



Geographical Indications (Wine and Spirits) Registration Amendment Act 2016

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Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to preliminary and principal provisions

3 Principal Act

This Act amends the Geographical Indications (Wine and Spirits) Registration Act 2006 (the **principal Act**).

4 Section 2 amended (Commencement)

After section 2(2), insert:

- (3) Any provision of this Act that is not already in force on 1 July 2018 comes into force on that date.

5 Section 3 amended (Purpose)

Replace section 3(c) with:

- (c) protect the interests of consumers of wine and spirits in New Zealand by providing assurance that a wine or spirit using a registered geographical indication originates in the territory, region, or locality to which the registered geographical indication relates; and
- (d) facilitate the purposes set out in paragraphs (a), (b), and (c) in a manner consistent with New Zealand's rights and obligations under the TRIPS Agreement.

6 Section 4 amended (Interpretation)

- (1) In section 4, insert in their appropriate alphabetical order:

enduring New Zealand geographical indication has the meaning given to it in section 6A

homonymous geographical indication has the meaning given to it in section 19(2)

registrant, in relation to a registered geographical indication, means the person upon whose application a geographical indication was registered, renewed, or re-registered (as the case may be)

- (2) In section 4, replace the definition of **New Zealand Geographic Board** with:

New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa means the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa continued under section 7(1) of the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008

- (3) In section 4, definition of **Registrar**, delete "Registered".

7 New section 6A inserted (What is enduring New Zealand geographical indication?)

After section 6, insert:

6A What is enduring New Zealand geographical indication?

- (1) An **enduring New Zealand geographical indication**—
- (a) is one of the following New Zealand geographical indications:
 - (i) New Zealand;
 - (ii) North Island;
 - (iii) South Island; and
 - (b) must be treated as—

- (i) a registered geographical indication under section 8; and
 - (ii) being registered on and from the date of commencement of this section; and
 - (c) is to be recorded in Part 1 of the register.
- (2) An enduring New Zealand geographical indication is not subject to the following provisions:
- (a) section 9A (duration of registration):
 - (b) section 45 (removal from register):
 - (c) section 46 (alteration of register).

8 Section 8 amended (Registration)

In section 8(2), replace “sections 10 to 15” with “sections 10 to 17”.

9 New section 9A and cross-heading inserted

After section 9, insert:

Duration of registration

9A Duration of registration

- (1) The registration of a geographical indication is effective for a period of 5 years commencing on the deemed date of registration.
- (2) The registration of a geographical indication may be renewed under section 47A.
- (3) This section does not affect a geographical indication that ceases to be registered before the expiry of the 5-year period referred to in subsection (1).

Compare: 2002 No 49 s 57

10 New section 13A inserted (No registration of geographical indication if use or registration likely to be offensive)

After section 13, insert:

13A No registration of geographical indication if use or registration likely to be offensive

The Registrar must not register a geographical indication if its use in relation to wine or spirits or its registration would, in the opinion of the Registrar, be likely to offend a significant section of the community, including Māori.

Compare: 2002 No 49 s 17(1)(c)

11 Section 21 amended (Restriction on use of New Zealand registered geographical indication for wine)

- (1) In section 21(a), after “harvested in the”, insert “place or places of”.
- (2) After section 21(a), insert:

- (ab) all of the constituent remainder of the wine referred to in paragraph (a) (if any) is obtained from grapes harvested in New Zealand; and

12 Section 22 amended (Restriction on use of foreign registered geographical indication for wine)

- (1) In section 22(a), after “originated in the”, insert “place or places of”.
- (2) Replace section 22(b) with:
 - (b) the foreign registered geographical indication or indications are used in accordance with—
 - (i) the scope of their protection in their country of origin (including any conditions as to their use imposed by their country of origin); and
 - (ii) their registration in New Zealand (including any conditions imposed by the Registrar).

13 Section 23 amended (Restriction on use of New Zealand registered geographical indication for spirit)

In section 23(a), after “originated in the”, insert “place of”.

