



# Australian Wine and Brandy Corporation Amendment Regulations 2010 (No. 1)<sup>1</sup>

**Select Legislative Instrument 2010 No. 217**

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I, MARIE BASHIR, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Australian Wine and Brandy Corporation Act 1980*.

Dated 19 July 2010

MARIE BASHIR  
Administrator

By Her Excellency's Command

TONY BURKE  
Minister for Agriculture, Fisheries and Forestry

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**1 Name of Regulations**

These Regulations are the *Australian Wine and Brandy Corporation Amendment Regulations 2010 (No. 1)*.

**2 Commencement**

These Regulations commence as follows:

- (a) on the day after they are registered — regulations 1 to 3;
- (b) on the commencement of Schedule 1 to the *Australian Wine and Brandy Corporation Amendment Act 2010* — regulation 4 and Schedule 1;
- (c) on the commencement of Schedule 2 to the *Australian Wine and Brandy Corporation Amendment Act 2010* — regulation 5 and Schedule 2.

**3 Amendment of *Australian Wine and Brandy Corporation Regulations 1981***

Schedules 1 and 2 amend the *Australian Wine and Brandy Corporation Regulations 1981*.

**4 Transitional — Schedule 1**

- (1) The amendments made by items [18] to [23] of Schedule 1 apply in relation to an objection to a proposed GI received by the Registrar of Trade Marks after the commencement of Schedule 1.
- (2) The amendments made by items [24] to [30] of Schedule 1 apply in relation to an application made under subsection 40RE (1) of the *Australian Wine and Brandy Act 1980* after the commencement of Schedule 1.

**5 Transitional — Schedule 2**

- (1) An approval in force under subregulation 6A (2) of the principal Regulations immediately before the commencement of Schedule 2 continues in force as an approval under paragraph 6A (2) (d) of the principal Regulations as amended by Schedule 2.
- (2) The amendment made by item [13] of Schedule 2 applies to an application for an export certificate made after the commencement of Schedule 2.
- (3) In this regulation:  
*principal Regulations* means the *Australian Wine and Brandy Corporation Regulations 1981*.

## Schedule 1 Amendments relating to Agreement

(regulation 3)

### [1] Regulation 3, before definition of *approved*

*insert*

*Act* means the *Australian Wine and Brandy Corporation Act 1980*.

*Agreement* means the Agreement between Australia and the European Community on trade in wine, done at Brussels on 1 December 2008.

*Note* Information about the Agreement is available from the Australian Treaties Database at [www.dfat.gov.au/treaties](http://www.dfat.gov.au/treaties).

### [2] Regulation 3, definition of *GIC*

*omit*

### [3] Regulation 3, after definition of *proposed GI*

*insert*

*proposed item* has the meaning given by subregulation 57 (1).

### [4] Regulation 3, definition of *the Act*

*omit*

### [5] Regulation 13

*substitute*

## 13 Geographical indications and traditional expressions

- (1) For subsection 40J (5) of the Act, the use of a geographical indication or traditional expression mentioned in Schedule 1 is exempted from the operation of sections 40C and 40E of the Act until 12 months after the Agreement enters into force.

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- (2) For subsection 40J (5) of the Act, the use of the geographical indication ‘Tokay’ is exempted from the operation of sections 40C and 40E of the Act until 10 years after the Agreement enters into force.

**[6] Regulations 14 and 15**

*omit*

subsections 40C (1), (2) and (3) and section 40E of the Act

*insert*

section 40C of the Act, until 12 months after the Agreement enters into force,

**[7] After regulation 15**

*insert*

**16 Variety names that are also geographical indications**

For subsection 40J (5) of the Act, the use of a name in Schedule 2 to describe and present wine originating in Australia is exempted from sections 40C and 40G of the Act if the name is used to describe a variety of grapes from which the wine is made.

**[8] Regulations 17 and 17A**

*substitute*

**17 Marketing periods for use of geographical indications, registered traditional expressions and registered additional terms**

- (1) For subsection 40J (5) of the Act, the use of a registered geographical indication, a registered translation, a registered traditional expression or a registered additional term to describe and present wine is exempted from the operation of the offence provisions if:
- (a) the offence provisions would apply to the use of the indication, translation, expression or term after the day on which this regulation commences; and

- (b) the wine was lawfully produced before the day on which the offence provisions first apply to the use of the indication, translation, expression or term; and
- (c) the indication, translation, expression or term is used by:
  - (i) a wholesaler of wine acting in the course of the wholesaler's business; or
  - (ii) a retailer of wine in the course of the retailer's business.

*Note* **The offence provisions** is defined in subsection 40J (1) of the Act.

- (2) The exemption in subregulation (1):
  - (a) ceases to apply to the use of the indication, translation, expression or term by a wholesaler in the description and presentation of fortified wines at the end of 5 years commencing on the day on which the offence provisions first apply to the use of the indication, translation, expression or term; and
  - (b) ceases to apply to the use of the indication, translation, expression or term by a wholesaler in the description and presentation of other wines at the end of 3 years commencing on the day on which the offence provisions first apply to the use of the indication, translation, expression or term.
- (3) The exemption in subregulation (1) ceases to apply to the use of the indication, translation, expression or term by a retailer in the description and presentation of fortified wines:
  - (a) at the end of 5 years commencing on the day on which the offence provisions first apply to the use of the indication, translation, expression or term; or
  - (b) if the retailer has a stock of the fortified wine at the end of that period — when that stock is exhausted.
- (4) The exemption in subregulation (1) ceases to apply to the use of the indication, translation, expression or term by a retailer in the description and presentation of wines other than fortified wines:
  - (a) at the end of 3 years commencing on the day on which the offence provisions first apply to the use of the indication, translation, expression or term; or

- 
- (b) if the retailer has a stock of the wine at the end of that period — when that stock is exhausted.

