

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN WINE AND BRANDY CORPORATION AMENDMENT BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Primary Industries
and Energy, the Honourable John Kerin MP)

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OUTLINE

1. This Bill has two primary purposes - to provide the legislative basis for implementation of a wine label integrity program by the Australian Wine and Brandy Corporation and to make consequential amendments to the Corporation's legislation necessitated by proposed amendment of the Wine Grapes Levy Act 1979. The opportunity has also been taken to amend penalties in the Australian Wine and Brandy Corporation Act 1980.
2. The wine label integrity program will require wine manufacturers to keep records to support claims of the vintage, variety or region of origin of wine (these claims are called 'label claims' in the Bill) and to make those records and the stocks to which they relate, available for audit by authorised inspectors. The purpose of auditing is to ensure truth in labelling, thereby increasing consumer confidence in the reliability of 'label claims' and enhancing the reputation of Australian wine in domestic and export markets.
3. All wine manufacturers engaged in the manufacture of wine for commercial purposes, will be required to keep a record of the vintage, variety, region of origin, source of supply, date of receipt and quantity of grape products received for use in making wine. This will enable the Corporation to trace a wine to the point where the grapes or juice from which it was made were first harvested or first processed.
4. Wine manufacturers who do not make 'label claims' about particular wine and market it for example as 'moselle', 'burgundy', 'claret' etc, will not be required under this legislation to keep any further records in respect of such wines.
5. Wine manufacturers who make 'labelling claims' about the vintage, variety or region of origin of wine will need to keep production, sales and disposal records for such wines thereby establishing an 'audit trail'.
6. An audit by the Corporation may be triggered by consumer or trade complaints, emerge from routine export inspection of wine by the Corporation or may be initiated by the Corporation on a random basis to assess the accuracy of 'label claims' emanating from a winery, a wine region or about a particular grape variety.

7. The legislation will commence on 1 January 1990 so that mandatory record keeping will commence with the 1990 harvest. Most winemakers already keep adequate records to support their 'label claims' as a matter of normal commercial practice. Where wineries do not already keep such records, the Corporation has offered to assist them to establish a simple and inexpensive record keeping system and to ensure they are fully conversant with the requirements of the legislation.

8. The Bill will enable the Corporation to obtain information necessary to monitor compliance with existing State and Territory food law and Commonwealth and State and Territory consumer protection law and enable the Corporation to bring breaches to the attention of those authorities for appropriate action.

FINANCIAL IMPACT STATEMENT

9. The Corporation has budgeted \$10,000 in 1989/90, \$20,000 in 1990/91 and \$75,000 in 1991/92 to implement the program. These costs will be met entirely from the Corporation's income which is derived primarily from receipts from the wine grapes levy. The program will have no effect upon Commonwealth expenditure and has no additional staffing implications for the Department of Primary Industries and Energy.

NOTES ON INDIVIDUAL CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title

10. This clause provides the short title of the Act.

Clause 2 - Commencement

11. Amendments consequential upon enactment of the Wine Grape Levy Amendment Bill 1989 will commence when that amendment commences, namely on 1 January 1990. All other provisions also commence on 1 January 1990 so that record keeping can commence with the 1990 harvest as requested by the wine industry.

PART 2 - AMENDMENTS CONSEQUENTIAL ON AMENDMENT OF WINE GRAPES LEVY ACT 1979

Clause 3 - Voting at annual general meetings

12. Section 29Z of the Principal Act provides that voting entitlements at annual general meetings of the Australian Wine and Brandy Corporation are to be related to the level of liability imposed in the preceding year to pay the levy which helps fund the Corporation. To preserve existing arrangements, this clause substitutes for a reference to the subparagraphs in the Wine Grapes Levy Act 1979 which identify this levy, an equivalent reference to the relevant component of the levy in Section 32 of the Principal Act which relates to payments to the Corporation of levies collected by the Commonwealth.

