



Australian Wine and Brandy Corporation Act 1980

Act No. 161 of 1980 as amended

This compilation was prepared on 20 November 2009
taking into account amendments up to Act No. 111 of 2009

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

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An Act to establish an Australian Wine and Brandy Corporation, and for related purposes

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Australian Wine and Brandy Corporation Act 1980*.

2 Commencement [see Note 1]

- (1) Sections 1 and 2 and subsection 13(4) shall come into operation on the date on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation.

3 Objects

- (1) The objects of this Act are:
 - (a) to promote and control the export of grape products from Australia; and
 - (b) to promote and control the sale and distribution, after export, of Australian grape products; and
 - (c) to promote trade and commerce in grape products among the States, between States and Territories and within the Territories; and
 - (d) to improve the production of grape products, and encourage the consumption of grape products, in the Territories; and
 - (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;
and this Act shall be construed and administered accordingly.
- (2) The Corporation shall perform its functions or exercise its powers only for the purpose of achieving an object specified in subsection (1).

4 Interpretation

- (1) In this Act, unless the contrary intention appears:

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.

annual general meeting means a meeting that the Corporation is required to convene under section 29W.

annual operational plan means a plan developed by the Corporation and approved by the Minister in accordance with Division 2 of Part VA.

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.

Chairperson means the Chairperson of the Corporation.

commencing date means the date fixed under subsection 2(2).

corporate plan means a plan developed by the Corporation and approved by the Minister in accordance with Division 1 of Part VA.

Corporation means the Australian Wine and Brandy Corporation established by this Act.

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.

Corporation's component of wine grapes levy has the meaning given by section 31L.

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

declared winemakers organisation means an organisation declared to be a declared winemakers organisation by a declaration in force under section 5A.

Deputy Chairperson means the Deputy Chairperson of the Corporation.

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

dried grapes means grapes containing less than 60% of moisture.

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

export means export from Australia.

Federal Court means the Federal Court of Australia.

fresh grapes means grapes containing not less than 60% of moisture.

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.

grape product means:

- (a) wine manufactured in Australia from prescribed goods;
- (b) brandy distilled in Australia from any such wine;
- (c) grape spirit manufactured in Australia from prescribed goods and suitable for the fortifying of wine or the manufacture of brandy; or
- (d) a product (being prescribed goods or a product derived in whole or in part from prescribed goods) declared by the regulations to be a grape product for the purposes of this Act.

industry means the grape products industry in Australia.

member means a member of the Corporation and includes the Chairperson.

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.

pending, in relation to an application for the registration of a trade mark under the *Trade Marks Act 1995*, has the meaning given in that Act.

prescribed goods means:

- (a) fresh grapes;
- (b) dried grapes; and
- (c) grape juice, whether single-strength or concentrated.

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.

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

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 owner, in relation to a trade mark, means the person in whose name the trade mark is registered under the *Trade Marks Act 1995*.

registered trade mark means a trade mark whose particulars are entered in the Register of Trade Marks under the *Trade Marks Act 1995*.

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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.

Register of Trade Marks means the register kept under section 207 of the *Trade Marks Act 1995*.

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.

trade mark has the meaning given in the *Trade Marks Act 1995*.

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, and includes a grape product declared by the regulations to be wine for the purposes of this Act.

wine export charge means charge imposed by Schedule 13 to the *Primary Industries (Customs) Charges Act 1999*.

wine grapes levy means levy imposed by Schedule 26 to the *Primary Industries (Excise) Levies Act 1999*.

year means a period of 12 months commencing on 1 July.

- (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.

Note: For the manner in which the Chairperson and Deputy Chairperson may be referred to, see section 18B of the *Acts Interpretation Act 1901*.

4A Extension to external Territories

This Act extends to all the external Territories.

4B Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

5A Declared winemakers organisations

Where the minister considers that an organisation is a national organisation which is representative of winemakers, the Minister may, by notice in writing published in the *Gazette*, declare that organisation to be a declared winemakers organisation.

5B Declared wine grape growers organisation

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.

5C Meaning of *description and presentation*

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.

5D Where wine originates

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 from grapes grown 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.

Part II—The Australian Wine and Brandy Corporation

6 Establishment of Corporation

There is established by this Act a corporation by the name of the Australian Wine and Brandy Corporation.

7 Functions of Corporation

The functions of the Corporation are:

- (a) to promote and control the export of grape products from Australia;
- (b) to encourage and promote the consumption and sale of grape products both in Australia and overseas;
- (c) to improve the production of grape products in Australia;
- (d) to conduct, arrange for, and assist in, research relating to the marketing of grape products; and
- (e) such other functions in connection with grape products as are conferred on the Corporation by this Act or the regulations.

8 Powers of Corporation

- (1) Subject to this Act, the Corporation has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (2) Without limiting the generality of subsection (1), the powers of the Corporation referred to in that subsection include power:
 - (aaa) to do anything for the purpose of giving effect to a prescribed wine-trading agreement; and
 - (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

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- (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
 - (a) to control the export of grape products from Australia by determining the persons, other than the Corporation, who shall be permitted to export grape products and the conditions under which such exports will be permitted; and
 - (b) at the request of a person engaging, or proposing to engage, in the export of a grape product, to co-ordinate activities relating to the promotion of the export of the grape product; and
 - (c) where a grape product proposed to be exported from Australia to a foreign country meets the requirements of that country for importation into that country, issue certificates that the product meets those requirements; and
 - (d) to the extent required to promote the export of grape products from Australia, or the sale of grape products overseas, by persons other than the Corporation, to buy, sell or otherwise engage in trade in grape products and do all things necessary or convenient for engaging in that trade; and
 - (e) to engage, or make arrangements with, persons, organisations or companies to perform work, or act as agent, for the Corporation, whether in Australia or overseas; and
 - (f) to charge such fees as are fair and proper to enable the Corporation to meet costs incurred by the Corporation in administering licensing arrangements relating to the export of grape products (including costs in relation to the grant or renewal of licences) and in ensuring that persons who are licensed to export grape products comply with the conditions under which the export of the grape products is permitted; and

- (g) to charge for the provision of services, or the performance of work, by, or on behalf of, the Corporation; and
 - (h) to waive the payment of fees and charges payable to the Corporation.
- (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.

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- “(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.
- (3) Subject to subsection 31K(4), the Corporation shall endeavour to ensure, to the extent that it is practicable to do so, that the performance at any time of its functions and the exercise at any time of its powers is consistent with, and designed to give effect to, the provisions of any corporate plan and of any annual operational plan in force at that time.

9 Contracts for carriage of grape products

- (1) The Corporation may, by notice published in the *Gazette*, approve a person as a carrier for the purposes of the carriage of a specified grape product to a specified place outside Australia.
- (2) The Corporation may, by notice published in the *Gazette*, determine that a contract, or a contract included in a class of contracts, for the carriage of a specified grape product to a specified place outside Australia shall not be entered into except with the approval of the Corporation.
- (3) An approval under subsection (2) may be given subject to such conditions (if any) as the Corporation determines.

- (4) While an approval under subsection (1) is in force in relation to a place outside Australia, a person shall not enter into a contract with another person for the carriage by that other person of a grape product specified in the notice of approval to that place unless that other person is approved under that subsection in relation to that place.

Penalty: \$6,000.

- (5) A person other than the Corporation shall not enter into a contract with another person for the carriage by that other person of a grape product in relation to which a notice under subsection (2) is in force to a place outside Australia specified in that notice except with the approval of the Corporation and in conformity with the conditions (if any) to which that approval is subject.

Penalty: \$6,000.

- (5A) An offence under subsection (4) or (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) Subsection (4) does not apply to the Corporation in relation to any grape product when acting on its own behalf or as the agent of the owner of the grape product or of a person having the authority to export the grape product.
- (7) A collector or officer for the purposes of the *Customs Act 1901* may require a person who seeks to export from Australia to a place outside Australia in relation to which a notice under subsection (2) is in force a grape product specified in the notice, on making entry of the grape product under that Act and before the entry has been passed, to satisfy him or her that:
- (a) the contract for the carriage of the grape product to that place was entered into with the approval of the Corporation and in conformity with the conditions (if any) to which that approval is subject; and

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- (b) the carrier undertaking the carriage of the grape product to that place is approved by the Corporation under subsection (1) as a carrier for the purposes of the carriage to that place of a grape product of a kind to which that contract relates;
and the collector or officer may refuse to pass the entry until that person has so satisfied him or her.
- (8) A contract entered into for the carriage of a grape product to a place outside Australia is not unenforceable, voidable or void by reason only of the contract having been entered into in contravention of subsection (4) or (5).

10 Power to enter into arrangements etc.

Without limiting the generality of section 8, the Corporation may enter into arrangements or agreements with persons, authorities or organizations in Australia or overseas, or, with the consent of the Minister, with a State, for the purposes of the Corporation.

11 Committees

- (1) The Corporation may appoint a committee to assist the Corporation in relation to a matter.
- (1A) Without limiting subsection (1), the Corporation may appoint a committee under that subsection to perform the functions appropriate for an executive committee of the Corporation.
- (2) A committee established under this section shall consist of such persons, including at least 1 member of the Corporation, as the Corporation thinks fit.

Part III—Constitution and meetings of the Corporation

12 Nature of Corporation

- (1) The Corporation:
 - (a) is a body corporate with perpetual succession;
 - (b) shall have a common seal;
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the Corporation. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

- (2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Corporation affixed to a document and shall presume that it was duly affixed.

13 Membership of Corporation

- (1) The Corporation shall consist of:
 - (a) a Chairperson; and
 - (c) 7 other members.
- (2) The members shall be appointed by the Minister in writing.
- (3) The members shall be appointed as part-time members.
- (4) The Minister must not appoint a person to be a member referred to in paragraph (1)(c) unless the Minister is satisfied that the person has knowledge of, or experience in, one or more of the following:
 - (a) winemaking;
 - (b) grape growing;
 - (c) marketing;
 - (d) finance;
 - (e) business management and administration;
 - (f) government policy processes and public administration.

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- (5) The members referred to in paragraph (1)(c) shall be appointed from persons nominated by the Selection Committee in accordance with section 29F.
- (6) A member holds office on such terms and conditions (in respect of matters not provided for by this Act) as are determined by the Minister in writing.
- (7) The performance of the functions and the exercise of the powers of the Corporation are not affected by reason only of there being a vacancy or vacancies in the membership of the Corporation.

14 Term of office of members

- (1) Subject to this Act, the Chairperson or a member referred to in paragraph 13(1)(c) holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but he or she is eligible for re-appointment.
- (5) Whenever a vacancy occurs in the office of Chairperson or of a member referred to in paragraph 13(1)(c) before the expiration of the person's term of office, the Minister may, in accordance with, and subject to, section 13, appoint a person to the office for the remainder of that period.

15 Deputy Chairperson

- (1) The Minister shall, by writing signed by the Minister, appoint a member other than the Chairperson to be Deputy Chairperson of the Corporation.
- (2) The Minister shall not appoint a member as the Deputy Chairperson unless the Minister has consulted with the Chairperson and the Presiding Member of the Selection Committee concerning the appointment.
- (3) Subject to this Act, the Deputy Chairperson holds office for such period as is specified in the instrument of appointment, but he or she is eligible for re-appointment.
- (4) The Minister may, at any time, terminate an appointment under subsection (1).

- (5) A member holding office as Deputy Chairperson may resign that office by writing signed by him or her and delivered to the Minister.
- (6) A member holding office as Deputy Chairperson ceases to hold that office if he or she ceases to be a member.
- (7) Whenever a vacancy occurs in the office of Deputy Chairperson before the expiration of the period of his or her appointment, the Minister may, in accordance with this section, appoint another member to hold that office for the remainder of that period.
- (8) While the office of Chairperson is vacant or the Chairperson is absent from Australia or is, for any other reason, unable to perform the functions of the office of Chairperson and the Deputy Chairperson is available to perform the functions of the office of Chairperson, the Deputy Chairperson has and may exercise all the powers, and shall perform all the functions, of the Chairperson under this Act.

16 Leave of absence

- (1) The Minister may grant leave of absence to the Chairperson from a meeting or meetings of the Corporation.
- (2) The Chairperson may grant leave of absence to another member from a meeting or meetings of the Corporation.

17 Resignation of members

A member may resign from the office of member by writing signed by the member delivered to the Minister.

20 Termination of appointments

- (1) The Minister may terminate the appointment of a member by reason of the misbehaviour, or the physical or mental incapacity, of the member.
- (4) If a member:
 - (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;

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- (b) fails, without reasonable excuse, to comply with his or her obligations under section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*;
 - (c) being a member to whom subsection 40(7) applies, fails, without reasonable excuse, to comply with the condition referred to in that subsection; or
 - (d) is absent from 3 consecutive meetings of the Corporation otherwise than:
 - (i) on business of the Corporation undertaken with the approval of the Corporation or of a committee of the Corporation; or
 - (ii) on leave of absence granted under section 16;
- the Minister shall terminate the appointment of the member.

21 Disclosure of interests by members of Corporation

- (4) For the purposes of sections 27F and 27J of the *Commonwealth Authorities and Companies Act 1997*, a member who is a winemaker or a grape grower is not taken to have a material personal interest in a matter being considered or about to be considered by the Corporation by reason only of being a winemaker or a grape grower.

22 Meetings of Corporation

- (1) Subject to this section, meetings of the Corporation shall be held at such times and places as the Corporation from time to time determines.
- (2) The Chairperson may at any time convene a meeting of the Corporation.
- (3) At a meeting of the Corporation, 5 members constitute a quorum.
- (4) The Chairperson shall preside at all meetings of the Corporation at which the Chairperson is present.
- (5) If the Chairperson is not present, but the Deputy Chairperson is present, at a meeting of the Corporation, the Deputy Chairperson shall preside at that meeting.

- (6) If neither the Chairperson nor the Deputy Chairperson is present at a meeting of the Corporation, the members present shall elect one of their number to preside at that meeting.
- (7) A question arising at a meeting of the Corporation shall be decided by a majority of the votes of the members present and voting.
- (8) The member presiding at a meeting of the Corporation has a deliberative vote and, in the event of an equality of votes, has a casting vote.
- (9) The Corporation shall keep minutes of its proceedings.
- (10) Subject to the preceding provisions of this section, the procedure at meetings of the Corporation shall be as determined by the Corporation.
- (11) The Corporation may invite a person to attend a meeting of the Corporation for the purpose of advising or informing the Corporation on any matter.
- (12) A person referred to in subsection (11) shall be paid such fees, allowances and expenses (if any) as the Corporation determines in respect of the person's attendance at a meeting of the Corporation.

Part IVA—Australian Wine and Brandy Corporation Selection Committee

29AA Interpretation

In this Part:

Committee means the Australian Wine and Brandy Corporation Selection Committee.

Presiding Member means the Presiding Member of the Committee.

29A Establishment of Committee

A Committee by the name of the Australian Wine and Brandy Corporation Selection Committee is established.

29B Functions of Committee

The functions of the Committee are:

- (a) to select persons to be nominated for appointment as members of the Corporation referred to in paragraph 13(1)(c); and
- (b) to nominate persons so selected to the Minister for appointment as members of the Corporation.

29C Powers of Committee

The Committee has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions.

