

AUSTRALIAN WINE AND BRANDY CORPORATION AMENDMENT ACT 1993
No. 93, 1993

AUSTRALIAN WINE AND BRANDY CORPORATION AMENDMENT ACT 1993
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SCHEDULE TO BE INSERTED IN PRINCIPAL ACT

ADMINISTRATIVE PROVISIONS RELATING TO THE GEOGRAPHICAL
INDICATIONS COMMITTEE

AUSTRALIAN WINE AND BRANDY CORPORATION AMENDMENT ACT 1993

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LONG TITLE

An Act to amend the Australian Wine and Brandy Corporation

Act 1980, and for related purposes

AUSTRALIAN WINE AND BRANDY CORPORATION AMENDMENT ACT 1993

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SECT 1

Short title etc.

(Assented to 16 December 1993)

1.(1) This Act may be cited as the Australian Wine and Brandy Corporation Amendment Act 1993.

(2) In this Act, "Principal Act" means the Australian Wine and Brandy Corporation Act 1980.*1*

(Minister's second reading speech made in-

House of Representatives on 29 September 1993

Senate on 28 October 1993)

1 No. 161, 1980, as amended. For previous amendments, see No. 48, 1982; Nos. 72 and 165, 1984; No. 65, 1985; No. 60, 1986; No. 51, 1988; No. 144, 1989; No. 26, 1991; and No. 137, 1992.

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SECT 2

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

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SECT 3

Objects

3. Section 3 of the Principal Act is amended:

(a) by adding "and" at the end of each of paragraphs (1)(a), (b) and (d);

(b) by inserting after paragraph (1)(d) the following paragraphs:

"(e) to enable Australia to fulfil its obligations under prescribed wine-trading agreements; and

(f) for the purpose of achieving any of the objects set out in the preceding paragraphs:

(i) to determine the boundaries of the various regions and localities in Australia in which wine is produced; and

(ii) to give identifying names to those regions and localities; and

(iii) to determine the varieties of grapes that may be used in the manufacture of wine in Australia;"

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SECT 4

Interpretation

4. Section 4 of the Principal Act is amended:

(a) by omitting from subsection (1) the definitions of "Committee" and "Presiding Member";

(b) by omitting from the definition of "prescribed goods" in subsection (1) "being grapes or grape juice produced in Australia;"

(c) by inserting in subsection (1) the following definitions:

" 'agreement country' means:

(a) if an agreement relating to trade in wine is in force between the

European Economic Community and Australia-an EC country; and

(b) if an agreement relating to trade in wine is in force between a foreign country (other than an EC country) and Australia and is declared by the regulations to be a prescribed wine-trading agreement-that foreign country;

'Australia' includes all the external Territories;

'blending requirements' means requirements relating to the blending of wines of different varieties, geographical indications or vintages, or any combination of the above;

'corporation', in Part VIB, means a body corporate that:

(a) is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; or

(b) is a trading corporation within the meaning of that paragraph that is formed within the limits of Australia; or

(c) is incorporated in a Territory;

'declared wine grape growers organisation' means an organisation in relation to which a declaration is in force under section 5B;

'description', in relation to wine, has a meaning affected by section 5C;

'EC country' means a country that is a member of the European Economic Community;

'export' means export from Australia;

'geographical indication', in relation to wine, means:

(a) a word or expression used in the description and presentation of the wine to indicate the country, region or locality in which the wine originated;

or

(b) a word or expression used in the description and presentation of the wine to suggest that a particular quality, reputation or characteristic of the wine is attributable to the wine having originated in the country, region or locality indicated by the word or expression;

'modify', in relation to oenological practices and processes, or compositional or other requirements, includes:

(a) add one or more practices or processes, or compositional or other

requirements; and

(b) vary any one or more of the practices or processes, or of the compositional or other requirements; and

(c) omit any one or more of the practices or processes, or of the compositional or other requirements;

'national food standard' means a national standard within the meaning of the Imported Food Control Act 1992;

'organisation' means any body of persons, whether a body corporate or an unincorporated body;

'originate', in relation to wine, has the meaning given by section 5D;

'presentation', in relation to wine, has a meaning affected by section 5C;

'prescribed wine-trading agreement' means:

(a) an agreement relating to trade in wine that is in force between the European Economic Community and Australia; or

(b) an agreement relating to trade in wine that is in force between a foreign country (other than an EC country) and Australia and is declared by the regulations to be a prescribed wine-trading agreement;

'Register' means the Register of Protected Names kept under section 40ZC;

'registered' means included in the Register;

'registered ancillary protected expression' means a word or expression, other than a geographical indication or traditional expression, that is included in the Register in relation to a particular country;

'registered condition', in relation to:

(a) a geographical indication, a traditional expression, or any other word or expression, relating to wine; or

(b) a variety of grapes for use in the manufacture of wine in Australia; means a condition included in the Register that is applicable to the geographical indication, traditional expression or other word or expression, or is applicable to the description and presentation of wine manufactured from, or from grapes that include, that variety of grapes, as the case may

be;

'registered geographical indication' means a geographical indication that is included in the Register in relation to a particular country;

'registered traditional expression' means a traditional expression that is included in the Register in relation to a particular country;

'registered variety of grapes' means a variety of grapes that is included in the Register;

'Registrar' means the Registrar of Protected Names;

'Selection Committee' means the Australian Wine and Brandy Corporation Selection Committee;

'sell' includes offer, expose or advertise for sale;

'traditional expression', in relation to wine, means a word or expression used in the description and presentation of the wine to refer to the method of production, or to the quality, colour or type, of the wine;

'wine' means an alcoholic beverage produced by the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes, or both;"

(d) by adding at the end the following subsection:

"(3) If a prescribed wine-trading agreement is in force between the European Economic Community and Australia, each EC country is taken, for the purposes of this Act, to be a party to the agreement."

