



# **Australian Grape and Wine Authority Regulations 1981**

**Statutory Rules No. 156, 1981 as amended**

made under the

*Australian Grape and Wine Authority Act 2013*

**Compilation start date:** 1 July 2014

**Includes amendments up to:** SLI No. 70, 2014

Prepared by the Office of Parliamentary Counsel, Canberra

---

## About this compilation

### **This compilation**

This is a compilation of the *Australian Grape and Wine Authority Regulations 1981* as in force on 1 July 2014. It includes any commenced amendment affecting the compilation to that date.

This compilation was prepared on 1 July 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### **Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

---

# Contents

<b>Part 1—Preliminary</b>	1
1 Name of Regulations .....	1
2 Repeal of the Wine Overseas Marketing (Licences) Regulations.....	1
3 Interpretation .....	1
4 Grape products .....	2
<b>Part 2—General export controls</b>	3
5 Grant of licences.....	3
6 Conditions of export—general .....	3
6A Conditions of export—food standards .....	5
6B Conditions of export—labelling of grape products other than wine, brandy or grape spirit.....	6
7 Export certificates.....	7
8 Powers of Authority .....	8
9 Suspension and cancellation of licences .....	8
10 Application for review of decision .....	9
11 Authority may require information.....	9
<b>Part 2A—Label Integrity Program</b>	11
11A Prescribed geographical indication.....	11
<b>Part 3—Exemption of wines from offence provisions</b>	12
12 Small quantities of wine .....	12
13 Geographical indications and traditional expressions.....	13
14 Vine varieties: Hermitage .....	13
15 Vine varieties: Lambrusco.....	14
16 Variety names that are also geographical indications .....	14
17 Marketing periods for use of geographical indications, registered traditional expressions and registered additional terms .....	14
17A Use of trade mark in description of wine.....	15
<b>Part 4—Description and presentation of wine</b>	17
18 Interpretation .....	17
19 Wine originating in more than one country .....	17
20 Grape varieties.....	17
21 Use of registered geographical indications .....	18
22 Vintages.....	20

---

<b>Part 4A—Applications for determination of Australian GIs</b>	22
22A    Payment of application fee .....	22
<b>Part 5—Criteria for determining Australian GIs</b>	23
23    Determining geographical indications .....	23
24    Interpretation .....	23
25    Criteria for determining geographical indications .....	24
<b>Part 6—Objection to determination of Australian GI based on pre-existing trade mark rights</b>	26
<b>Division 1—General</b>	26
28    Definition for Part 6.....	26
28A   Modifications of Division 4 of Part VIB of the Act.....	26
29    Parties to send copies of evidence to each other .....	26
30    Costs .....	26
31    How fees are to be paid (Act s 40RC and s 40RE) .....	26
<b>Division 2—Consideration of objections</b>	27
33    Application of Division 2 (Act s 40RC) .....	27
34    Definition for Division 2 .....	27
36    Evidence .....	27
37    Evidence in answer.....	27
38    Request for hearing.....	28
39    New evidence .....	28
40    Decision by Registrar .....	28
41    No decision if trade mark subject to removal or cancellation proceedings.....	29
42    Withdrawal of objection .....	29
43    Fees .....	29
<b>Division 3—Application for decision that ground of objection no             longer exists</b>	31
44    Application of Division 3 (Act s 40RE) .....	31
45    Definition for Division 3 .....	31
46    Notice of application .....	31
47    Evidence.....	32
49    Evidence in answer.....	32
50    Request for hearing.....	32
51    New evidence .....	32
52    Decision by Registrar .....	33
53    Withdrawal of application .....	33
54    Notice of decision.....	34

---

---

55	Fees for claim that ground of objection no longer exists (Acts 40RE).....	34
<b>Part 6A—Determination of foreign GIs and translations of foreign GIs</b>		<b>36</b>
<b>Division 1—Applications for determinations</b>		<b>36</b>
56	Applications for determinations .....	36
<b>Division 2—Objections based on pre-existing trade mark rights</b>		<b>37</b>
57	Notice to be given of proposed foreign GI or translation of foreign GI .....	37
58	Grounds of objection to determination of foreign GI or translation of foreign GI .....	37
<b>Division 3—Consideration of objections</b>		<b>41</b>
59	Application of Division 3 .....	41
60	Definition for Division 3 .....	41
61	Notice of objection .....	41
62	Evidence .....	41
63	Evidence in answer.....	42
64	Request for hearing.....	42
65	New evidence .....	42
66	Parties to send copies of evidence to each other .....	43
67	Decision by Registrar of Trade Marks.....	43
68	Recommendation by Registrar of Trade Marks to determine foreign GI or translation of foreign GI despite objection being made out .....	44
69	Notice of decision.....	44
70	Fees for Division 3 proceedings .....	45
71	Costs .....	46
<b>Division 4—Decision that ground of objection no longer exists</b>		<b>47</b>
72	Definition for Division 4 .....	47
73	Application for decision .....	47
74	Notice of application .....	47
75	Evidence .....	47
76	Evidence in answer.....	48
77	Request for hearing.....	48
78	New evidence .....	48
79	Parties to send copies of evidence to each other .....	49
80	Decision by Registrar of Trade Marks.....	49
81	Withdrawal of application .....	50
82	Notice of decision.....	50
83	Fees for Division 4 proceedings .....	50