### **17A Use of trade mark in description of wine**

- (1) This regulation applies if:
- (a) the Registrar of Trade Marks decides, under subsection 40RC (2) of the Act, that an objection to a proposed GI is made out, and the GI is subsequently registered in accordance with section 40ZD (2) of the Act; or
  - (b) the Registrar of Trade Marks decides, under regulation 67, that an objection to a proposed item is made out, and the item is subsequently registered in accordance with section 40ZD (2) of the Act; or
  - (c) a trade mark is registered or is the subject of a pending application under the *Trade Marks Act 1995* and:
    - (i) after the registration of, or application for, the trade mark, a GI or translation is proposed and registered; and
    - (ii) the GI or translation is identical to, or is likely to cause confusion with, the trade mark; or
  - (d) a trade mark listed in Schedule 3 is identical to:
    - (i) a registered GI that indicates a foreign country or a region or locality in a foreign country; or
    - (ii) a registered translation of such a GI; or
  - (e) a trade mark listed in Schedule 3 is likely to cause confusion with:
    - (i) a registered GI that indicates a foreign country or a region or locality in a foreign country; or
    - (ii) a registered translation of such a GI.
- (2) For subsection 40J (5) of the Act, the use of the trade mark to describe and present wine that did not originate in the country, region or locality indicated by the registered GI or registered translation is exempted from the offence provisions to the extent that:
- (a) the offence provisions relate to the use of:
    - (i) a registered GI or a registered translation; or

- (ii) an indication or term that resembles a registered GI or a registered translation; and
- (b) the origin of the wine is shown in the description and presentation of the wine in a way that is not likely to mislead.

*Note* **The offence provisions** is defined in subsection 40J (1) of the Act.

## **[9] Regulations 19 to 21**

*substitute*

### **19 Wine originating in more than one country**

For subsection 40F (6) of the Act, if wine is made from grapes grown in more than one country, the description and presentation of the wine must identify the proportion of the wine that originated in each country.

### **20 Grape varieties**

- (1) For subsection 40F (6) of the Act, a name used for a variety in the description and presentation of wine originating in Australia must be a name of a variety, or a synonym of a name, that is recognised as a name or a synonym by at least one of the following organisations:
  - (a) International Organisation of Vine and Wine;
  - (b) International Union for the Protection of New Varieties of Plants;
  - (c) International Plant Genetic Resources Institute.
- (2) For subsection 40F (6) of the Act, if wine originating in Australia is made from two or more varieties, the wine may only be described and presented as being of a particular variety if at least 850ml/L of the wine is obtained from that variety.
- (3) For subsection 40F (6) of the Act, if the description and presentation of wine originating in Australia refers to more than one variety:
  - (a) the description and presentation must list the varieties in descending order of their proportions in the wine; and



- 
- (b) each variety named in the description and presentation must be present in greater proportion in the composition of the wine than any variety that is not named; and
  - (c) in total, at least 850ml/L of the wine must be obtained from the named varieties.
- (4) For the purpose of determining the proportion of the varieties under subregulation (2) or (3), the quantity of products used for possible sweetening and cultures of micro-organisms, not exceeding a total of 50ml/L, is excluded.
  - (5) For this regulation, the volume of grapes in a fortified wine is to be calculated exclusive of the grape spirit or brandy (or both) added to the wine.

## **21 Use of geographical indications registered in relation to Australia**

- (1) For subsection 40F (6) of the Act, if the description and presentation of wine uses one or more GIs registered in relation to Australia, the total number of registered GIs and foreign place names used in the description and presentation of the wine must be three or less.

*Note* Subsection 4(1) of the Act defines **registered geographical indication** to mean a geographical indication included in Part 1 of the Register kept under section 40ZC of the Act. Subsection 40ZD(2) of the Act requires Part 1 of the Register to include particulars of any region or locality in relation to which a geographical indication is determined.

### ***One registered GI***

- (2) If the description and presentation of the wine:
  - (a) uses one GI registered in relation to Australia; and
  - (b) does not use a GI registered in relation to another country; and
  - (c) does not use a foreign place name;at least 850ml/L of the wine must have been obtained from grapes grown in the region or locality in Australia in relation to which the GI is registered.

*Two or three registered GIs*

- (3) If the description and presentation of the wine:
- (a) uses two or three registered GIs (at least one of which is registered in relation to Australia); and
  - (b) does not use a foreign place name;
- the wine, and the description and presentation, must meet the requirements of subregulation (4).
- (4) For subregulation (3):
- (a) in total, at least 950ml/L of the wine must have been obtained from grapes grown in the regions or localities in relation to which those GIs are registered; and
  - (b) at least 50ml/L of the wine must have been obtained from each of those regions or localities; and
  - (c) the description and presentation must set out the registered GIs in descending order of the proportions of the relevant grapes in the wine.

*Registered GIs used with foreign place names*

- (5) If the description and presentation of the wine uses:
- (a) at least one GI registered in relation to Australia; and
  - (b) at least one foreign place name;
- the wine, and the description and presentation, must meet the requirements of subregulation (6).
- (6) For subregulation (5):
- (a) in total, at least 950ml/L of the wine must have been obtained from grapes grown in:
    - (i) the regions or localities in relation to which those GIs are registered; and
    - (ii) the regions or localities identified by those foreign place names; and
  - (b) at least 50ml/L of the wine must have been obtained from each of those regions or localities; and
  - (c) the description and presentation must set out the registered GIs and foreign place names in descending order of the proportions of the relevant grapes in the wine.

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*General*

(7) For this regulation:

- (a) a word or term is not to be treated as a registered GI or a foreign place name, as the case may be, when it appears in the description and presentation because it is required by another law; and
- (b) the volume of grapes in a fortified wine is to be calculated exclusive of the grape spirit or brandy (or both) added to the wine.

*Example for paragraph (a)*

‘Australia’ and the name of a foreign country might appear in the description and presentation because they are required by regulation 19.

(8) In this regulation:

***foreign place name***, in relation to wine goods, means a word or expression that:

- (a) is not a registered GI; and
- (b) identifies a country, region or locality (other than Australia) in which the goods originated.

**[10] Subregulation 22 (1)**

*omit*

40F (5A)

*insert*

40F (6)

**[11] Paragraph 22 (1) (a)**

*after*

wine

*insert*

originating in Australia

**[12] Subregulation 22 (2)**

*omit*

it consists of at least 850ml/L of a variety, or varieties, of grape

*insert*

at least 850ml/L of the wine is obtained from grapes

**[13] After Part 4**

*insert*

**Part 4A Applications for determination of Australian GIs**

**22A Payment of application fee**

- (1) An application under section 40R of the Act must be accompanied by the fee (if any) charged by the Corporation for the making of the application.
- (2) The Corporation may waive the fee.
- (3) 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.

