

# **SUBMISSION**

by the



PACKAGING COUNCIL  
OF NEW ZEALAND (INC)  
(PAC.NZ)

to the

**Law Commission**

on the

**Review of the Incorporated Societies Act 1908**

**12<sup>th</sup> October 2011**

This submission is from:

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1. The Packaging Council of New Zealand is a company membership association and was incorporated in 1992 (number 550419). It is governed by an Executive Committee (Appendix 1), which is re-elected annually at the Annual General meeting. The Packaging Council employs three full time, permanent staff; an Executive Director, an Environment Manager and an Executive Personal Assistant.
2. The Packaging Council's role is to assist our members minimise the environmental impact of packaging by championing cost effective, sustainable solutions and product stewardship.
3. The Packaging Council represents the whole packaging supply chain, including raw material suppliers, packaging manufacturers, brand owners, retailers and recycling operators.
4. The Packaging Council has approximately 120 members (Appendix 2). We represent more than 80% of the packaging manufacturing industry and 75% of New Zealand's top 100 food and grocery brands. Packaging Council members contribute approximately NZ\$20 billion to the New Zealand economy.
5. We welcome the review of the Incorporated Societies Act 1908 and are pleased to make a submission.

**Responses to the questions asked in the Law Commission's discussion paper on  
'Reforming the Incorporated Societies Act 1908'**

**Chapter 1 - Introduction**

- Q1 Yes
- Q2 Yes
- Q3 Yes
- Q4 Only if assets would be treated differently on the dissolution of a society. In all other respects, it is likely that a members' benefit and a public benefit society would be governed in the same way, so the differentiation may not be critical.
- Q5 No opinion
- Q6 No opinion

**Chapter 2 – The Constitution of Societies**

- Q7 Yes. Also, rules around the status of membership would be helpful. For example, should a formal process be followed to cancel the membership of a member who fails to pay their annual subscription, but doesn't formally resign their membership? This may be important if a register of members has to be kept.
- Q8 Yes
- Q9 No, see answer to Q4
- Q10 Yes, but with a sensible amount of time for transition, say one year. This would allow the changes and any recommendations from the governing body to be discussed at the annual general meeting.
- Q11 The small nature of New Zealand may make it very difficult to find an 'unbiased decision maker'. The New South Wales model may therefore be more appropriate and allow for greater flexibility.
- Q12 No opinion
- Q13 Yes. A minimum of 15 members has served New Zealand well for over 100 years, and there appears to be no compelling reason to change this number. If the Law Commission were to recommend reducing the number, we would be concerned that it could lead to a proliferation of short-term special interest groups.
- Q14 An incorporated society should have a governance committee and that governance committee should be elected by the membership and act as the 'board' of the

organisation. It should not be a separate body within the organisation. The governance committee should have the authority to appoint employees with delegated responsibilities.

- Q15 Yes, as an organisation we suffer from confusion around organisations with similar names to our own.
- Q16 No, not unless there is clear evidence that there is a need for a greater role for a regulator.
- Q17 Possibly, under very specific circumstances. However, the model rules should be written in such a way as to be flexible enough to allow a society to change its rules after consultation with, and approval from, its members.

### **Chapter 3 – Good Governance**

- Q18 Yes
- Q19 Duties should include (i) key activities and responsibilities of the committee members, (ii) code of conduct and (iii) conflicts of interest.
- Q20 Not qualified to comment.
- Q21 Yes – see answer to Q19
- Q22 Yes and yes, but only on a case by case basis and only if relevant to a particular issue that the organisation is addressing or decision it is contemplating.
- Q23 The consequences of disclosure should not go beyond those set out in the Companies Act.
- Q24 Failure to disclose a conflict of interest should be a matter for the organisation and not incur criminal or civil penalties. Dealing with a failure to disclose a conflict of interest should be part of the model rules.
- Q25 No, since there is no equivalent in the Companies Act.
- Q26 Yes
- Q27 Yes
- Q28 Yes, all incorporated societies should be required to submit annual audited financial statements. Regulations setting out the audit and accounting standards would be very helpful and it would be appropriate for the standards to vary in accordance with the size of the society. We would suggest using annual income as the most transparent method for judging the size of a society and recommend smaller societies be defined as those with an annual income up to \$1 million and larger societies with an annual income of more than \$1 million.