---

---

84	Costs .....	51
<b>Division 5—Appeals</b>		<b>52</b>
85	Decisions appellable to Federal Court .....	52
<b>Division 6—Determinations of foreign GIs and translations of foreign GIs by Geographical Indications Committee</b>		<b>53</b>
86	When Geographical Indications Committee may proceed to make a determination .....	53
87	Consultation by Committee .....	55
88	Determining foreign GIs .....	55
89	Determining translations .....	55
90	Interim determination .....	56
91	Publication of notice of interim determination .....	56
92	Final determination .....	56
93	Publication of notice of final determination .....	57
94	Review of final determination .....	57
95	Date of effect of final determination .....	58
<b>Division 7—Omission of foreign GIs and translations of foreign GIs</b>		<b>59</b>
<b>Subdivision 1—Omission for non-use or loss of significance</b>		<b>59</b>
96	Definition for Subdivision 1 .....	59
97	Application for omission of foreign GI or translation of foreign GI .....	59
98	Further information concerning application .....	60
99	Notice by Committee .....	60
100	Determination by Committee .....	60
101	Notice of determination .....	62
102	AAT review of a determination .....	62
103	Date of effect of determination to omit item .....	63
<b>Subdivision 2—Omission because not protected in country of origin and not used in Australia</b>		<b>63</b>
104	Application for omission of foreign GI .....	63
105	Further information concerning application .....	64
106	Notice by Committee .....	64
107	Determination by Committee .....	64
108	Notice of determination .....	65
109	Date of effect of determination to omit foreign GI .....	65
<b>Part 7—Miscellaneous</b>		<b>66</b>
110	Registration not intended to create or affect trade mark rights .....	66
111	Delegation .....	66

---

---

<b>Schedule 1—Geographical indications and traditional expressions</b>	67
<b>Schedule 2—Varieties</b>	68
<b>Schedule 3—Trade Marks</b>	69
<b>Schedule 4—Modification of Division 4 of Part VIB of the Act</b>	70
<b>Endnotes</b>	71
<b>Endnote 1—About the endnotes</b>	71
<b>Endnote 2—Abbreviation key</b>	73
<b>Endnote 3—Legislation history</b>	74
<b>Endnote 4—Amendment history</b>	75
<b>Endnote 5—Uncommenced amendments [none]</b>	83
<b>Endnote 6—Modifications [none]</b>	83
<b>Endnote 7—Misdescribed amendments [none]</b>	83
<b>Endnote 8—Miscellaneous [none]</b>	83





## Part 1—Preliminary

### 1 Name of Regulations

These Regulations are the *Australian Grape and Wine Authority Regulations 1981*.

### 2 Repeal of the Wine Overseas Marketing (Licences) Regulations

Statutory Rules 1954 No. 88, 1959 No. 3 and 1973 No. 112 are repealed.

### 3 Interpretation

- (1) In these Regulations, unless the contrary intention appears:

*Act* means the *Australian Grape and Wine Authority Act 2013*.

*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).

*approved* means approved by the Authority.

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

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

*export certificate* means a certificate issued by the Authority under regulation 7.

*GI* means geographical indication.

*licence* means a licence granted under regulation 5.

## Regulation 4

---

**licensee** means the holder of a licence.

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

**proposed GI** has the meaning it has in subsection 40RA(1) of the Act.

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

**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.

- (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.

### 4 Grape products

For the purposes of paragraph (d) of the definition of **grape product** in subsection 4(1) of the Act, a product is a grape product for the purposes of the Act if:

- (a) it includes wine; and
- (b) it is derived in whole or in part from prescribed goods; and
- (c) it is not a grape product referred to in paragraph (a), (b) or (c) of that definition; and
- (d) an Australian standard applies to it.

## **Part 2—General export controls**

### **5 Grant of licences**

- (1) The Authority may, on the application of a person and after taking into consideration the prescribed matters in relation to the person, grant to the person a licence to export grape products from Australia.
- (2) A licence granted under this regulation:
  - (a) shall be in accordance with an approved form; and
  - (b) remains in force for such period, not exceeding 3 years, as is specified in the licence, and may be renewed.
- (3) For the purposes of subregulation (1), the prescribed matters are:
  - (a) the financial standing of the applicant; and
  - (b) whether the applicant has a place of business in Australia; and
  - (c) the applicant's ability to obtain grape products from Australian suppliers; and
  - (d) matters applicable to the person that relate to the promotion of the export of grape products, including matters that may affect adversely the export trade in grape products; and
  - (e) any other matters relating to the promotion of the export of grape products; and
  - (f) whether the Authority has cancelled a licence held by the applicant; and
  - (g) if the applicant is an individual—whether the Authority has cancelled a licence held by a corporation of which the applicant was a director or a shareholder who held a controlling interest.

### **6 Conditions of export—general**

- (1) The export of a grape product is prohibited unless:
  - (a) the exporter is a licensee; and
  - (b) the Authority has approved:

Regulation 6

---

- (i) the purchaser of the product; or
  - (ii) the person to whom the product is consigned as an agent or representative of the purchaser, or the licensee, in the country to which the product is consigned; and
  - (c) the product is exported in accordance with any directions given to the licensee by the Authority; and
  - (d) the product is sound and merchantable; and
  - (e) the licensee has given the Authority 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
  - (f) the Authority has issued an export certificate for the product.
- (2) Subregulation (1) does not apply to the export of a small quantity of grape product within the meaning given by subregulation (3) or (4).
- (3) A quantity of grape product is a **small quantity** of grape product if it is to be exported, whether or not to 1 consignee:
- (a) by 1 exporter, or by 2 or more exporters that are taken to be 1 exporter; and
  - (b) on 1 ship or aircraft to a single port of discharge; and
  - (c) in a total quantity of no more than 100 litres.
- (4) A quantity of grape product is a **small quantity** of grape product if it is any of the following:
- (a) a quantity of grape product that is contained in the personal luggage of a traveller;
  - (b) a quantity of grape product for the household of an individual who is moving house;
  - (c) a quantity of grape product that is intended to be displayed at a trade fair or comparable event;
  - (d) a quantity of grape product that is to be exported for a scientific or technical purpose;

---

**Regulation 6A**

---

- (e) a quantity of grape product that is to be exported by a diplomatic, consular or similar establishment as part of the duty-free allowance of the establishment;
  - (f) a quantity of grape product that is held on board a means of international transport as victualling supplies;
  - (g) a quantity of grape product that is a commercial sample for a prospective buyer.
- (5) For paragraph (3)(a), 2 or more exporters are taken to be 1 exporter if the exporters are:
- (a) related bodies corporate (within the meaning of the *Corporations Act 2001*); or
  - (b) individuals who are relatives; or
  - (c) individuals who are acting in concert with each other.
- (6) For the purpose of verifying a label claim made in relation to wine, the Authority 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 Authority.

