

Review of Wine Legislation

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1. INTRODUCTION

1.1 Outline of paper

This paper has four sections:

1. **Introduction:** introduces the review of wine legislation (Wine Makers Act 1981 and Wine Makers Levy Act 1976), including reasons for the review.
2. **Background:** provides relevant contextual information on the wine industry and the current regulatory environment.
3. **Issues to be addressed:** discusses the four key issues that have been identified as central to the wine review.
4. **Options for regulating the wine industry:** presents four options for regulating the New Zealand wine industry.

1.2 Purpose of paper

The purpose of this discussion paper is to invite submissions on how the wine industry should be regulated, if at all. The paper does this by:

- raising issues for consideration by those with an interest in the New Zealand wine industry;
- providing information to stimulate discussion on what role and involvement various parties should have in the wine industry; and
- presenting possible options for any future regulation of the industry.

1.3 Reasons for review

There are two specific pieces of legislation relating to the New Zealand wine industry, the:

- Wine Makers Act 1981; and
- Wine Makers Levy Act 1976.

These two Acts were enacted when the New Zealand wine industry was small and focussed on the domestic market. However, the industry has undergone significant structural change since then; the number of wine makers has increased dramatically, the vine area has more than doubled and international markets have become increasingly important.

The following have been identified as factors contributing to the need for review.

- Standards and standard setting:
 - The wine industry has demonstrated its commitment to self-regulation by developing voluntary standards. Additionally, there has been wide debate in the industry about the setting and enforcing of standards. Does the industry need a mechanism set in law to underpin what has been achieved to date?

- Export certification system:
 - Exports of New Zealand wine are projected to increase to 40 million litres, valued at \$275 million, by 2005.¹ What certification system does the industry need to support exports?
- Specific wine labelling requirements:
 - The Food Regulations 1984 prescribe, amongst other things, labelling requirements for wine. These regulations are to be replaced by the joint Food Standards Code developed by the Australia New Zealand Food Authority (ANZFA). However, the joint Food Standards Code will not provide for matters covered in Food Regulation 225, specifically ‘variety of grape’ and ‘country of origin’ labelling. There is currently no provision for vintage labelling. Do labelling requirements need to be provided for?
- Industry funding:
 - Grape wine makers are subject to a different regime for the payment of compulsory levies than that which applies to other compulsory levy paying sectors. Is there justification for continuing with wine industry-specific funding legislation?
- Licensing of wine makers to make wine:
 - The Wine Makers Act requires all New Zealand wine makers to be licensed by the Central Liquor Licensing Authority to make wine for sale. However, this licence only serves to identify those businesses that make wine for sale. Should wine makers continue to be licensed to make wine for sale?
- The review of food-based legislation:
 - The regulation of food in New Zealand is progressively being reviewed to harmonise all legislation covering the production and processing of food, including the application of the Hazard Analysis and Critical Control Point (HACCP) system. What regulatory basis does the industry need for food safety?
- The number of statutes covering the wine industry and government departments administering these:
 - There are currently four government departments involved in regulating the New Zealand wine industry.² This can lead to inefficiencies and may hamper industry growth as it undergoes structural change. What rationalisation should occur?

These factors highlight that the regulatory framework of the current system is not well integrated and that there is a need to clearly define the roles and responsibilities of all participants in the industry. The time has come to have a fundamental look at the regulatory framework for the wine industry in New Zealand.

¹ Taken from the Wine Institute’s Board-approved draft Strategic Plan for 2000-2005 ‘Towards sustainable growth for the New Zealand grape and wine industry’ (1999).

² These are the:

- Ministry of Justice, which administers the Wine Makers Act 1981;
- Ministry of Health, which issues export certificates under the Wine Makers Act 1981;
- New Zealand Customs Service, which enforces border control on the export of New Zealand wine; and the
- Ministry of Agriculture and Forestry, which administers the Wine Makers Levy Act 1976.

The Wine Institute of New Zealand (the Wine Institute) has been reviewing its own role in the industry and has raised a number of issues regarding the current regulatory system. The Wine Institute instigated the current review through making representations to the Government. It developed, as the representative of the grape wine industry, a proposal to replace the Wine Makers Act and the Wine Makers Levy Act with a new regulatory regime. This option is presented as Option 2 in section 4 of this paper.

1.4 Review objective

The objectives of this review are to:

- determine the most effective and efficient regulatory environment to support the New Zealand wine industry, both now and into the future; and
- determine the roles and responsibilities of all participants in the industry.

1.5 Scope of paper

The wine review is relevant to both the grape and non-grape wine industries.

While a number of issues are important to the wine industry, the scope of this review is specifically limited to the following issues:

- standards and standard setting;
- export certification;
- responsibilities for compliance and enforcement activities; and
- funding of industry activities.

The following issues, while important to the wine industry, are outside the scope of this review:

- labelling of wine for geographical indicator reasons under the Geographical Indications Act 1994;
- funding of the New Zealand Grape Growers Council through the Commodity Levies (Winemaking Grapes) Order 1998;
- excise duty;
- the Sale of Liquor Act 1989;
- particular requirements of New Zealand food regulations and/or Australia New Zealand joint Food Standards Code; and
- the Resource Management Act 1991.

There are other fora to discuss concerns regarding these issues.

1.6 Submission process

A number of Government departments are involved in the wine review. However, MAF has responsibility for co-ordinating the review. If you have any queries, please contact Lisa Winthrop at MAF Policy on (04) 498 9821, or Amy Chilton at MAF Policy on (04) 470 2761.

Included with this discussion paper is a submission form that presents questions that submitters might like to answer when commenting on the issues and options presented in this paper. An electronic copy of the submission form and this paper can be found on the MAF website, www.maf.govt.nz/winereview/. Submissions in a form other than that provided are also welcome, as are any additional or general comments.

Submissions on this discussion paper close at **5pm Friday 2 February 2001**. Please send your submission to:

Lisa Winthrop
MAF Policy
Ministry of Agriculture and Forestry
PO Box 2526
Wellington

Fax: (04) 474 4265

Alternatively, you can email your submission to wine@maf.govt.nz.

