person is a body corporate and the value of the gain cannot be readily ascertained. The order is that the person pay an amount up to 10% of the combined turnover of the body corporate and every interconnected body corporate it has over the period of the offending.
- (6) The court must assess the value of a gain that is readily ascertainable.
- (7) An amount that the court orders to be paid under this section is recoverable in the same manner as a fine.
- (8) In this section, **interconnected** and **turnover** have the same meanings as in the Commerce Act 1986.

Section 109A: inserted, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

**110 Charging documents**

Despite anything to the contrary in the Criminal Procedure Act 2011, a charging document in respect of any offence against this Act may be filed in any case within 4 years after the time when the offence was committed or within any longer time allowed by that other Act.

Section 110: replaced, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

*Compliance orders*

Heading: inserted, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

**110A Compliance orders**

- (1) A compliance order is an order made by a District Court that may do 1 or more of the following things:
  - (a) require a person to cease, or prohibit a person from commencing, anything done or to be done by or on behalf of that person that, in the opinion of the court, contravenes or is likely to contravene this Act or any requirement imposed by or under this Act, and thus—

- (i) is likely to endanger the health of the public through the sale of wine that has not been made in accordance with the requirements of Part 2 or that is otherwise not fit for its intended purpose; or
    - (ii) is likely to prejudice the reputation of New Zealand wine in overseas markets, or the integrity of official assurances given under this Act:
  - (b) require a person to remedy or mitigate any adverse effect arising from any action or matter that may be the subject of an order under paragraph (a):
  - (c) require a person to do something that, in the opinion of the court, is necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect arising from any action or matter that may be the subject of an order under paragraph (a):
  - (d) require a person to pay money to or reimburse the Crown for any actual and reasonable costs and expenses that the Crown has incurred or is likely to incur in avoiding, remedying, or mitigating any adverse effect arising from the failure of the person to comply with a compliance order earlier made against the person under paragraph (a), (b), or (c).
- (2) For the purposes of subsection (1)(d), **actual and reasonable costs** includes the costs of investigation, supervision, and monitoring of the relevant situation and the costs of any actions required to avoid, remedy, or mitigate the relevant adverse effect.
- (3) A compliance order may be made on such terms and conditions as the court thinks fit, including the provision of security or the entry into a bond for performance.
- (4) If the court so orders, a compliance order applies to the personal representatives, successors, and assigns of the person to whom the order is addressed to the same extent that it applies to the person.

Section 110A: inserted, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **110B Application for compliance order**

- (1) The Director-General may apply to a District Court for a compliance order of a kind specified in section 110A.
- (2) Every application to a District Court under this section must be made by originating application.
- (3) The rules relating to the practice and procedure of District Courts for the time being in force under the District Courts Act 1947 apply with respect to every application to the court under this section except as modified—
  - (a) by sections 110C to 110K; and
  - (b) by any rules made under section 110L.

Section 110B: inserted, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **110C Notification of application**

- (1) Except as provided in section 110F (which relates to interim compliance orders), the Director-General must serve notice of the application on every person directly affected by the application.
- (2) The notice must be served within 5 working days after the date on which the application is filed in a District Court, or within such further time as a District Court may allow.

Section 110C: inserted, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **110D Right to be heard**

Except as provided in section 110F, before deciding an application for a compliance order, the court must—

- (a) hear the applicant; and
- (b) hear any person against whom the order is sought who wishes to be heard.

Section 110D: inserted, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **110E Decision on application**

After considering an application for a compliance order, the court may—

- (a) make an appropriate order under section 110A; or
- (b) refuse the application.

Section 110E: inserted, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **110F Interim compliance orders**

- (1) If a District Court Judge considers it necessary to do so, the Judge may make an interim compliance order without requiring service of notice in accordance with section 110C and without holding a hearing.
- (2) Before making an interim compliance order, the Judge must consider—
  - (a) whether failure to make the order is likely—
    - (i) to endanger human health through the sale of the wine concerned; or
    - (ii) to prejudice the integrity or reputation of New Zealand exports of wine, or the integrity of official assurances under this Act; and
  - (b) whether the court should hear the applicant or any person against whom the order is sought; and
  - (c) such other matters as the Judge thinks fit.

- (3) The Judge must direct the applicant or another person to serve a copy of the interim compliance order on the person against whom the order is made.
- (4) The interim compliance order—
  - (a) takes effect from when it is served, or on and from such later date as the order directs; and
  - (b) remains in force until the application under section 110B for a compliance order in respect of the same matter is determined, or until cancelled under subsection (5) or under section 110G.
- (5) A person against whom an interim compliance order has been made without the person having been heard may apply to a District Court Judge to change or cancel the order, and, after hearing from that person and the applicant for the order, the Judge may confirm, change, or cancel the interim compliance order.

Section 110F: inserted, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **110G Change or cancellation of compliance order**

- (1) Without limiting section 110F(5), any person directly affected by a compliance order may apply to a District Court in the manner set out in rules made under section 110L to change or cancel the order.
- (2) The applicant must, within 5 working days after making the application, serve notice of the application in the manner set out in the rules on the Director-General and on any other person (outside the Ministry) who was directly affected by the original order.
- (3) Before deciding an application to change or cancel a compliance order, the court must hear the applicant, the Director-General, and any person directly affected by the original compliance order who wishes to be heard.
- (4) After considering the application, the court may—
  - (a) change or cancel the compliance order; or
  - (b) refuse the application.

Section 110G: inserted, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **110H Compliance with compliance order**

- (1) Where a compliance order is served on the person against whom it is directed, the person must—
  - (a) comply with the order; and
  - (b) unless the order directs otherwise, pay all the costs and expenses of complying with the order.
- (2) If the person fails to comply with the order, the Director-General may comply with the order on behalf of the person, and, for that purpose, may—

- (a) exercise, or direct the exercise of, any of the powers of a wine officer under this Act; and
- (b) recover the costs and expenses of complying with the order as a debt due from the person.