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SECT 5

Insertion of new section

5. After section 4 of the Principal Act the following section is inserted:

Extension to external Territories

"4A. This Act extends to all the external Territories."

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SECT 6

Insertion of new sections

6. The following sections are inserted in Part I of the Principal Act after section 5A:

Declared wine grape growers organisation

"5B. If the Minister considers that an organisation is a national organisation that is representative of growers of wine grapes, the Minister may, by notice published in the Gazette, declare the organisation to be a declared wine grape growers organisation.

Meaning of "description and presentation"

"5C. In this Act, a reference to the description and presentation with which wine is sold, exported or imported is a reference to all names (including business names) or other descriptions, references (including addresses), signs, designs and trade marks used to distinguish the wine and appearing:

(a) on the container (including on the device used to seal the container or on a label affixed to the container), on any tag attached to the container or, if the container is a bottle, on the sheathing covering the neck of the bottle; or

(b) on protective wrappings (such as papers and straw envelopes of all kinds), cartons and cases used in the packaging of the wine or the transport of the wine; or

(c) in documents relating to the transport of the wine or in other commercial documents (for example, invoices or delivery notes) relating to the sale or transport of the wine; or

(d) in advertisements relating to the wine.

Where wine originates

"5D. For the purposes of this Act:

(a) a wine is taken to have originated in a foreign country or Australia

only if the wine is made within the territory of that country or of Australia, as the case may be; and

(b) a wine is taken to have originated in a particular region or locality of a foreign country or of Australia only if the wine is made from grapes grown in that region or locality.".

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SECT 7

Powers of Corporation

7. Section 8 of the Principal Act is amended:

(a) by inserting before paragraph (2)(a) the following paragraphs:

"(aa) to determine any conditions that are to be applicable to registered geographical indications in relation to wines manufactured in Australia or an agreement country; and

(ab) to determine any conditions that are to be applicable to registered traditional expressions in relation to wines manufactured in Australia or an agreement country; and

(ac) to determine any conditions that are to be applicable to registered ancillary protected expressions in relation to wines manufactured in Australia or an agreement country; and

(ad) to determine any geographical indications or traditional expressions that are to be registered in relation to a foreign country that is not an agreement country and to determine any conditions that are to be applicable to those indications or expressions; and

(ae) to determine the varieties of grapes from which wine may be manufactured in Australia and to determine any conditions that are to be applicable to the description and presentation of wine manufactured from grapes of those varieties; and";

(b) by adding "and" at the end of paragraphs (2)(a), (b), (c), (d), (e) and

(f);

(c) by inserting after subsection (2) the following subsections:

"(2A) A determination under paragraph (2)(aa), (ab), (ac), (ad) or (ae) is to be in writing under the Corporation's common seal.

"(2B) When the Corporation makes a determination referred to in subsection (2A), the Chairperson must cause a notice stating that the determination has been made and setting out the terms of the determination to be published in any manner that the Corporation thinks appropriate.

"(2C) The notice must include a statement to the effect that:

(a) subject to the Administrative Appeals Tribunal Act 1975, application may be made, by or on behalf of any person whose interests are affected by the determination, to the Administrative Appeals Tribunal for review of the determination; and

(b) unless subsection 28(4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of the person for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the determination.

"(2D) Any failure to comply with subsection (2C) in relation to a determination does not affect the validity of the determination.

"(2E) Application may be made to the Administrative Appeals Tribunal for review of a determination.

"(2F) Section 29 of the Administrative Appeals Tribunal Act 1975 has effect in relation to an application for review of a determination as if the following subsections were inserted after subsection (1):

'(1A) Despite paragraph (1)(d) and subsection (2), an application to the Tribunal for review of a determination made under paragraph 8(2)(aa), (ab), (ac), (ad) or (ae) of the Australian Wine and Brandy Corporation Act 1980 must be made within 28 days after notice of the determination is published in accordance with subsection 8(2B) of that Act.

'(1B) Despite subsection (8), an application under subsection (7) in respect

of a determination under paragraph 8(2)(aa), (ab), (ac), (ad) or (ae) of the Australian Wine and Brandy Corporation Act 1980 must be made before the time fixed by subsection (1A) ends.'

"(2G) The Chairperson must give a copy of the determination to the Registrar so that particulars of the determination can be included in the Register:

(a) if an application is duly made to the Administrative Appeals Tribunal for review of the determination-as soon as practicable after the decision of the Tribunal on the review is given; or

(b) otherwise-as soon as practicable after the 28th day after notice of the determination is published in accordance with subsection (2B).

"(2H) The determination takes effect on the day on which particulars of the determination are included in the Register."

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SECT 8

Deputy Chairperson

8. Section 15 of the Principal Act is amended by inserting in subsection (2)

"of the Selection Committee" after "Presiding Member".

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SECT 9

Insertion of new section

9. The following section is inserted in Part IVA of the Principal Act before section 29A:

Interpretation

"29AA. In this Part:

'Committee' means the Australian Wine and Brandy Corporation Selection Committee;

'Presiding Member' means the Presiding Member of the Committee."

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SECT 10

Heading

10. The heading to section 29P of the Principal Act is amended by omitting "Determination" and substituting "Termination".