**[14] Part 5, heading**

*substitute*

**Part 5 Criteria for determining Australian GIs**

**[15] Regulations 26 and 27**

*omit*

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[16] **Part 6, heading**

*substitute*

**Part 6**                      **Objection to determination of  
Australian GI based on  
pre-existing trade mark rights**

[17] **Regulation 29, at the foot**

*insert*

*Note* In some proceedings there may only be one party.

[18] **Regulations 34 to 37**

*substitute*

**34**                      **Definition for Division 2**

In this Division:

*party*, in relation to proceedings mentioned in this Division, means either of the following:

- (a) if an application was made for the determination of the proposed GI under section 40R of the Act— the applicant;
- (b) a person who makes an objection under paragraph 40RA (2) (b) of the Act.

**36**                      **Evidence**

After notifying the Geographical Indications Committee, the Registrar must send each party a notice that:

- (a) gives the name and address of the other party; and
- (b) invites the party to file evidence in relation to a decision about the matter; and
- (c) states that any evidence must be filed 3 months or less from the date of the notice.

**37 Evidence in answer**

If a person files evidence in response to a notice sent under regulation 36, the Registrar must send the other party a notice that:

- (a) invites the party to file evidence in answer; and
- (b) states that evidence in answer must be filed 2 months or less from the date of the notice sent under this regulation, or any longer period that the Registrar of Trade Marks thinks is appropriate under the circumstances.

*Note* In some proceedings there may only be one party.

**[19] Subregulation 39 (4)**

*substitute*

- (4) If the new evidence is filed by the date mentioned in subregulation (3), the Registrar must send a notice to the other party telling them that the new evidence is filed and setting a reasonable period for the party to file evidence in answer to it.

*Note* In some proceedings there may only be one party.

**[20] Regulation 42, note**

*omit*

GIC

*insert*

Geographical Indications Committee

**[21] Subregulation 43 (2)**

*omit*

disregard any

*insert*

not deal with a

**[22] Subregulation 43 (2), table, item 2**

*omit*

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**[23] Subregulation 43 (3), note**

*omit*

**[24] Regulations 45 and 46**

*substitute*

**45 Definition for Division 3**

In this Division:

*party*, in relation to proceedings mentioned in this Division, means any of the following:

- (a) the person who makes an application under paragraph 40RE (1) (b) of the Act;
- (b) the owner of the trade mark concerned;
- (c) if:
  - (i) an application for the determination of the proposed GI to which the objection relates was made under section 40R of the Act; and
  - (ii) the applicant for the determination is not the person mentioned in paragraph (a);the applicant for the determination.

**46 Notice of application**

If the Registrar receives an application under paragraph 40RE (1) (b) of the Act, the Registrar must notify the Geographical Indications Committee in writing of the receipt and terms of the application.

**[25] Regulation 47**

*omit*

Not less than 1 month after a notice is published under subregulation 46 (1),

*insert*

After notifying the Geographical Indications Committee,

**[26] Regulation 48**

*omit*

**[27] After subregulation 52 (2)**

*insert*

- (3) The Registrar must not make a decision under subsection 40RE (1) of the Act if the trade mark concerned is the subject of removal or cancellation proceedings.
- (4) The Registrar must decide that the ground of objection continues to exist if no party files evidence within the period mentioned in paragraph 47 (c).

**[28] Regulations 53 and 54**

*substitute*

**53 Withdrawal of application**

- (1) If the applicant under paragraph 40RE (1) (b) of the Act withdraws the application before the Registrar makes a decision under this Division, the Registrar must continue the proceedings if requested to do so by another party.
- (2) However, if no party makes a request to continue, the Registrar must decide that the ground of objection continues to exist.

**54 Notice of decision**

- (1) The Registrar must, in writing, inform the Geographical Indications Committee and each party of the Registrar's decision.
- (2) After receiving notice of a decision from the Registrar, the Presiding Member of the Committee must publish a notice:
  - (a) setting out the proposed GI; and
  - (b) stating that a decision of the Registrar has been made in relation to the proposed GI; and
  - (c) setting out the terms of the decision.



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- (3) The notice under subregulation (2) is to be published in the manner that the Committee thinks appropriate.

**[29] Subregulation 55 (2)**

*omit*

disregard any

*insert*

not deal with a

**[30] Subregulation 55 (2), table, item 2**

*omit*

**[31] After Part 6**

*insert*

## **Part 6A Determination of foreign GIs and translations of foreign GIs**

### **Division 1 Applications for determinations**

#### **56 Applications for determinations**

- (1) A person may apply in writing to the Geographical Indications Committee for the determination of a GI in relation to a foreign country or a region or locality in a foreign country.
- (2) A person may apply in writing to the Committee for the determination of a translation of a GI in relation to a foreign country or a region or locality in a foreign country.
- (3) An application under subregulation (2) for the determination of a translation of a geographical indication may be made:
  - (a) after the GI is registered; or
  - (b) at the same time as an application under subregulation (1) for determination of the GI.

- (4) An application under subregulation (1) or (2) must be accompanied by the fee (if any) charged by the Corporation for the making of the application.
- (5) The Corporation may waive the fee.
- (6) 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.

## **Division 2                      Objections based on pre-existing trade mark rights**

### **57                      Notice to be given of proposed foreign GI or translation of foreign GI**

- (1) The Presiding Member of the Geographical Indications Committee must publish a notice if:
  - (a) an application has been made under subregulation 56 (1) for the determination of a GI (the *proposed item*); or
  - (b) an application has been made under subregulation 56 (2) for the determination of a translation of a GI (the *proposed item*).
- (2) The notice must:
  - (a) set out the proposed item; and
  - (b) invite persons to make written objections to the Registrar of Trade Marks in relation to the proposed item on a ground set out in regulation 58; and
  - (c) invite the objections to be made within the period of not less than 1 month stated in the notice.
- (3) If applications for determination of a GI and translation of the GI are made at the same time, the Presiding Member may publish a single notice in relation to both applications.