Section 110H: inserted, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **110I Appeals to High Court**

- (1) This subsection applies to a decision of a District Court, on an application under section 110B, to—
  - (a) make or refuse to make a compliance order; or
  - (b) dismiss the proceedings; or
  - (c) otherwise finally determine the proceedings.
- (2) A party to proceedings in which there is made a decision to which subsection (1) applies, or any other person prejudicially affected by the decision, may appeal to the High Court against the decision.
- (3) The High Court Rules and sections 74 to 78 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under subsection (2) as if it were an appeal under section 72 of that Act.

Section 110I: inserted, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **110J Appeals to Court of Appeal or Supreme Court**

- (1) With the leave of the court appealed to, a party to an appeal under section 110I may appeal to the Court of Appeal or the Supreme Court against any determination of the High Court in the appeal.
- (2) On an appeal under this section, the Court of Appeal or the Supreme Court has the same power to adjudicate on the proceedings as the High Court had.
- (3) Subsection (1) is subject to section 14 of the Supreme Court Act 2003 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).

Section 110J: inserted, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **110K Effect of appeal**

Except where the court making the order appealed from otherwise directs,—

- (a) the operation of a compliance order is not suspended by an appeal under section 110I or 110J; and
- (b) every compliance order may be enforced in the same manner in all respects as if no such appeal were pending.

Section 110K: inserted, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **110L Rules of court**

In addition to all other powers conferred by the District Courts Act 1947, the Governor-General may from time to time, by Order in Council, make rules—

- (a) regulating the practice and procedure of District Courts in proceedings under this Act that relate to compliance orders:
- (b) providing for such matters as are contemplated by or necessary or desirable for giving full effect to the provisions of this Act that relate to compliance orders.

Section 110L: inserted, on 2 March 2018, by section 242 of the Food Safety Law Reform Act 2018 (2018 No 3).

### *Industry levies*

### **111 Application of Commodity Levies Act 1990 to wine**

- (1) The purpose of this section is to allow the wine industry to determine to introduce and impose 1 or more levies on wine that are payable to a body representing the views and interests of winemakers.
- (2) Subject to this section, the provisions of the Commodity Levies Act 1990 apply to wine as if it were a commodity within the meaning of that Act.
- (3) Despite subsection (2),—
  - (a) paragraphs (ag) to (ak) of section 5(2) of the Commodity Levies Act 1990 apply as if the references in those paragraphs to “more than half” of the various kinds of support or totals were references to “more than 60%” of the relevant support or total:
  - (b) a referendum to demonstrate support for the levy proposal may include sub-referenda within industry-agreed groups within the wine industry; if this is the case, the more than 60% support requirement applies to each industry-agreed group.
- (4) Despite subsection (2), any wine levy order made in accordance with this section and the provisions of the Commodity Levies Act 1990—
  - (a) may be made under this Act, rather than under that Act, as if authorised by section 119 of this Act; but
  - (b) must be made on the recommendation of the Minister responsible for the Commodity Levies Act 1990, and are to be administered under that Act.

*Recordkeeping requirements**[Repealed]*

Heading: repealed, on 2 March 2018, by section 243 of the Food Safety Law Reform Act 2018 (2018 No 3).

**112 Records and returns***[Repealed]*

Section 112: repealed, on 2 March 2018, by section 243 of the Food Safety Law Reform Act 2018 (2018 No 3).

**113 Records to be available for inspection, etc***[Repealed]*

Section 113: repealed, on 2 March 2018, by section 243 of the Food Safety Law Reform Act 2018 (2018 No 3).

*Use of border information*

Heading: inserted, on 2 March 2018, by section 243 of the Food Safety Law Reform Act 2018 (2018 No 3).

**113A Border information supplied using JBMS must be supplied in approved form and manner**

- (1) This section applies to a requirement by or under this Act to supply to the Ministry any border information.
- (2) Any person who uses a JBMS (Joint Border Management System) to comply with the requirement (including, without limitation, by supplying the information to the Customs, or to an appointed agency, in accordance with section 41D or 41H of the Biosecurity Act 1993) must supply the information in a form and manner—
  - (a) for complying with the requirement by using the JBMS; and
  - (b) for the time being generally approved in writing by the Director-General.
- (3) The approved form and manner referred to in subsection (2)—
  - (a) must be notified via an Internet site that is, so far as practicable, publicly available free of charge; and
  - (b) may be set out in rules under section 325 of the Customs and Excise Act 2018.
- (4) In this section,—

**border information** and **JBMS** have the meanings given or referred to in section 41A(1) of the Biosecurity Act 1993

**Ministry** has the meaning given in section 41A(1) of the Biosecurity Act 1993 and also has the meaning given in section 4(1) of this Act.



Section 113A: inserted, on 24 June 2014, by section 16 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 113A(2): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 113A(3)(b): replaced, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 113A(4): replaced, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

### **113B Duty to use JBMS to supply border information**

- (1) This section applies to a requirement by or under this Act to supply to the Ministry any border information.
- (2) After the commencement of this section, the only ways in which a person can comply with the requirement are—
  - (a) by using a JBMS; or
  - (b) by using another means for the time being generally or specifically approved in writing by the Director-General.
- (3) In this section,—

**border information** and **JBMS** have the meanings given or referred to in section 41A(1) of the Biosecurity Act 1993

**Director-General** has the meaning given in section 4(1) of this Act

**Ministry** has the meaning given in section 41A(1) of the Biosecurity Act 1993 and also has the meaning given in section 4(1) of this Act.