**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

## Regulation 6B

---

- (c) the Authority 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 Authority 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 Authority 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 Authority.

## **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 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.

## **7 Export certificates**

- (1) A licensee may apply for an export certificate by notifying the Authority of the proposed export of a grape product.
- (2) The licensee must notify the Authority by lodging with it a notification of the proposed export of a grape product in an approved form.
- (3) A notification must be given at least 10 days before the day on which the grape product is to be exported.
- (3A) For the purpose of considering a notification, the Authority may request the licensee to give it information that satisfies the Authority that a requirement relating to the description and presentation of the grape product under a Commonwealth, State or Territory law has been met.

Example: If a grape product is described as ‘organic’ and is a product to which the Export Control (Organic Produce Certification) Orders apply, the Authority may ask the licensee who proposes to export the product to give the Authority information that satisfies it that an organic produce certificate has been issued for the product.

- (3B) A request under subregulation (3A) must:
- (a) be made in writing within 3 working days after the Authority receives the notification; and
  - (b) identify the requirement and the Commonwealth, State or Territory law under which it applies; and
  - (c) state the date by which the licensee must give the information to the Authority.
- (4) If the export of the grape product would comply with the conditions for export that apply to it, the Authority must issue an export certificate to that effect before the day on which the product is to be exported.
- (5) The Authority may issue an export certificate by electronic means.

## Regulation 8

---

- (6) If the export of the grape product would not comply with the conditions for export that apply to it, the Authority must:
  - (a) refuse to issue an export certificate; and
  - (b) send a statement to that effect to the licensee, setting out the grounds on which the export would not comply with the conditions.
- (7) The Authority may revoke an export certificate if the export of the grape product ceases, or would cease, to comply with the conditions for export that apply to the product.

### 8 Powers of Authority

The Authority, or a person authorised by it, may give to a licensee written directions about the quantities of grape product that the licensee may export:

- (a) generally; or
- (b) to a country specified in the directions; or
- (c) to a person, agent or representative specified in the directions.

### 9 Suspension and cancellation of licences

- (1) The Authority may suspend or cancel a licence if:
  - (a) a material change has occurred in respect of the licensee in relation to a matter referred to in subregulation 5(3); and
  - (b) if the change is to the licensee's place of business in Australia—the licensee does not inform the Authority of the new place of business in Australia within 14 days of the change.
- (2) The Authority may suspend or cancel a licence if the licensee exports a grape product in contravention of a provision of the Act or these Regulations.
- (3) The Authority may suspend or cancel a licence if:
  - (a) the licensee claims that the Authority has given an approval in relation to the export of a grape product; and



- (b) the Authority has not given an approval of that kind in relation to the export.

### **10 Application for review of decision**

An application may be made to the Administrative Appeals Tribunal for the review of:

- (a) a refusal by the Authority under subregulation 5(1) to grant a licence; or
- (aa) a decision by the Authority under subregulation 6A(2) to approve, or refuse to approve, the export of a grape product that does not comply with the Australia New Zealand Food Standards Code; or
- (b) a refusal by the Authority under subregulation 7(6) to issue an export certificate; or
- (c) a decision of the Authority under subregulation 7(7) to revoke an export certificate; or
- (d) a decision of the Authority under regulation 9 to suspend or cancel a licence.

### **11 Authority may require information**

- (1) A person shall, if required to do so by the Authority by notice in writing, furnish to the Authority, within such time as is specified in the notice, such returns and information as are specified in the notice relating to the sale, disposal or export, or the intended sale, disposal or export, by the person of grape products.
- (2) A person to whom such a notice is given must not neglect or fail to furnish the return or information to the Authority within the specified time.
- (2A) It is a defence to a prosecution under subregulation (2) if the defendant has a reasonable excuse.  

Note: A defendant bears an evidential burden in relation to the matter set out in subregulation (2A)—see section 13.3 of the *Criminal Code*.
- (3) A person is not excused from furnishing a return or information that he is required to furnish by virtue of a notice given, or sent by post, to him under subregulation (1) on the ground that the return

**Regulation 11**

---

or information might tend to incriminate him or make him liable to a penalty, but any return or information so furnished is not admissible in evidence against him in proceedings other than proceedings for an offence against subregulation (4).

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

Penalty: 10 penalty units.

## **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.

## Part 3—Exemption of wines from offence provisions

### 12 Small quantities of wine

- (1) For the purposes of the definition of *small quantities* in subsection 40J(1) of the Act, wine:
  - (a) that is contained in labelled containers, each of which:
    - (i) has a capacity of not more than 5 litres; and
    - (ii) is fitted with a non-reusable closing device; and
  - (b) that is exported, whether or not to 1 consignee:
    - (i) by 1 exporter, or by 2 or more exporters that are taken to be 1 exporter; and
    - (ii) on 1 ship or aircraft to a single port of discharge; and
    - (iii) in a total quantity of no more than 100 litres;is declared to be a small quantity of wine.
- (2) For the purposes of the definition of *small quantities* in subsection 40J(1) of the Act, the following are declared to be small quantities of wine:
  - (a) a quantity of wine, not exceeding 30 litres, that is contained in the personal luggage of a traveller;
  - (b) a quantity of wine, not exceeding 30 litres, that is sent in a consignment by an individual to another individual;
  - (c) a quantity of wine for the household of an individual who is moving house;
  - (d) a quantity of wine:
    - (i) that is intended to be displayed in Australia, or an agreement country, at a trade fair, or a comparable event, for the purposes of the customs laws of the relevant country; and
    - (ii) that is packed in labelled containers of a capacity of not more than 2 litres and fitted with a non-reusable closing device;

