

## A GOVERNANCE STRUCTURE FOR NGINZ

### Discussion paper - 30/9/14

In reviewing governance structure for NGINZ under GIA and a Commodity levy a number of imperatives arise.

#### Association Values

- That we are one body representing the nursery and garden industry and businesses within it.
- That the nursery and garden industry comprises the nursery production and garden retail sectors, the supply chains they service and those that supply these sectors.
- That we provide a voice to all members working for their collective well-being on matters that are important to and their businesses and industry as a whole.
- That all members have a fair voice and ability for their views to be represented to the Board
- That we are accountable to our members for our actions and outcomes. Our processes, systems and investment decision making is robust and transparent.
- That our governance and management is fit for purpose, efficient and effective and we have the expertise we need to get the job done.

Further, governance, management and operation procedures need to meet the requirements of both the Commodity Levies Act and, in the case of GIA, the Biosecurity Act.

This paper reflects the outcomes of a discussion by the NGINZ Board on 3 September 2014. The Board convened, and thanks, the "Towards 2025 Working Group", which also considered the governance paper and provided advice on changes in response to this.

### Background

The Commodity Levies Act requires Association governance and decision making to be responsive to and reflective of the needs of levy payers. Further it requires accountability for levy decisions and spending to levy payers.

At least 50% of the Board needs to be levy payers (growers), elected by levy-payers (growers).

A review of several other levy funded industry bodies yields a number of models for ensuring levy payer representation (see appendix). In all, levy-paying members are the only members who vote on levy issues (as per the Act), if a poll is called for, voting is weighted based on levy paid or some other production parameter.

Board composition is weighted towards levy-payers (as per the Act), in some Board members are elected by the district they represent, some have supply chain representatives and most have the ability for the Board to co-opt another member to ensure adequate expertise.

One body reviewed, Kiwifruit Growers Incorporated, have a Grower Forum comprising 37 members elected from regions (25 and weighted through 13 regions) and grower group (12 members). Their Board is elected from this body.

Major discussion points at regional meetings include how levy payers will ensure their voice is heard and their ability to influence how decisions are made and how their levy is spent. These principles are at the core of the Act.

While not as prescriptive, participation in GIA (under the Biosecurity Act) brings accountability to industry and the need to operate under an industry mandate, with these formally assessed by the Minister for Primary Industries when deciding on 'eligibility' to join GIA and Biosecurity Levy establishment.

## A potential Governance Structure for NGINZ

### 1. Member Classes

The constitution must clearly differentiate between “levy paying” members and “others”. The former have rights pertaining to levy matters that the other member classes do not have.

#### RECOMMEDATION

- Grower– a levy payer
- Retailer – entities deriving part of their income from retailing industry goods and services
- Supplier – other entities deriving part of their income from industry related activity
- Associate member – others with an interest in the aims of the Association and industry
- Life member

### 2. Decision making processes

The Board and NGINZ decision making structures and processes must be responsive to and reflective of the needs of levy payers. None of the bodies surveyed, other than Kiwifruit, are prescriptive on the procedures for levy payer consultation and involvement in the levy decision matters – save for levy decisions at the AGM – levy rate setting, budgets and financial accounts.

The system however mandates accountability to (and hence consultation with) levy payers on how the levy is spent. This was a major issue raised through the recent member meetings. Thus some formal process is in order.

While the interests of levy payers are protected by at least 50% of the Board being elected by levy payers, we need to ensure the views of non-levy payer members and those of the supply chains growers service are reflected in the decision making process.

### RECOMMENDATION

An appropriate decision making process may be that incorporated in the Australian levy system and modified to suit New Zealand legislation and process requirements:

- The Board with advice from and the support of advisory conduits develops strategy and direction to ensure the most appropriate use of funds to ensure maximum industry benefit through:
  - A Strategic Plan (3-5 years) establishing the strategic direction for NGINZ’s (industry) investment of levy funds (and other revenue streams) for the industry.
  - An Annual Business Plan (1 year). This plan determines the annual expenditure required to achieve the outcomes detailed in the strategic plan.
  - An Annual Report to industry and MPI that details the outcomes achieved from the expenditure outlined in the annual investment plan.