Clause 4 - Payments to Corporation

13. To preserve existing arrangements, this clause amends references to the marketing component of the wine grapes levy occurring in Section 32 of the Principal Act to accord with amended references incorporated in the Bill to amend the Wine Grapes Levy Act 1979. This will allow levy funds collected by the Commonwealth to continue to be paid to the Corporation.

Clause 5 - Payments by Corporation to Commonwealth

14. To preserve existing arrangements, this clause amends references to the marketing component of the wine grapes levy occurring in Section 33 of the Principal Act to accord with amended references incorporated in the Bill to amend the Wine Grapes Levy Act 1979. This will allow the Corporation to continue to repay to the Commonwealth amounts of levy which have been refunded by the Commonwealth to levy payers.

Clause 6 - Application of Part

15. This clause ensures that arrangements concerning payments and refunds of levy, will remain unchanged after 1 January 1990 when amendments to the Wine Grapes Levy Act 1979 commence.

PART 3 - LABEL INTEGRITY PROGRAM

Clause 7

16. This clause inserts new part VIA after part VI of the Principal Act. It provides for the implementation of a wine label integrity program.

"PART VIA - LABEL INTEGRITY PROGRAM

"Division 1 - Preliminary

"Object of Part

17. The new section 39A outlines the object of the Label Integrity Program.

"Operation of Part

18. New section 39B states that without prejudice to any other relevant powers of the Commonwealth, such as the trade and commerce power, authority to implement the Label Integrity Program rests upon the Corporations power of the Constitution.

"Interpretation

19. New section 39C defines certain words and phrases used throughout the new Part VIA. The following are of particular significance:

- 'Wine goods' means wine, grapes or grape extract.
- Under the definition of 'winery' a person who makes wine only for non-commercial purposes, such as for home consumption, is exempt from the record keeping requirements. A person who only manufactures grape juice or sparkling grape juice for consumption as such a beverage is also exempt from the record keeping requirements.
- A 'label claim' in relation to wine goods, means a claim about their vintage, variety or region of origin.

"Sales with a 'label claim'

20. New subsection 39D(1) establishes when wine is sold with a 'label claim'. State and Territory food law enables a wine manufacturer to claim a wine is of a specific variety or region of origin if 80 per cent of the wine is from that variety or region of origin and to claim a wine is of a specific vintage if 95 per cent of the wine is of that vintage. Thus for example, a wine claimed to be of the 1990 vintage could legally be 95 per cent from that vintage and 5 per cent from the 1985 vintage. References are made in the Bill to blends sold with a 'label claim' relating to a particular wine in the blend. New subsection 39D(2) stipulates that where a blend is sold with a 'label claim' (for example that the wine is of the 1990 vintage), that 'label claim' is taken to relate to each wine in the blend except that, where -

- one or more of the wines in the blend has that characteristic (ie, in the example, is or are from the 1990 vintage); and
- another wine in the blend does not have that characteristic (ie, in the example, is from the 1985 vintage),

the claim does not relate to that wine that does not have that characteristic.

"Penalties

21. New section 39E provides that penalties of \$15,000 apply to corporations for offences in this Part, while the penalty for the same offences by a natural person is up to \$3,000.

"Division 2 - Records relating to Label Claims

"Wine manufacturers to keep records of receipt of wine goods

22. New section 39F requires a wine manufacturer who receives wine goods for processing to keep a record of specified details in respect of all of those goods whether sourced from the manufacturers' own vineyards or not and whether or not any 'label claim' will be made in respect of those goods. These details will enable the quantity, source, date of receipt and vintage, varietal or regional identity of all wine goods used in making wine to be determined.

"Wine manufacturers to keep records of manufacture of certain wine

23. New section 39G requires a manufacturer who manufactures a wine which is not a blend to make specified production records where the wine will be sold with a 'label claim'. The section also requires a manufacturer to keep production records about that wine where it is used in making a blend intended to be sold with a 'label claim', deriving from the single wine.

"Wine manufacturers to keep records of manufacture of certain blends."

24. New section 39H deals with transfers between wineries requiring a wine manufacturer to keep specified production records of blends (eg., Cabernet Shiraz) where they are intended for sale with a 'label claim'.