---

**Regulation 13**

---

- (e) a quantity of wine, not exceeding 1 hectolitre, that is imported into Australia, or exported to an agreement country, for the purpose of scientific or technical purposes;
  - (f) a quantity of wine that is imported into Australia, or exported to an agreement country, by a diplomatic, consular or similar establishment as part of the duty-free allowance of the establishment;
  - (g) a quantity of wine that is held on board a means of international transport as victualling supplies.
- (3) For subparagraph (1)(b)(i), 2 or more exporters are taken to be 1 exporter if the exporters are:
- (a) related bodies corporate (within the meaning of the *Corporations Act 2001*); or
  - (b) individuals who are relatives; or
  - (c) individuals who are acting in concert with each other.

**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.
- (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.

**14 Vine varieties: Hermitage**

For the purposes of subsection 40J(5) of the Act, the use of the name *Hermitage* to describe and present wine is exempted from the operation of section 40C of the Act, until 12 months after the Agreement enters into force, if:

- (a) the name is used as a synonym for the grape variety *Shiraz*; and
- (b) the wine originates in Australia; and
- (c) the wine is sold in a country other than an EC country.

Regulation 15

---

**15 Vine varieties: Lambrusco**

For the purposes of subsection 40J(5) of the Act, the use of the name *Lambrusco* to describe and present wine is exempted from the operation of section 40C of the Act, until 12 months after the Agreement enters into force, if:

- (a) the name is used to describe a style of wine traditionally made and marketed under that name; and
- (b) the name is not used to describe a variety of grapes from which the wine is made; and
- (c) the wine originates in Australia; and
- (d) the wine is sold in a country other than an EC country.

**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.

**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.

---

**Regulation 17A**

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

Regulation 17A

---

- (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.



## **Part 4—Description and presentation of wine**

### **18 Interpretation**

In this Part, *wine* means wine that is offered for sale in Australia, imported into Australia or exported from Australia.

### **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

## Regulation 21

---

- (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 registered geographical indications

#### *Use of GI registered in relation to Australia—limit on number of GIs and foreign place names*

- (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.

#### *Use of one GI registered in relation to Australia*

- (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.

---

**Regulation 21**

---

*Use of one GI registered in relation to a foreign country*

- (2A) If the description and presentation of the wine uses only one GI, and that GI is registered in relation to a country other than Australia, at least 850ml/L of the wine must have been obtained from grapes grown in the region or locality in the country in relation to which the GI is registered.

Note: This subregulation applies whether or not the description and presentation of the wine also uses one or more foreign place names.

*Use of GI registered in relation to Australia with one or 2 other 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.

*Use of GI registered in relation to Australia with foreign place name*

- (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):

## Regulation 22

---

- (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 countries, 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 countries, 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.

### *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.

## 22 Vintages

- (1) For subsection 40F(6) of the Act, if:
  - (a) wine originating in Australia is made using grapes that were harvested in more than one vintage; and

Regulation 22

---

- (b) the description and presentation of the wine refers to one or more of those vintages;  
the description and presentation of the wine must refer to all of the vintages in descending order of the proportions of the relevant grapes in the wine.
- (2) In spite of subregulation (1), wine may be described and presented as being of one vintage if at least 850ml/L of the wine is obtained from grapes harvested in that vintage.
- (3) For the purposes of subregulation (2), 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.

## **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 Authority for the making of the application.
- (2) The Authority may waive the fee.
- (3) If the application is not accompanied by the fee, and the fee is not waived by the Authority, the application is treated as having never been made.

## **Part 5—Criteria for determining Australian GIs**

### **23 Determining geographical indications**

For the purpose of making determinations under section 40T of the Act, the Geographical Indications Committee is to have regard to the criteria set out in this Part.

### **24 Interpretation**

In this Part:

*region* means an area of land that:

- (a) may comprise one or more subregions; and
- (b) is a single tract of land that is discrete and homogeneous in its grape growing attributes to a degree that:
  - (i) is measurable; and
  - (ii) is less substantial than in a subregion; and
- (c) usually produces at least 500 tonnes of wine grapes in a year; and
- (d) comprises at least 5 wine grape vineyards of at least 5 hectares each that do not have any common ownership, whether or not it also comprises 1 or more vineyards of less than 5 hectares; and
- (e) may reasonably be regarded as a region.

*subregion* means an area of land that:

- (a) is part of a region; and
- (b) is a single tract of land that is discrete and homogeneous in its grape growing attributes to a degree that is substantial; and
- (c) usually produces at least 500 tonnes of wine grapes in a year; and
- (d) comprises at least 5 wine grape vineyards of at least 5 hectares each that do not have any common ownership, whether or not it also comprises 1 or more vineyards of less than 5 hectares; and

Regulation 25

---

(e) may reasonably be regarded as a subregion.

**wine grape vineyard** means a single parcel of land that:

- (a) is planted with wine grapes; and
- (b) is operated as a single entity by:
  - (i) the owner; or
  - (ii) a manager on behalf of the owner or a lessee, irrespective of the number of lessees.

**zone** means an area of land that:

- (a) may comprise one or more regions; or
- (b) may reasonably be regarded as a zone.