The next steps in the review process will be to:

- analyse submissions and provide a summary to all submitters; and
- draw on the submissions to develop a proposal for the Government.

1.7 Official Information Act 1982

Submissions may be the subject of requests for information made under the Official Information Act 1982 (OIA). The OIA specifies that information is to be made available unless there are grounds for withholding it. Such grounds are set out in the OIA. Submitters may wish to indicate grounds for withholding specific information contained in their submission, such as that the information is commercially sensitive or they wish personal information (e.g. name and contact details) to be withheld. MAF will take such indications into account when determining whether or not to release information. Any decision to withhold information requested under the OIA is reviewable by the Ombudsman.

2. BACKGROUND

2.1 The New Zealand wine industry

Most wine produced in New Zealand is made from grapes. In 2000,³ New Zealand produced around 60 million litres of grape wine and around 4 million litres of fruit and other non-grape wines, such as kiwifruit wine and cider.

The New Zealand grape wine industry

The New Zealand grape wine industry is spread over several regions throughout the country. Over 40 percent of the national grapevine area is in the Marlborough region, with 24 per cent in the Hawke's Bay and 14 per cent in the Gisborne region. Other grape production areas, including the Wairarapa, Nelson, Canterbury and Otago regions, together represent 13 per cent of the New Zealand vine area.

The New Zealand grape wine industry has changed significantly over the past decade. Both the total grapevine area and the vine producing area have increased dramatically, yet total wine production has only risen slightly (refer Table 1). This is a function of both decreasing average yields per hectare (due to changes in grape varieties grown) and the large vine area yet to come on-stream. The Wine Institute expects the total grapevine area to expand by around 1000 hectares per annum over the next five years and has predicted a significant rise in wine production.

Table 1: Summary statistics of New Zealand grape wine industry⁴

	1990	2000	% change
Number of wineries	131	358	173 ↑
Total vine area (hectares)	5800	12194	110 ↑
Producing area (hectares)	4880	9752	100 ↑
Average yield (tonnes per hectare)	14.4	8.9	62 ↓
Wine production (million litres)	54.4	60.1	10 ↑
Wine exports (million litres)	4.0	19.2	380 ↑
Wine exports (\$million)	18.4	168.6	816 ↑
Domestic sales of NZ wine (million litres)	39.2	40	2 ↑
Imported wine (million litres)	4.5	28.6	535 ↑
Imported wine (\$million)	27.8	127.3	358 ↑

³ All the dates in this section of this discussion paper refer to the twelve months to 30 June of the year stated in the text.

⁴ The Wine Institute provided all data on the grape wine industry.

Exports are now a dominant feature of the industry and have increased dramatically over the past ten years (see Table 1). Thirty two percent of New Zealand wine production was exported in 2000 compared with seven percent in 1990. The increase in the value of wine exports has been even more dramatic, with export earnings in 2000 up 35 percent from 1999 figures, and almost eleven times the export value in 1990. The increase in value over volume reflects the fact that New Zealand wines are increasingly being sold in the higher priced segments of international markets. Wine Institute projections suggest that wine exports will grow to \$375 million by 2005, and to around \$600 million by 2010.

Grape wine industry representation

The Wine Institute represents and promotes the interests of New Zealand grape wine makers both nationally and internationally. The New Zealand Grape Growers Council represents wine grape growers.

For the past two years the Wine Institute and the Grape Growers Council have been working toward merging. Agreement has been reached on most major issues, although details are still being worked through. Officials are aware of this pending merger and will give consideration to the role and function of the merged entity when putting forward proposals to the Government.

These two bodies already jointly fund ‘Winegrowers of New Zealand’ (a joint research and technical committee) to conduct activities that include:

- research relating to wine grape growing;
- the collection and publication of industry statistics;
- encouraging growers to adopt the Integrated Winegrape Production Scheme (which promotes the environmental sustainability of wine grape growing); and
- publication of the Export Spray Schedule (to assist wine grape growers to meet particular requirements of overseas markets).

The New Zealand non-grape wine industry

The New Zealand non-grape wine industry is much smaller than the grape wine industry. Most non-grape wines produced in New Zealand are either kiwifruit wines or apple ciders, with other fruit and vegetable wines and mead making up the balance. This industry comprises around 40 businesses, which are mainly located in the Hawke’s Bay, Nelson/Marlborough, Taranaki and Auckland regions.

Total non-grape wine production is approximately four million litres a year. Wine production per business varies between 3000 litres and 780,000 litres per annum. In the year to 31 March 2000 the export volume of non-grape wines was 0.11 million litres, worth \$0.95 million. This is down from a high of 0.37 million litres, worth \$1.40 million, in the year to 31 March 1991.

The Fruit Wine and Cider Makers Association of New Zealand represents makers of non-grape wine and is voluntarily funded by its members.

2.2 The Wine Makers Act 1981

The two main purposes of the Wine Makers Act 1981 are to provide for:

- the export certification of wine; and
- the licensing of wine makers.

Export certification of wine

The Wine Makers Act provides for the Ministry of Health to issue export certificates to grape and kiwifruit wine exporters, once it is satisfied that the grape and/or kiwifruit wine to be exported:

- complies with the Food Regulations 1984; and
- is free from obvious fault.

Grape and kiwifruit wine exported for sale is a prohibited export under the Wine Makers Act unless it has a valid export certificate. The export of New Zealand grape and kiwifruit wine without an export certificate is subject to investigation and enforcement by the New Zealand Customs Service.

Licensing

The Wine Makers Act requires all New Zealand wine makers to be licensed by the Central Liquor Licensing Authority to make wine for sale. However, the only purpose this license currently serves is to identify grape wine makers, who are liable to pay a compulsory levy to the Wine Institute under the Wine Makers Levy Act 1976. The need for this licence should be assessed as other liquor businesses are no longer required to be licensed to make liquor for sale.⁵

Amendments to the Wine Makers Act

The Wine Makers Act has been amended a number of times over the years. However, these amendments have been piecemeal and have not kept up with the changing nature of the industry, particularly the increased emphasis on exports and associated requirements. This gap was highlighted in 1998 after an incident involving the mis-labelling of wine for export. A subsequent review found that the absence of a statutory requirement to keep records was a major gap in the foreign government assurance process. In response, the Ministry of Health has been upgrading the export certification process for wine by requiring compliance with the Wine Institute's Record Keeping Code of Practice.