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**58 Grounds of objection to determination of foreign GI or translation of foreign GI**

*Registered owner of a registered trade mark*

- (1) The registered owner of a registered trade mark may object to the determination of a proposed item on one of the following grounds:
- (a) that the trade mark consists of a word, expression or other indication that is identical to the proposed item;
  - (b) that:
    - (i) the trade mark consists of a word, expression or other indication; and
    - (ii) the proposed item is likely to cause confusion with that word, expression or other indication;
  - (c) that:
    - (i) the trade mark contains a word, expression or other indication; and
    - (ii) the proposed item is likely to cause confusion with that word, expression or other indication; and
    - (iii) the owner has trade mark rights in that word, expression or other indication.
- (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, expression or other indication.

*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 item 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, expression or other indication that is identical to the proposed item; and
  - (iii) it appears that 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;
- (b) that:
- (i) the application was made in good faith; and
  - (ii) the trade mark consists of a word, expression or other indication; and
  - (iii) the proposed item is likely to cause confusion with that word, expression or other indication; and
  - (iv) it appears that 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, expression or other indication; and
  - (iii) the proposed item is likely to cause confusion with that word, expression or other indication; and
  - (iv) it appears that 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, expression or other indication.

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*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 item on one of the following grounds:
- (a) that:
    - (i) the trade mark consists of a word, expression or other indication that is identical to the proposed item; and
    - (ii) the person has trade mark rights in that word, expression or other indication; and
    - (iii) the rights were acquired through use in good faith;
  - (b) that:
    - (i) the trade mark consists of or contains a word, expression or other indication; and
    - (ii) the proposed item is likely to cause confusion with that word, expression or other indication; and
    - (iii) the person has trade mark rights in that word, expression or other indication; and
    - (iv) the rights were acquired through use in good faith.

*Common use*

- (5) A person may object to the determination of a proposed item on the ground that the proposed item is used in Australia:
- (a) as the common name of a type or style of wine; or
  - (b) as the name of a variety of grapes.

**Division 3                      Consideration of objections****59                      Application of Division 3**

This Division applies if:

- (a) the Registrar of Trade Marks receives an objection in relation to the proposed item on a ground that is set out in regulation 58; and
- (b) the objection is received within the period stated in the notice under regulation 57.

**60 Definition for Division 3**

In this Division:

*party*, in relation to proceedings mentioned in this Division, means either of the following:

- (a) the applicant under regulation 56 for a determination;
- (b) a person who makes an objection under paragraph 57 (2) (b).

**61 Notice of objection**

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

**62 Evidence**

After notifying the Geographical Indications Committee, the Registrar of Trade Marks must send each party a notice that:

- (a) gives the name and address of the other party; and
- (b) invites the party to file evidence in relation to a decision about the matter; and
- (c) states that any evidence must be filed 3 months or less from the date of the notice.

**63 Evidence in answer**

If a person files evidence in response to a notice sent under regulation 62, the Registrar of Trade Marks must send the other party a notice that:

- (a) invites the party to file evidence in answer; and
- (b) states that evidence in answer must be filed 2 months or less from the date of the notice sent under this regulation, or any longer period that the Registrar of Trade Marks thinks is appropriate under the circumstances.

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**64 Request for hearing**

- (1) A party may, no more than 1 month after the end of the period given under paragraph 63 (b) for the acceptance of evidence in answer, ask the Registrar of Trade Marks to conduct a hearing.
- (2) The Registrar of Trade Marks must agree to a request made under subregulation (1).

**65 New evidence**

- (1) At any time before the Registrar of Trade Marks makes a decision about an objection to a proposed item, but after the end of a period specified by the Registrar of the Trade Marks for the filing of evidence, a party may apply to the Registrar of Trade Marks, in writing, to file new evidence.
- (2) An application must include a statement:
  - (a) describing the new evidence; and
  - (b) giving the reasons why the new evidence was not filed within the specified period.
- (3) If, after considering the application, the Registrar of Trade Marks decides that it is reasonable to allow the filing of the new evidence, he or she must set a date by which the new evidence must be filed.
- (4) If the new evidence is filed by the date mentioned in subregulation (3), the Registrar of Trade Marks must send a notice to the other party telling them that the new evidence is filed and setting a reasonable period for the party to file evidence in answer to it.

**66 Parties to send copies of evidence to each other**

Evidence in relation to proceedings under this Division is not taken to be validly filed unless the party filing the evidence:

- (a) gives a copy of the evidence to the other party; and
- (b) includes, with the evidence being filed, a statement setting out the date, place and manner in which the copy was given to the other party.

**67 Decision by Registrar of Trade Marks**

- (1) The Registrar of Trade Marks must, as soon as practicable after the last day set for evidence to be filed, make a decision in writing whether the ground of objection is or is not made out by considering:
  - (a) the notice published under regulation 57 and any related documents; and
  - (b) the documents filed by the parties; and
  - (c) any other matter that the Registrar of Trade Marks thinks is relevant.
- (2) If a hearing is held, the Registrar of Trade Marks must also invite submissions from the parties and consider the submissions.
- (3) The Registrar of Trade Marks must not make a decision under subregulation (1) if the registered trade mark concerned is the subject of removal or cancellation proceedings.
- (4) The Registrar of Trade Marks must decide that the ground of the objection is not made out if:
  - (a) the person objecting to the proposed item does not file any evidence within the period mentioned in paragraph 62 (c); or
  - (b) the person objecting to the proposed item withdraws the notice of objection before the Registrar of Trade Marks makes a decision about the objection.

**68 Recommendation by Registrar of Trade Marks to determine foreign GI or translation of foreign GI despite objection being made out**

- (1) 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 Geographical Indications Committee that the proposed item be determined despite the objection having been made out;



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the Registrar of Trade Marks may make that recommendation to the Committee 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 item was in use in Australia before the trade mark rights arose.

*Note 2* If a recommendation is made under subregulation (1), the Committee may determine a GI or a translation of a GI— see subregulation 86 (5).

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

## **69 Notice of decision**

- (1) The Registrar of Trade Marks must, in writing, inform the Geographical Indications Committee and each party of the Registrar of Trade Marks's decision in relation to the objection under regulation 67 and any recommendation that has been made under regulation 68.
- (2) After receiving notice of a decision, the Presiding Member of the Committee must publish a notice:
  - (a) setting out the proposed item; and
  - (b) stating that a decision of the Registrar of Trade Marks has been made in relation to the proposed item; and
  - (c) setting out the terms of the decision made under regulation 67 and any recommendation made under regulation 68 in relation to the proposed item.
- (3) The notice under subregulation (2) is to be published in the manner that the Committee thinks appropriate.

