

Wine Amendment Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Regulatory Reform Bill as reported from the Commerce Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- Agricultural Compounds and Veterinary Medicines Amendment Bill comprising the enacting words, clauses 1 and 2, and Part 1
- Animal Products Amendment Bill comprising Part 2
- Companies Amendment Bill (No 2) comprising Part 3
- Conservation Amendment Bill comprising Part 4
- Films, Videos, and Publications Classification Amendment Bill comprising Part 5 and the Schedule
- Fisheries Amendment Bill comprising Part 6
- Friendly Societies and Credit Unions Amendment Bill comprising Part 7
- Radiocommunications Amendment Bill comprising Part 8
- Registered Architects Amendment Bill comprising Part 9
- Statistics Amendment Bill comprising Part 10
- Takeovers Amendment Bill comprising Part 11
- Unit Trusts Amendment Bill comprising Part 12

- this bill comprising Part 13
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Wine Amendment Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

~~text deleted~~

Hon John Banks

Wine Amendment Bill

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The Parliament of New Zealand enacts as follows:

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. 5

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120 Principal Act amended

This Part amends the Wine Act 2003.

121 Interpretation

- (1) Section 4(1) is amended by repealing the definitions of **recognised agency**, **recognised management plan verifier**, **recognised person**, and **recognised verifying agency** and substituting the following definitions:

“**recognised agency** means—

- “(a) a person who is recognised by the Director-General under **section 71 or 72**; and 10
- “(b) a group of persons who are recognised by the Director-General under **section 72**

“**recognised management plan verifier** means a recognised person whose specified functions and activities include carrying out verification functions and activities in relation to wine standards management plans 15

“**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— 20
- “(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)** 25

“**recognised verifying agency** means a recognised agency whose specified functions and activities include managing and carrying out verification functions and activities in relation to wine standards management plans”. 30

- (2) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**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 35

“(b) a notification given to a recognised class in accordance with **section 82(1)(c)(i)**

“**permissible functions and activities** means verification functions and activities and other 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— 5

“(a) verification functions and activities in relation to wine standards management plans:

“(b) other verification functions and activities in relation to export requirements: 10

“(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 15

“**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 class** means a class of natural persons that is recognised by the Director-General under **section 75** 20

“**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— 25

“(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”. 30

122 Duties of operators of wine standards management plans

Section 13(e) is amended by inserting “recognised agencies and” after “relevant”.

123 New section 28 substituted

Section 28 is repealed and the following section substituted: 35

- “28 References to recognised verifying agency**
 A reference in this subpart to a recognised verifying agency, in relation to a wine standards management plan, must be treated as if it were a reference to a recognised management plan verifier if a recognised person carries out the verification functions and activities for that plan without being employed or engaged by a recognised agency.” 5
- 124 Director-General may give directions**
- (1) Section 57(1) is amended by omitting “or recognised agencies” and substituting “recognised agencies, or recognised classes”. 10
- (2) Section 57 is amended by adding the following subsection:
- “(3) A direction must be given to a recognised class by notifying the class in accordance with **section 82W**.”
- 125 New heading substituted** 15
 The heading above section 69 is repealed and the following heading substituted:
“Recognised agencies, persons, and classes of persons”.
- 126 New sections 69 to 82Z substituted** 20
 Sections 69 to 82 are repealed and the following sections substituted:
- “69 Outline of sections 70 to 82Z—
 Sections 70 to 82Z—**
- “(a) establish a procedure for the recognition of agencies (including recognised verifying agencies) that are responsible for managing and carrying out specified functions and activities for the purposes of this Act; and 25
- “(b) establish a procedure for the recognition of persons (including recognised management plan verifiers) or classes of persons who are to carry out specified functions and activities for the purposes of this Act; and 30
- “(c) set out the duties of recognised agencies, recognised persons, and recognised classes, and when their recognition can be suspended or withdrawn; and 35

- “(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.

“**70 Interpretation** 5

In **sections 71 to 82Z**,—

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

- “(a) this Act; or
 “(b) regulations made under this Act; or 10
 “(c) a notice issued under section 120

“**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; 15
 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) 20
 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. 25

“Recognition of agencies, persons, and classes of persons

“**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. 30

- “(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 35
 recognised persons to carry out some or all of the per-

- missible 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. 5
- “(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 10
- “(ii) any specified conviction entered against the applicant or any director or manager of the applicant; and 15
- “(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 20
- “(v) any applicable requirements of this Act; and 25
- “(b) may take into account any other matters that the Director-General considers relevant.
- “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. 30
- “(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. 35
- “(3) **Section 71(2) and (3)** apply to **subsection (1)** accordingly, with all necessary modifications.

- “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— 5
- “(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 10
- “(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— 15
- “(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 20
- “(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 25 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.
- “74 Recognition of certain persons without application** 30
- “(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 of the public service listed in Schedule 1 of the State Sector Act 1988. 35
- “(2) **Section 73(2) and (3)** apply to **subsection (1)** accordingly, with all necessary modifications.