⁵ Winemaking premises must also be licensed under both the Customs and Excise Act 1996 and the Food Hygiene Regulations 1974. Additionally, District Licensing Agencies of the Liquor Licensing Authority license those wine makers that also sell wine to the public.

The Statutes Amendment Bill (No. 7)⁶ will further amend the Wine Makers Act to enable regulations to be made to prescribe the procedure, and impose fees and charges payable, in respect of:

- the application for, and granting of, export certificates; and
- the application for wine makers licences and objections to decisions of the Central Liquor Licensing Authority on such applications.

2.3 Wine Makers Regulations 1990

The Wine Makers Regulations 1990 are made under the Wine Makers Act. These cover administrative issues such as:

- the forms and process for applying for a wine makers licence;
- the renewal, transfer and removal of those licences; and
- for export wine, the process for the issuing of a ‘certificate of compliance’ under the Food Regulations 1984 by the Director of Wine (a position held by an official in the Ministry of Health).

2.4 Wine Makers Levy Act 1976

The Wine Makers Levy Act 1976 requires grape wine makers to pay a compulsory levy to the Wine Institute. The purpose of the levy is to fund the Wine Institute to promote, develop, and improve the grape wine making industry. In particular, the Wine Makers Levy Act provides that every licensed grape wine maker must pay the Wine Institute an annual grape wine makers levy; and pay any special levies approved by the Minister of Agriculture.

The Wine Makers Levy Act provides for the Minister of Agriculture to set levy rates on the recommendation of the Wine Institute.

The Wine Institute has chosen to spend compulsory levy money on those activities that it considers will benefit all wine makers (levy payers). Activities, such as organising export trade fairs, are funded on a user pays basis by those businesses that choose to participate in them.

2.5 New Zealand Food Regulations

Wine makers must also comply with the relevant requirements of the Food Hygiene Regulations 1974 and the Food Regulations 1984.

The Food Hygiene Regulations detail the hygiene requirements for the manufacture, preparation, storage, casking and bottling of wine. These regulations also prescribe the standards that winemaking premises must meet. Businesses can attain an exemption from the regulations by having an approved food safety programme under the Food Act. A food safety programme applies HACCP principles to food processing.

⁶ The Statutes Amendment Bill (No. 7) is currently being considered by Parliament. It is not possible to predict when it might be enacted.

The Food Regulations contain a prescriptive set of requirements that address:

- composition;
- ingredients;
- additives and back blending;
- alcohol content;
- concentration of certain substances;
- country of origin label statements; and
- variety and generic labelling declarations.

The Food Regulations will be replaced, following a transitional period, by the joint Food Standards Code developed by ANZFA.⁷ The standards in the joint Food Standards Code cover composition and labelling of foods. Its two objectives are to meet public health objectives and safety concerns and to provide consumer information.

The joint Food Standards Code will remove many of the very prescriptive standards that form a significant part of the Food Regulations. However, it will not provide for everything currently provided for by the Food Regulations. For example Regulation 225, which prescribes wine labelling requirements, including ‘variety of grape’ and ‘country of origin’ labelling, will not form part of the joint Food Standards Code. In addition, neither the Food Regulations, nor the joint Food Standards Code contain specifications for vintage labelling. The Wine Institute regards these labelling requirements as important for the wine industry.

2.6 Australian Wine and Brandy Corporation Act 1980

The Australian grape wine industry faces similar issues to the New Zealand grape wine industry. In response to these issues, the Australian Federal Government has regulated the Australian grape products industry through the Australian Wine and Brandy Corporation Act 1980 (the AWBC Act) and regulations made under that Act.

The AWBC Act provides a Label Integrity Program with the object of assisting to ensure the truth, and the reputation for truthfulness, of statements made on wine labels, or made for commercial purposes in other ways, about the vintage, variety or geographical indication of wine manufactured in Australia. Compliance with the Label Integrity Program is mandatory and is audited by inspectors appointed by the Australian Wine and Brandy Corporation (the Corporation).

Under the AWBC Act and Regulations each export of Australian wine requires both the exporter to be licensed by the Corporation and export consignments to be approved by the Corporation. The Corporation issues export certificates to assure overseas governments that each consignment of Australian wine complies with the relevant overseas governments’ import requirements.

The Corporation has the power to suspend or cancel an Australian wine exporter’s licence where an Australian wine exporter has undermined the reputation for truthfulness of Australian wines.

⁷ At this time it is expected that the ANZFA joint Food Standards Code will become come into force, for both countries, early in 2003.

3. ISSUES TO BE ADDRESSED

This section discusses the four key areas identified as central to the wine review:

- standards and standard setting;
- the export certification system;
- responsibilities for enforcement and compliance activities; and
- funding of industry activities.

This is not an exclusive list but represents the general areas under which most other issues are likely to fit within.

Provision for each of the four key areas can be made through either a voluntary/commercial basis (without supporting legislation), or on a compulsory basis (required by legislation), or a combination of both. Officials consider that legislative means for achieving outcomes should only be used where the benefits to the industry and/or consumers clearly outweigh the costs to the New Zealand economy of such legislation, and thereby enhance the industry's potential contribution to the economy.

3.1 Standards and standard setting

Most industries are subject to some sort of standards. Section 2.5 discussed the Food Regulations, the Food Hygiene Regulations and the joint Food Standards Code for Australia and New Zealand that currently apply, or will apply, to wine making. This review needs to examine whether it is necessary to provide a regulated system to underpin standards additional to those provided for.

The way in which wine is presented, written about, marketed and sold leads to particular emphasis being placed on country of origin. Consequently, the actions of individual businesses can potentially affect the overall reputation of New Zealand wine. Compliance with compulsory standards can protect New Zealand wine from such actions.

Standards set the extent and scope of the system within which products are produced. Standards should be applied to serve particular purposes and set by a transparent process. Wherever possible, standards should not prescribe how to meet certain requirements. However, there are instances where certain prescription is necessary, e.g. setting maximum chemical residue limits.