## **70 Fees for Division 3 proceedings**

- (1) In proceedings mentioned in this Division, the fees specified in column 3 of an item in the following table are payable in respect of a matter specified in column 2 of the item.
- (2) A fee imposed by subregulation (1) must be paid to the Registrar of Trade Marks.

- (3) The Registrar of Trade Marks must not deal with a matter until the fee for the matter is paid.

Item	Matter	Fee
1	Filing a notice of objection in response to an invitation under paragraph 57 (2) (b)	\$500
2	Applying to file new evidence under subregulation 65 (1)	\$100
3	Filing evidence under regulation 62, 63 or 65 (that is, evidence in support, evidence in answer or new evidence)	\$375
4	Requesting a hearing under subregulation 64 (1)	\$500
5	Attending a hearing	\$500 per day or part of a day

- (4) If a person requests a hearing and pays the fee mentioned in item 4 of the table in respect of the hearing, the fee in item 5 of the table applies to the person only for the second and any subsequent day of the hearing.

## 71 Costs

The Registrar of Trade Marks is not entitled to make an order for costs in proceedings mentioned in this Division.

## Division 4 Decision that ground of objection no longer exists

### 72 Definition for Division 4

In this Division:

*party*, in relation to proceedings mentioned in this Part, means any of the following:

- (a) the person who makes an application under regulation 73;
- (b) if the objection was made on a ground in subregulation 58 (1), (3) or (4) — the owner of the trade mark concerned;
- (c) if the objection was made on a ground in subregulation 58 (5) — the person who made the objection;

- 
- (d) if the applicant for the determination of the proposed item to which the objection relates is not the person mentioned in paragraph (a) — the applicant for the determination.

**73 Application for decision**

If the Registrar of Trade Marks has made a decision under regulation 67 that a ground of objection has been made out, a person may apply 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.

**74 Notice of application**

If the Registrar of Trade Marks receives an application under regulation 73, the Registrar of Trade Marks must notify the Geographical Indications Committee in writing of the receipt and terms of the application.

**75 Evidence**

After notifying the Geographical Indications Committee, the Registrar of Trade Marks must send each party a notice that:

- (a) gives the name and address of each other party; and
- (b) invites the party to file evidence in relation to a decision about the matter; and
- (c) states that any evidence must be filed 3 months or less after the date of the notice.

**76 Evidence in answer**

If a person files evidence in response to a notice sent under regulation 75, the Registrar of Trade Marks must send each party a notice that:

- (a) invites the party to file evidence in answer to another party's evidence; and

- (b) states that evidence in answer must be filed 2 months or less from the date of the notice sent under this regulation, or any longer period that the Registrar of Trade Marks thinks is appropriate under the circumstances.

**77 Request for hearing**

- (1) A party may, no more than 1 month after the end of the period given under paragraph 76 (b) for the acceptance of evidence in answer, ask the Registrar of Trade Marks to conduct a hearing.
- (2) The Registrar of Trade Marks must agree to a request made under subregulation (1).

**78 New evidence**

- (1) At any time before the Registrar of Trade Marks makes a decision about whether a ground of objection to a proposed item no longer exists, but after the end of a period specified by the Registrar of Trade Marks for the filing of evidence, a party may apply to the Registrar of Trade Marks, in writing, to file new evidence.
- (2) An application must include a statement:
  - (a) describing the new evidence; and
  - (b) giving the reasons why the new evidence was not filed within the specified period.
- (3) If, after considering the application, the Registrar of Trade Marks decides that it is reasonable to allow the filing of the new evidence, he or she must set a date by which the new evidence must be filed.
- (4) If the new evidence is filed by the date mentioned in subregulation (3), the Registrar of Trade Marks must send a notice to the other parties telling them that the new evidence is filed and setting a reasonable period for the parties to file evidence in answer to it.

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**79 Parties to send copies of evidence to each other**

Evidence in relation to proceedings under this Division is not taken to be validly filed unless the party filing the evidence:

- (a) gives a copy of the evidence to each other party; and
- (b) includes, with the evidence being filed, a statement setting out the date, place and manner in which the copy was given to each other party.

**80 Decision by Registrar of Trade Marks**

- (1) The Registrar of Trade Marks must, as soon as practicable after the last day set for evidence to be filed, decide whether the ground of objection no longer exists by considering:
  - (a) the documents filed by the parties; and
  - (b) any other matter that the Registrar of Trade Marks thinks is relevant.
- (2) If a hearing is held, the Registrar of Trade Marks must also invite submissions from the parties and consider the submissions.
- (3) The Registrar of Trade Marks must not make a decision under subregulation (1) if the registered trade mark concerned is the subject of removal or cancellation proceedings.
- (4) The Registrar of Trade Marks must decide that the ground of objection continues to exist if no party files evidence within the period mentioned in paragraph 75 (c).

**81 Withdrawal of application**

- (1) If the applicant under regulation 73 withdraws the application before the Registrar of Trade Marks makes a decision under this Division, the Registrar of Trade Marks must continue the proceedings if requested to do so by another party.
- (2) However, if no party makes a request to continue, the Registrar of Trade Marks must decide that the ground of objection continues to exist.

**82 Notice of decision**

- (1) The Registrar of Trade Marks must, in writing, inform the Geographical Indications Committee and each party of the Registrar of Trade Marks's decision.
- (2) After receiving notice of a decision from the Registrar of Trade Marks, the Presiding Member of the Committee must publish a notice:
  - (a) setting out the proposed item; and
  - (b) stating that a decision of the Registrar has been made in relation to the proposed item; and
  - (c) setting out the terms of the decision.
- (3) The notice under subregulation (2) is to be published in the manner that the Committee thinks appropriate.

**83 Fees for Division 4 proceedings**

- (1) In proceedings mentioned in this Division, the fees specified in column 3 of an item in the following table are payable in respect of a matter specified in column 2 of the item.
- (2) A fee imposed by subregulation (1) must be paid to the Registrar of Trade Marks.
- (3) The Registrar of Trade Marks must not deal with a matter until the fee for the matter is paid.