14 Section 24 amended (Restriction on use of foreign registered geographical indication for spirit)

- (1) In section 24(a), after “originated in the”, insert “place or places of”.
- (2) Replace section 24(b) with:
 - (b) the foreign registered geographical indication or indications are used in accordance with—
 - (i) the scope of their protection in their country of origin (including any conditions as to their use imposed by their country of origin); and
 - (ii) their registration in New Zealand (including any conditions imposed by the Registrar).

15 Section 25 amended (Additional rules relating to restrictions on use)

In section 25(a), replace “true origin” with “true place of origin”.

16 Section 29 amended (Continuous use)

- (1) Replace section 29(1) with:
 - (1) The restrictions in sections 21 to 24 on the use of a registered geographical indication do not apply in respect of the continued and similar use by any New Zealand person or entity of a term that is a registered geographical indication (a **term**), in relation to a wine or spirit in New Zealand, if—
 - (a) that person or entity—

- (i) is using the term in trade; and
- (ii) has used the term in trade in a continuous manner at least from 15 April 1984; or
- (b) that person or entity—
 - (i) is using the term in trade; and
 - (ii) has used the term in trade in a continuous manner in good faith since before 15 April 1994.
- (1A) The restrictions in sections 21 to 24 on the use of a registered geographical indication do not apply in respect of the continued and similar use by any New Zealand person or entity of a term, in relation to a wine or spirit in New Zealand, if that person or entity—
 - (a) is using the term in trade; and
 - (b) has used the term in trade in a continuous manner since acquiring the right to trade in a wine or spirit to which the exemption in subsection (1) applies.

(2) In section 29(2), replace “subsection (1)” with “subsections (1) and (1A)”.

(3) After section 29(2), insert:

Compare: TRIPS Agreement art 24(4)

17 Section 32 amended (Unregistered geographical indication homonymous with registered geographical indication)

In section 32(2), after “originates in the”, insert “place of”.

18 New section 32A inserted (Use of words “New Zealand” to denote origin)

After section 32, insert:

32A Use of words “New Zealand” to denote origin

Despite sections 21 and 23, the use of the words “New Zealand” in relation to wine or spirits is not to be treated as use of the enduring New Zealand geographical indication “New Zealand” if the words are used—

- (a) to comply with other laws or regulations to denote the country of origin; and
- (b) in the course of trade and not in such a manner as to mislead the public.

19 Section 34 amended (Registrar)

Replace section 34(1) with:

(1) The chief executive of the ministry must, under the State Sector Act 1988, appoint a Registrar of Geographical Indications.

20 Section 35 amended (Registrar’s seal)

In section 35(1), delete “Registered”.

21 New section 35A inserted (Power of Registrar to delegate)

After section 35, insert:

35A Power of Registrar to delegate

- (1) The Registrar may delegate to any person any of the Registrar's functions, duties, and powers, except this power of delegation.
- (2) The delegation—
 - (a) must be in writing; and
 - (b) may be made subject to any restrictions and conditions that the Registrar thinks fit; and
 - (c) is revocable, at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar.
- (3) A person to whom any functions, duties, or powers are delegated may perform those functions and duties and exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A person who appears to act under a delegation must, in the absence of evidence to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (5) Any reference to the Registrar in this Act (or in regulations made under this Act) includes a reference to a person to whom the Registrar has delegated his or her power in respect of a thing delegated to that person.

22 New sections 36A to 36C inserted

After section 36, insert:

36A Registrar may amend application to substitute applicant

- (1) The Registrar may, on the application of an interested person (**A**), amend a specified application made by another interested person (**B**) for registration of a geographical indication—
 - (a) by removing B's name and address; and
 - (b) by entering A's name and address as the substitute applicant.
- (2) The Registrar may exercise the powers under subsection (1) only—
 - (a) if—
 - (i) B consents to A being the substitute applicant; or
 - (ii) B has died or ceased to exist; and
 - (b) if the application is made in accordance with regulations made under section 57(1)(ea).