## 25 Criteria for determining geographical indications

For the purposes of subsection 40T(2) of the Act, the Committee is to have regard to the following criteria:

- (a) whether the area falls within the definition of a subregion, a region, a zone or any other area;
- (b) the history of the founding and development of the area, ascertained from local government records, newspaper archives, books, maps or other relevant material;
- (c) the existence in relation to the area of natural features, including rivers, contour lines and other topographical features;
- (d) the existence in relation to the area of constructed features, including roads, railways, towns and buildings;
- (e) the boundary of the area suggested in the application to the Committee under section 40R;
- (f) ordinance survey map grid references in relation to the area;
- (g) local government boundary maps in relation to the area;
- (h) the existence in relation to the area of a word or expression to indicate that area, including:
  - (i) any history relating to the word or expression; and
  - (ii) whether, and to what extent, the word or expression is known to wine retailers beyond the boundaries of the area; and



---

**Regulation 25**

- (iii) whether, and to what extent, the word or expression has been traditionally used in the area or elsewhere; and
- (iv) the appropriateness of the word or expression;
- (i) the degree of discreteness and homogeneity of the proposed geographical indication in respect of the following attributes:
  - (i) the geological formation of the area;
  - (ii) the degree to which the climate of the area is uniform, having regard to the temperature, atmospheric pressure, humidity, rainfall, number of hours of sunshine and any other weather conditions experienced in the area throughout the year;
  - (iii) whether the date on which harvesting a particular variety of wine grapes is expected to begin in the area is the same as the date on which harvesting grapes of the same variety is expected to begin in neighbouring areas;
  - (iv) whether part or all of the area is within a natural drainage basin;
  - (v) the availability of water from an irrigation scheme;
  - (vi) the elevation of the area;
  - (vii) any plans for the development of the area proposed by Commonwealth, State or municipal authorities;
  - (viii) any relevant traditional divisions within the area;
  - (ix) the history of grape and wine production in the area.

Note: In determining a geographical indication under subsection 40Q(1) of the Act, the Committee is not prohibited under the Act from having regard to any other relevant matters.

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

### **Division 1—General**

#### **28 Definition for Part 6**

In this Part:

*Registrar* means the Registrar of Trade Marks.

#### **28A Modifications of Division 4 of Part VIB of the Act**

For subsection 40PA(3) of the Act, the provisions of Division 4 of Part VIB of the Act apply as if they were modified as set out in Schedule 4.

#### **29 Parties to send copies of evidence to each other**

Evidence in relation to proceedings under this Part 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.

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

#### **30 Costs**

The Registrar is not entitled to make an order for costs in proceedings mentioned in this Part.

#### **31 How fees are to be paid (Act s 40RC and s 40RE)**

For subsections 40RC(5) and 40RE(2) of the Act, a fee imposed under this Part must be paid to the Registrar.

32 Note: Regulation 32 reserved for future use.

## **Division 2—Consideration of objections**

### **33 Application of Division 2 (Act s 40RC)**

For subsection 40RC(5) of the Act, this Division applies in relation to the making of a decision under subsection 40RC(2) of the Act.

### **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.

**Regulation 38**

---

**38 Request for hearing**

- (1) Any party may, no more than 1 month after the end of the period given under paragraph 37(b) for the acceptance of evidence in answer, ask the Registrar to conduct a hearing.
- (2) The Registrar must agree to a request made under subregulation (1).

**39 New evidence**

- (1) At any time before the Registrar makes a decision about an objection to a proposed GI, but after the end of a period specified by the Registrar for the filing of evidence, a party may apply to the Registrar, 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 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 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.

**40 Decision by Registrar**

- (1) The Registrar must, as soon as is practicable after the last day set for evidence to be filed, make a decision under subsection 40RC(2) of the Act by considering:
  - (a) the notice published under subsection 40RA(2) of the Act and any related documents; and
  - (b) the documents filed by the parties; and
  - (c) any other matter that the Registrar thinks is relevant.

**Regulation 41**

- (2) If a hearing is held, the Registrar must also invite submissions from the parties and consider the submissions.

**41 No decision if trade mark subject to removal or cancellation proceedings**

The Registrar must not make a decision under subsection 40RC(2) of the Act if the registered trade mark concerned is the subject of removal or cancellation proceedings.

**42 Withdrawal of objection**

If a person objecting to a proposed GI:

- (a) does not file evidence within the period mentioned in paragraph 36(c); or
- (b) withdraws the notice of objection before the Registrar makes a decision about the objection;

the Registrar must decide that the ground of the objection is not made out.

*Note* The Registrar must notify the parties and the Geographical Indications Committee about his or her decision: see subsection 40RD(1) of the Act.

**43 Fees**

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

<b>Item</b>	<b>Matter</b>	<b>Fee(\$)</b>
1	Filing a notice of objection in response to an invitation under paragraph 40RA(2)(b) of the Act	500
3	Applying to file new evidence under subregulation 39(1)	100

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

**Division 2** Consideration of objections

**Regulation 43**

---

---

<b>Item</b>	<b>Matter</b>	<b>Fee(\$)</b>
4	Filing evidence under regulation 36, 37 or 39 (that is, evidence in support, evidence in answer or new evidence)	375
5	Requesting a hearing under subregulation 38(1)	500
6	Attending a hearing	500 per day or part of a day

---

---

- (3) If a person requests a hearing and pays the fee mentioned in item 5 of the table in respect of the hearing, the fee in item 6 of the table applies to the person only for the second and any subsequent day of the hearing.

### **Division 3—Application for decision that ground of objection no longer exists**

#### **44 Application of Division 3 (Act s 40RE)**

For subsection 40RE(2) of the Act, this Division applies in relation to the making of a decision under subsection 40RE(1).

#### **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) if the objection was made on a ground mentioned in subsection 40RB(1), (3) or (4) of the Act—the owner of the trade mark concerned;
- (ba) if the objection was made on a ground mentioned in subsection 40RB(5) of the Act—the person who made the objection;
- (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.