Arguments for or against standards should not be based on cost alone, but on the necessity of, and justification for, each standard, and the practicality and feasibility of complying with them. Before any enforcement option for non-compliance can be applied, non-compliance must be identifiable.

Voluntary standards

Voluntary standards allow businesses to choose whether or not they wish to comply with that standard. This has the potential to limit compliance costs to those actions each business chooses to take. It can also mean that businesses can quickly respond to the demands of a changing environment.

Basing a system on voluntary standards can mean inconsistent application across an industry. There is a possibility that the international reputation of New Zealand wines could be damaged if an individual New Zealand wine maker chose not to adopt the voluntary standard and carried out bad wine making practices.

Compulsory standards

Applying compulsory standards can help to ensure that all products meet certain minimum requirements consistently across an industry. However, the setting of compulsory standards should not be undertaken lightly as failure to comply with compulsory standards can have wide-ranging consequences.

Compulsory standards should only apply where there is clear need to manage a particular risk, e.g. for reasons of product integrity, overseas market access or product safety. Any compulsory standards should be robust and fit within a framework that allows industry to respond to changes in technology and consumer expectations and to provide for meeting overseas market access requirements. Compulsory standards can provide the necessary flexibility to meet the demands of a changing environment by putting generic, outcome-based requirements at a high level, such as regulations, and inserting the detail in low-level legislation, which is easier to update.

Industry achievements

After requests from the industry, the Wine Institute has co-ordinated the development of, and consultation on, a number of Codes of Practice, including:

- Record Keeping for Wine Makers (compliance with this Code is one criteria necessary to 'satisfy' the Ministry of Health that an export certificate should be granted);
- Winery Waste Management;
- Good Wine Making Practice (under development); and
- Application of Hazard Analysis and Critical Control Point System to Wine Making (under development).

Other industry initiatives include the development of the Integrated Winemaking Production scheme and the annual spray schedule jointly produced by the Wine Institute and the Grape Growers Council.

These Codes of Practice and other publications have been developed as industry responses to problems/issues that the industry considers need addressing. Compliance with these Codes of Practice is not binding (with the exception of the Record Keeping Code of Practice for those wine makers wishing to obtain an export certificate).

3.2 Export certification

In many countries wine is a heavily regulated product. This is reflected by demands from importing countries for assurances as to the integrity, identity, and safety of imported wine and the conditions under which the wine is produced. Additionally, some foreign governments require assurances that New Zealand wine meets certain other requirements before it can enter their market. New Zealand wine makers need to produce wine within a system that allows such assurances to be given. This review will examine how to provide the

most effective and efficient system for issuing export certificates, and whether or not such a system requires legislation.

Provision of an export certification system

An export certification system is inevitably linked with the provision of standards. Standards are an integral part of a sound export certification system, as benchmarks against which product is certified. If the Government is responsible for signing export certificates, it must have confidence that all relevant requirements have been met.

Administrative export certificate system

An administrative system does not require a legislative framework. It can be flexible and can work with voluntary standards. In practice, an administrative system requires a lot of communication between the regulator and exporters. Additionally, an administrative export certificate generally only states that the consignment is from New Zealand, and/or makes reference to New Zealand's pest/disease status. The ultimate sanction for not complying with requirements, including overseas market access requirements, is refusal to provide an export certificate. There are other limitations to what an administrative system can provide, such as:

- Government accountabilities are unclear;
- protection of Government from liability is limited;
- it is unable to guarantee transparency as systems are not based in law; and
- it is unable to ensure equity and consistency across industry.

Legislative export certificate system

An export certification system that has a legislative basis can ensure that responsibility for risks to product integrity, identity and product safety sit where they are most appropriately managed by clearly identifying the roles of all parties. Such a system typically applies duties to exporters, is fairly robust, and is fair, equitable and transparent. Export certificates can make reference to the standards and system that the product has been produced in.

This review must consider whether there are sufficient reasons to justify the Government providing a legislative export certification system for the wine industry.

Current export certificate system

The current export certificate system has its basis in legislation, although some requirements are provided for using administrative means, e.g. enforcement of record keeping requirements. Wine Makers Act provides for export certificates to be given. Before issuing an export certificate for wine, the Ministry of Health must be satisfied that the wine is:

- fit for human consumption, which is tested by Environmental Science and Research; and
- free from obvious fault, which is decided by a taste test.

The role of, and necessity for, these two tests needs to be reviewed. When they were introduced 20 years ago, the quality of New Zealand wine was generally of a much lower standard. The industry has developed substantially since then, evidenced by New Zealand wines regularly winning overseas awards and competitions.

3.3 Responsibility for compliance and enforcement activities

Compliance

For standards to be effective, businesses must take responsibility for complying with them. Consumers and Government also need to be confident that standards have been met. This review needs to address responsibility for assessing compliance.

Currently independent auditors, who are contracted by individual businesses, audit compliance with the Wine Institute's Record Keeping Code of Practice. Audit reports that confirm that the Record Keeping Code has been complied with are required before the Ministry of Health issues an export certificate.

Independent auditors must have certain skills and competencies in order to ensure the integrity of their reports. Therefore, it may be appropriate to 'accredit' people or agencies to ensure they have the required skills and competencies to perform audits. This review will consider whether accreditation is needed and if so, how it would operate and who would be responsible for it.

Enforcement

A range of enforcement options should be available to encourage compliance, and penalise non-compliance, with any compulsory standards. This review will examine who should be responsible for enforcement activities and possible options for sanction measures.

As the Government is the primary regulator, it is generally most appropriate for the Government to be responsible for enforcement activities, especially the more extreme powers, such as seizure, destruction, arrest and prosecution, to protect the Government's interest and maintain public confidence.

If non-Government bodies are to exercise enforcement powers, they need to be subject to appropriate safeguards in order to protect the integrity of the system. Applying such safeguards can result in complex accountability arrangements and may be costly to administer. The range of powers available to non-Government enforcement bodies is generally limited.

3.4 Funding of industry activities

Some goods and services, called 'industry good' activities, are of net benefit to an industry, but, if voluntarily funded, may be under-provided, e.g. some forms of generic promotion, generic research and negotiating market access requirements. This is due to:

- 'free-rider problems', where investors voluntarily fund an activity that also benefits people who do not share in the costs of that activity; and
- 'non-rival problems', where investors cannot capture sufficient return on their investment to warrant it because they cannot protect that investment.