Section 113B: inserted, on 1 July 2016, by section 18(5) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 113B(2)(a): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 113B(3): replaced, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

### *Right of review*

### **114 Right of review of certain decisions made under delegated authority**

- (1) This section applies to any of the following decisions made under this Act by a person acting under the delegated authority of the Director-General:
  - (a) a decision to refuse to register a wine standards management plan or an amendment to a plan under subpart 1 of Part 2:
  - (b) a decision to impose conditions on the registration of a wine standards management plan under section 19:
  - (c) a decision to suspend all or any operations under a wine standards management plan under section 24:
  - (d) a decision to deregister a wine standards management plan under section 25, or to remove a wine business or part of a business from coverage of a plan under section 26:

- (e) a decision to refuse to register a person as an exporter under subpart 3 of Part 2:
  - (f) a decision to deregister an exporter under subpart 3 of Part 2:
  - (g) a decision to refuse an application to recognise an agency under section 71:
  - (h) a decision to refuse an application to recognise a person under section 73:
  - (ha) a decision to refuse an application to recognise a class under section 75:
  - (hb) a decision to exclude any members, or categories of members, from the recognition of a class under section 75(5):
  - (hc) a decision to vary a condition of recognition under section 81, unless the variation is made on the application of the recognised agency, the recognised person, or a member of the recognised class in accordance with the terms of that application:
  - (hd) a decision to suspend, or to extend the suspension of, recognition of an agency, a person, or a class under section 82J or 82K:
  - (he) a decision to withdraw recognition of an agency, a person, or a class under section 82N or 82O:
  - (i) any decision specified by the regulations as a decision that is subject to review under this section.
- (2) A person who is dissatisfied with any such decision may seek a review of the decision by the Director-General.
- (3) An application for a review must—
- (a) be in writing; and
  - (b) state the grounds on which it is believed that the original decision was inappropriate; and
  - (c) be provided to the Director-General within 20 working days after the original decision was notified to the applicant.
- (3A) The Director-General may conduct the review personally or designate another person who was not involved in the original decision to conduct the review.
- (4) The Director-General or designated person must review the matter within 40 working days, or within such extended period not exceeding a further 20 working days as the Director-General or designated person may specify by notice in writing to the applicant.
- (5) For the purposes of a review, the Director-General or designated person may require the applicant to supply information additional to that contained in the application for review within a specified time. The time taken to supply any such information (or allowed for its supply, if the information is not in fact supplied) is not to be counted for the purposes of the time limits specified in subsection (4).

- (6) The decision sought to be reviewed remains valid unless and until altered by the Director-General or designated person.
- (7) The Director-General or designated person must, as soon as practicable, notify the applicant for review of his or her decision on the review in writing, giving reasons for the decision.
- (8) A decision by the Director-General or a designated person under this section is final, unless determined otherwise by a court of law of competent jurisdiction.

Section 114(1): amended, on 31 August 2012, by section 12(1) of the Wine Amendment Act 2012 (2012 No 70).

Section 114(1)(d): amended, on 2 March 2018, by section 244(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 114(1)(f): amended, on 2 March 2018, by section 244(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 114(1)(g): replaced, on 31 August 2012, by section 12(2) of the Wine Amendment Act 2012 (2012 No 70).

Section 114(1)(h): replaced, on 31 August 2012, by section 12(2) of the Wine Amendment Act 2012 (2012 No 70).

Section 114(1)(ha): inserted, on 31 August 2012, by section 12(2) of the Wine Amendment Act 2012 (2012 No 70).

Section 114(1)(hb): inserted, on 31 August 2012, by section 12(2) of the Wine Amendment Act 2012 (2012 No 70).

Section 114(1)(hc): inserted, on 31 August 2012, by section 12(2) of the Wine Amendment Act 2012 (2012 No 70).

Section 114(1)(hd): inserted, on 31 August 2012, by section 12(2) of the Wine Amendment Act 2012 (2012 No 70).

Section 114(1)(he): inserted, on 31 August 2012, by section 12(2) of the Wine Amendment Act 2012 (2012 No 70).

Section 114(1)(i): replaced, on 2 March 2018, by section 244(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 114(2): amended, on 2 March 2018, by section 244(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 114(3A): inserted, on 2 March 2018, by section 244(5) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 114(4): amended, on 2 March 2018, by section 244(6) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 114(8): amended, on 2 March 2018, by section 244(7) of the Food Safety Law Reform Act 2018 (2018 No 3).

### *Consultation, notification, etc*

#### **115 Consultation requirements for making of Orders in Council, regulations, and notices**

- (1) Before making a recommendation for the making of any Order in Council or regulations under this Act, the Minister—

- (a) must be satisfied that the Director-General has carried out consultation in accordance with subsection (3) and has advised the Minister of the results of any such consultation; and
  - (b) must take into account the results of that consultation.
- (2) Before issuing a notice under section 120 (other than for the purposes of section 41(1)), the Director-General must consult in accordance with subsection (3) and take into account the results of that consultation.
- (3) The Director-General must—
  - (a) do everything reasonably practicable on his or her part to consult with the persons or industry organisations that appear to the Director-General to be representative of the interests of persons likely to be substantially affected by the making of the Order in Council, regulations, or notice; and
  - (b) in the case of a proposed Order in Council or regulations, advise the Minister of the results of any such consultation.
- (4) The process for consultation should, to the extent practicable in the circumstances, include—
  - (a) giving adequate and appropriate notice of the intention to make the Order in Council, regulations, or notice; and
  - (b) providing a reasonable opportunity for interested persons to make submissions; and
  - (c) adequate and appropriate consideration of any such submissions.
- (5) This section does not apply in relation to any Order in Council, regulations, or notice if the Minister or Director-General considers it necessary or desirable in the public interest that the Order in Council, regulations, or notice be made or issued as a matter of urgency.
- (6) A failure to comply with this section does not affect the validity of any Order in Council, regulations, or notice.

Section 115 heading: amended, on 2 March 2018, by section 245(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 115(2): amended, on 2 March 2018, by section 245(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 115(3)(a): amended, on 2 March 2018, by section 245(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 115(4)(a): amended, on 2 March 2018, by section 245(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 115(5): replaced, on 2 March 2018, by section 245(5) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 115(6): replaced, on 2 March 2018, by section 245(5) of the Food Safety Law Reform Act 2018 (2018 No 3).