36B Registrar must give public notice of accepted application

- (1) The Registrar must give public notice of an application for registration of a geographical indication that the Registrar has accepted.
- (2) The public notice must be given in the format, manner, and frequency that the Registrar thinks appropriate.

Compare: 2002 No 49 s 46; SR 2003/187 r 161

36C Interested person may oppose accepted application

An interested person may, in accordance with any prescribed requirements, oppose an application for registration of a geographical indication that the Registrar has accepted.

Compare: 2002 No 49 s 47; 2013 No 68 s 92

23 New section 39A inserted (Function of advisory committee appointed under Trade Marks Act 2002)

After section 39, insert:

39A Function of advisory committee appointed under Trade Marks Act 2002

It is a function of an advisory committee appointed under section 177(1) of the Trade Marks Act 2002 to advise the Registrar whether the use of a geographical indication in relation to wine or spirits, or the registration of the geographical indication, is, or is likely to be, offensive to Māori.

Compare: 2002 No 49 s 178

24 Section 42 amended (Register)

- (1) Replace section 42(2) with:
 - (a) Part 1, for enduring New Zealand geographical indications;
 - (b) Part 2, for all registered geographical indications except those to which paragraphs (a) and (c) refer;
 - (c) Part 3, for geographical indications that have been registered in accordance with regulations made under section 57(1)(j).
- (2) In section 42(3)(b), replace “Part 2” with “Part 3”.
- (3) After section 42(3)(c), insert:
 - (ca) the name and address of the registrant; and
- (4) Replace section 42(3)(d) with:
 - (d) the date of registration (except in the case of an enduring New Zealand geographical indication).

25 Section 43 amended (Public access to register)

In section 43(1), after “determined by”, insert “the”.

26 Section 45 amended (Removal from register)

- (1) In section 45(1)(d), replace “sections 10 to 15” with “sections 10 to 17”.
- (2) After section 45(3), insert:
- (4) The Registrar must remove a registered geographical indication from the register on its expiry.

27 New sections 45A and 45B inserted

After section 45, insert:

45A Notice of proposed removal

- (1) If the Registrar proposes on his or her own initiative to remove a registered geographical indication from the register, the Registrar must—
 - (a) notify the registrant of the grounds of the proposed removal; and
 - (b) give public notice of the proposed removal.
- (2) If the Registrar receives an application to remove a registered geographical indication from the register, the Registrar must,—
 - (a) if the applicant is not the registrant, send a copy of the application to the registrant; and
 - (b) give public notice of the proposed removal.
- (3) The public notice must be given in the format, manner, and frequency that the Registrar thinks appropriate.

45B Interested person may oppose proposed removal

If the Registrar gives notice of the proposed removal of a registered geographical indication under section 45A, an interested person may, in accordance with any prescribed requirements, oppose the proposed removal.

28 Section 46 amended (Alteration of register)

- (1) Replace section 46(1) with:
 - (1) The Registrar may, on his or her own initiative or on the application of an interested person, alter a registered geographical indication, or the conditions or boundaries relating to a registered geographical indication, if the Registrar is satisfied that—
 - (a) the alteration is necessary; and
 - (b) the alteration will not substantially alter the character of the geographical indication; and
 - (c) the alteration is not likely to mislead the public.
- (2) After section 46(1), insert:

- (1A) The Registrar may, on the application of a registrant, alter the registrant's name or address on the register in relation to a specified registered geographical indication.
- (1B) The Registrar may, on the application of an interested person (other than the registrant), alter the register in relation to a specified registered geographical indication—
- (a) by removing the registrant's name and address; and
 - (b) by entering the applicant's name and address as the substitute registrant.
- (1C) The Registrar may exercise the powers under subsection (1B) only—
- (a) if—
 - (i) the registrant consents to the interested person being the substitute registrant; or
 - (ii) the registrant has died or ceased to exist; and
 - (b) if the application is made in accordance with regulations made under section 57(1)(ea).