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SECT 11

Directions to Corporation and Geographical Indications Committee

11. Section 31K of the Principal Act is amended by adding at the end the following subsections:

"(6) This section applies in relation to the Geographical Indications Committee in the same way as it applies in relation to the Corporation.

"(7) For the purposes of this section as it so applies in relation to the Geographical Indications Committee:

(a) references (other than the reference in paragraph (5)(c)) to the Corporation are taken to be references to that Committee; and

(b) the reference in subsection (3) to the Chairperson is taken to be a reference to the Presiding Member of that Committee."

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SECT 12

Application of money of Corporation

12. Section 35 of the Principal Act is amended:

(a) by inserting in paragraph (aa) "Selection" before "Committee" (wherever occurring);

(b) by inserting in paragraph (aa) "of the Selection Committee" after "Presiding Member".

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SECT 13

Application of Division 2 of Part XI of the Audit Act

13. Section 38 of the Principal Act is amended by adding at the end the following subsection:

"(4) The report prepared by the Corporation of its operations during a year must include a report of the operations of the Geographical Indications Committee during the year and must set out all final determinations of geographical indications made by the Committee during the year."

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SECT 14

Interpretation

14. Section 39C of the Principal Act is amended by omitting the definition of "region of origin".

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SECT 15

Insertion of new section

15.(1) After section 39E of the Principal Act the following section is inserted in Division 1 of Part VIA:

Time for bringing prosecutions

"39EA. Despite section 15B of the Crimes Act 1914, a prosecution for an offence against section 39ZAAA may be brought at any time within 7 years after the requirement to make the relevant record arose."

(2) Section 39EA of the Principal Act as amended by this Act applies only in relation to requirements to make records that arise after the commencement of this section.

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SECT 16

Repeal of section and substitution of new section

16. Section 39S of the Principal Act is repealed and the following section is substituted:

Making of records

"39S.(1) A requirement of this Division to make a record is a requirement to make the record not later than 3 months after the happening of the event, circumstance or state of affairs required to be recorded.

"(2) A reference in this Part to the time when a requirement to make a record arose is a reference to the end of the period of 3 months that, under subsection (1), is applicable to the requirement."

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SECT 17

Insertion of new Part

17. The following Part is inserted in the Principal Act after Part VIA:

"PART VIB-PROTECTION OF CERTAIN NAMES AND EXPRESSIONS

"Division 1-Preliminary

Interpretation

"40. In this Part:

'Committee' means the Geographical Indications Committee.

Object of Part

"40A. The object of this Part is to regulate the sale, export and import of wine:

(a) for the purpose of enabling Australia to fulfil its obligations under prescribed wine-trading agreements; and

(b) for certain other purposes for which the Parliament has power to make laws;

and this Part is to be interpreted and administered accordingly.

Additional operation of Part

"40B.(1) Without prejudice to its effect apart from this subsection, this Part also has the effect that it would have if any reference to a person were a reference to a corporation.

"(2) Without prejudice to its effect apart from this subsection, this Part also has the effect that it would have if any reference to trade or commerce were, by express provision, confined to trade or commerce:

(a) between Australia and places outside Australia; or

(b) among the States; or

(c) within a Territory; or

(d) between a State and a Territory; or

(e) between 2 Territories.

"Division 2-Provisions relating to sale, export or import of wine

Sale, export or import of wine with a false description and presentation

"40C.(1) A person must not, in trade or commerce, knowingly sell wine with a false description and presentation.

"(2) A person must not, in trade or commerce, knowingly export wine with a false description and presentation.

"(3) A person must not, in trade or commerce, knowingly import wine with a false description and presentation.

"(4) It is not a defence to a prosecution for an offence against subsection (1), (2) or (3) that the description and presentation indicated the country, region or locality, as the case may be, in which the wine originated.

Penalty: Imprisonment for 2 years.

Note: Subsection 4B(2) of the Crimes Act 1914 allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If, as is the case for an offence against section 40C, the maximum term of imprisonment is 2 years, the maximum fine that may be imposed is 120 penalty units. The current value of a penalty unit is fixed by section 4AA of that Act. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

Meaning of "false description and presentation"

"40D.(1) This section has effect for the purposes of section 40C.

"(2) Subject to this section, the description and presentation of wine is false if:

(a) it includes the name of a country, or any other indication that the wine originated in a particular country, and the wine did not originate in that country; or

(b) it includes a registered geographical indication and the wine did not originate in a country, region or locality in relation to which the

geographical indication is registered; or

(c) it includes a registered traditional expression and the wine did not originate in a country, region or locality in relation to which the expression is registered; or

(d) it includes a registered ancillary protected expression and the wine did not originate in a country, region or locality in relation to which the expression is registered.

"(3) Subsection (2) does not limit what, apart from that subsection, is a false description and presentation of wine.

"(4) For the purposes of subsection (2), a registered geographical indication, a registered traditional expression or a registered ancillary protected expression is taken to be included in the description and presentation of wine even if the indication or expression is accompanied by another word or expression such as 'kind', 'type', 'style', 'imitation' or 'method', or any similar word or expression.

"(5) If:

(a) the description and presentation of wine includes a word or expression that is a registered geographical indication, a registered traditional expression, or a registered ancillary protected expression, in relation to a country, region or locality; and

(b) the wine originated in that country, region or locality; and

(c) the description and presentation indicates that the wine originated in that country, region or locality;

the description and presentation is not false merely because the word or expression included in the description and presentation is also a registered geographical indication, a registered traditional expression, or a registered ancillary protected expression, in relation to another country, region or locality.