Item	Matter	Fee
1	Making an application for a decision under regulation 73	\$500
2	Applying to file new evidence under regulation 78	\$100
3	Filing evidence under regulation 75, 76 or 78 (that is, evidence in support, evidence in answer or new evidence)	\$375
4	Requesting a hearing under regulation 77	\$500
5	Attending a hearing	\$500 per day or part of a day

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- (4) If a person requests a hearing and pays the fee mentioned in item 4 of the table in respect of the hearing, the fee in item 5 of the table applies to the person only for the second and any subsequent day of the hearing.

**84 Costs**

The Registrar of Trade Marks is not entitled to make an order for costs in proceedings mentioned in this Division.

**Division 5 Appeals**

**85 Decisions appellable to Federal Court**

For subsection 40ZAR (1) of the Act, decisions of the Registrar of Trade Marks made under the following provisions are prescribed:

- (a) subregulation 67 (1) (a decision that a ground of objection is or is not made out);
- (b) subregulation 68 (1) (a recommendation that a proposed item be determined or a refusal to make such a recommendation);
- (c) subregulation 80 (1) (a decision that a ground of objection no longer exists or a refusal to make such a decision).

**Division 6 Determinations of foreign GIs and translations of foreign GIs by Geographical Indications Committee**

**86 When Geographical Indications Committee may proceed to make a determination**

- (1) The Geographical Indications Committee may determine a GI or translation of a GI if no objection to which Division 3 applies was made to the proposed item within the period stated in the notice under regulation 57 setting out the proposed item.

- (2) If an objection was made to which Division 3 applies, the Committee:
- (a) must not proceed to make a determination until the requirements of regulation 69 have been complied with; and
  - (b) may only make a determination in the circumstances set out in the following subregulations.

*Ground of objection not made out*

- (3) The Committee may determine a GI or translation of a GI that was the subject of a decision under regulation 67 if:
- (a) all appeals against, or reviews of, the decision in relation to the proposed item 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 proposed item.

*Ground of objection made out and person agrees to determination being made*

- (4) The Committee may determine a GI or translation of 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 proposed item has agreed, by notice in writing given to the Committee, to the determination of the proposed item.

*Ground of objection made out and a recommendation is made under regulation 68*

- (5) The Committee may determine a GI or translation of 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 regulation 68 that the proposed item should be determined despite the ground of objection having been made out; and
  - (b) all appeals against, or reviews of, the decision to make that recommendation have been finalised; and
  - (c) the decision standing after the appeals and reviews have been finalised is that the recommendation is made.



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*Ground of objection made out and decision made under regulation 80*

- (6) The Committee may determine a GI or translation of 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 regulation 80 that the ground of objection no longer exists; and
  - (b) all appeals against, or reviews of, the decision that the ground no longer exists have been finalised; and
  - (c) the decision standing after the appeals and reviews have been finalised is that the ground no longer exists.

*No determination of translation without corresponding GI*

- (7) However, the Committee must not determine a translation of a GI if:
- (a) the application for determination of the translation under subregulation 56 (2) was made at the same time as an application for determination of the GI was made under subregulation 56 (1); and
  - (b) the Committee is not permitted under this regulation to proceed to determine the GI.

**87 Consultation by Committee**

In determining a GI or translation of a GI, the Committee may consult any organisation or person it thinks appropriate.

**88 Determining foreign GIs**

- (1) In determining a GI, 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 indication to be used to indicate that area or those areas; and
  - (c) determine any conditions of use that are to be applicable to the GI.

- (2) The Committee must not:
  - (a) determine a GI that is different to the GI proposed in the application under subregulation 56 (1); or
  - (b) determine boundaries different to those proposed in the application.
- (3) The Committee must have regard to the following criterion:
  - (a) whether the GI is protected by the laws of the country where the area is located.
- (4) The Committee may have regard to any other matter it considers relevant.
- (5) However, the Committee must not consider any submission to the extent that the submission asserts a trade mark right in respect of the proposed GI.

## **89 Determining translations**

- (1) In determining a translation of a GI, the Committee must:
  - (a) identify the GI to which the translation relates; and
  - (b) determine the translation to be used; and
  - (c) determine any conditions of use that are to be applicable to the translation.
- (2) The Committee must not determine a different translation to the translation that was proposed in the application under subregulation 56 (2).
- (3) The Committee must have regard to the following criterion:
  - (a) the translation must convey or evoke the significance of the GI to which it relates.
- (4) The Committee may have regard to any other matter it considers relevant.
- (5) However, the Committee must not consider any submission to the extent that the submission asserts a trade mark right in respect of the proposed translation.

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**90 Interim determination**

- (1) A determination by the Geographical Indications Committee under regulation 88 or regulation 89 is to be an interim determination in the first instance.
- (2) An interim determination does not have effect.

**91 Publication of notice of interim determination**

- (1) The Presiding Member of the Committee must publish a notice, stating that the interim determination has been made and setting out the terms of the determination, 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 1 month that is stated in the notice.
- (3) If interim determinations are made of both a GI and a translation of the GI, the Presiding Member may publish a single notice in relation to both determinations.

**92 Final determination**

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

**93 Publication of notice of final determination**

- (1) The Presiding Member of the Geographical Indications Committee must publish a notice, stating that a final determination has been made and setting out the terms of the determination, in any manner that the Committee thinks appropriate.
- (2) The notice must include a statement to the effect that:
  - (a) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made, by or on behalf of any person whose interests are affected by the determination, to the Administrative Appeals Tribunal for review of the determination; and

- (b) unless subsection 28 (4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of that person for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the determination; and
- (c) if a decision has been made under regulation 67, regulation 68 or regulation 80 before the final determination:
  - (i) no application to the Administrative Appeals Tribunal may be made in respect of that decision; and
  - (ii) an appeal lies to the Federal Court in respect of that decision under regulation 85.
- (3) If final determinations are made of both a GI and a translation of the GI, the Presiding Member may publish a single notice in relation to both determinations.
- (4) Any failure to comply with subregulation (2) in relation to a determination does not affect the validity of the determination.

#### **94 Review of final determination**

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

*Note* Under regulation 85, an appeal lies to the Federal Court from a decision under regulation 67, 68 or 80.

- (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 final determination must be made within 28 days after notice of the determination is published in accordance with regulation 93.
- (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 final determination must be made before the time fixed by subregulation (2) ends.