**116 Notification of notices under section 120**

- (1) This section applies to notices issued by the Director-General under section 120 (other than notices issued for the purposes of section 41(2)).
- (2) Where any notice to which this section applies affects only 1 person or a small number of persons, and the identity of those persons is known, the Director-General must—
  - (a) notify the persons of the matter individually in accordance with section 117; and
  - (b) either—
    - (i) supply them with a copy of the notice; or
    - (ii) notify them where they may inspect a copy free of charge (which may include inspection by electronic means) or obtain a copy on payment of a reasonable charge.
- (3) For any other notice, the Director-General must—
  - (a) publish the notice, or notification that it has been issued, in the *Gazette*; and
  - (b) where the Director-General considers it practicable, cause the notice to be brought to the attention of persons likely to be affected by it by notice or publication in any newspaper or trade journal, or by any other practicable means (including electronic means).
- (4) If the notice is not published in full in the *Gazette*,—
  - (a) the Director-General must make copies available for inspection free of charge, and for purchase at a reasonable cost, at the head office of the Ministry and at such other places as the Director-General determines; and
  - (b) the *Gazette* notice must specify where a copy may be inspected or obtained.

Section 116 heading: amended, on 2 March 2018, by section 246(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 116(1): amended, on 2 March 2018, by section 246(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 116(2)(b)(i): amended, on 2 March 2018, by section 246(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 116(3): replaced, on 2 March 2018, by section 246(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 116(4): amended, on 2 March 2018, by section 246(5) of the Food Safety Law Reform Act 2018 (2018 No 3).

**117 Service of individual notices, etc**

- (1) Where under any of the provisions of this Act any notice or other document or information is to be served on or supplied to the Minister, the Director-General, or a wine officer, it may be delivered, whether personally, by post, or by elec-

tronic means acceptable to the Director-General, to a wine officer at an appropriate office of the Ministry.

- (2) Where under any of the provisions of this Act any person is to be notified of any matter, written notice of that matter may be given or supplied to the person either personally or by post or fax addressed to that person, or by electronic means acceptable to the person, at—
  - (a) the person's address or electronic address as notified under this Act; or
  - (b) the person's last known business or residential address, in any other case.
- (3) Where a solicitor represents that the solicitor is authorised to accept any notice or document on behalf of any person, it is sufficient notification to deliver the document to the solicitor if the solicitor signs a memorandum stating that he or she accepts the document on behalf of that person.
- (4) Where any notice or other document or information is posted to a person (whether physically or by electronic means), it will be treated as having been received by that person not later than 7 days after the date on which it was posted, unless the person proves that, otherwise than through fault on the person's part, it was not so received.

#### **118 Directions, etc, to non-Ministry persons with functions under Act**

- (1) This section applies in the case where the Director-General wishes to issue any notice, direction, or instruction or otherwise communicate any requirement (a **notification**) to a person or body (the **relevant person**) who—
  - (a) has functions for the purposes of the administration of this Act, whether as a recognised person or recognised agency or otherwise; and
  - (b) is a person or body who is not a Ministry employee or officer or group of Ministry employees or officers.
- (1A) However, section 82W overrides this section if the relevant person is a member of a recognised class.
- (2) Where the Director-General wishes to issue a notification to a relevant person, the Director-General may issue that notification—
  - (a) to the relevant person directly; or
  - (b) to the relevant person's employer.
- (3) If the notification is issued to the relevant person directly, the Director-General must also, within a reasonable time, supply a copy of it to the relevant person's employer.
- (4) If the notification is issued to the relevant person's employer,—
  - (a) the notification must clearly identify the relevant person or class of relevant persons the notification is intended for; and

- (b) it is deemed to have been given to the relevant person or persons if given within a reasonable time before the notification is required to be acted upon; and
  - (c) the employer is under a duty to inform the relevant person, or all persons of the relevant class, of the content of the notification as soon as reasonably practicable having regard to the tenor of the notification.
- (5) For the purposes of subsections (3) and (4), **within a reasonable time** means—
- (a) within 7 days; or
  - (b) within such greater or lesser period, or at such greater or lesser intervals in relation to groups of notifications, as may have been generally agreed between the Director-General and the employer, or notified by the Director-General to the employer, in respect of notifications of that kind.
- (6) In this section, **employer**, in relation to the relevant person, includes—
- (a) a director, partner, secretary, or other officer or official of a company or other body of which the relevant person is an employee;
  - (b) a company or other body to whom the relevant person is contracted in relation to the person's functions for the purposes of this Act.

Section 118(1A): inserted, on 31 August 2012, by section 13 of the Wine Amendment Act 2012 (2012 No 70).

#### *Automated electronic systems*

Heading: inserted, on 2 March 2018, by section 247 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **118A Arrangement for system**

- (1) The Director-General may arrange for the use of an automated electronic system to do the actions described in subsection (2) that this Act or another enactment allows or requires the persons described in subsection (3) to do for the purposes of this Act.
- (2) The actions are—
  - (a) exercising a power;
  - (b) carrying out a function;
  - (c) carrying out a duty;
  - (d) making a decision, including making a decision by—
    - (i) analysing information that a person described in subsection (3) holds or has access to about a person, goods, or craft; and
    - (ii) applying criteria predetermined by the Director-General to the analysis;
  - (e) doing an action for the purpose of exercising a power, carrying out a function or duty, or making a decision:

- (f) communicating the exercising of a power, carrying out of a function or duty, or making of a decision.
- (3) The persons are—
  - (a) the Director-General:
  - (b) wine officers:
  - (c) persons designated under section 46 to issue official assurances.
- (4) The Director-General may make an arrangement only if satisfied that—
  - (a) the system has the capacity to do the action with reasonable reliability; and
  - (b) a process is available under which a person affected by an action done by the system can have the action reviewed by a person described in subsection (3) without undue delay.
- (5) A system used in accordance with an arrangement may include components outside New Zealand.
- (6) The Director-General must consult the Privacy Commissioner about including in an arrangement actions that involve the collection or use of personal information.