Compulsory levies can overcome these problems. However, compulsory levies are a coercive form of funding, and therefore should be subject to clear mandate and accountability requirements.

Limiting the expenditure of compulsory levy money to funding only industry goods could see some activities of the Wine Institute that are currently funded out of compulsory levies become funded on a voluntary basis.

This review needs to address whether there should be provisions for a compulsory levy, and if there are, what type of mandate and accountability provisions should be included and what levy money should be spent on.

Commodity Levies Act

The levy regime imposed by the Wine Makers Levy Act differs from that imposed by the Commodity Levies Act 1990. Currently, the levy provisions in the Wine Makers Levy Act do not specifically require clear mandate or accountability. Under the Commodity Levies Act, organisations wishing to impose a compulsory levy must first obtain a specific mandate from potential levy payers through a referendum, as the Grape Growers Council has done. Once a levy becomes compulsory (through an Order-in-Council made under the Commodity Levies Act), levy payers are able to play a part in the process of deciding the levy rate and how the levy money should be spent. Levy orders expire after six years, so if an organisation wishes to continue to collect a compulsory levy, it must obtain a new mandate.

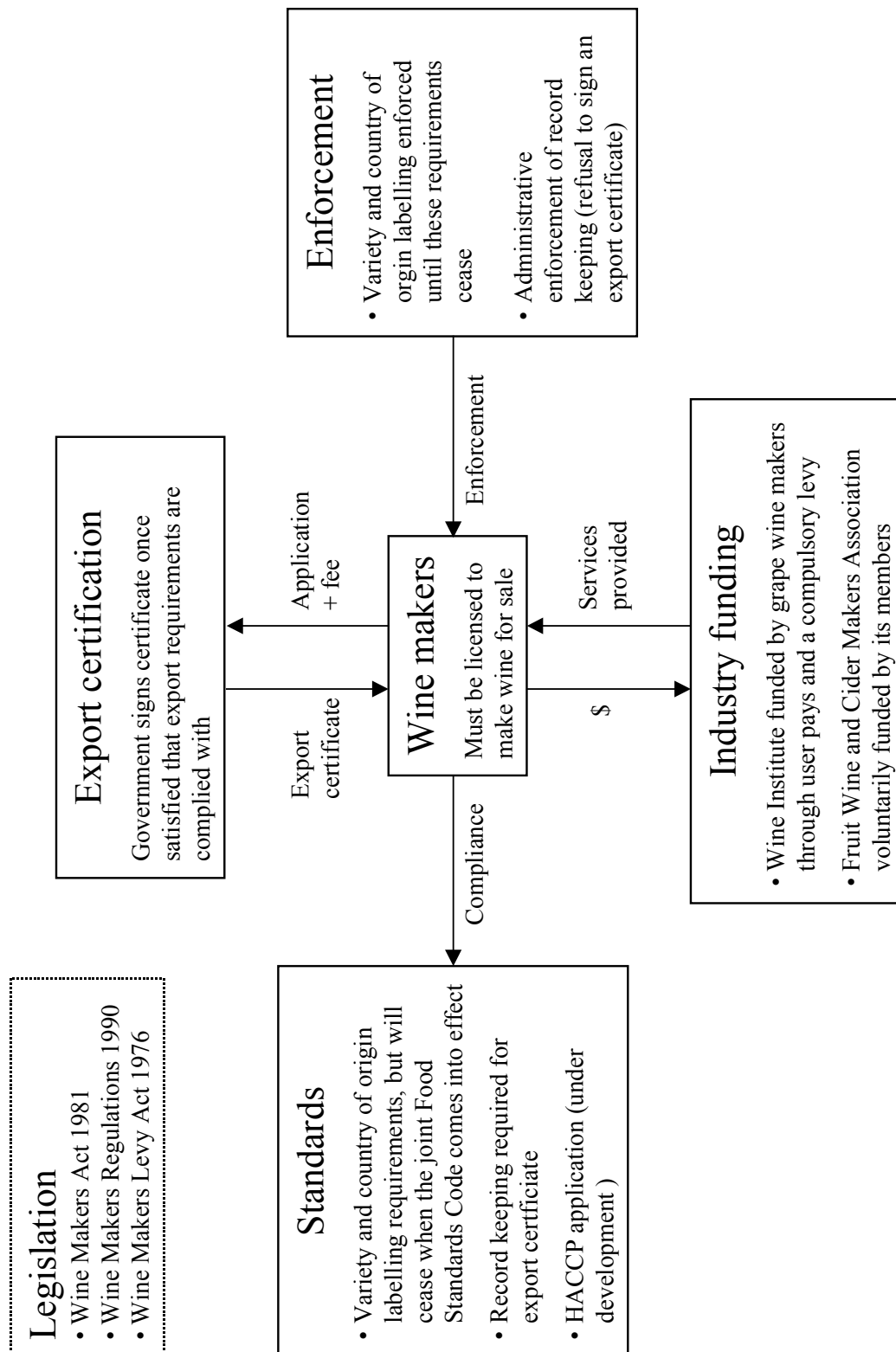
Implications of proposed merger of the Wine Institute and the Grape Growers Council

If the proposed Wine Institute and the Grape Growers Council merger proceeds, consideration will need to be given as to how the new body could be funded. Of particular note is that the compulsory levy paid by wine grape growers under the Commodity Levies (Winemaking Grapes) Order 1998 can only be paid to the Grape Growers Council. This levy order does not expire until 15 November 2004, unless earlier revoked and it cannot be amended to fund a new merged organisation.

4. OPTIONS

This section presents four options for future regulation of the wine industry. Although the options are represented as stand alone entities, components can be mixed and matched to produce the most appropriate regulatory system. Submitters may like to consider this when making submissions.