"(6) The description and presentation of wine is not false merely because it includes:

(a) the name of an individual who manufactured, sold, exported or imported

the wine; or

(b) if an individual who manufactured, sold, exported or imported the wine lawfully carries on business under the name of another individual who previously carried on the business-the name of that other individual; or

(c) the address of the winery at which the wine was manufactured.

Sale, export or import of wine with a misleading description and presentation

"40E.(1) A person must not, in trade or commerce, knowingly sell wine with a misleading description and presentation.

"(2) A person must not, in trade or commerce, knowingly export wine with a misleading description and presentation.

"(3) A person must not, in trade or commerce, knowingly import wine with a misleading description and presentation.

Penalty: Imprisonment for 2 years.

Note: Subsection 4B(2) of the Crimes Act 1914 allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If, as is the case for an offence against section 40E, the maximum term of imprisonment is 2 years, the maximum fine that may be imposed is 120 penalty units. The current value of a penalty unit is fixed by section 4AA of that Act. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

Meaning of "misleading description and presentation"

"40F.(1) This section has effect for the purposes of section 40E.

"(2) Subject to subsection (7), the description and presentation of wine is misleading if:

(a) it includes a registered geographical indication, a registered traditional expression or a registered ancillary protected expression; and

(b) the indication or expression is used in such a way in the description and presentation as to be likely to mislead as to the country, region or locality in which the wine originated.

"(3) Subject to subsection (7), the description and presentation of wine is misleading if:

(a) it includes a translation of a registered geographical indication, of a registered traditional expression or of a registered ancillary protected expression; and

(b) the inclusion of the translation is likely to mislead as to the country, region or locality in which the wine originated.

"(4) Subject to subsection (7), the description and presentation of wine is misleading if:

(a) it includes a word or expression that so resembles a registered geographical indication, a registered traditional expression or a registered ancillary protected expression as to be likely to be mistaken for the registered geographical indication, the registered traditional expression or the registered ancillary protected expression, as the case may be; and

(b) the wine did not originate in the country, region or locality in relation to which the indication or expression is registered.

"(5) The description and presentation of wine is misleading if:

(a) it includes:

(i) the name of an individual who manufactured, sold, exported or imported the wine; or

(ii) if an individual who manufactured, sold, exported or imported the wine lawfully carried on business under the name of another individual who previously carried on the business-the name of that other individual; or

(iii) the name or address of the winery at which the wine was manufactured; and

(b) the name or address, as the case may be, is used in such a way in the description and presentation as to be likely to mislead as to the country, region or locality in which the wine originated.

"(6) Subsections (2), (3), (4) and (5) do not limit what, apart from those subsections, is a misleading description and presentation of wine.

"(7) If:

(a) the description and presentation of wine includes a word or expression that:

(i) is a registered geographical indication, a registered traditional expression, or a registered ancillary protected expression, in relation to a country, region or locality; or

(ii) is a translation of an indication or expression referred to in subparagraph (i); or

(iii) resembles an indication or expression referred to in subparagraph (i); and

(b) the wine originated in that country, region or locality; and

(c) the description and presentation indicates that the wine originated in that country, region or locality; the description and presentation is not misleading merely because the indication or expression referred to in subparagraph (a)(i) is also registered in relation to another country, region or locality.

Sale, export or import of wine in contravention of certain registered conditions

"40G.(1) If any registered conditions are applicable to a registered geographical indication, a registered traditional expression or a registered ancillary protected expression, a person must not, in trade or commerce, sell, export or import wine with a description and presentation that includes that geographical indication, traditional expression or ancillary protected expression and does not comply with those conditions if the person knows:

(a) that the wine is sold, exported or imported with that description and presentation; and

(b) that the description and presentation does not comply with those conditions.

"(2) If a variety or varieties of grapes are included in the Register, a person must not, in trade or commerce, sell or export wine manufactured in Australia if the person knows that the wine is not manufactured exclusively from grapes of that variety or one or more of those varieties.

"(3) If:

- (a) a variety of grapes is included in the Register; and
 - (b) any registered conditions are applicable to the description and presentation of wine manufactured from, or from grapes that include, that variety of grapes;
- a person must not, in trade or commerce, sell or export wine that is manufactured in Australia from, or from grapes that include, that variety of grapes and the description and presentation of which does not comply with those conditions if the person knows:
- (c) that the wine is manufactured in Australia from, or from grapes that include, that variety of grapes; and
 - (d) that the wine is sold or exported with that description and presentation; and
 - (e) that the description and presentation does not comply with those conditions.

"(4) For the purposes of establishing a contravention of subsection (1), (2) or (3), if, having regard to:

- (a) a person's abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged contravention of that subsection;

the person ought reasonably to have known a particular matter referred to in that subsection, the person is taken to have known that matter.

Penalty: Imprisonment for 1 year.

Note: Subsection 4B(2) of the Crimes Act 1914 allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If, as is the case for an offence against section 40G, the maximum term of imprisonment is 1 year, the maximum fine that may be imposed is 60 penalty units. The current value of a penalty unit is fixed by section 4AA of that Act. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual

convicted of the same offence.

Blending requirements, oenological practices and processes and compositional or other requirements

"40H.(1) If the regulations make provision for or in relation to blending requirements applicable to the manufacture of wine, a person must not, in trade or commerce, sell, export or import wine to which those blending requirements are applicable if the person knows that the wine was not manufactured in accordance with those requirements.