Section 118A: inserted, on 2 March 2018, by section 247 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **118B Effect of use of system**

- (1) This section applies to an action done by an automated electronic system.
- (2) An action allowed or required by this Act done by the system—
  - (a) is treated as an action done properly by the appropriate person referred to in section 118A(3); and
  - (b) is not invalid by virtue only of the fact that it is done by the system.
- (3) If an action allowed or required by another enactment done by the system is done in accordance with any applicable provisions in the enactment on the use of an automated electronic system, the action—
  - (a) is treated as an action done properly by the appropriate person referred to in section 118A(3); and
  - (b) is not invalid by virtue only of the fact that it is done by the system.
- (4) If the system operates in such a way as to render the action done or partly done by the system clearly wrong, the action may be done by the appropriate person referred to in section 118A(3).

Section 118B: inserted, on 2 March 2018, by section 247 of the Food Safety Law Reform Act 2018 (2018 No 3).



*Regulations, notices, etc*

**119 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
  - (a) prescribing, in relation to wine standards management plans (*see* section 14),—
    - (i) requirements relating to the content of plans:
    - (ii) other requirements relating to plans:
    - (iii) how plans are to be differentiated from other information kept by operators:
  - (b) prescribing, in relation to the relationship between the Food Act regime and wine standards management plans (*see* sections 15B and 15C),—
    - (i) when and to what extent section 15C(2) or (3) does not apply:
    - (ii) requirements for determining whether all or any classes of registered food control plans are to be subject to the verification regime of this Act or the Food Act 2014:
    - (iii) any other requirements relating to elections to operate under a wine standards management plan under section 15B:
    - (iv) matters relating to the registration of food control plans as wine standards management plans:
  - (ba) *[Repealed]*
  - (bb) *[Repealed]*
  - (bc) *[Repealed]*
  - (c) prescribing, in relation to the registration of wine standards management plans (*see* sections 17 and 18),—
    - (i) the particulars to be shown in the register:
    - (ii) when part only of a wine standards management plan may be lodged and the parts that must be lodged:
    - (iii) information and other material that must accompany applications for registration:
    - (iv) how accompanying information and material is to be provided to the Director-General:
  - (ca) prescribing, in relation to significant amendments to registered wine standards management plans (*see* section 22),—
    - (i) the kinds of amendments that require registration under section 22 and those that do not:
    - (ii) how long before a known change, event, or other matter an application for registration of an amendment to the plan must be made:

- (iii) information and other material that must accompany applications for registration:
- (iv) how accompanying information and material is to be provided to the Director-General:
- (v) other requirements relating to registration of significant amendments:
- (cb) prescribing, in relation to minor amendments to registered wine standards management plans (*see* section 23),—
  - (i) the intervals at which notification must be given to the Director-General:
  - (ii) information and other material that must accompany a notification:
  - (iii) other requirements relating to notification of minor amendments:
- (d) *[Repealed]*
- (e) prescribing procedures and requirements relating to the registration of exporters:
- (f) prescribing, in relation to exports,—
  - (i) exemptions for any consignment for the purposes of section 37(2):
  - (ii) the kinds of consignments and wine in relation to which the Director-General may grant exemptions under section 39(1):
- (g) prescribing procedures and requirements for applying for and obtaining official assurances, and otherwise prescribing matters in relation to official assurances:
- (ga) specifying persons, or classes of persons, for the purposes of the definition of regulated person in section 54A:
- (h) prescribing requirements and procedures for the recognition and renewal of recognition of agencies, persons, and classes of persons under sections 70 to 82Z:
- (ha) prescribing competencies, qualifications, experience, or other requirements that must be met—
  - (i) in order for a person to be recognised as a recognised agency or a recognised person under sections 70 to 82Z:
  - (ii) in order for a class of persons to be recognised as a recognised class under sections 70 to 82Z:
  - (iia) in order for an agency, a person, or a class of persons to maintain recognition:
  - (iii) by a recognised agency, recognised person, or recognised class:
- (hb) prescribing performance standards or other requirements that must be met by a recognised agency when it is managing or carrying out, or a

recognised person or recognised class when it is carrying out, its specified functions and activities:

- (hc) prescribing any particulars that must be contained in the public register:
  - (i) *[Repealed]*
  - (j) *[Repealed]*
  - (k) imposing and prescribing levies to fund industry activities relating to wine pursuant to section 111:
  - (l) *[Repealed]*
  - (m) prescribing forms and procedures for the purposes of this Act:
  - (n) specifying matters that constitute offences for the purposes of section 103(1)(b):
  - (o) specifying decisions as decisions that are subject to review under section 114:
  - (oa) permitting supplementary notices to be made to supplement specified provisions of the regulations (*see* section 120(2)(b)):
  - (p) providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
- (2) *[Repealed]*

Section 119(1): amended, on 2 March 2018, by section 248(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(a): replaced, on 2 March 2018, by section 248(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(b): replaced, on 2 March 2018, by section 248(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(ba): repealed, on 2 March 2018, by section 248(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(bb): repealed, on 2 March 2018, by section 248(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(bc): repealed, on 2 March 2018, by section 248(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(c): replaced, on 2 March 2018, by section 248(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(ca): inserted, on 2 March 2018, by section 248(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(cb): inserted, on 2 March 2018, by section 248(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(d): repealed, on 2 March 2018, by section 248(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(f): replaced, on 2 March 2018, by section 248(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(ga): inserted, on 2 March 2018, by section 248(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(h): replaced, on 31 August 2012, by section 14(1) of the Wine Amendment Act 2012 (2012 No 70).

Section 119(1)(ha): inserted, on 31 August 2012, by section 14(1) of the Wine Amendment Act 2012 (2012 No 70).

Section 119(1)(ha)(ia): inserted, on 2 March 2018, by section 248(5) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(hb): inserted, on 31 August 2012, by section 14(1) of the Wine Amendment Act 2012 (2012 No 70).

Section 119(1)(hc): inserted, on 31 August 2012, by section 14(1) of the Wine Amendment Act 2012 (2012 No 70).