However, the Law Commission and the Registrar have access to the annual accounts filed by all incorporated societies and are therefore in the best position to conduct research into the relative sizes of New Zealand societies and make recommendations.

#### **Chapter 4 – The Legal Dealings of an Incorporated Society**

Q29 & Q30 Not qualified to make a recommendation. However, incorporated societies enter into contracts for a wide range of reasons and it would be very helpful to have clear guidance or rules around how and when it is appropriate or not appropriate for a society to enter into such a contract.

#### **Chapter 5 – Resolving Disputes Between Members and Their Societies**

Q31 We agree that it is not in the best interests of New Zealand societies for member grievances to be left open to wide judicial interpretation. The procedure for dealing with member grievances should be part of the model rules and, for the most part, should be a matter for the society. Where a judicial review is requested, then presumably having a standard set of model rules would allow for more consistent judiciary rulings. However, we would need to see compelling evidence that the courts require wider powers to make orders before agreeing to the suggestion that New Zealand adopt provisions similar to those in Victoria.

Q32 Yes

Q33 Not qualified to comment

Q34 Not qualified to comment

Q35 Not qualified to comment

Q36 No opinion

Q37 No opinion

Q38 No

#### **Chapter 6 – The Liquidation and Dissolution of Societies**

Q39 No opinion

Q40 No opinion

Q41 The distinction between members' benefit and public benefit societies is rather academic as it implies that members' benefit societies only receive income from their members. In reality, members' benefit societies often receive grants and sponsorship from non-members (including the Government) to fund specific projects

and activities. If a members' benefit society was to dissolve, their assets could include funds from non-members and it would not be appropriate for those assets to be distributed back to the members. Therefore there is probably a need for the Registrar to take responsibility for administering the dissolution of a society to ensure its assets are appropriately distributed.

Q42 Yes

## **Chapter 7 – Transitional Issues**

Q43 We would support the Companies Act approach. We suggest a minimum transitional period of two years for the adoption of model rules and any new auditing and accounting standards.

Q44 Communication will be key, along with an appropriate transitional period (we suggest a minimum of two years). We would strongly recommend a roadshow around the country to raise awareness and the provision of 'plain English' literature to explain the new requirements. Engagement with the New Institute of Chartered Accountants will also be critical and we would also recommend engagement with the various Chambers of Commerce who may see an opportunity to provide specialist training.

# Appendix 1

## Packaging Council of New Zealand Executive Committee Members

<b>Name</b>	<b>Company</b>
David Archer	Fonterra Co-Operative Group Ltd
Stephen Bramlage	O-I New Zealand
Harry Burkhardt	Replas Ltd
David Carter (President)	Lion Nathan National Foods
Suzy Clarkson	Coca-Cola Amatil (NZ) Ltd
Julie Evans	Tetra Pak (New Zealand) Ltd.
Tim Fahey	Amcor Packaging (New Zealand) Limited
Andrew Gleason	Visy Industries
Andreas Haussrer	Aperio Group (NZ) Ltd
Ian Maddaford	Transpacific Industries Group NZ Ltd
Richard Manaton (Vice President)	Progressive Enterprises Ltd.
Darren McClenaghan	Sealed Air (New Zealand) Ltd
Mandy Miller	DB Breweries Ltd
Rick Poynter	Poynter Agencies Ltd
Paul Robinson	3M New Zealand Ltd