29 New sections 46A to 46C inserted

After section 46, insert:

46A Notice of proposed alteration

- (1) If the Registrar proposes on his or her own initiative to alter a registered geographical indication, or the conditions or boundaries relating to a registered geographical indication, the Registrar must—
- (a) notify the registrant of the grounds of the proposed alteration; and
 - (b) give public notice of the proposed alteration.
- (2) If the Registrar receives an application to alter a registered geographical indication, or the conditions or boundaries relating to a registered geographical indication, the Registrar must,—
- (a) if the applicant is not the registrant, send a copy of the application to the registrant; and
 - (b) give public notice of the proposed alteration.
- (3) The public notice must be given in the format, manner, and frequency that the Registrar thinks appropriate.

46B Interested person may oppose proposed alteration

If the Registrar gives notice of the proposed alteration of a registered geographical indication or the conditions or boundaries relating to a registered geographical indication under section 46A, an interested person may, in accordance with any prescribed requirements, oppose the proposed alteration.

Compare: 2013 No 68 s 87

46C Alteration of register concerning certain inconsistent information

- (1) This section applies if information in the register relating to a person is inconsistent with the primary business data of that person in the New Zealand Business Number Register.
- (2) If this section applies, the Registrar may, in the prescribed manner (if any), alter the information in the register so that it is consistent with the primary business data in the New Zealand Business Number Register.
- (3) In this section, **primary business data** has the same meaning as in section 20(2) of the New Zealand Business Number Act 2016.

Compare: 2002 No 49 s 78A

30 Section 47 amended (Procedure for removal or alteration)

- (1) Repeal section 47(2)(a).
- (2) After section 47(2), insert:
- (3) This section does not affect the power of the Registrar to remove a registered geographical indication from the register in accordance with section 45(4).

31 New sections 47A to 47D and cross-headings inserted

After section 47, insert:

Renewal of registration

47A Renewal of registration

- (1) The Registrar must renew the registration of a geographical indication on an application by an interested person that is made in accordance with any prescribed requirements.
- (2) The registration of a geographical indication may be renewed for a further period of 10 years.

Compare: 2002 No 49 s 58

47B Notice of pending expiration of registration of geographical indication

- (1) If no interested person has made an application under section 47A within a prescribed period before the registration of a geographical indication expires, the Registrar must—
 - (a) give notice in writing of the pending expiration of the geographical indication—
 - (i) to the registrant; and
 - (ii) to other persons and organisations that the Registrar considers are representative of the producers of the wine or spirits to which the geographical indication relates; and
 - (b) give public notice of the pending expiration of the geographical indication.

- (2) A notice under subsection (1) must—
- (a) be in the prescribed form (if any); and
 - (b) at a minimum, state—
 - (i) the date on which the registration of the geographical indication will expire; and
 - (ii) any conditions as to the payment of fees on which a renewal of registration may be obtained; and
 - (iii) that, if the conditions referred to in subparagraph (ii) have not been complied with, the geographical indication will be removed from the register.

Compare: 2002 No 49 s 59

47C Status of geographical indication or trade mark removed from respective register for non-payment of renewal fee

- (1) A geographical indication or trade mark that has been removed from its respective register for non-payment of the renewal fee must be taken into account for a period of 1 year after the date of expiry of the registered geographical indication or registered trade mark when determining the registrability of a later geographical indication application.
- (2) Subsection (1) does not apply if the Registrar is satisfied that,—
- (a) in the case of a trade mark that has been removed from its register,—
 - (i) there has been no genuine use of the trade mark during the 2 years immediately before its removal; or
 - (ii) no deception or confusion would be likely to arise from the use of the geographical indication that is the subject of the application by reason of any previous use of the trade mark:
 - (b) in the case of a geographical indication that has been removed from its register,—
 - (i) in the case of a foreign geographical indication, it is not, or has ceased to be, protected in its country of origin; or
 - (ii) the geographical indication has fallen into disuse in its country of origin.