"Wine manufacturers to keep records of sales of certain wine"

25. New section 39J requires a wine manufacturer who sells wine with a 'label claim' to keep specified sale records for that wine. To complete the audit trail, a record of the purchaser will be required where a wine manufacturer sells such wine to associated companies which label and market the wine as their own or where the wine is sold unlabelled, but with a 'label claim' to a wholesaler or retailer who will resell it with that 'label claim'. A record of the purchaser will not be required where such wine is packaged for sale to the consumers in a package which identifies the manufacturer or where wine is sold direct from the manufacturer to the consumer. Therefore, no record of purchaser is required where in the normal course of trade the manufacturer sells wine bearing his own label to wholesalers, retailers and consumers.

"Wine manufacturers to keep records of disposals of certain wine"

26. New section 39K applies to wine manufacturers who make and dispose of wine under contract to another person. Where a manufacturer makes a 'label claim' about the wine or knows the person on whose behalf the wine has been made intends to sell the wine with a 'label claim', the manufacturer must keep specified records of its disposal. A record of the purchaser will not be required where either the wine is packaged for sale to the consumer in a package which identifies the manufacturer or where the wine is sold direct from the manufacturer to the consumer.

"Direct sales"

27. New section 39L simplifies record keeping requirements in respect of direct sales by a manufacturer to a consumer. Instead of keeping a record of the date of sale and quantity of wine sold with a 'label claim' for each transaction, the manufacturer may keep a record of the total quantity sold over a given period of up to a year.

"Wine manufacturers to keep records of transfers of certain wine"

28. To complete the audit trail, new section 39M requires a wine manufacturer to keep specified records where the manufacturer transfers wine from one of his or her wineries to another for blending and where a 'label claim' is or is intended to be made about the wine.

"Wine manufacturers to keep records of production of certain grape extract

29. New section 39N deals with transfers between wineries requiring wine manufacturers to keep specified production records for grape extract where a 'label claim' will be made in relation to the extract or where wine or a blend is made from the extract with a 'label claim' deriving from the 'label claim' of that extract.

"Wine manufacturers to keep records of sales of certain grape extract

30. New section 39P deals with grape extract sales requiring a wine manufacturer to keep specified sales records in relation to grape extract sold by him or her with a 'label claim'.

"Wine manufacturers to keep records of disposal of certain grape extract

31. New section 39Q requires a wine manufacturer to keep specified records of grape extract which he or she makes on behalf of another person and subsequently disposes of it, as instructed by that person. This only applies where a 'label claim' is being made.

"Wine manufacturers to keep records of transfers of certain grape extract

32. New section 39R requires a wine manufacturer to keep specified records of the transfer between wineries owned by the manufacturer of grape extract where the manufacturer intends to sell wine or a blend with a 'label claim' deriving from that extract. A record of transfer is also required where a wine manufacturer transfers grape extract with a 'label claim' to another wine manufacturer.

"Making of records

33. New section 39S requires a wine manufacturer to make the requisite records as soon as practicable.

"Records to relate to a winery

34. New section 39T clarifies that a record must show the winery to which the record relates.

"Keeping of records

35. New section 39U states that a wine manufacturer must keep the requisite records for 7 years, unless the Corporation approves in writing, a shorter period.

"Record of person

36. New section 39V clarifies that a record of the identity of a person is a record of the person's name and address sufficient to identify the person.

"Characteristics to be recorded

37. New section 39W clarifies the characteristics of wine or grape extract which are required to be recorded under various preceding sections.

"Record of variety

38. New section 39X clarifies that a record of variety is a record of any synonyms for that variety or where there is uncertainty about the variety, the variety considered most likely by the manufacturer.

"Record of region of origin

39. New section 39Y clarifies that a record of the region of origin of wine goods is a record of the geographical area which is the source of the goods.