4.1 Option 1: Status Quo

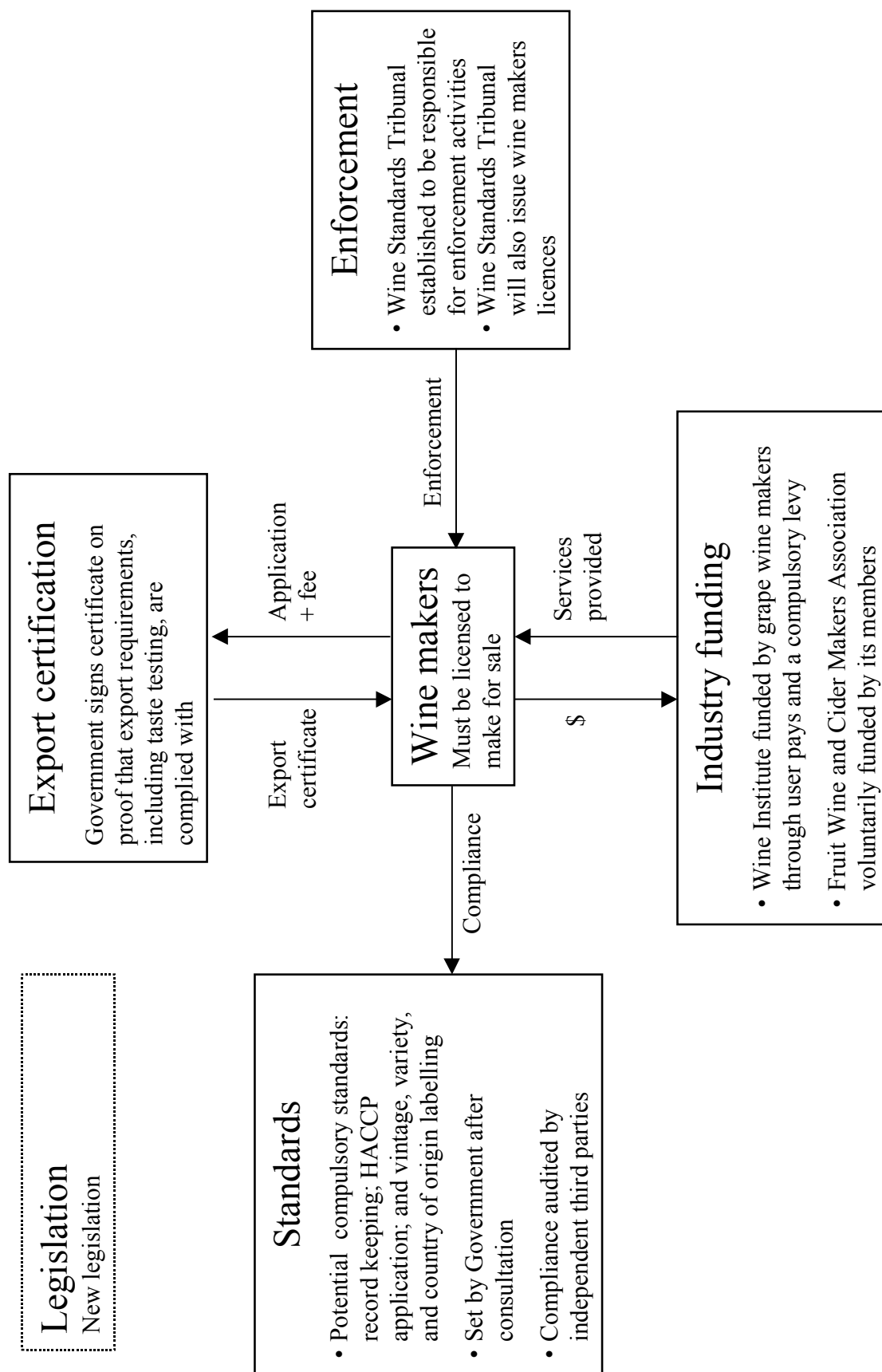


This option represents the current system of wine regulation in New Zealand. Under this option all provisions that are currently in place would continue, i.e. winemakers would need to be licensed to make wine, compliance with standards, other than Food Regulations and export requirements, would be voluntary and compulsory levies would continue under the Wine Makers Levy Act.

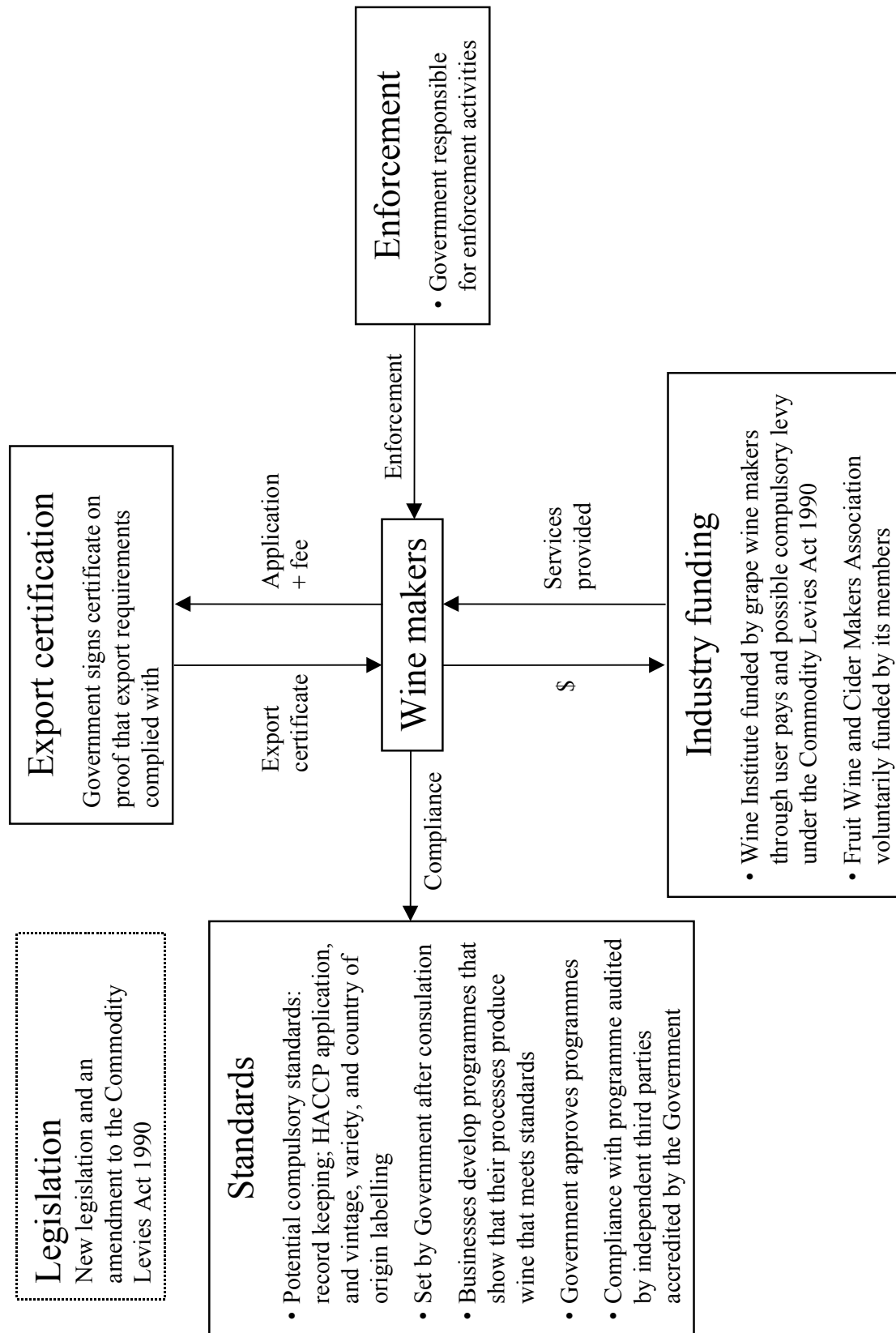
Maintaining the current system has certain advantages, primarily that the system has credibility, it works and people are familiar with it. However, there are implications that need to be considered.