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**95 Date of effect of final determination**

- (1) The Presiding Member of the Geographical Indications Committee 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 made to the Administrative Appeals Tribunal under regulation 94 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 regulation 93.
- (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.
- (4) However, a final determination in relation to a translation of a GI does not take effect, and particulars must not be included in the Register, if the GI to which it relates is not included in the Register.

**Division 7 Omission of foreign GIs and translations of foreign GIs****Subdivision 1 Omission for non-use or loss of significance****96 Definition for Subdivision 1**

In this Subdivision:

*item proposed to be omitted* means the entry in the Register that an application under regulation 97 relates to, which may be:

- (a) a registered GI in relation to a foreign country or a region or locality in a foreign country; or

- (b) a registered translation of a GI in relation to a foreign country or a region or locality in a foreign country; or
- (c) both a registered GI in relation to a foreign country or a region or locality in a foreign country and the registered translation of that GI.

**97 Application for omission of foreign GI or translation of foreign GI**

- (1) A person may apply to the Geographical Indications Committee to omit from the Register a GI in relation to a foreign country or a region or locality in a foreign country, on the ground that the GI is not in use.
- (2) If an application is made to omit a GI from the Register, and a translation of that GI is included in the Register, the application is taken to be for omission of both the GI and the translation.
- (3) A person may apply to the Committee to omit a registered translation from the Register on the ground that the translation no longer conveys or evokes the significance of the GI for which it was registered.
- (4) An application under subregulation (1) or (3) must be accompanied by the fee (if any) charged by the Corporation for the making of the application.
- (5) The Corporation may waive the fee.
- (6) 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.

**98 Further information concerning 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) The notice must include a statement about the effect of subregulation (2).

**99 Notice by Committee**

If the Geographical Indications Committee receives an application under regulation 97, the Presiding Member of the Committee must publish a notice in the manner that the Committee thinks appropriate:

- (a) setting out the item proposed to be omitted; and
- (b) stating that an application under regulation 97 has been made; and
- (c) inviting persons to make written submissions to the Committee in relation to the application within the period of not less than 1 month that is stated in the notice.

**100 Determination by Committee**

- (1) After considering any submissions made to it in response to a notice under regulation 99, the Committee must determine whether to omit the item proposed to be omitted.

*Omission of GI*

- (2) The Committee may, in writing, make a determination to omit a GI if the Committee is satisfied of the following matters:
- (a) that the GI has been registered for more than 5 years before the date of the notice under regulation 99;
  - (b) that the GI has not been used during the 3 years before the date of the notice under regulation 99;
  - (c) that no special circumstances exist in relation to the country, region or locality indicated by the GI that would preclude the making of a determination to omit the GI from the Register.
- (3) For the purposes of paragraph (2) (b), a GI has not been used if:
- (a) there has not been a production of wine for commercial use originating in the country, region or locality indicated by the GI; and

- (b) wine originating in the country, region or locality indicated by the GI has not been described and presented for sale in Australia using the GI or a registered translation of the GI; and
  - (c) wine originating in the country, region or locality indicated by the GI has not been described and presented for sale in the country of origin using the GI or a registered translation of the GI.
- (4) For the purposes of paragraph (2) (c), special circumstances exist if:
- (a) the country, 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 country, region or locality indicated by the GI during the period of 3 years immediately before the date of the notice under regulation 99.

*Omission of translation of GI*

- (5) The Committee may, in writing, make a determination to omit a translation of a GI if the Committee is satisfied that the translation no longer conveys or evokes the significance of the GI for which it was registered.
- (6) If the application under regulation 97 is for omission of both a GI and its translation, the Committee may make a determination to omit the translation without omitting the GI if the Committee is satisfied of the matters in subregulation (5) in relation to the translation.
- (7) The Committee must make a determination to omit a translation of a GI if it makes a determination to omit the GI.

**101 Notice of determination**

- (1) The Presiding Member of the Geographical Indications Committee must:
- (a) give a notice of the Committee's determination to the applicant; and



- 
- (b) if the determination made is to omit a GI, a translation of a GI or both a GI and its translation from the Register — publish a notice setting out the terms of the determination.
- (2) The notice under paragraph (1) (b) is to be published in the manner that the Committee thinks appropriate.

### **102 AAT review of a determination**

- (1) Application may be made to the Administrative Appeals Tribunal for review of a determination made under regulation 100.
- (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 regulation 100 must be made within 28 days after notice of the determination is published in accordance with regulation 101.
- (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 regulation 100 must be made before the time fixed by subregulation (2) ends.

### **103 Date of effect of determination to omit item**

- (1) If the determination made by the Geographical Indications Committee under regulation 100 is a determination to omit a GI, a translation of a GI or both a GI and its translation from the Register, the Presiding Member of the Committee 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 regulation 102 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 regulation 101.

- (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 item or items are omitted from the Register.

**Subdivision 2 Omission because not protected in country of origin and not used in Australia**

**104 Application for omission of foreign GI**

- (1) A person may apply to the Geographical Indications Committee to omit from the Register a GI in relation to a foreign country or a region or locality in a foreign country, on the ground that the GI is not protected in the country to which it relates and is not in use in Australia.
- (2) The application must be accompanied by the fee (if any) charged by the Corporation for the making of the 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.

**105 Further information concerning 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) The notice must include a statement about the effect of subregulation (2).

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**106 Notice by Committee**

If the Geographical Indications Committee receives an application under regulation 104, the Presiding Member of the Committee must publish a notice in the manner that the Committee thinks appropriate:

- (a) stating that an application under regulation 104 has been made and setting out the GI; and
- (b) inviting persons to make written submissions to the Committee in relation to the application within the period of not less than 1 month that is stated in the notice.

**107 Determination by Committee**

- (1) After considering any submissions made to it in response to a notice under regulation 106, the Committee must determine whether to omit the GI.
- (2) The Committee must make a determination to omit the GI from the Register if it is satisfied of the following matters:
  - (a) the GI is not protected by the laws of the country where the area indicated by the GI is located;
  - (b) in the 3 years before the date of the notice under regulation 106, wine originating in the country, region or locality indicated by the GI has not been described and presented for sale in Australia using the GI or a registered translation of the GI.
- (3) The Committee must make a determination in writing not to omit the GI from the Register if it is not satisfied of either or both of the matters in subregulation (2).
- (4) If the Committee makes a determination to omit a GI for which there is a registered translation, the Committee must also make a determination to omit the translation.