Routine and programmed procedures will be developed for project submissions from Industry and those servicing it, consultation on priorities and potential effectiveness, and reporting and reviews of outcomes.

### 3. Industry Supply Chains

Industry supply chains are broad, and in order to ensure our scope adequately provides grower-sector representation it is proposed that five major supply chains are recognised and defined by broad “end markets”:

- Production horticulture
- Forestry
- Revegetation and restoration
- Amenity and landscaping
- Retail and home garden

In regards to these supply chains, for Board elections and Industry Advisory Committee representation, any one Grower (member) would nominate their supply chain. In the case of a Grower servicing more than one supply chain, that Grower must select one (and only one) to nominate, presumably that which is most important to their business.

#### 4. Board and Advisory Conduit Structure

Three models were discussed by the Board and the Board expressed a preference for:

##### RECOMMENDATION

A smaller Board, competency based and highly governance focused with a formal industry conduit (Industry Advisory Committee) to ensure that levy payers and others are adequately represented and consulted.

##### NGINZ Board

At least 8 and up to 9 members

- 4 growers (levy payers) elected by levy payers
- 3 members elected by non-levy-payer NGINZ members
- Up to 1 Board appointed member
- A Board appointed independent Chair – who may or may not be an industry participant.

Working Group discussion included an option for a smaller Board than above. Some noted reservations, however and the need for a Board that is small enough to ensure effective decision making while large enough to provide for adequate expertise and relationship with the broad industry scope, membership and sectors.

**Industry Advisory Committee (IAC)** would review levy-related and all other matters and provide advice to the Board. It would routinely meet four times annually (or at a frequency otherwise determined by the Committee) and comprise 14 members ensuring direct grower (and other member) input into project planning and review, and levy funded matters.

It comprises:

- 9 Growers elected by Growers
  - 1 from each of the industry supply chains elected by growers in those supply chains (5 in total)
  - 4 elected by Growers at large
- 5 others nominated by the Board to ensure expertise and balance. Of these 3 shall be representative of independent retailers, home improvement retailers and industry suppliers.

The IAC is a focused and pan-industry body, and the Board still recognise that different sectors or interests need to be able to come together under either sector or cluster groups. So we are proposing to retain such mechanisms.

In each body it is envisaged that consensus advice and decision making will be the desired outcome, with provision for voting at the Board or IAC meetings on the basis of one vote per member without provision for weighted voting on the basis of the supply chain or sector that the member represents.

**Board and IAC Terms of Reference** are to be developed clarifying the roles of each body, and their relationship to each other, sectors, members, and cluster groups.

##### Two other options were considered, but are not preferred by the Board:

1. **A larger Board**, governance focused but with broader representation of levy payers and supply chain conduits at Board level. The need for formal conduits to levy payers and others is thus reduced but by no means fully diminished.

**Board** - At least 10 and up to 11 members

- 6 growers (levy payers) elected by levy payers
  - 4 elected from their nominated industry supply chains by growers in those supply chains
  - 2 elected by all growers
- 3 members elected by non-grower NGINZ members
- Up to 1 Board appointed member
- A Board appointed independent Chair – who may or may not be an industry participant

**Annual Grower Forums** provide for direct grower input to the decision making process and Board accountability whereby Grower input is sought on plans, projects and any other relevant issues – say five forums, three North Island, two South Island.

A possible supplement (or alternative, though with potential travel cost concerns for growers) to this process would be to add annual **supply chain forums** which would provide a mechanism for a focus on matters pertaining directly to the supply chains – four forums.

This model was not preferred by the Board, on the basis of it being unwieldy and potentially expensive.