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

**Division 3** Application for decision that ground of objection no longer exists

## Regulation 47

---

### **47 Evidence**

After notifying the Geographical Indications Committee, the Registrar must send each party a notice (an *invitation 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 invitation notice.

### **49 Evidence in answer**

If a person files evidence in response to an invitation notice sent under regulation 47, the Registrar 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 thinks is appropriate under the circumstances.

### **50 Request for hearing**

- (1) Any party may, no more than 1 month after the end of the period given under paragraph 49(b) for the acceptance of evidence in answer, ask the Registrar to conduct a hearing.
- (2) The Registrar must agree to a request made under subregulation (1).

### **51 New evidence**

- (1) At any time before the Registrar makes a decision about whether a ground of objection to a proposed GI no longer exists, but after the end of a period specified by the Registrar for the filing of evidence, a party may apply to the Registrar, in writing, to file new evidence.
- (2) An application must include a statement:
  - (a) describing the new evidence; and



**Regulation 52**

---

- (b) giving the reasons why the new evidence was not filed within the specified period.
- (3) If, after considering the application, the Registrar 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 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.

**52 Decision by Registrar**

- (1) The Registrar must, as soon as is practicable after the last day set for evidence to be filed, make a decision under subsection 40RE(1) of the Act by considering:
  - (a) the documents filed by the parties; and
  - (b) any other matter that the Registrar thinks is relevant.
- (2) If a hearing is held, the Registrar must also invite submissions from the parties and consider the submissions.
- (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).

**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.

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

**Division 3** Application for decision that ground of objection no longer exists

**Regulation 54**

---

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

**55 Fees for claim that ground of objection no longer exists (Act s 40RE)**

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

<b>Item</b>	<b>Matter</b>	<b>Fee (\$)</b>
1	Making an application for a decision under paragraph 40RE(1)(b) of the Act	500
3	Applying to file new evidence under regulation 51	100
4	Filing evidence under regulation 47, 49 or 51 (that is, evidence in support, evidence in answer or new evidence)	375
5	Requesting a hearing under regulation 50	500
6	Attending a hearing	500 per day or part of a day

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

**Part 6**

Application for decision that ground of objection no longer exists **Division 3**

**Regulation 55**

---

- (3) If a person requests a hearing and pays the fee mentioned in item 5 of the table in respect of the hearing, the fee in item 6 of the table applies to the person only for the second and any subsequent day of the hearing.

## **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 Authority for the making of the application.
- (5) The Authority may waive the fee.
- (6) If the application is not accompanied by the fee, and the fee is not waived by the Authority, 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.

### **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

Regulation 58

---

- (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.

*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.

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

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

Regulation 58

---

*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.

Regulation 63

---

**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.

**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.

Regulation 68

---

**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;

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.

<b>Item</b>	<b>Matter</b>	<b>Fee</b>
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.

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

**Division 3** Consideration of objections

Regulation 71

---

**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

## Regulation 76

---

- (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.

### **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).

Regulation 81

---

**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.

Regulation 84

---

<b>Item</b>	<b>Matter</b>	<b>Fee</b>
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

---

- (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.

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

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

**Regulation 86**

---

*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.

*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.

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

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

**Regulation 90**

---

- (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.

**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.

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

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

**Regulation 95**

---

- (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.

**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 Chair of the Authority.
- (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 Authority for the making of the application.

**Regulation 98**

---

- (5) The Authority may waive the fee.
- (6) If the application is not accompanied by the fee, and the fee is not waived by the Authority, 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.

Regulation 101

---

- (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 Chair of the Authority.
- (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 Authority for the making of the application.
- (3) The Authority may waive the fee.

**Regulation 105**

---

- (4) If the application is not accompanied by the fee, and the fee is not waived by the Authority, 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).

**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 Chair of the Authority.
- (3) The determination of the Committee takes effect on the day on which particulars of the GI are omitted from the Register.

## **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 Authority 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 Authority.
- (3) A delegation under subregulation (1) does not prevent the exercise of a power by the Authority.

## **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

## **Schedule 4—Modification of Division 4 of Part VIB of the Act**

(regulation 28A)

**1 After subsection 40RB(4)**

*insert*

*Common use*

- (5) A person may object to the determination of a proposed GI on the ground that the proposed GI 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.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide details of the history of this compilation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

### Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

### Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law, but the text of the amendments is included in endnote 5.

## Endnotes

Endnote 1—About the endnotes

---

### **Modifications—Endnote 6**

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

### **Misdescribed amendments—Endnote 7**

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

### **Miscellaneous—Endnote 8**

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.



**Endnote 2—Abbreviation key**

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

## Endnotes

### Endnote 3—Legislation history

---

### Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
1981 No. 156	23 June 1981	1 July 1981 ( <i>see Gazette</i> 1981, No. S123)	
1986 No. 161	30 June 1986	1 July 1986	r. 8
1993 No. 374	24 Dec 1993	24 Dec 1993	—
1994 No. 338	11 Oct 1994	11 Oct 1994	—
2000 No. 130	28 June 2000	1 Jan 2001	r. 4
2001 No. 76	27 Apr 2001	27 Apr 2001	—
2002 No. 60	5 Apr 2002	5 Apr 2002	—
2003 No. 191	31 July 2003	1 Aug 2003	—
2004 No. 252	26 Aug 2004	1 Jan 2005 ( <i>see</i> r. 2)	—
2005 No. 39	24 Mar 2005 ( <i>see</i> F2005L00752)	25 Mar 2005	—
2005 No. 245	15 Nov 2005 ( <i>see</i> F2005L03397)	16 Nov 2005	—
2010 No. 217	23 July 2010 ( <i>see</i> F2010L02118)	rr. 1–3: 24 July 2010 r. 4, 5 and Schedules 1 and 2: 1 Sept 2010 ( <i>see</i> r. 2 and F2010L02117)	rr. 4 and 5
2011 No. 85	20 June 2011 ( <i>see</i> F2011L01078)	21 June 2011	—
2012 No. 161	13 July 2012 ( <i>see</i> F2012L01554)	14 July 2012	—
205, 2013	6 Aug 2013 ( <i>see</i> F2013L01519)	7 Aug 2013	—
70, 2014	13 June 2014 ( <i>see</i> F2014L00707)	Sch 1: 14 June 2014 Sch 2 (items 3–22): 1 July 2014	—