**108 Notice of determination**

The Presiding Member of the Geographical Indications Committee must:

- (a) give a notice of the Committee's determination to the applicant; and

- (b) publish a notice setting out the terms of the determination in any manner that the Committee thinks appropriate.

**109 Date of effect of determination to omit foreign GI**

- (1) If the determination made by the Geographical Indications Committee under regulation 107 is to omit the GI from the Register, the Presiding Member of the Committee must give a copy of the determination to the Register so that particulars of the determination can be omitted from the Register as soon as 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.

**[32] Part 7**

*substitute*

**Part 7 Miscellaneous**

**110 Registration not intended to create or affect trade mark rights**

The inclusion of a GI or a translation of a GI in Part 1 of the Register is not intended to create or affect a right under the *Trade Marks Act 1995* or at common law in respect of a trade mark.

**111 Delegation**

- (1) The Corporation may, by writing under its common seal, delegate any or all of its powers under these Regulations (except this power of delegation) to a person or to a committee appointed under section 11 of the Act.

- (2) A power delegated under subregulation (1), if exercised by the delegate, is taken to have been exercised by the Corporation.
- (3) A delegation under subregulation (1) does not prevent the exercise of a power by the Corporation.

**[33] Schedule 1**

*substitute*

**Schedule 1 Geographical indications and traditional expressions**

(regulation 13)

Amontillado  
Auslese  
Burgundy  
Chablis  
Champagne  
Claret  
Fino  
Graves  
Manzanilla  
Marsala  
Moselle  
Oloroso  
Port  
Sauternes  
Sherry  
Spatlese  
White Burgundy

## **Schedule 2 Varieties**

(regulation 16)

Alicante Bouchet

Barbera

Carignan

Carignane

Chardonnay

Orange Muscat

Pinot Chardonnay

Rhine Riesling

Trebbiano

## **Schedule 3 Trade Marks**

(regulation 17A)

Ilya

Karloff

Lienert of Mecklenburg

Lindauer

Montana

Salena Estate

The Bissy

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## Schedule 2      Amendments relating to export control and label integrity

(regulation 3)

**[1]      Regulation 3**

*omit*

In these Regulations

*insert*

(1) In these Regulations

**[2]      Regulation 3, after definition of *approved***

*insert*

*Australia New Zealand Food Standards Code* has the same meaning as in the *Food Standards Australia New Zealand Act 1991*.

**[3]      Regulation 3, definition of *Australian standard***

*substitute*

*Australian standard* means a standard within the meaning of the *Food Standards Australia New Zealand Act 1991*.

**[4]      Regulation 3, definition of *Food Standards Code***

*omit*

**[5]      Regulation 3, after definition of *licensee***

*insert*

*product label* means a label attached to, or writing or other sign appearing on, a bottle or other package of a grape product.

**[6] Regulation 3, definition of *relative***

*substitute*

***relative***, in relation to an individual, means the spouse, de facto partner (within the meaning of the *Acts Interpretation Act 1901*), parent or other ancestor, child or other descendant, brother or sister of the individual.

**[7] Regulation 3, definition of *vintage***

*omit*

**[8] Regulation 3**

*insert*

- (2) Without limiting who is a child of a person for the purposes of the definition of ***relative*** in subregulation (1), someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.
- (3) If one person is the child of another person because of the definition of ***child*** in subregulation (2), relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

**[9] Paragraphs 6 (1) (e) and (ea)**

*substitute*

- (e) the licensee has given the Corporation samples of the product and the product label for the purpose of determining the soundness and merchantability of the product; and
- (ea) the exporter has complied with any request for further information made under subregulation (6), subregulation 6A (4) or subregulation 7 (3A); and



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**[10] After subregulation 6 (5)**

*insert*

- (6) For the purpose of verifying a label claim made in relation to wine, the Corporation may request the exporter to provide a record kept under section 39F of the Act.
- (7) A request must:
  - (a) be made in writing; and
  - (b) identify the label claim; and
  - (c) state the date by which the exporter must provide the record to the Corporation.

**[11] Regulation 6AA**

*omit*

**[12] Regulation 6A**

*substitute*

**6A Conditions of export — food standards**

*Prohibition of export*

- (1) The export of a grape product is prohibited unless the product complies with the Australia New Zealand Food Standards Code.

*Partial compliance with Code*

- (2) Subregulation (1) does not apply to the export of a grape product if:
  - (a) the grape product does not comply with the Australia New Zealand Food Standards Code in particular respects; and
  - (b) the grape product complies with the Code in all other respects; and

- (c) the Corporation is satisfied that:
    - (i) the product meets any requirements for grape products imposed by the country to which the product is to be exported; and
    - (ii) the non-compliance will not compromise the reputation of Australian grape products; and
  - (d) the Corporation approves the export.
- (3) The approval must:
- (a) be given to the exporter in writing; and
  - (b) must identify the particulars of the non-compliance; and
  - (c) must state that the product must comply with the Code in any other respect.

*Provision of records*

- (4) The Corporation may ask an exporter to provide records demonstrating that the grape product complies with the Australia New Zealand Food Standards Code in particular respects.
- (5) The request must:
- (a) be made in writing; and
  - (b) state the respects in which compliance with the Code needs to be demonstrated; and
  - (c) state the date by which the exporter must provide the records to the Corporation.

**6B Conditions of export — labelling of grape products other than wine, brandy or grape spirit**

- (1) The export of a grape product other than wine, brandy or grape spirit is prohibited if the description and presentation of the grape product includes:
- (a) a registered geographical indication other than the term 'Australia'; or
  - (b) a registered translation; or
  - (c) the name of a variety or varieties of grapes; or

(d) the year in which the grapes from which the grape product was manufactured were harvested.

- (2) In this regulation, the definition of *description and presentation* in the Act applies in relation to a grape product other than wine in the same way as it applies in relation to wine.

**[13] Subregulation 7 (4)**

*omit*

at least 3 days

**[14] Paragraph 10 (aa)**

*before*

Food Standards Code

*insert*

Australia New Zealand

**[15] After Part 2**

*insert*

## **Part 2A Label Integrity Program**

### **11A Prescribed geographical indication**

For the definition of *prescribed geographical indication* in subsection 4 (1) of the Act, a geographical indication included in the Register with respect to Australia is prescribed.

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#### **Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.