"(2) If the regulations make provision for or in relation to oenological practices or processes, or compositional or other requirements, applicable to the manufacture of wine in Australia, a person must not, in trade or commerce, knowingly export wine to which those practices or processes, or those compositional or other requirements, are applicable if the person knows that the wine was not manufactured in accordance with those practices or processes, or those compositional or other requirements, as the case may be.

"(3) For the purposes of establishing a contravention of subsection (1) or (2), if, having regard to:

(a) a person's abilities, experience, qualifications and other attributes;
and

(b) all the circumstances surrounding the alleged contravention of that subsection;

the person ought reasonably to have known a particular matter referred to in that subsection, the person is taken to have known that matter.

Penalty: Imprisonment for 2 years.

Note: Subsection 4B(2) of the Crimes Act 1914 allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If, as is the case for an offence against section 40H, the maximum term of imprisonment is 2 years, the maximum fine that may be imposed is 120 penalty units. The current value of a penalty unit is fixed by section 4AA of that Act. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5

times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

Exception for certain wines

"40J.(1) In this section:

'small quantities', in relation to wines, means quantities declared by the regulations to be small quantities of wines for the purposes of this section;

'the offence provisions' means subsections 40C(1), (2) and (3), section 40E and subsections 40G(1), (2) and (3) and 40H(1) and (2).

"(2) The offence provisions do not apply in relation to wines manufactured before the commencement of this Part.

"(3) The offence provisions do not apply in relation to wines that are in transit through Australia.

"(4) The offence provisions do not apply in relation to wines that:

(a) originate in Australia or an agreement country; and

(b) are consigned in small quantities between Australia and an agreement country under the conditions, and in accordance with the procedures, prescribed by the regulations.

"(5) The regulations may exempt wines referred to in the regulations from the operation of any one or more of the offence provisions, either generally or for such periods, in such circumstances, and subject to such conditions, as are set out in the regulations.

Prosecution of offences

"40K.(1) To avoid doubt, it is declared that any of the following may institute a proceeding for an offence against section 40C, 40E, 40G or 40H:

(a) the Corporation;

(b) a person engaged in the manufacture of wine or the growing of wine grapes in Australia or in an agreement country;

(c) an organisation established under the law of Australia or of an agreement country whose objects or purposes include any of the following:

(i) the promotion of the manufacture of wine, the growing of wine grapes or the marketing of wine;

(ii) the promotion or protection of the interests of persons engaged in the manufacture of wine, the growing of wine grapes or the marketing of wine;

(iii) the promotion or protection of the interests of consumers of wine.

"(2) This section does not limit the operation of section 13 of the Crimes Act 1914.

Injunctions

"40L.(1) If a person has engaged, is engaging or proposes to engage in any conduct in contravention of this Division, the Federal Court of Australia may grant an injunction:

- (a) restraining the person from engaging in the conduct; and
- (b) if the Court thinks it desirable to do so-requiring the person to do a particular act.

"(2) An application for an injunction may be made by, or on behalf of, an interested person.

"(3) The following are interested persons for the purposes of subsection (2):

- (a) the Corporation;
- (b) a declared wine makers organisation;
- (c) a declared wine grape growers organisation;
- (d) a person who is a manufacturer of wine, or a grower of wine grapes, in Australia or an agreement country;
- (e) an organisation established under the law of Australia or of an agreement country whose objects or purposes include any of the following:
 - (i) the promotion of the manufacture of wine, the growing of wine grapes or the marketing of wine;
 - (ii) the promotion or protection of the interests of persons engaged in the manufacture of wine, the growing of wine grapes or the marketing of wine;
 - (iii) the promotion or protection of the interests of consumers of

wine.

"(4) The Court may grant an interim injunction pending a determination of an application for an injunction.

"(5) The Court may discharge or vary an injunction granted under this section.

"(6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind.

"(7) The powers conferred on the Federal Court of Australia by this section are in addition to, and not in derogation of, any other powers of the Court.
Application of national food standards to wines imported from agreement countries

"40M.(1) A national food standard applying to wine has effect in relation to wine that originated in an agreement country as if any requirement in the standard to comply with particular oenological practices or processes, or compositional or other requirements, in relation to wine were replaced by a requirement to comply with:

(a) subject to paragraph (b), the oenological practices and processes, and the compositional and other requirements, set out in the prescribed wine-trading agreement to which Australia and that country are parties; or

(b) if that agreement has been amended so as to modify any of those practices or processes or compositional or other requirements - those practices or processes, or compositional or other requirements, as so modified from time to time.

"(2) The Minister may suspend the operation of this section in relation to wine of a particular kind or description if the Minister is satisfied that there are reasonable grounds for believing that continued compliance with an oenological practice or process, or a compositional or other requirement, that

was used in the manufacture of the wine would endanger human health.

"(3) A suspension under subsection (2):

(a) must be by written notice signed by the Minister and published in the Gazette; and

(b) takes effect on a day stated in the notice that is not earlier than the day following the date of publication; and

(c) remains in force, unless sooner revoked, for one year.

"Division 3-Establishment, function and powers of Geographical Indications Committee

Establishment of Committee

"40N. A committee to be known as the Geographical Indications Committee is established.

Function and powers of Committee

"40P.(1) The function of the Committee is to make determinations of geographical indications for wine in relation to regions and localities in Australia.

"(2) The Committee has power to do all things that are necessary or convenient to be done by, or in connection with, the performance of its function.