Section 119(1)(i): repealed, on 2 March 2018, by section 248(6) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(j): repealed, on 2 March 2018, by section 248(6) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(l): repealed, on 2 March 2018, by section 248(6) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(o): replaced, on 2 March 2018, by section 248(7) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(1)(oa): inserted, on 2 March 2018, by section 248(7) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 119(2): repealed, on 2 March 2018, by section 248(8) of the Food Safety Law Reform Act 2018 (2018 No 3).

### **119A Scope of regulations**

- (1) Regulations made under this Act may do any or all of the following:
  - (a) authorise the Minister or Director-General to—
    - (i) impose requirements, conditions, restrictions, or prohibitions:
    - (ii) issue approvals, directions, instructions, or orders:
  - (b) authorise a wine officer to—
    - (i) impose requirements, conditions, restrictions, or prohibitions:
    - (ii) issue directions or instructions:
  - (c) exempt, or authorise the Minister or Director-General to exempt, any wine, person, place, business, process, operation, activity, or other matter or thing from any provision of the regulations:
  - (d) authorise the Minister, the Director-General, or a wine officer to decide a matter:
  - (e) confer any other discretion on the Minister, the Director-General, or a wine officer.
- (2) The regulations may—
  - (a) apply generally, or in relation to any specified, or specified class of, wine, persons, places, businesses, processes, operations, activities, or other matters or things:

- (b) make the same provision for all cases or different provisions for different cases, or classes of case.
- (3) If a provision of this Act permits regulations to prescribe requirements, the regulations may prescribe requirements, specifications, criteria, procedures, or other matters of a similar kind.

Section 119A: inserted, on 2 March 2018, by section 249 of the Food Safety Law Reform Act 2018 (2018 No 3).

## 120 Notices

- (1) The Director-General may issue notices under this subsection to do anything that a provision of this Act permits to be done by notice under this subsection.
- (2) The Director-General may issue notices under this subsection to prescribe matters,—
  - (a) if a provision of this Act refers to regulations and supplementary notices (for example by requiring something to be done in accordance with regulations and any supplementary notice), to supplement those regulations; or
  - (b) if the regulations permit supplementary notices to be made to supplement provisions of the regulations, to supplement those provisions of the regulations.
- (3) The Director-General must not issue a notice under subsection (2) unless satisfied that the notice—
  - (a) sets out matters of detail to elaborate on matters provided for in the regulations; or
  - (b) sets out procedures, methodologies, forms, or other matters of an administrative nature relating to matters provided for in the regulations; or
  - (c) sets out how requirements imposed by the regulations may or must be met; or
  - (d) otherwise supplements matters of general principle set out in the regulations.
- (4) If a provision of this Act requires the Minister to be satisfied of any matter before recommending the making of regulations, the Director-General may not issue a notice under subsection (2) to supplement those regulations unless the Director-General is satisfied of that matter.
- (5) A notice may—
  - (a) apply generally, or in relation to any specified, or specified class of, wine, persons, businesses, activities, or other matters or things;
  - (b) make the same provision for all cases or different provisions for different cases, or classes of case;
  - (c) impose any conditions, restrictions, or prohibitions.

- (6) If a notice issued under this section is inconsistent with the regulations, the regulations prevail to the extent of the inconsistency.
- (7) A notice issued under this section must be notified in accordance with section 116.

Section 120: replaced, on 2 March 2018, by section 249 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **120A Application of Legislation Act 2012 to notices**

- (1) The following notices issued under section 120(1) are neither disallowable instruments nor legislative instruments for the purposes of the Legislation Act 2012 and do not have to be presented to the House of Representatives under section 41 of that Act:
  - (a) a notice issued for the purposes of section 41:
  - (b) a notice that—
    - (i) is issued for the purposes of section 11, 21, 39, or 82Y; and
    - (ii) applies only to a named person.
- (2) Any other notice issued under section 120(1), and any notice issued under section 120(2), is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 120A: inserted, on 2 March 2018, by section 249 of the Food Safety Law Reform Act 2018 (2018 No 3).

### **121 Incorporation of material by reference into regulations, notices, and orders**

- (1) The following material may be incorporated by reference into any regulations, notice, or order (all referred to in this section as **instruments**) made or given under this Act:
  - (a) standards, requirements, or recommended practices published by or on behalf of any body or person in New Zealand or in any other country:
  - (b) standards, requirements, or recommended practices of international or national organisations:
  - (c) standards, requirements, or recommended practices 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.
- (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.

- (3) Any such material so incorporated by reference in an instrument is to be treated for all purposes as forming part of that instrument.
- (3A) 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.
- (4) If any amendment to or updating of material incorporated by reference under this section (other than a standard work of reference) is made, that amendment or updating—
  - (a) does not take effect unless specified in the instrument concerned; and
  - (b) does not take effect until the date specified for that purpose in the instrument concerned.
- (5) A **standard work of reference** is a work of reference that the Director-General considers is accepted internationally or by an industry as a standard one to refer to on its subject matter.

Section 121(1)(b): amended, on 2 March 2018, by section 250(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 121(1)(c): amended, on 2 March 2018, by section 250(1) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 121(3A): inserted, on 2 March 2018, by section 250(2) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 121(4): amended, on 2 March 2018, by section 250(3) of the Food Safety Law Reform Act 2018 (2018 No 3).

Section 121(5): replaced, on 2 March 2018, by section 250(4) of the Food Safety Law Reform Act 2018 (2018 No 3).