While the current system has served the industry adequately to date, it is likely to require regular modification to meet the demands of a changing industry, and a changing trading and market environment, as the gaps highlighted in section 1.3 (Reasons for review) will remain. Voluntary application of standards across the wine industry will continue, possibly creating free-rider problems and raising issues of inconsistency. Additionally, benefits provided to levy payers in other sectors under the Commodity Levies Act would not be available to grape wine makers.

4.2 Option 2: New Wine Act as proposed by the Wine Institute of New Zealand



4.3 Option 3: Proposal based on other legislation



4.4 Comparing Option 2 and Option 3

Option 2 and Option 3 are similar, although there are some key differences. The areas of commonality are described below, followed by a description and implications of those areas where the options differ.

Common components of Option 2 and Option 3

Options 2 and 3 would both require new legislation. There would be provision to make standards (additional to those in the Food Regulations and the proposed joint Food Standards Code), where necessary to assure product integrity and safety. The Government could make standards after certain criteria were met, e.g. demonstrable need, economic efficiency, overseas market access requirements, and after consultation with the industry.

Standards would be generic and outcome based and may include:

- labelling requirements for variety, vintage and country of origin;
- application of HACCP; and
- record keeping requirements.

Providing for such standards would help ensure that wine making upholds product integrity through being true to label and by applying standards consistently across the wine industry.

Wine makers would be responsible for meeting standards and the Government would not prescribe how standards are to be met. Compliance with standards would be audited by independent third party agencies, which would compete to provide compliance audit services. However, how the two options propose to achieve a contestable compliance audit environment differs (see below). Non-compliance and unresolved issues between the third party agency and the wine maker would be reported to the enforcement body.

Both options would specifically legislate for an export certificate system where Government would be responsible for issuing export certificates. Provision would be made to accommodate overseas market access requirements to ensure that a credible export certificate system is provided.

The legislation would require the Wine Institute to show it had wine maker support before a compulsory levy payable to the Wine Institute to fund certain types of industry activities could be imposed. The legislation would also strengthen the accountability requirements of the Wine Institute to levy payers. However, how the two options propose to provide for a compulsory levy differs (see below). The existing funding arrangements of the Fruit Wine and Cider Makers Association would continue.

These two options limit Government intervention to those activities that are necessary to uphold product integrity and safety, and provide for export certificates and compulsory funding of some industry activities.

Areas of difference between Option 2 and Option 3

Compliance audits

Options 2 and 3 both propose that compliance with compulsory standards be audited by independent third party agencies. However, the mechanisms proposed to achieve this differ.

Option 2 proposes that the Government would perform checks on auditors to ensure consistent and equitable performance across the wine industry.

Option 3 provides a more comprehensive approach. It proposes that businesses develop programmes that show their wine making processes produce wine that complies with any compulsory standards. The Government would register those programmes once it was satisfied that the proposed programme would result in wine that complies with any compulsory standards. Auditors would then audit businesses to check compliance with their programme. Government would accredit the auditors to ensure only those people/agencies that have the appropriate skills and competencies can perform audits. This would give confidence in the validity of the audit report.

Taste testing

Option 2 proposes that, in addition to meeting compulsory standards and overseas market access requirements, wine for export must undergo a mandatory taste test, which would be cost recovered. Option 3 does not include a compulsory taste test requirement.

Responsibility for enforcement

Option 2 proposes that an enforcement body, nominally called the ‘Wine Standards Tribunal’ be established to undertake enforcement activities. It would be a statutory body consisting of three members nominated by the Wine Institute and appointed by the Minister. The Wine Standards Tribunal would be involved in developing any compulsory standards for the wine industry.

The Wine Standards Tribunal would also issue a licence to wine makers to make wine for sale. The removal of this licence, and therefore the legal right to make wine for sale, would be the ultimate sanction for non-compliance with any compulsory standards. Other proposed enforcement options include warning letters, compulsory product recall, and expulsion from Wine Institute organised events. Appeals would be by judicial review through the Courts.

If a non-Government enforcement body were to be established, it would need to be subject to appropriate safeguards in order to protect the integrity of the system. It is likely that this would require complex accountability arrangements and may be costly to run. Additionally, the nomination of Tribunal members, as currently proposed, potentially raises conflict of interest issues that would need to be examined.