Compare: 2002 No 49 s 60

Restoration to register

47D Registrar may restore expired geographical indication to register

- (1) This section applies if a geographical indication has expired and been removed from the register in accordance with section 45(4) within the previous 12 months.

- (2) The Registrar may restore an expired geographical indication to the register in accordance with any prescribed requirements.
- (3) A geographical indication that is restored to the register is taken to have continued in existence as if it had not been removed from the register.

32 Section 53 amended (When Registrar may establish geographical indications committee)

Replace section 53(3) with:

- (3) The function of the committee is to advise the Registrar on issues relating to the matters specified in subsection (1), including—
 - (a) the boundaries of a geographical indication; and
 - (b) the use of a place name as a geographical indication.

33 Section 54 amended (Membership of committee)

In section 54(2)(b), after “New Zealand Geographic Board”, insert “Ngā Pou Taunaha o Aotearoa”.

Part 2 Amendments to miscellaneous provisions

34 Section 57 amended (Regulations)

- (1) After section 57(e), insert:
 - (ea) prescribing the procedure relating to the alteration of the name and address of an applicant or a registrant (including the substitution of information relating to an applicant or a registrant);
 - (eb) prescribing the manner in which the Registrar may alter the register under section 46C, including prescribing procedures, requirements, and other matters in respect of an alteration:
- (2) In section 57, insert as subsection (2):
 - (2) The Governor-General may prescribe any renewal fees under subsection (1)(i) that—
 - (a) recover some or all of the costs incurred by the Registrar in performing his or her functions under this Act;
 - (b) recover those costs at a level that provides an incentive to allow registrations of geographical indications to expire if persons interested in the registration no longer find registration beneficial.

Compare: 2013 No 68 s 243(2)(b)

35 New sections 57A to 57E inserted

After section 57, insert:

57A Recognition of agents

- (1) Anything that must be done by or to a person under this Act in relation to a geographical indication may be done by or to the person's expressly authorised agent.
- (2) Subsection (1) applies only if the agent is not a person whom the Registrar refused to recognise as an agent in accordance with section 57B.

Compare: 2002 No 49 s 190

57B Registrar may refuse to recognise person as agent

- (1) The Registrar may refuse to recognise a person as an agent if that person—
 - (a) is suspended from practice before the Intellectual Property Office of New Zealand; or
 - (b) has his or her registration as a patent attorney suspended or cancelled; or
 - (c) has been removed from or struck off the roll of barristers and solicitors under the provisions of the Lawyers and Conveyancers Act 2006, and has not been restored to the roll; or
 - (d) is suspended from practice as a barrister or solicitor; or
 - (e) has been convicted in New Zealand of an offence specified in Part 10 (except section 298A) of the Crimes Act 1961 or has been convicted of an equivalent offence in another country.
- (2) If the Registrar refuses to recognise a person as an agent, the Registrar must, as soon as practicable, notify that person and the person's principal in writing.

Compare: SR 2003/187 rr 23, 24

57C Registrar may award costs

- (1) The Registrar may, in any proceedings before him or her under this Act,—
 - (a) by order, award to a party costs of an amount that the Registrar thinks appropriate (which, without limitation, may be on an indemnity basis); and
 - (b) direct how and by what parties the costs are to be paid.
- (2) The order may be entered as a judgment of the court and may be enforced accordingly.

Compare: 2013 No 68 s 212

57D Registrar may require security for costs

- (1) The Registrar may require a party to proceedings to give security for the costs of the proceedings if the Registrar is satisfied that—
 - (a) the party does not reside, and does not carry on business, in New Zealand; or

- (b) there is reason to believe that the party will be unable to pay the costs of the other party if unsuccessful in the proceedings.
- (2) If the party does not give the security required, the Registrar may treat the proceedings as having been abandoned by that party and determine the matter accordingly.