### **121A Availability and proof of material incorporated by reference**

- (1) If material (other than a standard work of reference) is incorporated by reference in an instrument under section 121, a copy of the material and any amendment to, or update of, the material must be—
  - (a) certified as a correct copy of the material by the Director-General; and
  - (b) retained by the Director-General.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the instrument of that material.
- (3) The Director-General must—
  - (a) make copies of all material incorporated in an instrument by reference available for inspection, free of charge, at the head office of the Ministry and at other places that the Director-General determines are appropriate; and

- (b) make copies of the material available, free of charge, on an Internet site maintained by or on behalf of the Ministry; and
  - (c) either make copies of the material available for purchase, at a reasonable cost, or advise where copies of the material may be obtained.
- (4) The Director-General may comply with subsection (3)(b) by providing a hyper-text link from an Internet site maintained by or on behalf of the Ministry to a copy of the material that is available, free of charge, on an Internet site maintained by or on behalf of someone else.
- (5) The Director-General is not required to comply with subsection (3)(b) or (c) if doing so would infringe copyright in the material or be inconsistent with any other enactment or rule of law.

Section 121A: inserted, on 2 March 2018, by section 251 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### **121B Application of Legislation Act 2012 to incorporating instrument and incorporated material**

- (1) Part 2 of the Legislation Act 2012 does not apply to material incorporated by reference in an instrument under section 121 or to an amendment to, or update of, that material.
- (2) Subpart 1 of Part 3 of the Legislation Act 2012 applies to an instrument that incorporates material by reference.
- (3) However, nothing in section 41 of the Legislation Act 2012 requires material that is incorporated by reference in an instrument to be presented to the House of Representatives.

Section 121B: inserted, on 2 March 2018, by section 251 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### *Repeals, amendments, savings, and transitional provisions*

#### **122 Wine Makers Act 1981 repealed**

The Wine Makers Act 1981 is repealed, subject to section 129.

#### **123 Wine Makers Levy Act 1976 repealed**

- (1) The Wine Makers Levy Act 1976 is repealed.
- (2) *Amendment(s) incorporated in the Act(s).*
- (3) Nothing in subsection (1) affects any liability arising before the date of commencement of that subsection.
- (4) On the commencement of subsection (1), all the rights, and liabilities of the trustee under the Wine Makers Levy Act 1976 are transferred to the Wine Institute of New Zealand Inc (the **Institute**), and for the purpose of exercising any of those rights or dealing with any of those liabilities the Institute (or its successor in title) is deemed to be the same person as the trustee under that Act.



- (5) Within 5 working days before the commencement of subsection (1), the trustee under the Wine Makers Levy Act 1976 must transfer all assets held as trustee to the Institute.

**124 Alcohol Advisory Council Act 1976 amended**

- (1) The Alcohol Advisory Council Act 1976 is amended in the manner indicated in Part 1 of Schedule 2 with effect on 1 January 2004.
- (2) The Alcohol Advisory Council Act 1976 is amended in the manner indicated in Part 2 of Schedule 2 with effect on the close of 30 June 2004.

**125 Food Act 1981 amended**

*Amendment(s) incorporated in the Act(s).*

**126 Privacy Act 1993 amended**

*Amendment(s) incorporated in the Act(s).*

**127 Customs and Excise Regulations 1996 amended**

*Amendment(s) incorporated in the regulations.*

**128 Wine Makers Regulations 1990 revoked**

The Wine Makers Regulations 1990 (SR 1990/77) are revoked, subject to section 129.

**129 Saving of provisions of Wine Makers Act 1981 and Wine Makers Regulations 1990 as export eligibility requirement regulations, etc**

- (1) Despite sections 122 and 128, sections 25 and 26 of the Wine Makers Act 1981 and regulations 11 to 17 and forms 12 to 16 of the Schedule of the Wine Makers Regulations 1990 are deemed to continue in force as if they were regulations made under section 119(1)(d) of this Act.
- (2) Regulations made under section 119 may amend, revoke, or replace those sections and regulations accordingly.
- (3) Any overseas market access requirements notified or made available by the Director-General under section 26A of the Wine Makers Act 1981, and any notices given by the Director-General under that section, are deemed to have been notified or made available by the Director-General under section 41 of this Act.

**130 Transitional period for wine standards management plans**

- (1) Nothing in this Act requires a winemaker or other person to operate under a registered wine standards management plan before the expiry of the transitional period.
- (2) Subsection (1) ceases to apply to operations covered by a wine standards management plan once that plan has been registered and has taken effect.

- (3) In this section, **transitional period** means the period that commences on the date of commencement of subpart 1 of Part 2 and expires—
- (a) 3 years after that date; or
  - (b) on such other date as may be specified by Order in Council made under subsection (4) or subsection (5).
- (4) The Governor-General may by Order in Council make regulations extending the transitional period provided for in subsection (3)(a) (or in subsection (5)) for a further period not exceeding 2 years. The extended transition period may apply to all wine businesses or operations or some classes only of wine businesses or operations.
- (5) The Governor-General may by Order in Council, on the recommendation of the Minister after consultation in accordance with section 115, make regulations that specify a shorter transition period than that provided for in subsection (3) or subsection (4). The shorter transition period may apply to all wine businesses or operations or some classes only of wine businesses or operations.

### **131 Transitional provisions relating to exports and exporters**

- (1) Nothing in this Act requires any person to be registered as an exporter under subpart 3 of Part 2 until 1 July 2004, and no person commits an offence against this Act by reason merely of a failure to register as an exporter before that date.
- (2) Regulations made under this Act may provide for the recognition of certificates issued under section 25 of the Wine Makers Act 1981 as equivalent to requirements for export under this Act, whether or not subject to conditions.

### **132 Transitional provisions relating to fees**

Despite section 86(1)(a), regulations under this Act may set a fee, charge, or levy that applies in the financial year commencing on 1 July 2003, even if the regulations are not made before the commencement of that year.

## Schedule 1

### Transitional, savings, and related provisions relating to amending Acts

s 4A

Schedule 1: inserted, on 2 March 2018, by section 252 of the Food Safety Law Reform Act 2018 (2018 No 3).