In contrast, Option 3 proposes that the Government undertake all enforcement activities. The range and availability of enforcement options would need to be discussed during policy development, but would be comparable to options available to other similar sectors and would be likely to include warnings, fines, suspension/removal of right to trade, and prosecutions. Like Option 2, appeals under Option 3 would be by judicial review through the Courts.

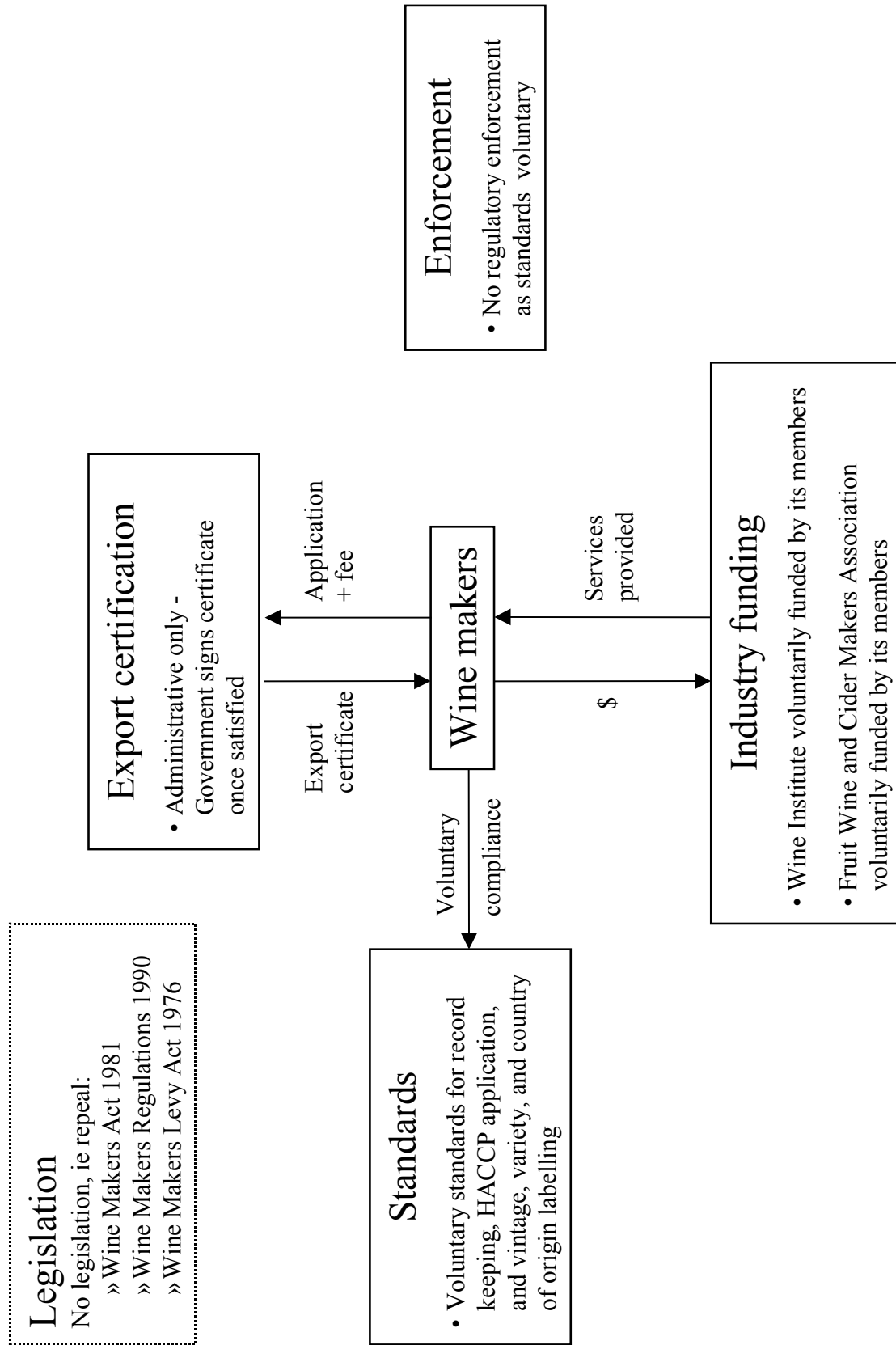
Funding of industry activities

Option 2 proposes that a new Wine Act would allow the imposition of a compulsory levy on grape wine to be paid to the Wine Institute⁸ following demonstration of wine maker's support. The new Wine Act would also impose certain accountability provisions on the Wine Institute for any compulsory levy money that the Wine Institute received under that Act.

Option 3 proposes that the Wine Institute be able to obtain a compulsory levy on grape wine under the Commodity Levies Act 1990. The Commodity Levies Act would have to be amended to include grape wine in the definition of 'commodity' to enable this to happen. Before the Wine Institute could collect a levy, it would have to hold a referendum that demonstrated majority support for the compulsory levy. If the Wine Institute received any levy money under the Commodity Levies Act it would be required to comply with its accountability provisions, including accounting separately for levy money.

⁸ We note that the Grape Growers Council and the Wine Institute are considering merging and therefore any reference to the Wine Institute in relation to funding of industry activities can also be read as a reference to any new organisation formed out of such a merger.

4.5 Option 4: No specific legislation



Legislation
 No legislation, ie repeal:
 >> Wine Makers Act 1981
 >> Wine Makers Regulations 1990
 >> Wine Makers Levy Act 1976

This option would involve repealing all wine specific legislation (i.e. the Wine Makers Act 1981, the Wine Makers Regulations 1984, and the Wine Makers Levy Act 1976). While wine makers would still need to comply with the Food Act and associated Regulations and the proposed joint Food Standards Code, there would be no provision to make any additional compulsory standards (some current labelling requirements will cease when joint Food Standards Code in force). This would mean that industry-developed standards would have no legal status, and compliance would be voluntary. It is likely that these standards would be inconsistently applied across the wine industry.

The Government would only be able to provide an administrative export certification system, although the ability to withhold an export certificate would be an effective sanction.

All funding of both the grape and non-grape wine industries would be on a voluntary basis. This would encourage industry bodies to target their expenditure appropriately. However, some industry good activities might be under-provided because businesses that choose not to fund some activities could free ride on others' investments, and those who choose to invest may be unable to fully benefit from their investment.