29D Minister may request nominations

The Minister may, by notice in writing given to the Presiding Member, request the Committee to give to the Minister, within the period specified in the notice:

- (a) written nominations of persons for appointment as members of the Corporation referred to in paragraph 13(1)(c); or
- (b) where a casual vacancy occurs in the office of a member of the Corporation referred to in paragraph (a)—a written nomination of a person for appointment to that office.

29E Selection of persons by Committee

- (1) The Committee shall not nominate a person for appointment as a member of the Corporation unless the person possesses one or more of the qualifications referred to in subsection 13(4).
- (2) The Committee shall not nominate a person for appointment as a member of the Corporation if:
 - (a) the person is a member of the Committee; or
 - (b) the person has been a member of the Committee within 12 months of the day on which the nomination is given to the Minister.

29F Nomination

- (1) Where the Minister gives a request to the Presiding Member under section 29D:
 - (a) the Committee shall, before the end of the period specified in the notice, select a person or persons to be nominated for appointment to the office or offices concerned; and
 - (b) the Presiding Member shall, on behalf of the Committee, before the end of that period, give to the Minister the written nomination or nominations concerned.
- (2) The Committee shall give to the Minister only one nomination in respect of each appointment to be made by the Minister.
- (3) Where the Committee proposes to nominate a person for appointment as a member of the Corporation, the Presiding Member shall cause to be prepared and attached to the nomination a statement setting out:
 - (a) details of the person's qualifications and experience; and
 - (b) such other information relating to the person as the Committee thinks will assist the Minister in considering whether to appoint the person.

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- (4) The Committee may nominate a person for appointment even though the Minister has previously rejected a nomination of that person or the Committee has previously decided not to nominate the person for appointment.

29G Minister may reject nominations

Where the Minister is not satisfied that a person nominated by the Committee for appointment as a member of the Corporation should be appointed as such a member, the Minister may, by notice in writing given to the Presiding Member, reject the nomination and may include in that notice a further request under section 29D for a nomination of a person for appointment to the office concerned.

29H Membership of Committee

- (1) The Committee shall consist of the following members:
 - (a) a Presiding Member; and
 - (b) such other number of members as is determined by the Minister.
- (2) The members of the Committee shall be appointed in writing by the Minister and, subject to this Act, hold office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but are eligible for re-appointment.
- (3) Each member of the Committee referred to in paragraph (1)(b) shall be a person who has been nominated by a declared winemakers organisation.
- (4) All members of the Committee shall be appointed as part-time members.
- (5) A person who is a member of the Corporation is not eligible to be appointed under subsection (2) as a member of the Committee.
- (6) The appointment of a member of the Committee is not invalidated, and shall not be called in question, because of a defect or irregularity in or in connection with the member's nomination or appointment.
- (7) The exercise of a power or the performance of a function by the Committee is not invalidated because of a vacancy or vacancies in the membership of the Committee.

29J Acting Presiding Member

- (1) The Minister may appoint a person to act as 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 office of Presiding Member;but a person appointed to act during a vacancy shall not continue to act for more than 12 months.
- (2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) The Minister may determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as the Presiding Member.
- (4) The Minister may terminate an appointment made under subsection (1) at any time.
- (5) Where a person is acting as Presiding Member in accordance with paragraph (1)(b) and the office of Presiding Member becomes vacant while the person is so acting, then, subject to subsection (2), the person may continue to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the day on which the vacancy occurred expires, whichever first happens.
- (6) The appointment of a person to act as Presiding Member ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.
- (7) While a person is acting as Presiding Member, the person has and may exercise all the powers, and shall perform all the functions, of the Presiding Member under this Act.
- (8) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that:
 - (a) the occasion for the person's appointment had not arisen;

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- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

29K Casual vacancy

Where a member of the Committee ceases to hold office before the expiration of the term of office of the member of the Committee:

- (a) in the case of the Presiding Member—the Minister may appoint a person to be the Presiding Member until the expiration of that term; or
- (b) in the case of any other member of the Committee—the Minister may appoint a person to be a member until the expiration of that term.

29L Remuneration and allowances of members of Committee

- (1) A member of the Committee shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, the member shall be paid such remuneration as is prescribed.
- (2) A member shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*, other than subsections 7(9) and (13) of that Act.

29M Leave of absence

- (1) The Minister may grant leave of absence to the Presiding Member from a meeting of the Committee.
- (2) The Presiding Member may grant leave of absence to another member of the Committee from a meeting of the Committee.

29N Resignation

A member of the Committee may resign from office by writing signed by the member and delivered to the Minister.

29P Termination of appointment of members of Committee

- (1) The Minister may terminate the appointment of a member of the Committee by reason 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;
 - (b) fails, without reasonable excuse, to comply with his or her obligations under section 29Q; or
 - (c) is absent, without leave of absence under section 29M, from 3 consecutive meetings of the Committee;the Minister shall terminate the appointment of the member of the Committee.

29Q Disclosure of interests by members of Committee

- (1) A member of the Committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of that interest at a meeting of the Committee.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Committee and the member shall not, unless the Minister or the Committee otherwise determines:
 - (a) be present during any deliberation of the Committee with respect to that matter; or
 - (b) take part in any decision of the Committee with respect to that matter.
- (3) For the purpose 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), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:
 - (a) be present during any deliberation of the Committee for the purpose of making the determination; or

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- (b) take part in the making by the Committee of the determination.
- (4) A member of the Committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee in accordance with section 29S shall, as soon as practicable after the relevant facts have come to the knowledge of the member, disclose the nature of that interest to the Minister.
- (5) A member of the Committee who is required to make a disclosure under subsection (4) in respect of a matter shall not, unless the Minister otherwise determines, sign a document with respect to that matter in accordance with section 29S.
- (6) A member of the Committee who is a winemaker shall not be taken to have a pecuniary interest in a matter being considered or about to be considered by the Committee by reason only of being a winemaker.

29R Meetings of Committee

- (1) Meetings of the Committee shall be held at such times and places as the Committee from time to time determines.
- (2) A meeting of the Committee may be called by the Presiding Member.
- (3) At a meeting of the Committee, a number one less than the number of members of the Committee constitutes a quorum.
- (4) The Presiding Member shall preside at all meetings of the Committee at which the Presiding Member is present.
- (5) If the Presiding Member is not present at a meeting of the Committee, the members of the Committee who are present shall elect one of their number to preside at the meeting.
- (6) A question arising at a meeting of the Committee shall be decided by a majority of the votes of the members of the Committee present and voting.
- (7) The member of the Committee presiding at a meeting of the Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

- (8) The Committee shall keep minutes of its proceedings.

29S Resolutions without meetings

Where:

(a) a copy of a document setting out a proposed resolution of the Committee comes into the possession of the number of members of the Committee constituting a quorum; and

(b) a majority of those members sign a copy of the document;

a resolution of the Committee in the terms set out in the document shall be deemed to have been passed at a meeting of the Committee on the day on which the copies of the document were signed or, if the members of the Committee who signed the copies of the document did not sign on the same day, on the latest day on which a copy of the document was signed by such a member.

29T Staff and consultants

- (1) The Presiding Member may, on behalf of the Committee, engage persons to perform administrative and clerical services in connection with the performance of its functions.
- (2) The Presiding Member may, on behalf of the Committee, engage persons having suitable qualifications and experience as consultants to the Committee to assist the Committee in identifying persons suitable for nomination to the Minister.
- (3) The terms and conditions of engagement of persons engaged under subsection (1) or (2) shall be such as are determined by the Committee.

29TA Annual report

- (1) The Committee must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report of the operations of the Committee (if any) during the financial year that ended on that 30 June.
- (2) A report for a financial year may, subject to agreement between the Presiding Member and the Chairperson, be included, as a discrete part, in the annual report for the Corporation for that financial year.

Note: The annual reporting obligations for the Corporation are contained in the *Commonwealth Authorities and Companies Act 1997*.

Section 29TA

- (3) If subsection (2) does not apply to a report under this section, the Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister has received the report.

Part IVB—Annual general meeting of the industry

29U Interpretation

- (1) In this Part, unless the contrary intention appears:

eligible producer, in relation to a year, means a person on the list of producers prepared in that year.

list of producers means a list of persons prepared under section 29V.

old Charge Act means the repealed *Wine Export Charge Act 1997*.

old Levy Act means the repealed *Wine Grapes Levy Act 1979*.

- (2) For the purposes of this Part and of regulations made for the purposes of this Part, where 2 or more persons become liable to pay wine grapes levy, wine export charge or levy imposed under the old Levy Act, because they are members of a partnership or are the trustees of a trust estate, that partnership or trust estate shall be taken to be the person liable to pay that levy or charge.
- (3) Where, under this Part, rights are conferred upon a body corporate, a partnership or a trust estate to participate at an annual general meeting, those rights shall be exercised by a natural person appointed, in writing, for the purpose by the body corporate, the members of the partnership or the trustees of the trust estate, as the case may be.

29V List of producers

- (1) As soon as practicable after each 30 September, the Department must prepare and give to the Corporation a list of the persons who the Department, at the time of the preparation of the list, knows became liable to pay:
- (aa) wine grapes levy; and
 - (ab) wine export charge; and
 - (a) levy imposed under the old Levy Act; and
 - (b) charge imposed under the old Charge Act;

Section 29W

in respect of the year that ended on 30 June immediately preceding that 30 September.

- (2) The Corporation must not use a list of persons prepared under this section except for the purposes of this Part.

29W Corporation to convene annual general meeting

- (1) The Corporation shall, within 3 months after the annual report of the Corporation is laid before a House of the Parliament or after the list of producers is prepared in the year immediately following the year to which the annual report relates, whichever occurs last, or within such longer period as is approved by the Minister, but not earlier than 42 days after the preparation of that list, cause an annual general meeting of the industry to be convened at a time and place determined by the Corporation.
- (2) The Corporation shall, not later than 42 days before the intended day of an annual general meeting in a year, send to each eligible producer for that year:
- (a) a notice of the day, time and place of the meeting; and
 - (b) a copy of the most recent annual report of the Corporation.

29X Purpose of annual general meeting

The purpose of an annual general meeting is to provide an opportunity for eligible producers:

- (a) to consider the most recent annual report of the Corporation;
- (b) to receive an address by the Chairperson with respect to the performance of the Corporation in the year to which the annual report relates and with respect to the economic outlook for the industry, and the intended activities of the Corporation, in the year next following that year;
- (c) to question the members of the Corporation concerning any aspect of the Corporation's activities during the year to which the annual report relates and any aspect of the intended activities of the Corporation; and
- (d) to debate, and vote upon, any motion relating to a matter within the responsibilities of the Corporation.

29Y Conduct of annual general meeting

- (1) An annual general meeting may be attended by:
 - (a) the members of the Corporation;
 - (b) eligible producers for the year in which the meeting is held;
 - (c) persons invited by the Corporation to attend the meeting; and
 - (d) such members of the staff of the Corporation as the Chairperson determines to be appropriate having regard to the business of the meeting.
- (2) The Chairperson shall preside at an annual general meeting at which he or she is present.
- (3) The Corporation shall cause a record to be kept of the proceedings of an annual general meeting of the industry.

29ZA Minister to be notified of resolutions

The Corporation shall, when making a recommendation referred to in subclause 9(1) of Schedule 26 to the *Primary Industries (Excise) Levies Act 1999* or subclause 5(1) of Schedule 13 to the *Primary Industries (Customs) Charges Act 1999*, notify the Minister of any resolution relating to the recommendation passed or defeated at the most recent annual general meeting, of the number of votes cast for the resolution and of the number of votes cast against the resolution.

Part V—Staff

30 Employees

- (1) The Corporation may engage such employees as it thinks necessary for the purposes of this Act.
- (2) The terms and conditions of employment (including remuneration) of the person holding the position of principal employee (however described) of the Corporation shall be such as are determined by the Corporation.
- (3) The terms and conditions of employment (including remuneration) of an employee, other than the employee referred to in subsection (2), shall be such as are determined by the Corporation.

Part VA—Operation of Corporation

Division 1—Corporate plans

31 Corporation to develop corporate plans

- (1) The Corporation shall, in accordance with this section, develop, for the purpose of the more effective performance by the Corporation of its functions, a plan:
 - (a) defining what, in the opinion of the Corporation, should be the principal objectives of the Corporation;
 - (b) giving a broad outline of the strategies that should, in the opinion of the Corporation, be pursued in achieving those objectives;
 - (c) setting out the Corporation's assessment, for the period to which the plan relates, of the market outlook and the economic outlook for the industry.
- (2) The first corporate plan shall relate to such period, being a period commencing on 1 November 1986 or such later day as the Minister approves and ending on 30 June 1989, 30 June 1990 or 30 June 1991, as the Corporation determines.
- (3) Each subsequent corporate plan shall relate to such period, being a period of 3, 4 or 5 years commencing on the 1 July immediately following the end of the period to which the previous plan related, as the Corporation determines.

31A Agreement to corporate plans

- (1) The Corporation shall cause a copy of a corporate plan prepared under section 31 to be given to the Minister:
 - (a) in the case of the first plan—on or before 1 October 1986 or such later day as the Minister approves; or
 - (b) in any other case—at least 3 months before the commencement of the period to which the plan relates.
- (2) Where a copy of a corporate plan is given to the Minister, the Minister may, by notice in writing given to the Corporation:
 - (a) agree to the plan; or

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- (b) if the Minister is of the opinion that, in the interests of the industry or of a particular sector of the industry, the plan should be revised in some respect—request the Corporation to revise the plan appropriately.
- (3) The Minister shall include in the notice of request under paragraph (2)(b) a statement setting out the Minister's reasons for making the request.
- (4) Where the Corporation receives a request under paragraph (2)(b), the Corporation shall consider the request and statement of reasons, make such revision of the corporate plan as it considers appropriate and re-submit the revised plan to the Minister for the Minister's agreement.
- (5) A corporate plan comes into force:
 - (a) at the commencement of the period to which the plan relates;
 - or
 - (b) on the day on which the Corporation receives notice of the Minister's agreement;whichever is the later.

31B Variation of corporate plans by Corporation

- (1) Subject to subsection (4), the Corporation shall not vary a corporate plan of its own motion except with the agreement of the Minister.
- (2) Where the Corporation wishes to vary a corporate plan, the Corporation shall prepare written proposals for the variations and give a copy of the proposals to the Minister together with a statement setting out the Corporation's reasons for making the proposals.
- (3) The Minister may, after considering proposals for variation of a corporate plan submitted under subsection (2) and the reasons for making those proposals, by notice in writing given to the Corporation, agree to or reject the proposals.
- (4) Nothing in this section prevents the Corporation making variations of a minor nature to a corporate plan.

31C Variations of corporate plans at request of Minister

- (1) The Minister may, by notice in writing given to the Corporation, request the Corporation to vary a corporate plan in the manner set out in the notice of request.
- (2) Where the Minister makes a request under subsection (1), the Minister shall include in the notice of request a statement setting out the Minister's reasons for making the request.
- (3) Where the Corporation receives a request under subsection (1), the Corporation shall consider the request and statement of reasons, prepare written proposals for such variation of the plan as the Corporation considers appropriate and submit those proposals to the Minister for the Minister's agreement.
- (4) The Minister may, after considering proposals for variation of a corporate plan submitted under subsection (3), by notice in writing given to the Corporation, agree to or reject the proposals.