"Division 4-Australian geographical indications

Power of Committee to determine geographical indications

"40Q.(1) The Committee may, either on its own initiative or on an application made to it in accordance with section 40R, determine a geographical indication in relation to a region or locality in Australia.

"(2) A determination by the Committee is to be in writing signed by the Presiding Member of the Committee.

Applications for determinations

"40R. Any of the following may apply in writing to the Committee for the determination of a geographical indication in relation to a region or locality in Australia:

- (a) a declared winemakers organisation;
- (b) a declared wine grape growers organisation;
- (c) an organisation representing winemakers in a State or Territory;
- (d) an organisation representing growers of wine grapes in a State or Territory;
- (e) a winemaker;
- (f) a grower of wine grapes.

Consultation by the Committee

"40S. In determining a geographical indication, the Committee:

- (a) must consult any declared winemakers organisation and any declared wine grape growers organisation; and
- (b) may consult any other organisations or persons it thinks appropriate.

Making of determinations

"40T.(1) In determining a geographical indication, the Committee must:

- (a) identify in the determination the boundaries of the area or areas in the region or locality to which the determination relates; and
- (b) determine the word or expression to be used to indicate that area or those areas.

"(2) If the regulations prescribe criteria for use by the Committee in determining a geographical indication, the Committee is to have regard to those criteria.

"(3) When making a determination as a result of an application, the Committee may do either or both of the following:

- (a) determine an area or areas having boundaries different from those stated in the application;
- (b) determine a word or expression to be used to indicate the area or areas constituting the geographical indication that is different from a word or expression proposed in the application.

Interim determination

"40U.(1) A determination by the Committee is to be an interim determination in the first instance.

"(2) An interim determination does not have effect as a determination of a geographical indication.

Publication of notice of interim determination

"40V.(1) The Presiding Member of the Committee must cause a notice stating that the interim determination has been made and setting out the terms of the determination to be published in any manner that the Committee thinks appropriate.

"(2) The notice must invite persons to make written submissions to the Committee in relation to the determination within a period of not less than one month that is stated in the notice.

Final determination

"40W. After considering any submissions made to it, the Committee may make a final determination.

Publication of notice of final determination

"40X.(1) The Presiding Member must cause a notice stating that a final determination has been made and setting out the terms of the determination to be published in any manner that the Committee thinks appropriate.

"(2) The notice must include a statement to the effect that:

(a) subject to the Administrative Appeals Tribunal Act 1975, application may be made, by or on behalf of any person whose interests are affected by the determination, to the Administrative Appeals Tribunal for review of the determination; and

(b) unless subsection 28(4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of that person for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the determination.

"(3) Any failure to comply with subsection (2) in relation to a determination does not affect the validity of the determination.

Review of final determination

"40Y.(1) Application may be made to the Administrative Appeals Tribunal for

review of a final determination.

"(2) Section 29 of the Administrative Appeals Tribunal Act 1975 has effect in relation to an application for review of a final determination as if the following subsections were inserted after subsection (1):

'(1A) Despite paragraph (1)(d) and subsection (2), an application to the Tribunal for review of a final determination under Part VIB of the Australian Wine and Brandy Corporation Act 1980 must be made within 28 days after notice of the determination is published in accordance with section 40X of that Act.

'(1B) Despite subsection (8), an application under subsection (7) in respect of a final determination under Part VIB of the Australian Wine and Brandy Corporation Act 1980 must be made before the time fixed by subsection (1A) ends.'

Date of effect of final determination

"40Z.(1) The Presiding Member must give a copy of the final determination to the Registrar so that particulars of the determination can be included in the Register:

(a) if an application is duly made to the Administrative Appeals Tribunal for review of the determination-as soon as practicable after the decision of the Tribunal on the review is given; or

(b) otherwise-as soon as practicable after the 28th day after notice of the determination is published in accordance with section 40X.

"(2) When the Presiding Member gives a copy of a final determination to the Registrar, the Presiding Member must also give a copy to the Chairperson of the Corporation.

"(3) A final determination of the Committee takes effect on the day on which particulars of the determination are included in the Register.

"Division 5-Register of Protected Names

Registrar

"40ZA.(1) There is to be a Registrar of Protected Names.

"(2) The Registrar is to be an employee of the Corporation.

"(3) The Corporation must ensure that, at all times when the person appointed as Registrar is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the Registrar, another employee is appointed to act as Registrar.

Functions of Registrar

"40ZB. The Registrar has the following functions:

- (a) to keep the Register of Protected Names;
- (b) to enter particulars in the Register in accordance with section 40ZD;
- (c) to provide administrative assistance to the Committee;
- (d) in accordance with the directions of the Committee, to prepare and cause to be published maps or other documents showing the boundaries of regions and localities in relation to which geographical indications have been determined by the Committee;
- (e) in accordance with the directions of the Committee, to notify authorities and organisations in foreign countries of the geographical indications and traditional expressions included in the Register in relation to wines manufactured in Australia.

Register of Protected Names

"40ZC.(1) The Registrar is to keep a register to be known as the Register of Protected Names.

"(2) The Register may be kept wholly or partly by means of a computer.