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1</b>	
Heading to Part 1 .....	ad. 1993 No. 374
r. 1.....	am. 1993 No. 374 rs. 2000 No. 130 am. 2011 No. 85; No 70, 2014
r. 3.....	am. 1986 No. 161 rs. 1993 No. 374 am. 2004 No. 252; 2005 No. 39; 2010 No. 217; 2011 No. 85; No 70, 2014
r. 4.....	rs. 1993 No. 374
<b>Part 2</b>	
Heading to Part 2 .....	ad. 1993 No. 374
r. 5.....	am. 1986 No. 161; 1993 No. 374; 2005 No. 39; No 70, 2014
r. 6.....	rs. 1993 No. 374 am. 2005 No. 39; 2010 No. 217; No 70, 2014
r. 6AA.....	ad. 2003 No. 191 rep. 2010 No. 217
r. 6A.....	ad. 1993 No. 374 rs. 2005 No. 245; 2010 No. 217 am No 70, 2014
r. 6B.....	ad. 2010 No. 217 am No. 205, 2013
r. 7.....	rs. 1993 No. 374 am. 2005 No. 39; 2010 No. 217; No 70, 2014
hdg to r 8.....	rs No 70, 2014
r. 8.....	am. 1993 No. 374 rs. 2005 No. 39 am No 70, 2014
r. 9.....	am. 1986 No. 161; 1993 No. 374; 2005 No. 39; No 70, 2014

## Endnotes

### Endnote 4—Amendment history

---

<b>Provision affected</b>	<b>How affected</b>
r. 10.....	am. 1986 No. 161; 1993 No. 374; 2005 Nos. 39 and 245; 2010 No. 217; No 70, 2014
hdg to r 11.....	rs No 70, 2014
r. 11.....	am. 1993 No. 374; 2002 No. 60; No 70, 2014
<b>Part 2A</b>	
Part 2A.....	ad. 2010 No. 217
r. 11A.....	ad. 2010 No. 217
<b>Part 3</b>	
Part 3.....	ad. 1993 No. 374
r. 12.....	rep. 1986 No. 161 ad. 1993 No. 374 am. 2005 No. 39
r. 13.....	ad. 1993 No. 374 rs. 2000 No. 130; 2010 No. 217
r. 14.....	ad. 1993 No. 374 am. 2010 No. 217
r. 15.....	ad. 1993 No. 374 am. 2010 No. 217
r. 16.....	ad. 1993 No. 374 rep. 2000 No. 130 ad. 2010 No. 217
r. 17.....	ad. 1993 No. 374 am. 2000 No. 130 rs. 2010 No. 217
r. 17A.....	ad. 2004 No. 252 rs. 2010 No. 217
<b>Part 4</b>	
Heading to Part 4 .....	rs. 2001 No. 76
Part 4.....	ad. 1993 No. 374
r. 18.....	ad. 1993 No. 374
Heading to r. 19 .....	rs. 2001 No. 76
r. 19.....	ad. 1993 No. 374 am. 2000 No. 130; 2001 No. 76

---

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	rs. 2010 No. 217
Heading to r. 20 .....	rs. 2001 No. 76
r. 20.....	ad. 1993 No. 374
	am. 2000 No. 130; 2001 No. 76
	rs. 2010 No. 217
Heading to r. 21 .....	rs. 2001 No. 76; No 70, 2014
Subhead to r 21(1).....	ad No 70, 2014
Subhead to r 21(2).....	rs No 70, 2014
Subhead to r 21(3).....	rs No 70, 2014
Subhead to r 21(5).....	rs No 70, 2014
r. 21.....	ad. 1993 No. 374
	am. 1994 No. 338; 2001 No. 76; No 70, 2014
	rs. 2010 No. 217
Heading to r. 22 .....	rs. 2001 No. 76
r. 22.....	ad. 1993 No. 374
	am. 2001 No. 76; 2010 No. 217
<b>Part 4A</b>	
Part 4A.....	ad. 2010 No. 217
r. 22A.....	ad. 2010 No. 217
	am No 70, 2014
<b>Part 5</b>	
Heading to Part 5 .....	rs. 2010 No. 217
Part 5.....	ad. 1994 No. 338
r. 23.....	ad. 1994 No. 338
r. 24.....	ad. 1994 No. 338
r. 25.....	ad. 1994 No. 338
r. 26.....	ad. 1994 No. 338
	rep. 2010 No. 217
r. 27.....	ad. 2004 No. 252
	rep. 2010 No. 217
<b>Part 6</b>	
Heading to Part 6 .....	rs. 2010 No. 217

## Endnotes

### Endnote 4—Amendment history

---

<b>Provision affected</b>	<b>How affected</b>
Part 6.....	ad. 2004 No. 252
<b>Division 1</b>	
r. 28.....	ad. 2004 No. 252
r. 28A.....	ad. 2012 No. 161
r. 29.....	ad. 2004 No. 252
Note to r. 29.....	ad. 2010 No. 217
r. 30.....	ad. 2004 No. 252
r. 31.....	ad. 2004 No. 252
r. 32.....	ad. 2004 No. 252
<b>Division 2</b>	
r. 33.....	ad. 2004 No. 252
r. 34.....	ad. 2004 No. 252 rs. 2010 No. 217
r. 35.....	ad. 2004 No. 252 rep. 2010 No. 217
r. 36.....	ad. 2004 No. 252 rs. 2010 No. 217
r. 37.....	ad. 2004 No. 252 rs. 2010 No. 217
r. 38.....	ad. 2004 No. 252
r. 39.....	ad. 2004 No. 252 am. 2010 No. 217
r. 40.....	ad. 2004 No. 252
r. 41.....	ad. 2004 No. 252
r. 42.....	ad. 2004 No. 252
Note to r. 42.....	am. 2010 No. 217
r. 43.....	ad. 2004 No. 252 am. 2010 No. 217
Note to r. 43(3) .....	rep. 2010 No. 217
<b>Division 3</b>	
r. 44.....	ad. 2004 No. 252
r. 45.....	ad. 2004 No. 252