31D Date of effect of variations

Where:

- (a) a corporate plan has come into force; and
- (b) a variation to the plan is agreed to by the Minister under section 31B or 31C or the Corporation makes a variation of a minor nature to the plan;

the plan shall continue in force on and after the day on which the Corporation receives notice of the Minister's agreement or the day on which the Corporation makes the variation of a minor nature, as the case may be, as if the Minister had originally agreed to the plan as so varied.

31E Notice of variation of corporate plans

Where a variation of a corporate plan is agreed to by the Minister in accordance with section 31B or 31C, particulars of the variation shall be included in the annual report of the Corporation for the year in which the variation was made.

Division 2—Annual operational plans

31F Corporation to develop annual operational plans

- (1) Subject to subsection (2), the Corporation shall, in relation to each financial year of a period to which a corporate plan relates or to which an intended corporate plan will relate, develop an annual operational plan setting out particulars of the action that the Corporation intends to take in order to give effect to or further, during that year, the matters set out in that corporate plan.
- (2) The first annual operational plan shall relate to the period commencing on the day on which the first corporate plan comes into force and ending on the first 30 June after that day and, for the purposes of the operation of subsection (1) in relation to that first annual operational plan, references in that subsection to a financial year shall be read as references to the period to which that first plan relates.
- (3) Each subsequent annual operational plan shall relate to the financial year commencing immediately after the end of the period to which the previous annual operational plan related.

31G Agreement to annual operational plans

- (1) The Corporation shall cause a copy of an annual operational plan prepared under section 31F to be given to the Minister:
 - (a) in the case of the first plan—on or before 1 October 1986 or such later day as the Minister approves; or
 - (b) in any other case—at least 2 months before the commencement of the period to which the plan relates.
- (2) Where a copy of an annual operational plan is given to the Minister, the Minister may, by notice in writing given to the Corporation:
 - (a) agree to the plan; or
 - (b) if the Minister is of the opinion that the plan is inconsistent with the provisions of the corporate plan that relates, or the intended corporate plan that will relate, to a period that includes, or will include, the period to which the

first-mentioned plan will relate—request the Corporation to revise the first-mentioned plan appropriately.

- (3) The Minister shall include in the notice of a request under paragraph (2)(b) a statement setting out the Minister's reasons for making the request.
- (4) Where the Corporation receives a request under paragraph (2)(b), the Corporation shall consider the request and statement of reasons, make such revision of the annual operational plan as it considers appropriate and re-submit the revised plan to the Minister for the Minister's agreement.
- (5) An annual operational plan comes into force:
 - (a) at the commencement of the period to which the plan relates;
or
 - (b) on the day on which the Corporation receives notice of the Minister's agreement;whichever is the later.

31H Variation of annual operational plans

- (1) Sections 31B, 31C and 31D apply to annual operational plans in the same manner as those sections apply to corporate plans.
- (2) Where, if a proposed variation of a corporate plan were to be agreed to by the Minister, a relevant annual operational plan would not be consistent with the provisions of the corporate plan, the Corporation shall, at the time of submitting to the Minister for agreement proposals for variation to the corporate plan, also submit to the Minister proposals for appropriate variations of that annual operational plan.

31J Notice of variation of annual operational plan

Where a variation of an annual operational plan is agreed to by the Minister in accordance with section 31H, particulars of the variation shall be included in the annual report of the Corporation for the year in which the variation was made.

Division 3—Directions

31K Directions to Corporation and Geographical Indications Committee

- (1) Except as provided by this section and the *Commonwealth Authorities and Companies Act 1997*, the Corporation is not subject to direction by or on behalf of the Commonwealth Government.
- (2) Subject to this section, where the Minister is satisfied that, because of the existence of exceptional circumstances, it is necessary to give a direction to the Corporation in order to ensure that the performance of the functions, or the exercise of the powers, of the Corporation does not conflict with major government policies, the Minister may, by notice in writing to the Corporation, give the direction to the Corporation with respect to the performance of its functions and the exercise of its powers.
- (3) The Minister shall not give a direction under subsection (2) unless and until the Minister has given the Chairperson:
 - (a) notice in writing that the Minister is contemplating giving the direction; and
 - (b) an adequate opportunity to discuss with the Minister the need for the proposed direction.
- (4) The Corporation shall comply with any direction given under subsection (2).
- (5) Where the Minister gives a direction to the Corporation under subsection (2):
 - (a) the Minister shall cause a notice in writing setting out particulars of the direction to be published in the *Gazette* as soon as practicable after giving the direction;
 - (b) the Minister shall cause a copy of that notice to be laid before each House of the Parliament within 15 sitting days of the House after giving the direction;
 - (c) particulars of the direction shall be included in the annual report of the Corporation for the year in which the direction was given; and

- (d) that report shall include particulars of the impact of that direction on the operations of the Corporation.
- (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.

Part VI—Finance

31L Corporation's component of wine grapes levy

For the purposes of this Act, the *Corporation's component of wine grapes levy* is an amount of levy covered by paragraph 7(1)(a) of Schedule 26 to the *Primary Industries (Excise) Levies Act 1999*.

32 Payments to Corporation

There shall be paid to the Corporation out of the Consolidated Revenue Fund, which is appropriated accordingly, amounts equal to:

- (aa) amounts received by the Commonwealth as the Corporation's component of wine grapes levy; and
- (ab) so much of the amounts (if any) received by the Commonwealth under section 15 of the *Primary Industries Levies and Charges Collection Act 1991* as is attributable to non-payment of the Corporation's component of wine grapes levy; and
- (ac) amounts received by the Commonwealth as wine export charge; and
- (ad) so much of the amounts (if any) received by the Commonwealth under section 15 of the *Primary Industries Levies and Charges Collection Act 1991* as is attributable to non-payment of wine export charge; and
- (a) so much of the amounts from time to time received by the Commonwealth as levy under the repealed *Wine Grapes Levy Act 1979* as is so received by virtue of subsection 6(1), other than paragraph 6(1)(b) of that Act; and
- (b) so much of the amounts (if any) received by the Commonwealth under section 5 of the repealed *Wine Grapes Levy Collection Act 1979* or section 15 of the *Primary Industries Levies and Charges Collection Act 1991* as is attributable to non-payment of levy referred to in subsection 6(1), other than paragraph 6(1)(b), of the repealed *Wine Grapes Levy Act 1979*; and

- (c) so much of the amounts from time to time received by the Commonwealth as charge under the repealed *Wine Export Charge Act 1997* as is received because of section 6 of that Act; and
- (d) so much of the amounts (if any) received by the Commonwealth under section 15 of the *Primary Industries Levies and Charges Collection Act 1991* as is attributable to non-payment of charge referred to in section 6 of the repealed *Wine Export Charge Act 1997*.

33 Payments by Corporation to Commonwealth

- (1) Where a refund is made by the Commonwealth in accordance with section 7 of the repealed *Wine Grapes Levy Collection Act 1979* or section 18 of the *Primary Industries Levies and Charges Collection Act 1991* in respect of an amount that has been paid or overpaid to the Commonwealth by way of an amount of levy that is payable to the Commonwealth by virtue of subsection 6(1), other than paragraph 6(1)(b), of the repealed *Wine Grapes Levy Act 1979*, the Corporation shall pay to the Commonwealth an amount equal to the amount of the refund.
- (2) If a refund is made by the Commonwealth in accordance with section 18 of the *Primary Industries Levies and Charges Collection Act 1991* in respect of an amount that has been paid or overpaid to the Commonwealth by way of an amount of charge that is payable to the Commonwealth because of section 6 of the repealed *Wine Export Charge Act 1997*, the Corporation must pay to the Commonwealth an amount equal to the amount of the refund.
- (3) If:
 - (a) a refund is made by the Commonwealth under section 18 of the *Primary Industries Levies and Charges Collection Act 1991* in respect of an amount; and
 - (b) the amount has been paid or overpaid to the Commonwealth by way of wine export charge;the Corporation must pay to the Commonwealth an amount equal to the amount of the refund.
- (4) If:

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- (a) a refund is made by the Commonwealth under section 18 of the *Primary Industries Levies and Charges Collection Act 1991* in respect of an amount; and
 - (b) the amount has been paid or overpaid to the Commonwealth by way of the Corporation's component of wine grapes levy;
- the Corporation must pay to the Commonwealth an amount equal to the amount of the refund.

34 Borrowing

- (1) The Corporation may, with the approval of the Minister:
 - (a) borrow money otherwise than from the Commonwealth; or
 - (b) raise money otherwise than by borrowing;on terms and conditions that are specified in, or consistent with, the approval.
- (2) Without limiting the generality of subsection (1), the Corporation may, under that subsection, borrow money, or raise money otherwise than by borrowing, by dealing with securities.
- (3) A borrowing of money, or a raising of money otherwise than by borrowing, under subsection (1), may be made, in whole or in part, in a currency other than Australian currency.
- (4) An approval may be given under subsection (1) in relation to a particular transaction or in relation to transactions included in a class of transactions.
- (5) An approval under subsection (1) shall be given in writing.
- (6) For the purposes of this section:
 - (a) the issue by the Corporation of an instrument acknowledging a debt in consideration of:
 - (i) the payment or deposit of money; or
 - (ii) the provision of credit;otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Corporation shall be deemed to be a raising by the Corporation, otherwise than by borrowing, of an amount of money equal to the amount of the money paid or deposited or the value of the credit provided, as the case may be; and

- (b) the obtaining of credit by the Corporation otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Corporation shall be deemed to be a raising by the Corporation, otherwise than by borrowing, of an amount of money equal to the value of the credit so obtained.
- (7) In this section, *securities* includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents.
- (8) A reference in this section to dealing with securities includes a reference to:
 - (a) creating, executing, entering into, drawing, making, accepting, indorsing, issuing, discounting, selling, purchasing or re-selling securities;
 - (b) creating, selling, purchasing or re-selling rights or options in respect of securities; and
 - (c) entering into agreements or other arrangements relating to securities.

34A Corporation may give security

The Corporation may give security over the whole or any part of its land or other assets for:

- (a) the repayment by the Corporation of money borrowed by the Corporation under paragraph 34(1)(a) and the payment by the Corporation of interest (including any interest on that interest) on money so borrowed; or
- (b) the payment by the Corporation of amounts (including any interest) that the Corporation is liable to pay with respect to money raised by the Corporation under paragraph 34(1)(b).

34B Borrowings not otherwise permitted

The Corporation shall not borrow money, or raise money otherwise than by borrowing, except in accordance with section 34.

35 Application of money of Corporation

- (1) The moneys of the Corporation may be applied only:

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- (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Corporation in or in connection with the performance of its functions, or the exercise of its powers, under this Act;
 - (aa) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Presiding Member of the Selection Committee or the Selection Committee in or in connection with the performance of the functions, or the exercise of the powers, of the Selection Committee under this Act;
 - (ab) in payment to the Commonwealth of amounts equal to the expenses incurred by the Commonwealth in relation to:
 - (i) the collection or recovery of amounts referred to in paragraph 32(aa), (ab), (ac), (ad), (a) or (b); or
 - (ii) the administration of section 32;
 - (b) in payment of any remuneration, allowances, fees or expenses payable under this Act; and
 - (c) in making any other payments that the Corporation is authorized or required to make under this Act.
- (2) Subsection (1) does not prevent investment of surplus money of the Corporation under section 19 of the *Commonwealth Authorities and Companies Act 1997*.

38 Extra matters to be included in annual report

- (4) The report prepared by the members under section 9 of the *Commonwealth Authorities and Companies Act 1997* on the operations of the Corporation 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.

39 Liability to taxation

- (1) The Corporation is subject to taxation (other than income tax) under the laws of the Commonwealth.
- (2) Subject to subsection (3), the Corporation is not subject to taxation under a law of a State or Territory.

- (3) The regulations may provide that subsection (2) does not apply in relation to taxation under a specified law.

Part VIA—Label integrity program

Division 1—Preliminary

39A Object of Part

The object of this Part is to advance the objects of this Act by helping 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.

39B Operation of Part

Without prejudice to its effect apart from this subsection, this Part has the effect it would have if the references in it to a wine manufacturer were, by express provision, confined to a wine manufacturer who is:

- (a) a foreign corporation, within the meaning of paragraph 51(xx) of the Constitution; or
- (b) a trading or financial corporation formed within the limits of the Commonwealth, within the meaning of that paragraph; or
- (c) a corporation that is controlled by a corporation described by paragraph (a) or (b); or
- (d) a partnership at least one of the partners in which is a corporation described by paragraph (a), (b) or (c).

39C Interpretation

In this Part, unless the contrary intention appears:

approved means approved by the Corporation in writing.

blend means wine manufactured by blending different wines.

different wines means wines that are different because at least one of their characteristics of vintage, variety or geographical indication is different.

direct sale means a sale of wine to a consumer visiting a winery or ordering the wine from its manufacturer.

examinable document means:

- (a) any document required to be kept under this Part; or
- (b) any wine label or other document relating to the vintage, variety or geographical indication of wine goods; or
- (c) any document relating to advertising the vintage, variety or geographical indication of wine goods; or
- (d) any other document that is relevant to monitoring or enforcing compliance with a label law.

geographical area includes a vineyard, a district and a State, but does not include Australia or a larger area.

grape extract means grape juice, must, or concentrate obtained from grapes.

inspection power, in relation to wine premises, means:

- (a) power to search any part of the premises; or
- (b) power to inspect, examine, take measurements of, or conduct tests (including by the taking of samples) concerning, any wine goods or other thing on the premises; or
- (c) power to take extracts from, and make copies of, any examinable documents on the premises; or
- (d) power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising any other inspection power on the premises.

inspector means a person appointed under section 39ZA.

label claim, in relation to wine goods, means a claim about their vintage, variety or geographical indication made on a wine label, in a commercial document or in an advertisement, and includes a claim so made about the vintage, variety or geographical indication of wine goods from which they were manufactured.

label law means:

- (a) this Part; or
- (b) the regulations; or
- (c) another law of the Commonwealth relating to the description of wine; or
- (d) a law of a State or an internal Territory relating to the description of wine.

label offence means an offence against a label law.

made, in relation to a claim, includes implied.

manufacturer, in relation to wine, means the wine manufacturer who operates the winery where the wine is made.

manufacturing wine includes blending different wines.

package, in relation to wine, means a container in which the wine is sold or transferred for sale.

principal employee means the person holding the position of principal employee (however described) of the Corporation.

single wine means a wine other than a blend.

supplier, in relation to wine goods received by a wine manufacturer, means:

- (a) where the wine manufacturer produced them—the wine manufacturer; or
- (b) where another person produced them—the person who supplied them to the wine manufacturer.

variety, in relation to wine or grape extract, means the variety of the grapes from which it was obtained.

vintage means:

- (a) in relation to grapes—the year in which they were harvested; or
- (b) in relation to wine or grape extract—the year in which the grapes from which it was obtained were harvested.

wine goods means wine, grapes or grape extract.

wine label means a label attached to a bottle or other package of wine and includes that part of a package of wine on which there is writing.

wine manufacturer means a person who operates a winery.

wine premises means any premises, place or conveyance where it is reasonable to assume that wine goods or examinable documents are or might be located.

winery means an establishment at which:

- (a) wine is manufactured for commercial purposes; or
- (b) grape extract is manufactured for use in the manufacture of wine for commercial purposes;

and, in relation to a wine manufacturer, means a winery operated by the manufacturer.