Contents of Register

"40ZD.(1) The Register is to be divided into the following parts:

- (a) a part containing geographical indications in relation to wines manufactured in Australia and the conditions (if any) applicable to those indications;
- (b) a part containing traditional expressions in relation to wines manufactured in Australia and the conditions (if any) applicable to those expressions;
- (c) a part containing geographical indications in relation to wines manufactured in an agreement country and the conditions (if any) applicable to

those indications;

(d) a part containing traditional expressions in relation to wines manufactured in an agreement country and the conditions (if any) applicable to those expressions;

(e) a part containing words or expressions, other than geographical indications or traditional expressions, in relation to wines manufactured in an agreement country and the conditions (if any) applicable to those words or expressions;

(f) a part containing the names of varieties of grapes for use in the manufacture of wines in Australia and the conditions (if any) applicable to the description and presentation of wines manufactured in Australia from grapes of those varieties;

(g) a part containing geographical indications in relation to wines manufactured in foreign countries that are not agreement countries and the conditions (if any) applicable to those indications;

(h) a part containing traditional expressions in relation to wines manufactured in foreign countries that are not agreement countries and the conditions (if any) applicable to those traditional expressions.

"(2) The Registrar is to enter in the appropriate part of the Register, in accordance with the directions of the Corporation, the following particulars:

(a) in relation to Australia-the following geographical indications:

(i) Australia;

(ii) Australian;

(iii) the name of each State and internal Territory;

(iv) each geographical indication determined by the Committee under Division 4;

and the conditions (if any) applicable to those indications;

(b) in relation to Australia-each word or expression that, under a prescribed wine-trading agreement, is a traditional expression in relation to wines manufactured in Australia and the conditions (if any) applicable to those traditional expressions;

(c) in relation to an agreement country-each geographical indication that, under a prescribed wine-trading agreement to which that country is a party, is a geographical indication in relation to wines manufactured in that country and the conditions (if any) applicable to those indications;

(d) in relation to an agreement country-each word or expression that, under a prescribed wine-trading agreement to which that country is a party, is a traditional expression in relation to wines manufactured in that country and the conditions (if any) applicable to those traditional expressions;

(e) in relation to an agreement country-each word or expression (other than a word or expression to which paragraph (c) or (d) applies) that, under a prescribed wine-trading agreement to which that country is a party, is required to be protected in relation to wines manufactured in that country and the conditions (if any) applicable to those words or expressions;

(f) particulars of varieties of grapes that may be used in the manufacture of wine in Australia and the conditions (if any) applicable to the description and presentation of wines manufactured in Australia from grapes of those varieties;

(g) in relation to a foreign country that is not an agreement country-geographical indications in relation to wines manufactured in that country and the conditions (if any) applicable to those indications;

(h) in relation to a foreign country that is not an agreement country-traditional expressions in relation to wines manufactured in that country and the conditions (if any) applicable to those expressions.

Inspection of Register

"40ZE.(1) The Registrar must ensure that the Register is available for inspection at the office of the Registrar by any person during ordinary hours of business of that office.

"(2) To the extent that the Register is kept by use of a computer, subsection (1) is complied with by giving members of the public access to a computer terminal that they can use to inspect the particulars constituting the Register, either on a screen or in the form of a computer print-out.

"(3) The Registrar may supply a copy of the Register or part of the Register to a person on payment of the prescribed fee."

AUSTRALIAN WINE AND BRANDY CORPORATION AMENDMENT ACT 1993

No. 93 of 1993 -

SECT 18

Remuneration and allowances of members of Corporation etc.

18.(1) Section 40 of the Principal Act is renumbered as section 41A.

(2) Section 40 of the Principal Act as renumbered by subsection (1) is amended by inserting after paragraph (1)(a) the following paragraph:

"(b) a member of the Geographical Indications Committee established by section 40N; or"

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SECT 19

Repeal of section 48

19. Section 48 of the Principal Act is repealed.

AUSTRALIAN WINE AND BRANDY CORPORATION AMENDMENT ACT 1993

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SECT 20

Additional amendments

20. The Principal Act is amended as set out in the following table:

ADDITIONAL AMENDMENTS

Provision amended

Amendment

Section 39A, section 39C (definitions of "different wines", "examinable document" and "label claim"), paragraphs 39F(c) and 39W(c), section 39Y and the heading to that section, subsections 39Z(3) and (4) and paragraph 39ZJ(1)(c)

Omit "region of origin" (wherever occurring),
substitute "geographical indication".

AUSTRALIAN WINE AND BRANDY CORPORATION AMENDMENT ACT 1993

No. 93 of 1993 -

SECT 21

Repeal of Schedule and substitution of new Schedule

21. The Schedule to the Principal Act is repealed and the Schedule set out in the Schedule to this Act is substituted.

AUSTRALIAN WINE AND BRANDY CORPORATION AMENDMENT ACT 1993

No. 93 of 1993 -

SCHEDULE

SCHEDULE TO BE INSERTED IN PRINCIPAL ACT

"SCHEDULE

ADMINISTRATIVE PROVISIONS RELATING TO THE GEOGRAPHICAL
INDICATIONS

COMMITTEE

Interpretation

"1. In this Schedule:

'Committee' means the Geographical Indications Committee;

'member' means the Presiding Member or a nominated member of the
Committee;

'nominated member' means a member of the Committee referred to in paragraph 2(1)(b) or (c);

'Presiding Member' means the Presiding Member of the Committee.

Membership of Committee

"2.(1) The Committee is to consist of 3 members as follows:

- (a) a Presiding Member appointed by the Chairperson of the Corporation in accordance with a resolution of the Corporation;
- (b) one member appointed by the Chairperson of the Corporation on the nomination of a declared winemakers organisation;
- (c) one member appointed by the Chairperson of the Corporation on the nomination of a declared wine grape growers organisation.