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	rs. 2010 No. 217
	am. 2012 No. 161
r. 46.....	ad. 2004 No. 252
	rs. 2010 No. 217
r. 47.....	ad. 2004 No. 252
	am. 2010 No. 217
r. 48.....	ad. 2004 No. 252
	rep. 2010 No. 217
r. 49.....	ad. 2004 No. 252
r. 50.....	ad. 2004 No. 252
r. 51.....	ad. 2004 No. 252
r. 52.....	ad. 2004 No. 252
	am. 2010 No. 217
r. 53.....	ad. 2004 No. 252
	rs. 2010 No. 217
r. 54.....	ad. 2004 No. 252
	rs. 2010 No. 217
r. 55.....	ad. 2004 No. 252
	am. 2010 No. 217
<b>Part 6A</b>	
Part 6A.....	ad. 2010 No. 217
<b>Division 1</b>	
r. 56.....	ad. 2010 No. 217
	am No 70, 2014
<b>Division 2</b>	
r. 57.....	ad. 2010 No. 217
r. 58.....	ad. 2010 No. 217
<b>Division 3</b>	
r. 59.....	ad. 2010 No. 217
r. 60.....	ad. 2010 No. 217
r. 61.....	ad. 2010 No. 217
r. 62.....	ad. 2010 No. 217

## Endnotes

### Endnote 4—Amendment history

---

<b>Provision affected</b>	<b>How affected</b>
r. 63.....	ad. 2010 No. 217
r. 64.....	ad. 2010 No. 217
r. 65.....	ad. 2010 No. 217
r. 66.....	ad. 2010 No. 217
r. 67.....	ad. 2010 No. 217
r. 68.....	ad. 2010 No. 217
r. 69.....	ad. 2010 No. 217
r. 70.....	ad. 2010 No. 217
r. 71.....	ad. 2010 No. 217
<b>Division 4</b>	
r. 72.....	ad. 2010 No. 217
r. 73.....	ad. 2010 No. 217
r. 74.....	ad. 2010 No. 217
r. 75.....	ad. 2010 No. 217
r. 76.....	ad. 2010 No. 217
r. 77.....	ad. 2010 No. 217
r. 78.....	ad. 2010 No. 217
r. 79.....	ad. 2010 No. 217
r. 80.....	ad. 2010 No. 217
r. 81.....	ad. 2010 No. 217
r. 82.....	ad. 2010 No. 217
r. 83.....	ad. 2010 No. 217
r. 84.....	ad. 2010 No. 217
<b>Division 5</b>	
r. 85.....	ad. 2010 No. 217
<b>Division 6</b>	
r. 86.....	ad. 2010 No. 217
r. 87.....	ad. 2010 No. 217
r. 88.....	ad. 2010 No. 217
r. 89.....	ad. 2010 No. 217
r. 90.....	ad. 2010 No. 217
r. 91.....	ad. 2010 No. 217



## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
r. 92.....	ad. 2010 No. 217
r. 93.....	ad. 2010 No. 217
r. 94.....	ad. 2010 No. 217
r. 95.....	ad. 2010 No. 217 am No 70, 2014
<b>Division 7</b>	
<b>Subdivision 1</b>	
r. 96.....	ad. 2010 No. 217
r. 97.....	ad. 2010 No. 217 am No 70, 2014
r. 98.....	ad. 2010 No. 217
r. 99.....	ad. 2010 No. 217
r. 100.....	ad. 2010 No. 217
r. 101.....	ad. 2010 No. 217
r. 102.....	ad. 2010 No. 217
r. 103.....	ad. 2010 No. 217 am No 70, 2014
<b>Subdivision 2</b>	
r. 104.....	ad. 2010 No. 217 am No 70, 2014
r. 105.....	ad. 2010 No. 217
r. 106.....	ad. 2010 No. 217
r. 107.....	ad. 2010 No. 217
r. 108.....	ad. 2010 No. 217
r. 109.....	ad. 2010 No. 217 am No 70, 2014
<b>Part 7</b>	
Part 7.....	ad. 2005 No. 39 rs. 2010 No. 217
r. 60.....	ad. 2005 No. 39 rep. 2010 No. 217
r. 110.....	ad. 2010 No. 217

## Endnotes

### Endnote 4—Amendment history

---

<b>Provision affected</b>	<b>How affected</b>
r. 111.....	ad. 2010 No. 217 am No 70, 2014
<b>Schedule 1</b>	
Heading to Schedule .....	rep. 2000 No. 130
Heading to Schedule 1 .....	ad. 2000 No. 130
Schedule .....	ad. 1993 No. 374 am. 2000 No. 130
Renumbered Schedule 1 .....	2000 No. 130
Schedule 1.....	rs. 2010 No. 217
<b>Schedule 2</b>	
Schedule 2.....	ad. 2010 No. 217
<b>Schedule 3</b>	
Schedule 3.....	ad. 2010 No. 217
<b>Schedule 4</b>	
Schedule 4.....	ad. 2012 No. 161

---

---

Endnote 5—Uncommenced amendments [none]

**Endnote 5—Uncommenced amendments [none]**

**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**