39D Sales with a label claim

- (1) For the purposes of this Part, wine is sold with a label claim if a label claim is made in relation to the wine when or before it is sold.
- (2) For the purposes of this Part, where a blend is sold with a label claim, the claim not only relates to the blend but also relates to a wine used in the blend unless:
 - (a) the claim is one that the blend, or wine used in the blend, has a particular characteristic; and
 - (b) the first-mentioned wine does not have, but another wine used in the blend does have, that characteristic.

39E Penalties

- (1) Penalties of \$15,000 specified in this Part are for offences committed by corporations.
- (2) Where a natural person is convicted of any offence against this Part for which such a penalty is specified, the maximum penalty for the offence is \$3,000.

39EA Time for bringing prosecutions

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.

Division 2—Records relating to label claims

39F Wine manufacturers to keep records of receipt of wine goods

A wine manufacturer who receives wine goods for processing at the manufacturer's winery must make and keep a record in writing of their receipt showing:

- (a) the date of their receipt; and
- (b) their quantity; and
- (c) their vintage, variety and geographical indication; and
- (d) the identity of their supplier.

39G Wine manufacturers to keep records of manufacture of certain single wines

- (1) This section applies to a single wine if its manufacturer:
 - (a) intends to sell the wine with a label claim; or
 - (b) where the wine was manufactured on behalf of another person—knows that that person intends to sell the wine with a label claim; or
 - (c) intends to use the wine in manufacturing a blend on the manufacturer's behalf and sell the blend with a label claim relating to the wine; or
 - (d) intends to use the wine in manufacturing a blend on behalf of another person and knows that that person intends to sell the blend with a label claim relating to the wine.
- (2) A wine manufacturer who manufactures a single wine to which this section applies must make and keep a record in writing of its manufacture showing:
 - (a) the date of its manufacture; and
 - (b) its quantity; and
 - (c) such of its characteristics and other details as are required by section 39W.

39H Wine manufacturers to keep records of manufacture of certain blends

- (1) This section applies to a blend if its manufacturer:
-

- (a) intends to sell the blend with a label claim; or
 - (b) where the blend was manufactured on behalf of another person—knows that that person intends to sell the blend with a label claim.
- (2) A wine manufacturer who manufactures a blend to which this section applies must make and keep a record in writing of its manufacture showing:
- (a) the date of its manufacture; and
 - (b) its quantity; and
 - (c) such of its characteristics and other details as are required by section 39W.

39J Wine manufacturers to keep records of sales of certain wine

- (1) This section applies to the sale of wine by a wine manufacturer if the manufacturer makes a label claim in relation to the wine.
- (2) A wine manufacturer who sells wine in a sale to which this section applies must make and keep a record in writing of the sale showing:
- (a) subject to section 39L, the date of the sale; and
 - (b) subject to section 39L, the wine's quantity; and
 - (c) such of the wine's characteristics and other details as are required by section 39W; and
 - (d) subject to subsections (3) and (4), the identity of the purchaser.
- (3) Where:
- (a) a wine manufacturer sells wine packaged for sale to consumers; and
 - (b) the package has a wine label showing that the wine was made by, and setting out the name and address of, the manufacturer;
- the manufacturer is not required to make and keep a record of the identity of the purchaser.
- (4) Where a wine manufacturer sells wine in a direct sale, the manufacturer is not required to make and keep a record of the identity of the purchaser.

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39K Wine manufacturers to keep records of disposals of certain wine

- (1) Where a wine manufacturer:
 - (a) manufactures wine on behalf of another person at the manufacturer's winery; and
 - (b) disposes of the wine in accordance with the instructions of that person;this section applies to the disposal if the manufacturer:
 - (c) makes a label claim in relation to the wine; or
 - (d) knows that that person intends to sell the wine with a label claim.
- (2) A wine manufacturer who disposes of wine by a disposal to which this section applies must make and keep a record in writing of the disposal showing:
 - (a) subject to section 39L, the date of the disposal; and
 - (b) subject to section 39L, the wine's quantity; and
 - (c) such of the wine's characteristics and other details as are required by section 39W; and
 - (d) the identity of that person; and
 - (e) subject to subsections (3) and (4), where it is disposed of by being delivered to a person other than that person—the identity of the person to whom it is delivered.
- (3) Where:
 - (a) a wine manufacturer disposes of wine by delivering the wine to a person other than the person on whose behalf it was manufactured; and
 - (b) the wine is packaged for sale to consumers; and
 - (c) the package has a wine label showing that the wine was made by, and setting out the name and address of, the manufacturer;the manufacturer is not required to make and keep a record of the identity of the person to whom it is delivered.
- (4) Where a wine manufacturer disposes of wine in a direct sale, the manufacturer is not required to make and keep a record of the identity of the person to whom it is delivered.

39L Direct sales

Where wine manufactured at a winery is sold in direct sales, then, in respect of such wine:

- (a) in relation to which identical label claims are made by the wine manufacturer who operates the winery; and
 - (b) sold during a particular period (not being longer than a year);
- the manufacturer may, instead of making and keeping a record of the date of sales and quantities, make and keep a record of the period and of the total quantity of the wine sold in the period.

39M Wine manufacturers to keep records of transfers of certain wine

- (1) Where a wine manufacturer transfers wine from a winery of the manufacturer to another winery of the manufacturer for use in manufacturing a blend, this section applies to the transfer if the manufacturer:
 - (a) makes a label claim in relation to the wine; or
 - (b) intends to sell the blend with a label claim relating to the wine; or
 - (c) where the blend is to be manufactured on behalf of another person—knows that that person intends to sell the blend with a label claim relating to the wine.
- (2) A wine manufacturer who transfers wine in a transfer to which this section applies must make and keep a record in writing of the transfer showing:
 - (a) the date of the transfer; and
 - (b) the wine's quantity; and
 - (c) the winery from which the wine is transferred; and
 - (d) the winery to which the wine is transferred; and
 - (e) such of the wine's characteristics and other details as are required by section 39W.

39N Wine manufacturers to keep records of production of certain grape extract

- (1) Where grape extract is produced by a wine manufacturer at a winery of the manufacturer for use in the manufacture of wine at

Section 39P

another winery of the manufacturer, this section applies to the extract if the manufacturer:

- (a) where the wine is to be a single wine made on the manufacturer's behalf—intends to sell the wine with a label claim; or
 - (b) where the wine is to be a blend made on the manufacturer's behalf—intends to sell the blend with a label claim relating to wine manufactured from the extract; or
 - (c) where the wine is to be a single wine made on behalf of another person—knows that that person intends to sell the wine with a label claim; or
 - (d) where the wine is to be a blend made on behalf of another person—knows that that person intends to sell the blend with a label claim relating to wine manufactured from the extract.
- (2) Where grape extract is produced by a wine manufacturer at a winery of the manufacturer for use in the manufacture of wine at a winery of another person, this section applies to the extract if the manufacturer makes a label claim relating to the extract.
 - (3) A wine manufacturer who produces grape extract to which this section applies must make and keep a record in writing of its production showing:
 - (a) the date of its production; and
 - (b) its quantity; and
 - (c) such of its characteristics and other details as are required by section 39W.

39P Wine manufacturers to keep records of sales of certain grape extract

- (1) Where grape extract produced by a wine manufacturer at the manufacturer's winery is sold by the manufacturer for use in manufacturing wine, this section applies to the extract if the manufacturer makes a label claim in relation to the extract.
- (2) A wine manufacturer who sells grape extract in a sale to which this section relates must make and keep a record in writing of the sale showing:
 - (a) the date of the sale; and
 - (b) the extract's quantity; and

- (c) such of the extract's characteristics and other details as are required by section 39W; and
- (d) the identity of the purchaser.

39Q Wine manufacturers to keep records of disposal of certain grape extract

- (1) Where a wine manufacturer:
 - (a) produces grape extract at the manufacturer's winery on behalf of another person; and
 - (b) disposes of the extract in accordance with the instructions of that person;this section applies to the disposal if the manufacturer makes a label claim in relation to the extract.
- (2) A wine manufacturer who disposes of grape extract by a disposal to which this section applies must make and keep a record in writing of the disposal showing:
 - (a) the date of the disposal; and
 - (b) the extract's quantity; and
 - (c) such of the extract's characteristics and other details as are required by section 39W; and
 - (d) the identity of that person; and
 - (e) where the extract is disposed of by being delivered to yet another person—the identity of the person to whom it is delivered.

39R Wine manufacturers to keep records of transfers of certain grape extract

- (1) Where a wine manufacturer transfers grape extract from a winery of the manufacturer to another winery of the manufacturer for use in manufacturing wine, this section applies to the transfer if the manufacturer:
 - (a) where the wine is to be a single wine—intends to sell the wine with a label claim; or
 - (b) where the wine is to be a blend—intends to sell the blend with a label claim relating to wine manufactured from the extract.

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- (2) Where a wine manufacturer transfers grape extract from a winery of the manufacturer to a winery of another person for use in manufacturing wine, this section applies to the transfer if the manufacturer makes a label claim in relation to the extract.
- (3) A wine manufacturer who transfers grape extract in a transfer to which this section applies must make and keep a record in writing of:
 - (a) the date of the transfer; and
 - (b) the extract's quantity; and
 - (c) the winery from which the extract is transferred; and
 - (d) the winery to which the extract is transferred; and
 - (e) such of its characteristics and other details as are required by section 39W.

39S Making of records

- (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.

39T Records to relate to a winery

A requirement of this Division (other than sections 39M and 39R) to make a record includes a requirement to make a record that shows the winery to which the record relates.

39U Keeping of records

A requirement of this Division to keep a record is a requirement to keep the record for 7 years, or a shorter approved period, after the record is made.

39V Record of person

For the purposes of this Division, a record of the identity of a person is a record of particulars of the person's name and address that are enough to identify the person.

39W Characteristics to be recorded

- (1) Where, under section 39G, 39H, 39J, 39K, 39M, 39N, 39P, 39Q, or 39R, a record relating to wine or grape extract is to show such characteristics of the wine or extract as are required by this section, the requirement is for the record to show:
 - (a) where the section requiring the record applies because of a claim about vintage—the vintage of the wine or extract; or
 - (b) where that section applies because of a claim about variety—the variety of the wine or extract; or
 - (c) where that section applies because of a claim about region of origin—the geographical indication of the wine or extract.
- (2) Also, the record must show details of every step the wine manufacturer who must make the record took, in manufacturing the wine or extract, that changed or affected:
 - (a) if the section requiring the record applies because of a claim about vintage—the vintage of the wine or extract; or
 - (b) if that section applies because of a claim about variety—the variety of the wine or extract; or
 - (c) if that section applies because of a claim about region of origin—the geographical indication of the wine or extract; or
 - (d) in any case—the tank or other place or thing in which the wine or extract was stored; or
 - (e) in any case—the volume of the wine or extract stored in any such tank, place or thing.
- (3) The details required under subsection (2) in relation to a wine or extract must be in a form that allows an audit trail containing its history of the wine's manufacture to be readily traced from the record. It must be possible for the details of the steps taken and the results of the steps to be readily checked for discrepancies by following the sequence of the steps recorded.

39X Record of variety

- (1) For the purposes of this Division, where there is uncertainty about the variety of wine goods, a record showing their variety is a record showing whichever variety the wine manufacturer making the record considers on reasonable grounds most likely to be their variety.

Section 39Y

- (2) For the purposes of this Division, where a variety of wine goods is known by more than one name, a record showing the variety is a record showing any one of those names.

39Y Record of geographical indication

For the purposes of this Division, a record showing the geographical indication of wine goods is a record showing the name or description of any geographical area that is a geographical indication of the goods.

39Z Record of blends etc.

- (1) For the purposes of this Division, where:
- (a) a wine manufacturer makes only one label claim about wine; and
 - (b) the wine is a blend manufactured by blending wine with the characteristic claimed and other wine;
- a record showing the characteristic of the blend required because of the claim is a record showing what proportion of the blend is represented by wine with the characteristic claimed.
- (2) For the purposes of this Division, where:
- (a) a wine manufacturer makes label claims about 2 or more of the characteristics of wine; and
 - (b) the wine is a blend manufactured by blending wine with all the characteristics claimed and other wine;
- a record showing the characteristics of the blend required because of the claims is a record showing what proportion of the blend is represented by wine with the characteristics claimed.
- (3) Subject to subsections (1) and (2), for the purposes of this Division, a record showing the vintage, variety or geographical indication of a blend is:
- (a) a record showing what proportions of the blend are represented by each different wine in the blend; and
 - (b) a record, in respect of each of those wines, showing its vintage, variety or geographical indication, as the case may be.
- (4) For the purposes of this Division, a record showing the vintage, variety or geographical indication of grape extract derived from

grapes of different vintages, varieties or geographical indications is:

- (a) a record showing what proportions of the goods are derived from each kind of grape; and
- (b) a record, in respect of each kind of grape, showing its vintage, variety or geographical indication, as the case may be.

39ZAAA Offences in relation to record-keeping

- (1) If a wine manufacturer who is required by this Division to make and keep a record of a matter:
 - (a) intentionally fails to make or keep the record as required by this Division; or
 - (b) intentionally makes or keeps a record of the matter that is false, misleading or incomplete in a material particular;the manufacturer is guilty of an offence.

Penalty: \$15,000.

- (2) In proceedings for an offence against this section, if the prosecution:
 - (a) does not prove whether the wine concerned was a single wine or a blend; but
 - (b) does prove that, in either case, the defendant would have committed an offence against this section;the prosecution does not have to prove whether the wine was a single wine or a blend in order to prove the offence.

39ZAA Corporation may require records

- (1) If the Corporation has reason to believe that a wine manufacturer or other person holds or controls a record required by this Division to be made and kept, the Corporation may, by notice in writing served on the person, require the person to produce the record to the Corporation, within the period and in the manner specified in the notice.
- (2) The period specified in the notice must not be less than 14 days from the day on which it is served.
- (3) The notice must set out the effects of section 39ZAB.

Section 39ZAB

39ZAB Failure to comply with section 39ZAA notice

- (1) A person must not refuse or fail to comply with a notice under section 39ZAA.

Penalty: \$15,000.

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (2) It is a reasonable excuse for a person to refuse or fail to comply with a notice if complying would tend to incriminate the person.
- (3) In subsection (1), strict liability applies to the physical element of circumstance, that the notice is under section 39ZAA.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

39ZAC Corporation may retain records

If a record is produced to the Corporation under section 39ZAA:

- (a) the Corporation may keep it for 60 days, or, if a prosecution for a label offence of whose commission the record may be evidence is instituted within that period, until the completion of the proceedings for the offence and of any appeal from the decision in relation to the proceedings; and
- (b) the Corporation may inspect the record and may make and retain copies of all or part of it; and
- (c) while the Corporation has possession of the record, the Corporation must:
- (i) allow the record to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the Corporation's possession; and
- (ii) allow such a person to make a copy of the record.

Division 3—Inspection

39ZA Appointment of inspectors

- (1) The principal employee may, on behalf of the Corporation:
 - (a) appoint an eligible person to be an inspector; or
 - (b) appoint a class of eligible persons to be inspectors.
- (2) The appointment of an inspector ceases if he or she ceases to be an eligible person.
- (3) For the purposes of this section, the following are eligible persons:
 - (a) employees of the Corporation;
 - (b) officers and employees of the Commonwealth or of authorities of the Commonwealth;
 - (c) officers and employees of a State or internal Territory whom a Minister of the Crown of the State, or Minister of the Territory, has agreed may be appointed as inspectors;
 - (d) officers and employees of a local government body whom the body has agreed may be appointed as inspectors.