#### Part 1

#### Provisions relating to Food Safety Law Reform Act 2018

##### 1 Operator of existing WSMP to provide information now required with application to register plan

- (1) The Director-General may, by notice under section 120(1), require operators of existing WSMPs to provide all or part of the additional information to the Director-General in the manner and within the period specified in the notice.
- (2) The operator must provide the information as required by the notice.
- (3) If the operator fails to do so, the Director-General may—
  - (a) suspend operations under the existing WSMP in accordance with section 24; or
  - (b) remove the existing WSMP from the register in accordance with section 25.
- (4) For the purposes of subclause (3), sections 24(1)(c) and 25(1)(ba) are to be read as including a reference to suspension or removal under this clause.
- (5) This clause is repealed on the date that is 2 years after the commencement date.
- (6) In this clause,—

**additional information** means information or material that the operator of the existing WSMP—

- (a) has not provided to the Director-General; and
- (b) would have been required by section 18 to provide with an application for registration of the existing WSMP had the application been made on the day on which the relevant notice under subclause (1) was issued

**commencement date** means the date on which section 187 of the Food Safety Law Reform Act 2018 comes into force

**existing WSMP** means a wine standards management plan that was registered before the commencement date.

*Saving of notices issued by Director-General*

##### 2 Interpretation

In this clause and clauses 3 to 5,—

**4-year date** means the date that is 4 years after the commencement date

**commencement date** means the date on which section 249 of the Food Safety Law Reform Act 2018 comes into force

**existing notice** means a notice that was issued by the Director-General under this Act and was in force immediately before the commencement date

**new section 120** means section 120 as inserted by section 249 of the Food Safety Law Reform Act 2018.

### 3 Saving of notices where empowering provisions continued or replaced

- (1) This clause applies to an existing notice (a **continuing notice**)—
  - (a) that was made only under 1 or more of the following:
    - (i) section 120(1)(b) (for section 11):
    - (ii) section 120(1)(j)(for sections 38 and 40(b)(i)):
    - (iii) section 120(1)(h) (for section 39):
    - (iv) section 120(1)(k) (for section 41):
    - (v) section 120(1)(l) and (m) (for sections 43, 44, and 45):
    - (vi) section 120(1)(i) (for section 47):
    - (vii) section 120(1)(o) (for section 88(5)):
    - (viii) section 120(1)(p) (for section 112); or
  - (b) that is declared by Order in Council under clause 5 to be a continuing notice.
- (2) A continuing notice continues in force as if it were a notice issued under new section 120(1) or (2) (as the case requires) for the purposes of,—
  - (a) if the provision for the purposes of which it was made remains in force (with or without modifications), that provision; or
  - (b) otherwise, the provision of the Act that, with or without modification, replaces or corresponds to the provision for the purposes of which it was made.
- (3) A continuing notice may be amended or revoked as if it were a notice issued under new section 120(1) or (2) (as the case requires).

### 4 Transitional arrangement for other notices

- (1) This clause applies in relation to an existing notice that is not a continuing notice.
- (2) Until the 4-year date, a notice to which this clause applies—
  - (a) continues in force as if—
    - (i) it were a notice issued under new section 120(1) or (2) (as the case requires); and

- (ii) the provision for the purposes of which it was made had not been amended or repealed by Part 3 of the Food Safety Law Reform Act 2018; and
  - (b) may be amended or revoked by the Director-General by notice under section 120 as in force immediately before the commencement date as if Part 3 of the Food Safety Law Reform Act 2018 had not commenced; and
  - (c) may be revoked by the Director-General by notice under new section 120 or by the regulations.
- (3) On the 4-year date, any notice to which this clause applies that remains in force is revoked.

**5 Order in Council declaring notices to be continuing notices**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare an existing notice, or a class of existing notices, to be a continuing notice or notices for the purposes of clause 3.
- (2) The Minister may not recommend the making of an order under this clause unless satisfied that, for each notice to which the order applies, there is an enactment in this Act as amended by the Food Safety Law Reform Act 2018—
  - (a) that, with or without modification, replaces or corresponds to the enactment under which the notice was made; and
  - (b) under which the notice could be made.
- (3) An Order in Council cannot be made under this clause on or after the 4-year date.

**Schedule 1**  
**Form of search warrant**

*[Repealed]*

s 65

Schedule 1: repealed, on 1 October 2012, by section 310(13) of the Search and Surveillance Act 2012 (2012 No 24).

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**Schedule 2**  
**Amendments to Alcohol Advisory Council Act 1976**

s 124

**Part 1**  
**Amendments in force on 1 January 2004**

**Alcohol Advisory Council Act 1976 (1976 No 143)**

*Amendment(s) incorporated in the Act(s).*

**Part 2**  
**Amendments in force on 30 June 2004**

**Alcohol Advisory Council Act 1976 (1976 No 143)**

*Amendment(s) incorporated in the Act(s).*

## Wine Amendment Act 2012

Public Act	2012 No 70
Date of assent	30 August 2012
Commencement	see section 2

**1 Title**

This Act is the Wine Amendment Act 2012.

**2 Commencement**

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

**3 Principal Act amended**

This Act amends the Wine Act 2003.

**16 Transitional provision for agencies or persons recognised under principal Act**

An agency or a person that, immediately before the commencement of this Act, was recognised to carry out specified functions under sections 69 to 82 of the principal Act is deemed to have been recognised to carry out those specified functions under sections 70 to 82Z of the principal Act, as amended by this Act, and anything evidencing the recognition is valid as a notice of recognition under those sections, as amended, until it expires or is suspended or revoked.

## Reprints notes

### 1 *General*

This is a reprint of the Wine Act 2003 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Public Service Act 2020 (2020 No 40): section 135

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Food Safety Law Reform Act 2018 (2018 No 3): Part 3

Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120): section 14

Food Act 2014 (2014 No 32): section 447

Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11): sections 16 and 18(5)

Wine Amendment Act 2013 (2013 No 139)

Wine Amendment Act 2012 (2012 No 70)

Search and Surveillance Act 2012 (2012 No 24): section 310

Criminal Procedure Act 2011 (2011 No 81): section 413

Policing Act 2008 (2008 No 72): section 116(a)(ii)

Wine Amendment Act 2005 (2005 No 119)

Wine Act Commencement Order 2005 (SR 2005/28)