“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— 5
- “(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 10
- “(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 15
- “(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— 20
- “(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 25 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 demonstrate adequate 30 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 35 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
- “(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*). 10
- “**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. 15
- “Recognition process*
- “**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 20
- “(b) be accompanied by the prescribed application fee (if any).
- “**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. 25
- “(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 30
- “(b) within any further time that the Director-General allows by notice in writing.

“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. 5
- “(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 10
- “(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— 15
- “(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. 20

“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. 25
- “(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 30
- “(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— 35

- “(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.
- “**81 Director-General may impose or vary conditions of recognition** 5
- “(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**. 10
- “(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**. 15
- “(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. 20
- “(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. 25
- “(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. 30
- “(6) In this section, **vary** means—
- “(a) to impose additional conditions; or
- “(b) to revoke or amend any conditions.

“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 5
- “(b) for a recognised agency or a recognised person, give the agency or person a notice of recognition; and 10
- “(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. 15

“(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 20
- “(c) any conditions of recognition imposed under **section 81(1)**; and
- “(d) the duration of the recognition under **section 82B**.

“82A Scope, effect, and transfer of recognition 25

“(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— 30
 - “(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 35
 - “(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 5
 - “(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 10
- “(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 15
- “(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 20
- “(e) each member of the class who carries out the specified functions and activities for which the class is recognised— 25
- “(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— 30
- “(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 35
 - “(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. 5
- “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 10
- “(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 15
- “(b) recognition has no effect while it is suspended under **section 82J or 82K**.
- “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 ~~calendar~~ month before 20 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. 25
- “(2) In determining whether to renew the recognition of an agency, a person, or a class of persons, the Director-General must 30 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 35 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 5
- “(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. 10
- “(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 15
- “(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 20 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)** 25 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 30
- “(b) is an appropriate person to make an application on behalf of the class.
- “**82D Application for renewal of recognition**
- An application for renewal of recognition under **section 82C** must— 35
- “(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).

“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— 5

“(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 10

“(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 15

“(b) the application is accompanied by the prescribed application fee (if any). 20

“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. 25

“Performance of specified functions and activities

“82G Duties of recognised agencies

“(1) When carrying out its specified functions and activities, a recognised agency must ensure that it— 30

“(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 35

- “(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 5
- “(e) complies with all conditions of recognition imposed under **section 81**; and
- “(f) complies with all applicable directions given under section 57; and 10
- “(g) complies with all 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)— 15
- “(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. 20
- “(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). 25

“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 30
- “(b) maintains all competency requirements applicable to his or her recognition; and
- “(c) maintains an appropriate degree of impartiality and independence; and 35
- “(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 5
- “(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 10
- “(ii) for a recognised management plan 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 15
- “(g) complies with all applicable directions given under section 57; and
- “(h) complies with all applicable requirements of this Act.
- “**82I Recognised agency or person may act in other capacities** 20
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 25
- “(b) while purporting to act as a recognised agency or a recognised person.
- “Suspension of recognition*
- “**82J Suspension of recognition of recognised agency, recognised person, or recognised class** 30
- “(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— 35
- “(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 5
- “(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 10
- “(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. 15
- “(2) The maximum period of suspension is 3 months.
- “(3) The Director-General may do either or both of the following: 20
- “(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. 25
- “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 30
- “(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 35

- “(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: 5
- “(b) require a suspended agency, person, or class to take appropriate corrective action to remedy the deficiency or failure that resulted in the suspension.
- “82L Method of suspension of recognition 10**
- “(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 15
- “(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. 20
- “(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 25
- “(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 30
- “(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. 35

- “(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.

“**82M Suspension does not limit other actions** 5
 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.

“Withdrawal of recognition

- “**82N Withdrawal of recognition of recognised agency or recognised person** 10
- “(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 15
- “(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 20
- “(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 25
- “(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 30
- “(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 35

- “(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 department of the public service listed in Schedule 1 of the State Sector Act 1988.
- “(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. 5
- “(3) The notification given to the agency or person in accordance with **section 82X(a)(i)** must— 10
- “(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. 15
- “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— 20
- “(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. 25
- “(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. 30
- “(3) The notification given to the recognised class in accordance with **section 82X(a)(ii)** must— 35
- “(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.

“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— 5
- “(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 10
- “(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. 15
- “(2) A notice of withdrawal must—
- “(a) be given to a recognised agency, a recognised person, or an applicant by notice in writing; and 20
- “(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 25
- “(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. 30
- “(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. 35

- “(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. 5

“Surrender of recognition

“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 10
 - “(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,— 15
- “(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 20
 - “(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. 25

“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 30
- “(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)**.

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

**“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 5
of each—
- “(a) recognised agency:
 - “(b) recognised person:
 - “(c) recognised class.
- “(2) The public register may be kept in any manner the Director- 10
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 15
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 in- 20
dustries regulated under this Act to know who is recog-
nised 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 25
Act.