39ZB Identity cards

- (1) The principal employee may cause an identity card to be issued to an inspector.
- (2) An identity card must:
 - (a) contain a recent photograph of the inspector to whom it is issued; and
 - (b) be in an approved form.
- (3) An inspector whose appointment ceases must, as soon as practicable, return his or her identity card to the Corporation.

Penalty: \$100.

- (4) An offence under subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

39ZC Monitoring powers of inspectors—exercised with consent

For the purpose of finding out whether label laws are being complied with, an inspector may, with the consent of, and after producing the inspector's identity card for inspection by, the occupier of wine premises, enter, and exercise inspection powers on, the premises.

39ZD Monitoring warrants

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to particular wine premises.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that the inspector should have access to the premises for the purpose of finding out whether label laws are being complied with.
- (3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
 - (a) authorise an inspector (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the premises; and
 - (ii) to exercise inspection powers on the premises; and
 - (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.

39ZE Offence powers of inspectors—exercised with consent

- (1) Where an inspector has reasonable grounds for suspecting that there is on wine premises a particular thing that may afford
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evidence of the commission of a label offence, the inspector may, with the consent of, and after producing the inspector's identity card for inspection by, the occupier of the premises, enter, and exercise inspection powers on, the premises.

- (2) An inspector who has entered premises under subsection (1) must leave them if requested to do so by their occupier.

39ZF Offence related warrants

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to particular wine premises.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, on the premises a particular thing that may afford evidence of the commission of a label offence.
- (3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
 - (a) state the name of the inspector; and
 - (b) authorise the inspector, with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the place; and
 - (ii) to exercise inspection powers on the premises; and
 - (iii) to seize the thing that might afford evidence; and
 - (c) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (d) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and
 - (e) state the purpose for which the warrant is issued.

39ZG Discovery of evidence

- (1) Where an inspector enters wine premises under a warrant under section 39ZF and finds the thing (in this section called the *evidence*) that may afford evidence of the commission of a label offence and which the inspector entered to find:
 - (a) the inspector may seize the evidence; and
 - (b) the inspector may keep the evidence for 60 days, or, if a prosecution for a label offence in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceedings for the offence and of any appeal from the decision in relation to the proceedings; and
 - (c) if the evidence is a book, record or document—while the inspector has possession of the evidence, the inspector must:
 - (i) allow the evidence to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the inspector's possession; and
 - (ii) allow such a person to make a copy of the evidence.
- (2) If, in the course of searching wine premises entered under section 39ZE or a warrant under section 39ZF, the inspector:
 - (a) finds a thing that the inspector believes, on reasonable grounds to be:
 - (i) a thing (other than the evidence) that will afford evidence of the commission of the label offence mentioned in subsection (1); or
 - (ii) a thing that will afford evidence of the commission of another label offence; and
 - (b) the inspector believes, on reasonable grounds, that it is necessary to seize the thing to prevent its concealment, loss or destruction;subsection (1) applies to the thing as if it were the evidence.

39ZH Power to require persons to answer questions and produce documents

An inspector who is on wine premises that the inspector has entered under a warrant issued under section 39ZD or 39ZF may require any person on the premises to:

- (a) answer any questions put by the inspector; and

(b) produce any examinable documents requested by the inspector.

(2) A person must not refuse or fail to comply with a requirement under subsection (1).

Penalty: \$3,000.

(2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2A). See subsection 13.3(3) of the *Criminal Code*.

(2B) An offence under subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) It is a reasonable excuse for a person to refuse or fail to answer a question or produce a document if answering the question, or producing the document would tend to incriminate the person.

Division 4—Use of records and results of inspection

39ZJ Corporation to assist enforcement of laws on description of wine

- (1) For the purpose of achieving the object of this Part, the Corporation may give information obtained under this Part or section 42, and other assistance, to:
 - (a) the Australian Competition and Consumer Commission; or
 - (b) a Department of, or an authority or other body established for a public purpose by, the Commonwealth, a State or a Territory with responsibilities relating to the labelling, description or quality of wine; or
 - (c) a person prosecuting, or taking other proceedings against, or proposing to prosecute or take other proceedings against, a person in relation to the false description of the vintage, variety or geographical indication of any wine.
- (2) This section does not limit any powers and duties of the Corporation.

39ZK Proceedings not to lie against Corporation etc.

No proceedings lie against:

- (a) the Corporation; or
- (b) a member of the Corporation; or
- (c) an employee of the Corporation; or
- (d) an inspector;

in relation to any loss incurred or damage suffered because of information or assistance given under section 39ZJ.

39ZL Corporation may assist in relation to levy

- (1) The purpose of this section is to:
 - (a) assist; and
 - (b) achieve administrative savings in connection with;the calculation and collection of:
 - (ba) wine grapes levy; or
 - (bb) wine export charge; or

- (c) levy imposed by the repealed *Wine Grapes Levy Act 1979*; or
 - (d) levy imposed by the repealed *Grape Research Levy Act 1986*; or
 - (e) charge imposed by the repealed *Wine Export Charge Act 1997*.
- (1A) The Corporation may, with the consent of a wine manufacturer or wine exporter, give to an Agency (within the meaning of the *Public Service Act 1999*), with responsibilities relating to the levy or charge, information kept by, or held on behalf of, the manufacturer that is obtained by the Corporation under this Part or under section 42.
- (2) A wine manufacturer is to be taken to have consented to the giving of information under subsection (1A) where the occupier of the wine premises where the information is kept or held gave such consent.

Part VIB—Protection of certain names and expressions

Division 1—Preliminary

40 Interpretation

In this Part:

Committee means the Geographical Indications Committee.

40A Object of Part

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.

40B Additional operation of Part

- (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

40C Sale, export or import of wine with a false description and presentation

- (1) A person must not, in trade or commerce, intentionally sell wine with a false description and presentation.
- (2) A person must not, in trade or commerce, intentionally export wine with a false description and presentation.
- (3) A person must not, in trade or commerce, intentionally 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.

40D Meaning of false description and presentation

- (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

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- (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; or
 - (e) it is not in accordance with such provisions (if any) relating to the description and presentation of wine as are prescribed for the purposes of this paragraph.
- (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:
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- (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.

40E Sale, export or import of wine with a misleading description and presentation

- (1) A person must not, in trade or commerce, intentionally sell wine with a misleading description and presentation.
- (2) A person must not, in trade or commerce, intentionally export wine with a misleading description and presentation.
- (3) A person must not, in trade or commerce, intentionally 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.

40F Meaning of *misleading description and presentation*

- (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

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- (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.
- (5A) The description and presentation of wine is misleading if it is not in accordance with such provisions (if any) relating to the description

and presentation of wine as are prescribed for the purposes of this subsection.

(6) Subsections (2), (3), (4), (5) and (5A) 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.

40G Sale, export or import of wine in contravention of certain registered conditions

- (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

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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.

40H Blending requirements, oenological practices and processes and compositional or other requirements

- (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, intentionally 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.

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40J Exception for certain wines

- (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.

40K Prosecution of offences

- (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*.

40L Injunctions

- (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.

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- (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.

40M Application of national food standards to wines imported from agreement countries

- (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

40N Establishment of Committee

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

40P Function and powers of Committee

- (1) The functions of the Committee are:
 - (a) to deal with applications for the determination of geographical indications for wine in relation to regions and localities in Australia (*Australian GIs*) in accordance with this Part; and
 - (b) to make determinations of Australian GIs in accordance with this Part; and
 - (c) to make determinations for the omission of Australian GIs in accordance with this Part; and
 - (d) any other functions conferred on the Committee under this Part.
- (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 functions.

Division 4—Australian geographical indications

Subdivision A—What this Division is about

40PA What this Division is about

- (1) This Division deals with the determining of geographical indications (**GIs**) in relation to a region or locality in Australia.

Note: Geographical indications in relation to wine manufactured in an agreement country are not determined under this Division. They are determined in the agreement between Australia and the agreement country.

- (2) Subdivisions B and C deal with the powers of the Committee and applications for the determination of GIs. Subdivision D deals with objections to the determination of a GI on the basis of pre-existing trade mark rights. GIs are determined under Subdivision E.

Subdivision B—Powers of Committee to determine geographical indications

40Q Power of Committee to determine geographical indications

- (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.

40QA Committee must await decisions under Subdivision D

The Committee must not do a thing under Subdivision E in respect of a proposed GI unless the requirements of Subdivision D have been complied with.

Subdivision C—Applications for determinations of geographical indications

40R Applications for determinations

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.

Subdivision D—Objections to determination of geographical indications based on pre-existing trade mark rights

40RA Notice to be given of proposed geographical indication

- (1) The Presiding Member of the Committee must cause a notice under subsection (2) to be published if:
 - (a) an application under section 40R has been made for the determination of a geographical indication (the *proposed GI*); or
 - (b) the Committee is considering determining a geographical indication (the *proposed GI*) on its own initiative under section 40Q; or
 - (c) after an application under section 40R has been made, the Committee is considering, under paragraph 40T(3)(b), determining a geographical indication (the *proposed GI*) that is different from the GI proposed in the application.
- (2) The notice must:
 - (a) set out the proposed GI; and
 - (b) invite persons to make written objections to the Registrar of Trade Marks in relation to the proposed GI on a ground set out in section 40RB; and

- (c) invite those objections to be made within the period of not less than one month stated in the notice.

40RB Grounds of objection to the determination of a geographical indication

Registered owner of a registered trade mark

- (1) The registered owner of a registered trade mark may object to the determination of a proposed GI on one of the following grounds:
 - (a) that the trade mark consists of a word or expression that is identical to the proposed GI;
 - (b) that:
 - (i) the trade mark consists of a word or expression; and
 - (ii) the proposed GI is likely to cause confusion with that word or expression;
 - (c) that:
 - (i) the trade mark contains a word or expression; and
 - (ii) the proposed GI is likely to cause confusion with that word or expression; and
 - (iii) the owner has trade mark rights in that word or expression.
- (2) The owner may object on the ground specified in paragraph (1)(c) even if there are conditions or limitations entered on the Register of Trade Marks suggesting that the owner does not have trade mark rights to that word or expression.

Trade mark pending

- (3) If a person has an application pending for the registration of a trade mark under the *Trade Marks Act 1995*, the person may object to the determination of a proposed GI on one of the following grounds:
 - (a) that:
 - (i) the application was made in good faith; and
 - (ii) the trade mark consists of a word or expression that is identical to the proposed GI; and
 - (iii) prima facie, the requirements under the *Trade Marks Act 1995* for accepting an application for registration of

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a trade mark would be satisfied in respect of the trade mark applied for;

(b) that:

- (i) the application was made in good faith; and
- (ii) the trade mark consists of a word or expression; and
- (iii) the proposed GI is likely to cause confusion with that word or expression; and
- (iv) prima facie, the requirements under the *Trade Marks Act 1995* for accepting an application for registration of a trade mark would be satisfied in respect of the trade mark applied for;

(c) that:

- (i) the application was made in good faith; and
- (ii) the trade mark contains a word or expression; and
- (iii) the proposed GI is likely to cause confusion with that word or expression; and
- (iv) prima facie, the requirements under the *Trade Marks Act 1995* for accepting an application for registration of a trade mark would be satisfied in respect of the trade mark applied for; and
- (v) after registration, the applicant would have trade mark rights in the word or expression.

Trade mark not registered

(4) If a person claims to have trade mark rights in a trade mark that is not registered, the person may object to the determination of a proposed GI on one of the following grounds:

(a) that:

- (i) the trade mark consists of a word or expression that is identical to the proposed GI; and
- (ii) the person has trade mark rights in that word or expression; and
- (iii) the rights were acquired through use in good faith;

(b) that:

- (i) the trade mark consists of or contains a word or expression; and
- (ii) the proposed GI is likely to cause confusion with that word or expression; and

- (iii) the person has trade mark rights in that word or expression; and
- (iv) the rights were acquired through use in good faith.

40RC Consideration of objections

Notice of objection to be given to Committee

- (1) If:
- (a) the Registrar of Trade Marks receives an objection in relation to the proposed GI on a ground set out in section 40RB; and
 - (b) the objection is received within the period stated in the notice under section 40RA;

the Registrar of Trade Marks must in writing notify the Committee of the receipt and terms of the objection.

Registrar of Trade Marks to make decision on whether ground made out or not

- (2) If an objection is notified to the Committee under subsection (1), the Registrar of Trade Marks must decide in writing whether the ground of objection is or is not made out.

Registrar may make recommendation to Committee to determine a GI

- (3) If:
- (a) the Registrar of Trade Marks decides that the ground of objection is made out; and
 - (b) the Registrar of Trade Marks is satisfied that it is reasonable in the circumstances to recommend to the Committee that the proposed GI be determined despite the objection having been made out;

the Registrar of Trade Marks may make the recommendation. The recommendation must be in writing.

Note 1: For example, it may be reasonable for the Registrar of Trade Marks to make such a recommendation if the Registrar of Trade Marks is satisfied that the proposed GI was in use before the trade mark rights arose.

Note 2: If a recommendation is made under subsection (3), the Committee may determine the GI (see subsection 40SA(4)).

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- (4) In determining under paragraph (3)(b) whether it is reasonable in the circumstances to make the recommendation to the Committee, the Registrar of Trade Marks must have regard to Australia's international obligations.

Regulations

- (5) Regulations may set out the procedure to be followed in making a decision under subsection (2) or (3). The procedures may include the charging of fees, the holding of hearings and the taking of evidence.

40RD Notice to be given of decision

Notice to be given by Registrar of Trade Marks

- (1) After the Registrar of Trade Marks has made a decision under section 40RC in relation to the proposed GI, the Registrar of Trade Marks must, in writing, inform the following of the outcome of the decision and of any recommendation that has been made under subsection 40RC(3):
- (a) the person who proposed the GI, if there was an application under section 40R for the GI;
 - (b) the person who objected to the determination of the proposed GI;
 - (c) the Committee.

Notice to be given by Committee

- (2) After receiving notice of a decision under subsection (1), the Presiding Member must cause a notice to be published:
- (a) setting out the proposed GI; and
 - (b) stating that a decision of the Registrar of Trade Marks has been made in relation to the proposed GI; and
 - (c) setting out the terms of the decision and any recommendation made under subsection 40RC(3) in relation to the proposed GI.
- (3) The notice under subsection (2) is to be published in the manner that the Committee thinks appropriate.

40RE Decision that ground of objection no longer exists

- (1) If:
- (a) a decision has been made that a ground of objection to a proposed GI has been made out; and
 - (b) a person applies in writing to the Registrar of Trade Marks for a decision that circumstances have changed since that decision was made such that the ground of objection no longer exists;

the Registrar of Trade Marks may, in writing, make a decision that the ground of objection no longer exists.

Note: If the Registrar of Trade Marks makes a decision under this section, the Committee may determine the GI (see subsection 40SA(5)).

- (2) Regulations may set out the procedure to be followed in making a decision under subsection (1). The procedures may include the charging of fees, the holding of hearings and the taking of evidence.