"(2) The members of the Committee are to be appointed on a part-time basis.

"(3) The appointment of a member of the Committee is not ineffective only because of a defect or irregularity in, or in connection with, the member's nomination or appointment.

"(4) The exercise of a power, or the performance of a function, by the Committee is not ineffective only because there is one vacancy in the membership of the Committee.

Acting Presiding Member

"3.(1) The Chairperson of the Corporation may appoint a person to act as the Presiding Member:

- (a) during a vacancy in the office of Presiding Member (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Presiding Member is absent from Australia or is, for any other reason, unable to perform the functions of the Presiding Member.

"(2) Nothing done by or in relation to a person purporting to act under this section is ineffective on any one or more of the following grounds:

- (a) the occasion for the person's appointment to act had not arisen;

(b) there is a technical defect or irregularity in connection with the person's appointment;

(c) the person's appointment had ceased to have effect;

(d) the occasion for the person to act had not arisen or had ceased.

Alternate members of the Committee

"4.(1) The Chairperson of the Corporation may appoint a person who is not a member of the Committee to be the alternate of a particular nominated member.

"(2) If a nominated member is absent from a meeting of the Committee, the member's alternate (if any) is entitled to attend the meeting and, when so attending, is taken to be a member of the Committee.

"(3) If a person ceases to hold office as a nominated member:

(a) the person (if any) who was the person's alternate immediately before he or she ceased to hold office is entitled to attend meetings of the Committee while the office is vacant and, when so attending, is taken to be a member of the Committee; and

(b) the person is taken to be the alternate of a person appointed to the vacant office until a new appointment of an alternate is made.

"(4) A person may only be appointed as a nominated member's alternate if the person has been nominated in writing by the organisation by which the member was nominated for appointment.

"(5) A person appointed as a member's alternate remains the member's alternate until the organisation that nominated the person gives the Chairperson of the Corporation a written nomination of a different person for appointment as the member's alternate.

"(6) A person may resign an appointment as alternate of a member of a Committee by giving a signed notice of resignation to the Chairperson of the Corporation.

Term of office

"5.(1) The Presiding Member holds office for such period of not more

than 3 years as is stated in the document of appointment.

"(2) A member appointed on the nomination of an organisation holds office until the organisation gives the Chairperson of the Corporation a written nomination of another person to be appointed in place of the member.

Resignation

"6. A member may resign his or her appointment by giving a signed notice of resignation to the Chairperson of the Corporation.

Termination of appointment

"7.(1) The Corporation may terminate the appointment of a member of the Committee because of misbehaviour or physical or mental incapacity.

"(2) If a member of the Committee:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

(b) fails without reasonable excuse to comply with clause 9; or

(c) is absent, without leave of absence under clause 8, from 3 consecutive meetings of the Committee;

the Corporation must terminate the appointment of the member.

Leave of absence

"8.(1) The Chairperson of the Corporation may grant the Presiding Member leave of absence from a meeting of a Committee.

"(2) The Presiding Member may grant leave of absence to another member of a Committee from a meeting of a Committee.

Disclosure of interests by Committee members

"9.(1) A member of the Committee who has a direct or indirect financial interest in a matter being considered or about to be considered by the Committee must, as soon as possible after the member has become aware of the relevant facts, disclose the nature of that interest at a meeting of the Committee.

"(2) A disclosure under subsection (1) must be recorded in the minutes of a meeting of the Committee and the member must not, unless the Corporation or the Committee otherwise determines:

(a) be present during any deliberation of the Committee regarding that matter; or

(b) take part in any decision of the Committee regarding that matter.

"(3) For the purposes of the making of a determination by the Committee under subsection (2) in relation to a member who has made a disclosure under subsection (1), the member must not:

(a) be present during any deliberation of the Committee for the purpose of making a determination; or

(b) take part in the making of the determination.

"(4) A member of the Committee who is a winemaker or a grower of wine grapes is not taken to have a financial interest in a matter being considered, or about to be considered, by the Committee solely because the member is a winemaker or grower of wine grapes, as the case may be.

Meetings

"10.(1) Meetings of the Committee are to be held at such times and places as the Committee determines.

"(2) A meeting of the Committee may be convened by the Presiding Member.

"(3) Two members constitute a quorum at the meeting of the Committee.

"(4) The presiding Member is to preside at all meetings of the Committee at which he or she is present.

"(5) If the Presiding Member is not present at a meeting of the Committee, the members of the Committee who are present must elect one of them to preside at the meeting.

"(6) Subject to subsection (7), a question arising at a meeting of the Committee is to be decided by a majority of the votes of the members of the Committee.

"(7) If only 2 members are present at a meeting of the Committee and

those members are unable to agree on a question, the question is to be deferred until a meeting at which 3 members are present.

"(8) The Committee must keep minutes of its proceedings.

"(9) The minutes must record each decision made by the Committee and the reasons for the decision.

Staff and consultants

"11.(1) The Corporation must make staff available to provide administrative assistance for the Committee.

"(2) The Presiding Member may, on behalf of the Corporation, engage persons with suitable qualifications and experience as consultants to the Committee.

"(3) The terms and conditions of engagement of consultants are to be those determined by the Committee with the approval of the Corporation.

Information for inclusion in Corporation's annual report

"12. As soon as practicable after the end of each financial year, the Committee must give to the Corporation any information relating to the Committee's operations during that year that the Corporation reasonably requires for the purpose of preparing a report in relation to that year under section 63H of the Audit Act 1901."