"Record of blends etc

40. State and Territory food law enables a wine manufacturer to claim a wine is of a specific variety or region of origin if 80 per cent of the wine is from that variety or region of origin and to claim a wine is of a specific vintage if 95 per cent of the wine is of that vintage. New section 39Z provides that where a blend is made of wine or wines with a 'label claim' and other wine about which no 'label claim' is made (ie., 'filler') then a record showing the vintage, variety or region of origin of the blend is a record of the proportion of the 'label claim' wine or each of the 'label claim' wines in the blend. Similarly a record of the vintage, variety or region of origin of a blend made from grape extract is a record of the proportion of each of the different grapes used in making the blend.

"Division 3 - Inspection

"Appointment of Inspectors

41. New section 39ZA empowers the senior executive of the Corporation to appoint inspectors and establishes criteria for their eligibility for appointment.

"Identity cards

42. New section 39ZB enables the senior executive of the Corporation to issue identity cards to inspectors.

"Monitoring powers of inspectors - exercised with consent

43. New section 392C provides for an inspector to carry out inspection duties at premises with the occupiers' consent, following production of an identity card.

"Monitoring warrants

44. New section 392D enables a magistrate to issue to an inspector a warrant effective for 6 months from the date of issue to inspect wine premises, where the magistrate is satisfied the inspector should have access to determine whether label laws are being complied with.

"Offence powers of inspectors - exercised with consent

45. New section 392E enables an inspector, with the continuing consent of the occupier of the premises, to search for evidence of a breach of label laws.

"Offence related warrants

46. New section 392F empowers a magistrate to issue a one month warrant to enable an inspector to enter and inspect premises and seize evidence of a breach of label laws. The inspector has to satisfy the magistrate that there are reasonable grounds for suspecting that evidence is or may be on the premises within 72 hours of issue of the warrant.

"Discovery of evidence

47. New section 392G enables an inspector in possession of an offence related warrant to seize the evidence and retain it for 60 days or for the length of a prosecution if it commences within those 60 days. The section enables the inspector to seize evidence other than that specifically being sought, which indicates a label offence has been committed.

"Power to require persons to answer questions and produce documents

48. New section 392H provides that where an inspector has entered premises under a warrant, any person on the premises is required to co-operate in the investigation except where compliance would result in self-incrimination.

"Division 4 - Use of Records and Results of Inspection

"Corporation to assist enforcement of laws on description of wine

49. New section 392J enables the Corporation to pass the information obtained under this part or under Section 42 of the Principal Act and render other assistance to the States and Territories or to the Trade Practices Commission to facilitate prosecution of breaches of wine composition and description laws. The section also enables the Corporation to provide information and assistance to another person who is taking or intends to take proceedings against a person accused of making false 'label claims'.

"Proceedings not to lie against the Corporation etc

50. New section 392K indemnifies the Corporation, its members, employees or an inspector against any action brought because of information or assistance provided under section 392H.

"Corporation to assist in relation to levy

51. To minimise duplication of inspection resources, and cut costs to the wine industry, new section 392L enables the Corporation, with a wine manufacturer's consent, to inform the Department of Primary Industries and Energy of the quantity of grape products which would attract levy under the Wine Grapes Levy Act 1979 and the Grape Research Levy Act 1986.

Clause 8 - Corporation may require information

52. This clause extends the application of Section 42 of the Principal Act by enabling the Corporation to require wine manufacturers to provide information relating to description of wine products and to allow sufficient time to respond to requests for information and to make other minor changes conducive to natural justice.

PART 4 - OFFENCES

Clause 9

53. This clause inserts new section 44A after section 44 of the Principal Act.

"Conduct by directors, servants or agents

54. New section 44A provides that subject to certain conditions, the conduct of directors, servants or agents of a body corporate can be taken as that of the body corporate, and similarly, the conduct of agents acting for a person other than a body corporate can be taken as that of the other person.

Clause 10 - Application of section 44A

55. This clause stipulates that new section 44A does not apply in relation to offences committed before 1 January 1990.

Clause 11 - Amendment of penalties

56. This clause updates penalties in the Principal Act as indicated in the Schedule.