“82T Contents of public register

- “(1) The public register must contain all of the following informa-
tion:
- “(a) for each recognised agency and recognised person,— 30
 - “(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 recog-
nition; and 35
 - “(b) for each recognised class,—
 - “(i) a definition of the class that allows the class to be
accurately and readily identified; and

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- “(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: 5
 - “(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 10
- “(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 15
- “(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 20
- “(e) any other particulars that are prescribed in regulations made under this Act.
- “(2) A suspension of recognition that is recorded on the public register must specify— 25
- “(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— 30
- “(a) be recorded twice, once in the recognised person part of the register, and again in the recognised agency part of the register; or 35
 - “(b) be recorded in one of those areas of the register and cross-referenced in the other area of the register.

“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 5
- “(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.

“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. 10
- “(2) **Subsection (3)** applies if the recognition of a recognised agency, a person who is recognised under **section 73**, or a recognised class is— 15
 - “(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,— 20
 - “(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. 25

*“Miscellaneous matters relating to recognition***“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: 30
 - “(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 35

- 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: 5
 - “(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. 10
- “(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. 15

“**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— 20

- “(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 25
- “(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 30
- “(d) consider any submissions that he or she receives on the matter from any person who was notified of the matter. 35

“82Y Director-General may require notification of termination of contracts

- “(1) The Director-General may, by notice under section 120, require any recognised management plan verifier or recognised 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. 5
- “(2) The notice may apply generally or to any particular case or class of case. 10
- “(3) The recognised management plan verifier or recognised 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.

“82Z Director-General must consider exemption, waiver, or refund of fees 15

- “(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 20
- “(b) an application is made under **section 82C** by 1 person to renew more than 1 type of recognition; or 25
- “(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).” 30

127 Offence of breach of duty

- (1) Section 102(1)(c) is amended by omitting “71” and substituting “**82G**”. 35

- (2) Section 102(1)(d) is amended by omitting “72” and substituting “**82H**”.

128 Evidence in proceedings

- (1) Section 105(1)(c) is amended by omitting “an analyst or a recognised person” and substituting “an analyst, a recognised agency, or a recognised person” 5
- (2) Section 105(3) is amended by omitting “an analyst or a recognised person” and substituting “an analyst, a recognised agency, or a recognised person”.

129 Right of review of certain decisions made under delegated authority 10

- (1) Section 114(1) is amended by omitting “, or by a person or organisation acting pursuant to an arrangement or contract with the Director-General”.
- (2) Section 114(1) is amended by repealing paragraphs (g) and (h) 15 and substituting the following paragraphs:
- “(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**: 20
- “(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)**: 25
- “(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: 30
- “(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**:” 35

130 Directions, etc, to non-Ministry persons with functions under Act

Section 118 is amended by inserting the following subsection after subsection (1):

“(1A) However, **section 82W** overrides this section if the relevant person is a member of a recognised class.” 5

131 Regulations

(1) Section 119(1) is amended by repealing paragraph (h) and substituting the following paragraphs:

“(h) prescribing requirements and procedures for the recognition and renewal of recognition of agencies, persons, and classes of persons under **sections 70 to 82Z:** 10

“(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:** 15

“(ii) in order for a class of persons to be recognised as a recognised class under **sections 70 to 82Z:**

“(iii) by a recognised agency, recognised person, or recognised class: 20

“(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: 25

“(hc) prescribing any particulars that must be contained in the public register:”.

(2) Section 119(1) is amended by repealing paragraph (j) and substituting the following paragraph: 30

“(j) prescribing fees, charges, or levies for the purposes of this Act in accordance with the requirements for regulations made under section 88 or 89, including—

“(i) fees or charges 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**): 35

- “(ii) fees, charges, or levies that are 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**):”. 5

132 Notices

- (1) Section 120(1) is amended by repealing paragraph (f) and substituting the following paragraph:
- “(f) notifying requirements in relation to the termination of contracts with recognised management plan verifiers or recognised verifying agencies under **section 82Y**.”. 10
- (2) Section 120(1) is amended by repealing paragraph (n) and substituting the following paragraphs:
- “(n) specifying requirements and procedures for the recognition and renewal of recognition of agencies, persons, and classes of persons under **sections 70 to 82Z**. 15
- “(na) 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**. 20
- “(ii) in order for a class of persons to be recognised as a recognised class under **sections 70 to 82Z**: 25
- “(iii) by a recognised agency, recognised person, or recognised class: 25
- “(nb) 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:”. 30

133 Transitional provision for agencies or persons recognised under principal Act

An agency or a person that, immediately before the commencement of **this Part**, 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 35

Wine Amendment Bill

amended by **this Part**, 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.

134 Privacy Act 1993 consequentially amended

- (1) This section amends the Privacy Act 1993. 5
- (2) The item relating to the Wine Act 2003 in Part 1 of Schedule 2 of the Privacy Act 1993 is amended by omitting “73” and substituting “**82S**”.

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Legislative history

22 August 2012

Divided from Regulatory Reform Bill (Bill 269–2)
by committee of the whole House as Bill 269–3M