2. **The Australian Model** - whereby levy funds are administered by Horticulture Australia (who manage all levy monies from all industries). Essentially levy management is separated from Association governance.

In Australia levy monies are managed by Horticulture Australia Ltd (HAL). HAL is national research, development and marketing organisation for the whole Australian horticulture industry – it manages 60 levies and supervises all industry investment plans and R&D programmes.

Levy funds are collected by Levies Revenue Service (LRS), part of the Commonwealth's DAFF (MPI equivalent), and passed onto HAL.

Investment decisions are considered by Industry Advisory Committees (IAC) which are sub-committees of HAL and comprise individuals appointed by HAL upon recommendation of industry bodies (NGIA for example which seeks open nominations from levy payers).

The **main role of the IAC** is to provide direction and advice to HAL on the most appropriate use of funds to ensure maximum industry benefit.

#### **A HAL-Model in New Zealand?**

Some New Zealand nurseries are familiar with this model given relationships with Australians and see it as advantageous to ensure independence of levy decisions, transparency, responsiveness to levy payers, and funding independence from NGINZ governance and influence.

However, NZ does not have the equivalent of HAL or LRS and implementation of an Australian-like system would require at least one of these to be created with ensuing overheads and duplication of efforts.

NZ's HAL-equivalent would become the levy body and this body would be accountable to levy payers and MPI, rather than NGINZ – it is essentially a new and independent industry body comprising levy payers (that is growers). The Australian model was not preferred by the Board on the basis of its inherent overhead cost and duplication.

#### **5. AGM & SGM Voting**

An **annual meeting of levy payers** is mandated by the Act. In terms of the relationship between an annual meeting of levy payers and the AGM/SGM, options are:

- The levy payer meeting is a part of the Association's AGM/SGM with voting rights determined by the remit under question, or
- A separate meeting that considers only levy matters.

All levy payers are entitled to vote on levy issues including appointment of levy payer representatives to the Board and the setting of the levy rate. Voting is initially one member one vote unless a poll is called for in which case weighted voting is commonly based upon commodity quantity or levy value paid.

We must provide a mechanism whereby non-member levy payers (eg conscientious objectors) contribute to decisions on spending the levy – either by a vote at General Meetings or through separate consultations.

Some bodies provide voting rights on non-levy matters to non-levy members. In the interests of promoting a “whole of industry” and vertically integrated approach, this will be an important parameter to include.

#### RECOMMEDATION

- A single AGM/SGM with a levy payers section where levy matters are discussed and voted on. That section being part of the open meeting – that is, non-levy payers can attend. Non-levy payers would have speaking right, but no voting rights on levy matters.
- Grower members are entitled to vote on any resolution regarding the Levy. If a poll is called for, voting is on the basis of levy value paid.
- Growers and “supply chain” members are entitled to vote on any non-levy matter, and if a poll is called for, voting is on the basis on one vote per member. (Irrespective of the levy value paid in the case of Grower members).
- Associate members are not entitled to vote on any matter.

**Ultimate accountability for all matters however remains with the Board.** The IAC and/or regional and supply forums are “industry advisory groups”, formal or not. It is the NGINZ Board that is, appropriately, finally accountable to industry, levy payers and the Minister.

None of these structures preclude members or the Board (or the IAC) discussing matters on an as needed basis at any time.

#### 6. Financial structure and accountability

The levy will be collected under the auspices of the Association – The Nursery and Garden Industry Association of New Zealand Inc (NGINZ).

NGINZ would develop the strategic and annual investment plans and contract NEL to undertake implementation. Accountability is thus sheeted back to and through NGINZ to levy payers and MPI.

It is important to segregate levy funds from other income streams and expenses. Under the proposed 0.3% year one actual levy we might anticipate:

Levy income	\$1,500,000
Existing Retail and Supplier subscriptions	\$200,000
Trading income	\$100,000
Gift card write down	\$100,000
<b>Total Income</b>	<b>\$1,900,000</b>

It is sufficient to segregate levy activity through a separate bank account and a separate budget centre in NGINZ annual accounts. A standalone body corporate is not needed.