## Appendix 2

### Packaging Council of New Zealand Members

3M New Zealand Ltd  
Accolade Packaging Limited  
Aerosol Association of New Zealand (Inc)  
Alto Packaging Ltd  
Amcor  
Antares Restaurant Group Ltd  
Aperio Group (NZ) Ltd  
Arnotts Campbell NZ Ltd  
Attwoods Ltd  
Auckland Drum Company Ltd  
Barnes Plastics  
Bemis Flexible Packaging Australasia Ltd  
BJ Ball Papers  
Bluebird Foods Ltd  
Boxkraft (NZ) Ltd  
British American Tobacco (New Zealand) Ltd  
Cadbury Ltd  
Carter Holt Harvey  
Cas-Pak Products Ltd  
Carter Holt Harvey  
CCC Two Ltd  
Cerebos Gregg's Ltd  
Charta Packaging Ltd.  
Chemiplas NZ Ltd  
Chep New Zealand Ltd.  
Clorox New Zealand Limited  
Coca-Cola Amatil (NZ) Ltd  
Codemark Ltd  
Corporate Express New Zealand Ltd  
Cospak (NZ) Ltd  
Creation House Ltd  
DB Breweries Ltd  
Detpak (NZ) Ltd  
Eldex Packaging Ltd  
Express Couriers  
Fonterra  
Foodstuffs  
Frucor Beverages Ltd  
Glass Packaging Forum (Inc)  
GlaxoSmithKline  
Goodman Fielder  
Gravure Packaging Ltd  
Heinz Wattie's Australasia Ltd  
Hostmann-Steinberg NZ  
Hubbard Foods Ltd  
Huhtamaki  
Imperial Tobacco New Zealand  
Ingham Enterprises (NZ) Pty Ltd  
ITW Industrial Packaging  
Jenkins Group Ltd  
Kimberly Clark New Zealand  
Kyocera Mita NZ  
La Bonne Cuisine Ltd  
Lion Nathan National Foods  
Mars New Zealand  
Mastagard Coleridge Recycling Ltd  
Matua Valley Wines  
McDonald's Restaurants  
Meadwestvaco Pty Ltd  
Mil-Tek New Zealand Ltd  
National Foods International  
NCI Packaging (NZ) Ltd  
Nestle New Zealand Ltd  
NZ Food and Grocery Council (Inc)  
NZ Juice & Beverage Association (Inc)  
NZ Post Group  
NZ Retailers Association (Inc)  
NZ Sugar Company Ltd  
NZ Winegrowers (Inc)  
OfficeMax New Zealand Ltd  
O-I New Zealand  
Packaging House  
Paper-Pak  
Pernod Ricard New Zealand Ltd  
Plastics New Zealand (Inc)  
Poynter Agencies Ltd  
Premier Plastics Ltd.  
Progressive Enterprises Ltd.  
PZ Cussons (New Zealand) Pty Ltd  
Quickshrink Distributors (NZ) Ltd.  
R J's Licorice Ltd  
Reckitt Benckiser (NZ) Ltd  
Reharvest Timber Products Ltd  
Replas Ltd  
Retailquip New Zealand Ltd  
Rotaform Plastics Ltd  
Sanford Ltd  
Sanitarium Health Food Company  
Sato New Zealand Ltd  
SC Johnson & Son Pty Ltd.  
SCA Hygiene Australasia  
Scholle New Zealand Ltd.  
Sealed Air (New Zealand) Ltd  
Sealord NZ Marketing Ltd  
Shiseido NZ Ltd.  
Silver Fern Farms (PPCS)  
Snell Packaging & Stationery  
Sonoco New Zealand Ltd  
Spicers Paper  
Sullivan Packaging Ltd.  
SustainaPac  
Sutton Group Ltd  
Tetra Pak (New Zealand) Ltd.  
The Associated Bottlers Co Ltd.  
The Good Packaging Company Ltd  
The Wrigley Company (NZ) Ltd.  
Transpacific Industries Group NZ Ltd  
Unilever Australasia



VIP Packaging  
Visy Industries  
Vitaco Health (NZ) Limited  
Warehouse Stationery  
Westfield (New Zealand) Ltd