40RF Appeals

- (1) An appeal lies to the Federal Court against a decision of the Registrar of Trade Marks, made under:
- (a) subsection 40RC(2) (a decision that a ground of objection is or is not made out); and
 - (b) subsection 40RC(3) (a recommendation that a proposed GI be determined or a refusal to make such a recommendation); and
 - (c) section 40RE (a decision that a ground of objection no longer exists or a refusal to make such a decision).
- (2) The jurisdiction of the Federal Court to hear and determine appeals against decisions of the Registrar of Trade Marks under this Act is exclusive of the jurisdiction of any other court except the jurisdiction of the High Court under section 75 of the Constitution.
- (3) On hearing an appeal against a decision of the Registrar of Trade Marks under this Act, the Federal Court may do any one or more of the following:
- (a) admit further evidence orally, or on affidavit or otherwise;

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- (b) permit the examination and cross-examination of witnesses, including witnesses who gave evidence before the Registrar of Trade Marks;
 - (c) order an issue of fact to be tried as it directs;
 - (d) affirm, reverse or vary the Registrar of Trade Marks's decision;
 - (e) give any judgment, or make any order, that, in all the circumstances, it thinks fit;
 - (f) order a party to pay costs to another party.
- (4) The Registrar of Trade Marks may appear and be heard at the hearing of an appeal to the Federal Court against a decision of the Registrar of Trade Marks.
- (5) Except with the leave of the Federal Court, an appeal does not lie to the Full Court of the Federal Court against a decision of a single judge of the Federal Court in the exercise of its jurisdiction to hear and determine appeals from decisions of the Registrar of Trade Marks.
- (6) The regulations may make provision about the practice and procedure of the Federal Court in a proceeding under this section, including provision:
- (a) prescribing the time for starting the action or proceeding or for doing any other act or thing; or
 - (b) for an extension of that time.

40RG Decisions made under this Division not to affect rights under Trade Marks Act

A decision made under this Division does not:

- (a) create or affect a right under the *Trade Marks Act 1995* or at common law in respect of a trade mark; or
- (b) in any way pre-empt or affect a decision of the Registrar of Trade Marks under the *Trade Marks Act 1995* in respect of a pending application for the registration of a trade mark.

Subdivision E—Determinations of geographical indications

40SA When may a determination be made under this Subdivision?

- (1) If an objection was made to a proposed geographical indication (**GI**) under section 40RB, the Committee may only determine the GI in the circumstances set out in this section.

Grounds of objection not made out

- (2) The Committee may determine a GI that was the subject of a decision under subsection 40RC(2), if:
 - (a) all appeals against, or reviews of, the decision (if any) in relation to the GI have been finalised; and
 - (b) the decision standing after the appeals and reviews have been finalised is that a ground of objection has not been made out in relation to the GI.

If grounds for objection made out and person agrees to determination of GI

- (3) The Committee may determine a GI that is the subject of a decision that a ground of objection has been made out, if the person who objected to the determination of the GI has agreed, by notice in writing given to the Committee, to the determination of the GI.

If grounds for objection made out and a recommendation is made under subsection 40RC(3)

- (4) The Committee may determine a GI that is the subject of a decision that a ground of objection has been made out, if:
 - (a) a recommendation has been made to the Committee under subsection 40RC(3) that the GI should be determined despite the ground of objection having been made out; and
 - (b) all appeals against, or reviews of, the decision that the GI should be determined (if any) have been finalised; and
 - (c) the decision standing after the appeals and reviews have been finalised is that the GI should be determined.

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If grounds for objection made out and a decision is made under section 40RE

- (5) The Committee may determine a GI that is the subject of a decision that a ground of objection has been made out, if:
- (a) a decision has been made under section 40RE that the ground of objection no longer exists; and
 - (b) all appeals against, or reviews of, the decision that the ground no longer exists (if any) have been finalised; and
 - (c) the decision standing after the appeals and reviews have been finalised is that the ground no longer exists.

40S Consultation by the Committee

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.

40T Making of determinations

- (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.

- (4) In determining a geographical indication, the Committee must not consider any submission to the extent that the submission asserts a trade mark right in respect of the proposed geographical indication.

40U Interim determination

- (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.

40V Publication of notice of interim determination

- (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.

40W Final determination

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

40X Publication of notice of final determination

- (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

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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; and

- (c) if a decision has been made under section 40RC before the final determination, no application to the Administrative Appeals Tribunal may be made in respect of that decision under section 40RC. An appeal lies to the Federal Court under section 40RF from a decision under section 40RC.
- (3) Any failure to comply with subsection (2) in relation to a determination does not affect the validity of the determination.

40Y Review of final determination

- (1) Application may be made to the Administrative Appeals Tribunal for review of a final determination.

Note: Under section 40RF, an appeal lies to the Federal Court from a decision under section 40RC.

- (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.”.

40Z Date of effect of final determination

- (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 4A—Omission of registered geographical indications

Subdivision A—What this Division is about

40ZAA What this Division is about

- (1) This Division deals with determining the omission from the Register of geographical indications (*Australian GIs*) determined under Division 4.
- (2) The grounds for omission are that an Australian GI is not in use (see Subdivision B) or is no longer required (see Subdivision C).

Note: Subsection 40ZD(3) also deals with changes to the Register.

Subdivision B—Omission of Australian GIs for non-use

40ZAB Power of Committee to determine that an Australian GI should be omitted from the Register

The Committee may, either on its own initiative or on an application made in accordance with section 40ZAC, determine that an Australian GI is to be omitted from the Register on the ground that the GI is not in use.

40ZAC Application

- (1) A person (the *applicant*) may apply in the prescribed form to the Committee to omit an Australian GI from the Register on the ground that the GI is not in use.
- (2) The application must be accompanied by such fee (if any) charged by the Corporation for the making of such an application.
- (3) The Corporation may waive the fee.
- (4) If the application is not accompanied by the fee, and the fee is not waived by the Corporation, the application is treated as having never been made.

40ZAD Further information concerning an application

- (1) For the purposes of determining the application, the Committee may, by notice in writing, require the applicant to provide such further information as the Committee directs, within the period specified in the notice.
- (2) If the applicant does not comply with this requirement, the application is taken to have been withdrawn.
- (3) A notice must include a statement about the effect of the above.

40ZAE Notice by Committee

If the Committee:

- (a) receives an application under section 40ZAC; or
- (b) proposes on its own initiative that an Australian GI should be omitted from the Register on the ground that the GI is not in use;

the Presiding Member of the Committee must cause a notice to be published in the manner that the Committee thinks appropriate:

- (c) setting out the Australian GI; and
- (d) stating that an application under section 40ZAC has been made, or that the Committee is proposing to make a determination to omit the GI on its own initiative; and
- (e) inviting persons to make written submissions to the Committee in relation to the application or proposal within the period of not less than one month that is stated in the notice.

40ZAF Determination by Committee

- (1) After considering any submissions made to it in response to a notice under section 40ZAE, the Committee must determine whether to omit the Australian GI on the ground that the GI is not in use.
- (2) The Committee may, in writing, make a determination to omit the GI on that ground if the Committee is satisfied of the following matters:
 - (a) that the GI has been registered for a period of more than 5 years before the date of the notice under section 40ZAE;

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- (b) that the GI has not been used during the period of 3 years before the date of the notice under section 40ZAE (see subsection (3));
- (c) that no special circumstances exist in relation to the region or locality indicated by the GI that would preclude the making of a determination to omit the GI from the Register (see subsection (4)).

Meaning of GI not been used

- (3) For the purposes of paragraph (2)(b), an Australian GI has not been used if:
 - (a) there has not been a production of wine for commercial use originating in the region or locality indicated by the GI; and
 - (b) wine originating in the region or locality indicated by the GI has not been described and presented for sale within Australia, or for export, using that GI.

Meaning of special circumstances

- (4) For the purposes of paragraph (2)(c), special circumstances exist if:
 - (a) the region or locality indicated by the GI has been affected by fire, drought or some other disaster; and
 - (b) as a result of being so affected, there has not been a production of wine for commercial use originating in the region or locality indicated by the GI during the period of 3 years immediately before the date of the notice under section 40ZAE.

40ZAG Notice of determination

The Presiding Member of the Committee must cause:

- (a) a notice to be given of the Committee's determination to the applicant (if any); and
- (b) if the determination made is to omit the Australian GI from the Register—a notice setting out the terms of the determination to be published in the manner that the Committee thinks appropriate.

40ZAH AAT review of a determination

- (1) Application may be made to the Administrative Appeals Tribunal for review of the determination made under section 40ZAF.
- (2) Despite paragraph 29(1)(d) and subsection 29(2) of the *Administrative Appeals Tribunal Act 1975*, an application to the Tribunal for review of a determination under section 40ZAF must be made within 28 days after notice of the determination is published in accordance with section 40ZAG.
- (3) Despite subsection 29(8) of the *Administrative Appeals Tribunal Act 1975*, an application under subsection 29(7) of that Act in respect of a determination under section 40ZAF must be made before the time fixed by subsection (2) of this section ends.

40ZAI Date of effect of determination to omit GI

- (1) If the determination made by the Committee under section 40ZAF is a determination to omit the Australian GI from the Register, the Presiding Member must give a copy of the determination to the Registrar so that particulars of the determination can be omitted from the Register:
 - (a) if an application is made to the Administrative Appeals Tribunal under section 40ZAH 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 40ZAG.
- (2) When the Presiding Member gives a copy of the determination to the Registrar, the Presiding Member must also give a copy to the Chairperson of the Corporation.
- (3) The determination of the Committee takes effect on the day on which particulars of the GI are omitted from the Register.

Subdivision C—Omission of Australian GIs because no longer required

40ZAJ Application

- (1) A person (the *applicant*) may apply in the prescribed form to the Committee to omit an Australian GI from the Register on the ground that the GI is no longer required.
- (2) The application must be accompanied by a written statement from each of the following organisations supporting the application:
 - (a) a declared winemakers' organisation (if any);
 - (b) a declared wine grape growers' organisation (if any);
 - (c) the organisation or organisations representing winemakers in a State or Territory wholly or partly covered by the region or locality in Australia indicated by the GI;
 - (d) the organisation or organisations representing growers of wine grapes in a State or Territory wholly or partly covered by the region or locality in Australia indicated by the GI.
- (3) The application must also be accompanied by such fee (if any) charged by the Corporation for the making of such an application.
- (4) The Corporation may waive the fee.
- (5) If:
 - (a) the application is not accompanied by the fee, and the fee is not waived by the Corporation; or
 - (b) the application is not accompanied by the statements referred to in subsection (2);then the application is taken never to have been made.

40ZAK Further information concerning an application

- (1) For the purposes of determining the application, the Committee may, by notice in writing, require the applicant to provide such further information as the Committee directs, within the period specified in the notice.
- (2) If the applicant does not comply with this requirement, the application is taken to have been withdrawn.

- (3) A notice must include a statement about the effect of subsection (2).

40ZAL Notice by Committee

After receiving an application under section 40ZAJ, the Presiding Member of the Committee must cause a notice to be published in the manner that the Committee thinks appropriate:

- (a) stating that an application under section 40ZAJ has been made and setting out the Australian GI; and
- (b) inviting:
 - (i) interested persons in relation to the GI (see section 40ZAM); and
 - (ii) members of the organisations referred to in subsection 40ZAJ(2); and
 - (iii) the organisations referred to in subsection 40ZAJ(2); to object to the omission of the GI from the Register by making written submissions to the Committee within the period of not less than one month that is stated in the notice.

40ZAM Meaning of interested person

For the purposes of subparagraph 40ZAL(b)(i), an interested person in relation to an Australian GI is a person who the Committee is satisfied is:

- (a) a winemaker who makes wine for commercial purposes from grapes grown in the region or locality indicated by the GI; or
- (b) a grower of grapes who grows wine grapes in the region or locality indicated by the GI; or
- (c) a person who owns or leases a tract of land that is:
 - (i) 5 hectares or more in size and situated in the region or locality indicated by the GI; and
 - (ii) capable of being used to grow grapes for commercial wine production; or
- (d) a person who:
 - (i) has a mortgage, lien or other commercial interest over, or in relation to, a vineyard or other property used in the production of wine that is situated in the region or locality indicated by the GI; and

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- (ii) has the agreement of the owner of the property to that person making a submission to the Committee under section 40ZAL.

40ZAN Determination by Committee

No submission made

- (1) If no submissions have been made to the Committee in response to the notice under section 40ZAL, the Committee must make a determination in writing to omit the Australian GI from the Register on the grounds that the GI is no longer required.

Submission made

- (2) If a submission has been made to the Committee, the Committee must make a determination in writing not to omit the GI from the Register.

40ZAO Notice of determination

The Presiding Member of the Committee must cause:

- (a) notice to be given of the Committee's determination to the applicant; and
- (b) a notice setting out the terms of the determination to be published in any manner that the Committee thinks appropriate.

40ZAP Date of effect of determination to omit Australian GI

- (1) If the determination made by the Committee under section 40ZAN is a determination to omit the Australian GI from the Register, the Presiding Member must give a copy of the determination to the Registrar so that particulars of the determination can be omitted from the Register as soon as is practicable.
- (2) When the Presiding Member gives a copy of the determination to the Registrar, the Presiding Member must also give a copy to the Chairperson of the Corporation.
- (3) The determination of the Committee takes effect on the day on which particulars of the GI are omitted from the Register.

Division 5—Register of Protected Names

40ZA Registrar

- (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.

40ZB Functions of Registrar

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.

40ZC Register of Protected Names

- (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.

40ZD Contents of Register

- (1) The Register is to be divided into the following parts:

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- (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.
- (3) If:
- (a) it appears to the Corporation that:

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- (i) an entry in the Register is not, or has ceased to be, necessary; or
 - (ii) an entry in the Register is included in the wrong part of the Register;
and the inclusion of the entry in the Register, or in that part of the Register, did not result from a determination made by the Committee under Division 4; or
 - (b) it appears to the Corporation that an entry should not have been included in the Register, or an entry in the Register is incorrect, because of a clerical or similar error;
the Corporation may direct the Registrar to omit the entry from the Register, to omit the entry from that part of the Register and insert it in the correct part, or to correct the entry, as the case requires.
- (4) In subsection (3):
entry includes a part of an entry.
- (5) The Registrar must comply with a direction given under subsection (3).

40ZE Inspection of Register

- (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.

Division 6—Inspection

40ZF Inspection powers

The provisions of Part VIA relating to inspections, including Division 4 of that Part, apply in relation to this Part in the same way as they apply in relation to Part VIA, with the following modifications:

- (a) references in that Part to *label laws* are treated as references to the requirements of this Part and of regulations made for the purposes of this Part;
- (b) references in that Part to *label offences* are treated as references to offences against this Part and against regulations made for the purposes of this Part.

Part VII—Miscellaneous

41A Remuneration and allowances of members of Corporation etc.