Note - Levy Income: The aim is to collect \$1.5m through the levy. The Board has assumed the Department of Statistics information is conservative and the true value of the industry (nursery production) is \$400m. The Board recognises that at 0.3% there is a short-term risk of under-collection, with this risk diminishing over time with industry growth under the ‘Greenlife Double’ strategy. There is a mechanism to adjust the levy rate up (up to the maximum rate of 0.4%) or down if a major correction is needed, with this requiring the agreement by levy payers at an AGM/SGM

**Appendix 1 - Review of Member & Levy issues from Constitutions of other industry bodies**

28 July 2014

Body	Member Classes	AGM Voting	Board / Exec	Levy
<b>HortNZ</b>	<ul style="list-style-type: none"> <li>Active Grower</li> <li>Associate</li> <li>Life</li> </ul>	<p>Active Grower is only class that votes – 1 vote per member unless weighted vote called for, then 1 vote per levy \$ paid</p> <p>Levy related votes always weighted</p>	<p>8 growers 1 co-opted</p> <p>Elected by Active Growers on 1 vote per growers basis</p>	<p>0.15% of sales value</p> <p>Plus</p> <p>Plus</p> <p>0.35% on tomato</p> <p>0.30% Fresh vegetable</p> <p>0.50% on process vegetables</p>
<b>Avocado</b>	<ul style="list-style-type: none"> <li>Levy Member</li> <li>Ordinary member – grows or intends to grow</li> <li>Associate</li> <li>Life</li> </ul>	<p>Levy &amp; Ordinary members = voting members</p> <p>Show of hands or by poll – 1 vote per 1000 trays</p>	<p>8 members 4 on a regional basis voted by voting members 4 elected by all voting members</p>	<p>3% of sell price, plus 50cents per tray if exported.</p>
<b>Pipfruit</b>	<ul style="list-style-type: none"> <li>Grower</li> <li>Post-harvest</li> <li>Associate</li> <li>Life</li> </ul>	<p>Various voting rights to member classes, only Growers vote on levy, rule changes and Grower Directors 1 vote per kg</p>	<p>At least 7, up to 8 4 elected by growers 3 elected by PH 1 co-opted</p>	<p>1.5 cents per kg</p>
<b>Summerfruit</b>	<ul style="list-style-type: none"> <li>Producer</li> <li>Exporter</li> <li>Associate – non-commercial producers, nursery, exporters, marketers</li> <li>Group</li> <li>Life</li> </ul>	<p>Producer – 1 vote/ha</p> <p>Associates also in Board elections</p>	<p>5 Producers, 1 of whom can be an Associate 3 Exporters</p>	<p>1% or 1.75% depending on fruit type.</p>
<b>Feijoa</b>	<ul style="list-style-type: none"> <li>Producer</li> <li>Supply Chain</li> <li>Marketing (HEA)</li> </ul>		<p>8 Producers (4 by regional 4 national) 2 Marketers</p>	<p>3% of sell price</p>
<b>Kiwifruit</b>	<ul style="list-style-type: none"> <li>Growers</li> <li>Forum Members</li> </ul>	<p>1 vote per tray</p>	<p>President, VP, 4 x Forum, CEO</p> <p>Members Forum (37) 25 by district (weighted by number) 12 ex growers groups Meet at least 2 x year</p>	<p>NZKGI - 0.28 cents per kg exported.</p> <p>KVH - 0.28 cents per green kg exported.</p> <p>KVH - 0.56 cents per gold/red kg exported.</p>
<b>Beef &amp; Lamb</b>	<ul style="list-style-type: none"> <li>Farmers</li> </ul>	<p>Farmers Votes in proportion to # of animals</p>	<p>6 elected by Farmers across regional districts 3 elected by processors and exporters 1 co-opted</p>	