Compare: 2013 No 68 s 213

57E Meaning of proceedings for purposes of sections 57C and 57D

For the purposes of sections 57C and 57D, **proceedings** means any procedure prescribed by regulations made under section 57—

- (a) for opposition, and determination of opposition, to an accepted application for registration of a geographical indication as referred to in section 37(2)(b):
- (b) for opposition, and determination of opposition, to the removal or alteration of a registered geographical indication as referred to in section 47(2)(b).

36 Section 63 replaced (Trade Marks Act 2002 amended)

Replace section 63 with:

63 Consequential amendments to Trade Marks Act 2002

Amend the Trade Marks Act 2002 as set out in the Schedule.

37 New Schedule inserted

After section 64, insert the Schedule set out in the Schedule of this Act.

Schedule

New Schedule inserted

s 37

Schedule

Consequential amendments to Trade Marks Act 2002

s 63

Section 5

In section 5(1), repeal the definitions of **geographical indication**, **protected geographical indication**, and **specified goods**.

In section 5(1), insert in its appropriate alphabetical order:

registered geographical indication has the same meaning as in section 7(1) of the Geographical Indications (Wine and Spirits) Registration Act 2006

Section 11

After section 11(a), insert:

(ab) are subject to any lawful use of a registered geographical indication; and

Section 20

Replace section 20 with:

20 Trade mark that contains geographical indication must not be registered in certain circumstances

- (1) The Commissioner must not register a trade mark if—
- (a) a registered geographical indication for a wine or spirit exists under the Geographical Indications (Wine and Spirits) Registration Act 2006 and—
 - (i) the trade mark contains the registered geographical indication for a wine or spirit; and
 - (ii) the trade mark relates to a wine or spirit that does not originate in the place of geographical origin to which the registered geographical indication relates; and
 - (iii) the use of the trade mark is likely to deceive or confuse; or
 - (b) an application for registration of a geographical indication for a wine or spirit has been made in good faith under the Geographical Indications (Wine and Spirits) Registration Act 2006 and—
 - (i) the trade mark contains the geographical indication that is the subject of the application for registration; and

Section 20—*continued*

- (ii) the trade mark relates to a wine or spirit that does not originate in the place of geographical origin to which the geographical indication relates; and
 - (iii) the use of the trade mark is likely to deceive or confuse; and
 - (iv) if registered, the deemed date of registration of the geographical indication is earlier than the deemed date of registration of the trade mark (if registered).
- (2) This section does not apply if the Commissioner or the court, as the case may be, considers that a case of honest concurrent use exists that, in the opinion of the Commissioner or the court, makes it proper for the trade mark to be registered, subject to any conditions that the Commissioner or the court may impose.

Compare: 2006 No 60 ss 14–17

New section 60A

After section 60, insert:

60A Status of geographical indication removed from register for non-payment of renewal fee

- (1) A geographical indication that has been removed from the register for non-payment of the renewal fee must be taken into account for a period of 1 year after the date of expiry of the registered geographical indication when determining the registrability of a later trade mark application.
- (2) Subsection (1) does not apply if the Commissioner is satisfied that, in the case of a foreign geographical indication,—
- (a) the geographical indication is not, or has ceased to be, protected in its country of origin; or
 - (b) the geographical indication has fallen into disuse in its country of origin.

Compare: 2006 No 60 s 47C

Section 88

In section 88(c), replace “Geographical Indications Act 1994” with “Geographical Indications (Wine and Spirits) Registration Act 2006”.

New section 98A

After section 98, insert:

98A No infringement through use of registered geographical indication

A registered trade mark is not infringed by the lawful use of a registered geographical indication registered under the Geographical Indications (Wine and Spirits) Registration Act 2006.

Legislative history

3 November 2015	Introduction (Bill 86–1)
17 March 2016	First reading and referral to Primary Production Committee
15 September 2016	Reported from Primary Production Committee (Bill 86–2)
2 November 2016	Second reading
15 November 2016	Committee of the whole House (Bill 86–3)
16 November 2016	Third reading
25 November 2016	Royal assent

This Act is administered by the Ministry of Business, Innovation, and Employment.