- (1) This section applies to a person who is:
 - (a) a member; or
 - (b) a member of the Geographical Indications Committee established by section 40N; or
 - (c) a member of a committee constituted under section 11 other than a member of the Corporation.
- (2) Subject to this section, a person to whom this section applies shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, the person shall be paid such remuneration as is prescribed.
- (3) Subject to this section, a person to whom this section applies shall be paid such allowances as are prescribed.
- (4) Subsections (2) and (3) have effect subject to the *Remuneration Tribunal Act 1973*.
- (5) Payments under this section shall be made out of the funds of the Corporation.
- (6) If:
 - (a) a person to whom this section applies is also a member of, or a candidate for election to, the Parliament of a State; and
 - (b) under the law of that State the person would not be eligible to remain, or to be elected as, a member of that Parliament if he or she were entitled to remuneration under this Act;the person shall not be paid remuneration or allowances under this Act but shall be reimbursed such expenses as the person reasonably incurs because of the person's performing the functions of the office under this Act held by the person.
- (7) If a person to whom this section applies is also:
 - (a) a member of the Parliament of a State (other than a State referred to in subsection (6)); or

- (b) in the service or employment of a State or an authority of a State, or holds or performs the duties of any office or position established by or under a law of a State, on a full-time basis; it is a condition of the person's holding the office under this Act held by the person that the person pay to the State, within one month of receiving an amount of remuneration under this Act, an amount equal to that first-mentioned amount, and the person:
- (c) shall not be paid allowances under this Act; and
- (d) shall be reimbursed such expenses as the person reasonably incurs because of the person's performing the functions of the office under this Act held by the person.
- (8) An amount payable to a State by a person under subsection (7) is a debt due to the State and the State may recover that amount by action against the person in a court of competent jurisdiction.

- (9) In this section:

Parliament, in relation to the Northern Territory, means the Legislative Assembly of the Northern Territory.

State includes the Northern Territory.

42 Corporation may require information

- (1) The Corporation may, by notice in writing given, or sent by post, to a person, require the person to furnish, within such time as is specified in the notice not being less than 14 days, such information, in addition to any other information that the person is required to furnish under this Act or any other Act, in relation to the production of prescribed goods or grape products to matters relating to the description of wine, other than matters about which records are required to be kept under Part VIA, or to prescribed goods or grape products owned by the person or under the person's control as is specified in the notice.
- (2) A person shall not fail or neglect duly to furnish information that the person is required to furnish by virtue of a notice given, or sent by post, to the person under subsection (1).
- (2A) Subsection (2) does not apply if the person has a reasonable excuse.

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Note: The defendant bears an evidential burden in relation to the matter in subsection (2A). See subsection 13.3(3) of the *Criminal Code*.

(2B) An offence under subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) A person is not excused from furnishing information that the person is required to furnish by virtue of a notice given, or sent by post, to the person under subsection (1) on the ground that the information might tend to incriminate the person or make the person liable to a penalty, but any information so furnished is not admissible in evidence against the person in proceedings other than proceedings for an offence against subsection (4).

(4) A person shall not furnish to the Corporation information that the person knows is false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—imprisonment for 6 months; or
- (b) in the case of a body corporate—\$5,000.

43 Delegation

(1) The Corporation may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a person or to a committee established under section 11 any of its powers under this Act, other than its powers under subsection 30(2) or this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Corporation.

(3) A delegation under this section does not prevent the exercise of a power by the Corporation.

44 Offences in relation to export of grape products

(1) A person shall not export a grape product from Australia in contravention of the regulations.

Penalty:

- (a) in the case of a natural person—\$6,000; or

- (b) in the case of a body corporate—\$10,000.
- (1A) An offence under subsection (1) is an offence of strict liability.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (2) The provisions of Part VIA relating to inspections, including Division 4 of that Part, apply in relation to this section in the same way as they apply in relation to that Part, with the following modifications:
- (a) references in that Part to **label laws** are treated as references to the requirements of the regulations relating to the export of grape products from Australia;
 - (b) references in that Part to **label offences** are treated as references to offences against this section.

44AA Time for bringing prosecutions

Despite section 15B of the *Crimes Act 1914*, a prosecution for an offence against section 44 of this Act that is committed after the commencement of this section may be brought at any time within 7 years after the commission of the offence.

44A Conduct by directors, servants or agents

- (1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, servant or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions to avoid the conduct.

Section 44A

- (3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a natural person in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the servant or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a natural person by a servant or agent of the person within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions to avoid the conduct.
- (5) Where:
- (a) a natural person is convicted of an offence; and
 - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (9) A reference in this section to an offence against this Act includes a reference to:
- (a) an offence created by the regulations; and

- (b) an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to this Act or the regulations.

45 Operation of certain laws not restricted

Nothing in this Act or the regulations restricts the operation of the *Customs Act 1901*, the *Commerce (Trade Descriptions) Act 1905* or the *Export Control Act 1982*, or of any regulations made under any one or more of those Acts.

46 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular:
 - (a) making provision with respect to annual general meetings including, in particular, provisions in respect of:
 - (i) the giving of notice of motions to be moved at such meetings; and
 - (ii) the moving of motions at such meetings by the Corporation; and
 - (iii) the procedure at such meetings; and
 - (iv) the appointment by persons entitled to attend such meetings of other persons to be their proxies at such meetings; and
 - (iva) the method of determining the number of votes that an eligible producer (within the meaning of section 29U) may cast at such meetings; and
 - (v) the means of determining whether or not motions voted upon at such meetings have been passed; and
 - (vi) the confidentiality of voting at such meetings; and
 - (b) requiring the doing of acts or things necessary to be done for the purpose of giving effect to a prescribed wine-trading agreement; and
 - (c) prohibiting the export of a grape product from Australia except subject to and in accordance with prescribed conditions, including, in particular:

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- (i) conditions requiring an exporter to be the holder of a licence to export the grape product;
- (ii) conditions requiring an exporter to obtain the approval of the Corporation for particular exports of the grape product;
- (iii) conditions requiring the purchaser of the grape product, or the person to whom the grape product is consigned as an agent or representative of the purchaser or exporter in the country to which the grape product is consigned, to be a person approved by the Corporation; or
- (iv) conditions relating to the price, or form of consignment, of the grape product; and
- (d) making provision with respect to:
 - (i) the grant, suspension or cancellation by the Corporation, or a person authorized by it, of licences to export a grape product from Australia; and
 - (ii) the issuing or revocation by the Corporation, or by a person authorized by it, in respect of particular exports of a grape product, of certificates as to compliance with the conditions subject to which the grape product may be exported; and
- (e) providing for the period for which a licence, or a licence included in a class of licences, granted under the regulations remains in force; and
- (f) authorizing the Corporation, or a person authorized by it:
 - (i) to determine prices or other matters for the purposes of the regulations; or
 - (ii) to give to the holder of a licence to export a grape product granted under the regulations directions, in writing, with respect to the quantities of the grape product that may be exported by the holder of the licence either generally or otherwise as provided in the regulations; and
- (g) requiring persons to furnish returns and information necessary for the purposes of this Act; and
- (h) providing for a penalty of:
 - (i) if the person is a natural person, a fine not exceeding \$1,000; or

- (ii) if the person is a body corporate, a fine not exceeding \$5,000;
for offences against the regulations.

Part VIII—Repeal of certain Acts and consequent transitional provisions

47 Interpretation

In this Part, *Board* means the Australian Wine Board established by the *Wine Overseas Marketing Act 1929*.

49 Rights etc. of Board to vest in Corporation etc.

- (1) Upon the commencing date:
 - (a) any rights, property or assets that, immediately before that date, were vested in the Board are, by force of this subsection, vested in the Corporation; and
 - (b) the Corporation becomes, by force of this subsection, liable to pay and discharge any debts, liabilities or obligations of the Board that existed immediately before that date.
- (2) An arrangement or contract entered into by or on behalf of the Board as a party and in force immediately before the commencing date continues in force, notwithstanding the repeal of the Acts specified in the Schedule, but that arrangement or contract has effect, on and after the commencing date, as if:
 - (a) the Corporation were substituted for the Board as a party to the arrangement or contract; and
 - (b) any reference in the arrangement or contract to the Board were (except in relation to matters that occurred before that date) a reference to the Corporation.
- (3) Where, immediately before the commencing date, proceedings to which the Board was a party were pending in any court, the Corporation is, by force of this subsection, substituted for the Board as a party to the proceedings and has the same rights in the proceedings as the party for which it is substituted.

50 Instrument etc. not liable to stamp duty etc.

An instrument or document that the Secretary to the Department of Primary Industry or an officer of that Department authorized by

him or her in writing for the purpose of this section certifies to have been made, executed or given by reason of, or for a purpose connected with or arising out of, the operation of this Part is not liable to stamp duty or other tax under a law of the Commonwealth or of a State or Territory.

51 Application of moneys of Corporation

The moneys of the Corporation may be applied in payment or discharge of the debts, liabilities and obligations referred to in paragraph 49(1)(b).

53 Employees of Board

- (1) A person who, immediately before the commencing date, was employed by the Board shall, by virtue of this subsection, be deemed to be, on that date, engaged as an employee of the Corporation under section 30.
- (2) Terms and conditions of employment applicable to a person referred to in subsection (1) immediately before the commencing date shall, by virtue of this subsection, be deemed to be terms and conditions of employment determined under subsection 30(2), but those terms and conditions may, at any time after the commencing date, be varied under that subsection.

54 Report on operations of Board

- (1) The Corporation shall, not later than 6 months after the commencing date, prepare and submit to the Minister a report on the operation of the *Wine Overseas Marketing Act 1929* during the period that:
 - (a) commenced immediately after the expiration of the last period in respect of which a report was submitted by the Board to the Minister in pursuance of section 29 of that Act; and
 - (b) ended immediately before the commencing date.
- (2) The Minister shall cause a copy of the report, together with a statement by the Minister regarding the operation of the *Wine Overseas Marketing Act 1929* during the period to which the report relates, to be laid before each House of the Parliament within 15

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sitting days of that House after the receipt of the report by the Minister.

- (3) The persons who, immediately before the commencing date, were members of the Board shall furnish to the Corporation such information as is necessary to enable the Corporation to prepare the report.

55 Regulations

The regulations may make provision for and in relation to the continued effect, for the purposes of the regulations, of licences and certificates in force, immediately before the commencing date, under regulations made for the purposes of the *Wine Overseas Marketing Act 1929*.

Schedule—Administrative provisions relating to the Geographical Indications Committee

1 Interpretation

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.

2 Membership of Committee

- (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.

3 Acting Presiding Member

- (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.

4 Alternate members of the Committee

- (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.

5 Term of office

- (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.

6 Resignation

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

7 Termination of appointment

- (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.

8 Leave of absence

- (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.

9 Disclosure of interests by Committee members

- (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.

10 Meetings

- (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.

11 Staff and consultants

- (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.

12 Information for inclusion in Corporation's annual report

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*.

Table of Acts**Notes to the *Australian Wine and Brandy Corporation Act 1980*****Note 1**

The *Australian Wine and Brandy Corporation Act 1980* as shown in this compilation comprises Act No. 161, 1980 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 14 May 1999 is not included in this compilation. For subsequent information *see* Table A.

The *Australian Wine and Brandy Corporation Act 1980* was modified by the A.C.T. Self-Government (Consequential Provisions) Regulations (1989 No. 3 as amended) *see* Table B.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Wine and Brandy Corporation Act 1980</i>	161, 1980	10 Dec 1980	Ss. 1, 2 and 13(4): Royal Assent Remainder: 1 July 1981 (<i>see Gazette</i> 1981, No. S123)	
<i>Export Control (Miscellaneous Amendments) Act 1982</i>	48, 1982	9 June 1982	1 Jan 1983 (<i>see</i> s. 2 and <i>Gazette</i> 1982, No. G48, p. 2)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1984</i>	72, 1984	25 June 1984	S. 3: 23 July 1984 (a)	S. 5(1)
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1984</i>	165, 1984	25 Oct 1984	S. 3: Royal Assent (b)	Ss. 2(32) and 6(1)
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (c)	—
<i>Australian Wine and Brandy Corporation Amendment Act 1986</i>	60, 1986	24 June 1986	Ss. 1, 2, 3(1), 5, 14, 19 and 30: Royal Assent Remainder: 1 July 1986	Ss. 29 and 30

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Primary Industries (Recovery of Levy Collection Expenses) Act 1988</i>	51, 1988	15 June 1988	S. 3: Royal Assent (d)	—
<i>Australian Wine and Brandy Corporation Amendment Act 1989</i>	144, 1989	23 Nov 1989	1 Jan 1990	Ss. 6 and 10
<i>Primary Industries Levies and Charges Collection (Consequential Provisions) Act 1991</i>	26, 1991	1 Mar 1991	1 July 1991 (see s. 2)	—
<i>Australian Wine and Brandy Corporation Amendment Act 1992</i>	137, 1992	11 Nov 1992	S. 4: 9 Dec 1992 Remainder: Royal Assent	—
<i>Australian Wine and Brandy Corporation Amendment Act 1993</i>	93, 1993	16 Dec 1993	16 Dec 1993	S. 15(2)
<i>Primary Industries and Energy Legislation Amendment Act (No. 2) 1994</i>	129, 1994	21 Oct 1994	S. 3: 1 Dec 1994 (e)	—
<i>Competition Policy Reform Act 1995</i>	88, 1995	20 July 1995	S. 77: 6 Nov 1995 (see <i>Gazette</i> 1995, No. S423) (f)	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 2 (item 19): (g) Schedule 4 (items 48, 49): Royal Assent (g)	—
<i>Wine Export Charge (Consequential Amendments) Act 1997</i>	86, 1997	27 June 1997	27 June 1997 (see s. 2)	—
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 554–567): 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) (h)	—
<i>Primary Industries and Energy Legislation Amendment Act (No. 1) 1998</i>	102, 1998	30 July 1998	30 July 1998	—
<i>Primary Industries Levies and Charges (Consequential Amendments) Act 1999</i>	32, 1999	14 May 1999	Schedule 5 (Part 1): 1 July 1999 (i) Schedule 5 (Parts 2, 3): 1 Jan 2000 (i)	Sch. 5 (Part 3): [see Table A]
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (item 277): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (j)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
<i>Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2000</i>	121, 2000	5 Oct 2000	Schedule 2 (item 8): 11 Nov 1999 (<i>ja</i>)	—
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 10 (items 63, 64): 13 Mar 2000 (<i>see</i> <i>Gazette</i> 2000, No. S114) (<i>k</i>)	—
<i>Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 1999</i>	170, 1999	10 Dec 1999	Schedule 7: Royal Assent (<i>l</i>)	Sch. 7 (item 16) [<i>see</i> Table A]
<i>Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2000</i>	121, 2000	5 Oct 2000	Schedule 2 (item 8): 11 Nov 1999 Remainder: 5 Dec 2000 (<i>see</i> <i>Gazette</i> 2000, No. S612)	—
<i>Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001</i>	115, 2001	18 Sept 2001	16 Oct 2001	S. 4 [<i>see</i> Table A]
<i>Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001</i>	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97) [<i>see</i> Table A]
<i>Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2003</i>	38, 2003	2 May 2003	Schedule 1: 3 May 2003	—
<i>US Free Trade Agreement Implementation Act 2004</i>	120, 2004	16 Aug 2004	Schedule 3: 1 Jan 2005	Sch. 3 (item 16) [<i>see</i> Table A]
<i>Australian Wine and Brandy Corporation Amendment Act (No. 1) 2007</i>	92, 2007	22 June 2007	22 June 2007	Sch. 1 (item 8) [<i>see</i> Table A]
<i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 4 (items 87, 88): 4 July 2008	—
<i>Statute Stocktake (Regulatory and Other Laws) Act 2009</i>	111, 2009	16 Nov 2009	Schedule 1 (item 1): 17 Nov 2009	—

Act Notes

- (a) The *Australian Wine and Brandy Corporation Act 1980* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
- (b) The *Australian Wine and Brandy Corporation Act 1980* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2(7) of which provides as follows:
- (7) The amendment of the *Australian Wine and Brandy Corporation Act 1980* made by this Act shall come into operation the day on which this Act receives the Royal Assent.
- (c) The *Australian Wine and Brandy Corporation Act 1980* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
- (d) The *Australian Wine and Brandy Corporation Act 1980* was amended by section 3 only of the *Primary Industries (Recovery of Levy Collection Expenses) Act 1988*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2), (3) and (4), this Act commences on the day on which it receives the Royal Assent.
- (e) The *Australian Wine and Brandy Corporation Act 1980* was amended by section 3 only of the *Primary Industries and Energy Legislation Amendment Act (No. 2) 1994*, subsection 2(3) of which provides as follows:
- (3) The amendments made by this Act to the *Australian Wine and Brandy Corporation Act 1980* commence on the first day of the second month that begins after the day on which this Act receives the Royal Assent.
- (f) The *Australian Wine and Brandy Corporation Act 1980* was amended by section 77 only of the *Competition Policy Reform Act 1995*, subsection 2(2) of which provides as follows:
- (2) Part 3 commences on a day to be fixed by Proclamation. However, if Part 3 does not commence by Proclamation within the period of 6 months beginning on the day on which this Act receives the Royal Assent, then it commences on the first day after the end of that period.
- (g) The *Australian Wine and Brandy Corporation Act 1980* was amended by Schedule 2 (item 19) and Schedule 4 (items 48, 49) only of the *Statute Law Revision Act 1996*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
 - (2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.
- Item 19 is taken to have commenced immediately after the commencement of section 20 of the *Australian Wine and Brandy Corporation Amendment Act 1993*.
Section 20 commenced on 16 December 1993.
- (h) The *Australian Wine and Brandy Corporation Act 1980* was amended by Schedule 2 (items 554–567) subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (i) The *Australian Wine and Brandy Corporation Act 1980* was amended by Schedule 5 (Parts 1–3) only of the *Primary Industries Levies and Charges (Consequential Amendments) Act 1999*, section 2 of which provides as follows:
- (1) Subject to this section, this Act commences on the commencement of section 1 of the *Primary Industries (Excise) Levies Act 1999*.

Act Notes

- (2) The following provisions commence on 1 January 2000:
- (d) Parts 2 and 3 of Schedule 5.
- (j) The *Australian Wine and Brandy Corporation Act 1980* was amended by Schedule 1 (item 277) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (ja) The *Public Employment (Consequential and Transitional) Amendment Act 1999* was amended by Schedule 2 (item 8) only of the *Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2000*, subsection 2(3) of which provides as follows:
- (3) Item 8 of Schedule 2 is taken to have commenced on the day on which the *Public Employment (Consequential and Transitional) Amendment Act 1999* received the Royal Assent.
- (k) The *Australian Wine and Brandy Corporation Act 1980* was amended by Schedule 10 (items 63 and 64) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(c) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
- (c) the items in Schedules 10, 11 and 12.
- (l) The *Australian Wine and Brandy Corporation Act 1980* was amended by Schedule 7 only of the *Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part I	
S. 3.....	am. No. 93, 1993
S. 4.....	am. No. 60, 1986; No. 26, 1991; No. 93, 1993; No. 152, 1997; Nos. 32 and 170, 1999; No. 120, 2004
S. 4A	ad. No. 93, 1993
S. 4B	ad. No. 115, 2001
S. 5.....	rep. No. 60, 1986
S. 5A	ad. No. 60, 1986
Ss. 5B, 5C.....	ad. No. 93, 1993
S. 5D	ad. No. 93, 1993 am. No. 170, 1999
Part II	
S. 7.....	am. No. 60, 1986
S. 8.....	am. No. 60, 1986; No. 93, 1993; No. 38, 2003
S. 9.....	am. No. 60, 1986; No. 144, 1989; No. 115, 2001; No. 73, 2008
S. 11.....	am. No. 60, 1986
Part III	
S. 12.....	am. No. 152, 1997
S. 13.....	rs. No. 60, 1986 am. No. 92, 2007
S. 14.....	am. Nos. 72 and 165, 1984 rs. No. 60, 1986 am. No. 159, 2001; No. 92, 2007
S. 15.....	rs. No. 60, 1986 am. No. 93, 1993; No. 92, 2007
Ss. 16, 17	rs. No. 60, 1986
Ss. 18, 19	rep. No. 60, 1986
S. 20.....	am. No. 60, 1986; No. 152, 1997; No. 156, 1999
S. 21.....	rs. No. 60, 1986 am. No. 152 1997; No. 156, 1999
S. 22.....	am. No. 60, 1986
Part IV	rep. No. 60, 1986
Ss. 23–29.....	rep. No. 60, 1986
Part IVA	
Part IVA	ad. No. 60, 1986
S. 29AA	ad. No. 93, 1993
Ss. 29A–29K	ad. No. 60, 1986
S. 29L.....	ad. No. 60, 1986 am. No. 43, 1996
Ss. 29M, 29N	ad. No. 60, 1986

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 29P.....	am. No. 93, 1993
Ss. 29P–29T	ad. No. 60, 1986
S. 29TA	ad. No. 92, 2007
Part IVB	
Part IVB	ad. No. 60, 1986
S. 29U	ad. No. 60, 1986 am. No. 129, 1994; No. 86, 1997; No. 32, 1999; No. 121, 2000
S. 29V	ad. No. 60, 1986 rs. No. 129, 1994 am. No. 86, 1997; No. 32, 1999
Ss. 29W–29Y	ad. No. 60, 1986 am. No. 129, 1994
S. 29Z.....	ad. No. 60, 1986 am. No. 144, 1989; No. 129, 1994; No. 32, 1999 rep. No. 121, 2000
S. 29ZA	ad. No. 60, 1986 am. No. 32, 1999; No. 121, 2000
Part V	
S. 30.....	am. No. 60, 1986; No. 102, 1998
Part VA	
Part VA	ad. No. 60, 1986
Division 1	
S. 31	rep. No. 65, 1985 ad. No. 60, 1986
Ss. 31A–31E	ad. No. 60, 1986
Division 2	
Ss. 31F–31J.....	ad. No. 60, 1986
Division 3	
S. 31K	ad. No. 60, 1986 am. No. 93, 1993; No. 152 1997
Part VI	
S. 31L.....	ad. No. 32, 1999
S. 32.....	rs. No. 60, 1986 am. No. 144, 1989; No. 26, 1991; No. 86, 1997; No. 32, 1999
S. 33.....	rs. No. 60, 1986 am. No. 144, 1989; No. 26, 1991; No. 86, 1997; No. 32, 1999
S. 34.....	rs. No. 60, 1986
Ss. 34A, 34B	ad. No. 60, 1986
S. 35.....	am. No. 60, 1986; No. 51, 1988; No. 93, 1993; No. 152 1997; No. 32, 1999
S. 36.....	rep. No. 152, 1997
S. 37.....	rep. No. 60, 1986
Heading to s. 38.....	rs. No. 152, 1997
S. 38.....	am. No. 60, 1986; No. 93, 1993; No. 152, 1997

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 38A	ad. No. 60, 1986 rep. No. 152, 1997
Part VIA	
Part VIA	ad. No. 144, 1989
Division 1	
S. 39A	ad. No. 144, 1989 am. No. 93, 1993
S. 39B	ad. No. 144, 1989
S. 39C	ad. No. 144, 1989 am. No. 93, 1993; No. 170, 1999
Ss. 39D, 39E	ad. No. 144, 1989
S. 39EA	ad. No. 93, 1993
Division 2	
S. 39F.....	ad. No. 144, 1989 am. No. 137, 1992; No. 93, 1993
Ss. 39G–39K.....	ad. No. 144, 1989 am. No. 137, 1992; No. 170, 1999
S. 39L.....	ad. No. 144, 1989
Ss. 39M–39R	ad. No. 144, 1989 am. No. 137, 1992; No. 170, 1999
S. 39S	ad. No. 144, 1989 rs. No. 93, 1993
Ss. 39T–39V	ad. No. 144, 1989
S. 39W	ad. No. 144, 1989 am. No. 93, 1993; No. 170, 1999
S. 39X	ad. No. 144, 1989
Heading to s. 39Y.....	am. No. 93, 1993
S. 39Y	ad. No. 144, 1989 am. No. 93, 1993
S. 39Z.....	ad. No. 144, 1989 am. No. 93, 1993; No. 43, 1996
S. 39ZAAA	ad. No. 137, 1992 am. No. 170, 1999; No. 115, 2001
S. 39ZAA.....	ad. No. 137, 1992
S. 39ZAB.....	ad. No. 137, 1992 am. No. 115, 2001
S. 39ZAC.....	ad. No. 137, 1992
Division 3	
S. 39ZA	ad. No. 144, 1989
S. 39ZB	ad. No. 144, 1989 am. No. 115, 2001
Ss. 39ZC–39ZE.....	ad. No. 144, 1989
Ss. 39ZF, 39ZG.....	ad. No. 144, 1989 am. No. 137, 1992
S. 39ZH.....	ad. No. 144, 1989 am. No. 115, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 4	
S. 39ZJ.....	ad. No. 144, 1989 am. No. 93, 1993; No. 88, 1995
S. 39ZK.....	ad. No. 144, 1989 am. No. 170, 1999
S. 39ZL.....	ad. No. 144, 1989 am. No. 86, 1997; Nos. 32 and 146, 1999
Part VIB	
Part VIB.....	ad. No. 93, 1993
Division 1	
S. 40.....	ad. No. 93, 1993 am. No. 60, 1986
Renumbered s. 41A.....	No. 93, 1993
Ss. 40A, 40B.....	ad. No. 93, 1993
Division 2	
S. 40C.....	ad. No. 93, 1993 am. No. 115, 2001
S. 40D.....	ad. No. 93, 1993 am. No. 102, 1998
S. 40E.....	ad. No. 93, 1993 am. No. 115, 2001
S. 40F.....	ad. No. 93, 1993 am. No. 102, 1998
S. 40G.....	ad. No. 93, 1993
S. 40H.....	ad. No. 93, 1993 am. No. 115, 2001
Ss. 40J–40M.....	ad. No. 93, 1993
Division 3	
S. 40N.....	ad. No. 93, 1993
S. 40P.....	ad. No. 93, 1993 am. No. 120, 2004
Division 4	
Subdivision A	
Subdiv. A of Div. 4 of..... Part VIB	ad. No. 120, 2004
S. 40PA.....	ad. No. 120, 2004
Subdivision B	
Heading to Subdiv. B of..... Div. 4 of Part VIB	ad. No. 120, 2004
S. 40Q.....	ad. No. 93, 1993
S. 40QA.....	ad. No. 120, 2004
Subdivision C	
Heading to Subdiv. C of..... Div. 4 of Part VIB	ad. No. 120, 2004
S. 40R.....	ad. No. 93, 1993

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision D	
Subdiv. D of Div. 4 of Part VIB	ad. No. 120, 2004
Ss. 40RA–40RG.....	ad. No. 120, 2004
Subdivision E	
Heading to Subdiv. E of Div. 4 of Part VIB	ad. No. 120, 2004
S. 40SA	ad. No. 120, 2004
S. 40S	ad. No. 93, 1993
S. 40T.....	ad. No. 93, 1993 am. No. 120, 2004
Ss. 40U–40W	ad. No. 93, 1993
S. 40X	ad. No. 93, 1993 am. No. 120, 2004
S. 40Y	ad. No. 93, 1993
Note to s. 40Y(1).....	ad. No. 120, 2004
S. 40Z.....	ad. No. 93, 1993
Division 4A	
Div. 4A of Part VIB	ad. No. 120, 2004
Subdivision A	
S. 40ZAA.....	ad. No. 120, 2004
Subdivision B	
Ss. 40ZAB–40ZAI	ad. No. 120, 2004
Subdivision C	
Ss. 40ZAJ–40ZAP.....	ad. No. 120, 2004
Division 5	
Ss. 40ZA–40ZC	ad. No. 93, 1993
S. 40ZD	ad. No. 93, 1993 am. No. 38, 2003
S. 40ZE	ad. No. 93, 1993
Division 6	
Div 6 of Part VIB.....	ad. No. 170, 1999
S. 40ZF	ad. No. 170, 1999
Part VII	
S. 41A formerly s. 40.....	am. No. 93, 1993; No. 43, 1996
S. 41	am. No. 60, 1986 rep. No. 152, 1997
S. 42.....	am. No. 60, 1986; No. 144, 1989; No. 137, 1992; No. 115, 2001
S. 43.....	am. No. 60, 1986; No. 102, 1998
S. 44.....	am. No. 60, 1986; No. 144, 1989; No. 170, 1999; No. 115, 2001
S. 44AA.....	ad. No. 38, 2003

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 44A	ad. No. 144, 1989 am. No. 115, 2001
S. 45.....	rs. No. 48, 1982
S. 46.....	am. No. 60, 1986; No. 144, 1989; No. 121, 2000; No. 38, 2003
Part VIII	
S. 48.....	rep. No. 93, 1993
S. 50.....	am. No. 73, 2008
S. 52.....	rep. No. 111, 2009
Schedule	
Schedule	rs. No. 93, 1993

Table A

Application, saving or transitional provisions

Primary Industries Levies and Charges (Consequential Amendments) Act 1999
(No. 32, 1999)

Schedule 5

Part 3—Transitional provision relating to wine grapes levy

36 Transitional—regulations

Unless the contrary intention appears, regulations made for the purposes of section 29Z of the *Australian Wine and Brandy Corporation Act 1980* apply, in relation to levy imposed by Schedule 26 to the *Primary Industries (Excise) Levies Act 1999*, in a corresponding way to the way in which those regulations apply in relation to levy imposed by the repealed *Wine Grapes Levy Act 1979*.

Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 1999
(No. 170, 1999)

Schedule 7

16 Application of amendments

The amendments made by items 6 to 15 apply to wines and grape extracts that are begun to be manufactured after the commencement of this item.

Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001 (No. 115, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

Table A

- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001
(No. 159, 2001)

Schedule 1

97 Application of amendments

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

US Free Trade Agreement Implementation Act 2004 (No. 120, 2004)

Schedule 3

16 Application

The amendments made by items 1 to 15 of this Schedule apply to applications for determination of geographical indications that have not been finally determined under section 40W of the *Australian Wine and Brandy Corporation Act 1980* on the day this item commences.

Australian Wine and Brandy Corporation Amendment Act (No. 1) 2007
(No. 92, 2007)

Schedule 1

8 Application of amendment made by item 7

The amendment made by item 7 applies in relation to the operations of the Committee during the financial year commencing on 1 July 2007 and during subsequent financial years.

Table B

Modifications

A.C.T. Self-Government (Consequential Provisions) Regulations

Subsection 40(9) (renumbered section 41A):

Omit the subsection, substitute:

(9) In this section:

Parliament means:

- (a) in relation to the Australian Capital Territory—the Legislative Assembly for the Territory; and
- (b) in relation to the Northern Territory—the Legislative Assembly of the Territory;

State includes the Australian Capital Territory and the Northern Territory.