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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN WINE AND BRANDY CORPORATION  
AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Primary Industries and Energy,  
the Hon Simon Crean, MP)



## AUSTRALIAN WINE AND BRANDY CORPORATION AMENDMENT BILL 1992

### OUTLINE

The purpose of this Bill is to amend the Australian Wine and Brandy Corporation Act 1980 to remove uncertainties about the enforcement of laws concerning truth in labelling of wine.

2. The Wine Label Integrity Program was implemented in 1990 following amendments in 1989 to the Australian Wine and Brandy Corporation Act 1980.

The program requires manufacturers to keep records to support labelling claims of the vintage, variety and region of origin of wine and to make those records and the stocks to which they relate available for audit upon request by the Australian Wine and Brandy Corporation. The purpose of auditing is to ensure truth in labelling, thereby increasing consumer confidence in the reliability of wine label claims and enhancing the reputation of Australian wine in domestic and export markets.

3. However, practice in using the legislation, under which over 200 audits have been conducted, has highlighted technical difficulties which are likely to impair the enforcement of the legislation. The legislation requires manufacturers to keep Label Integrity Program records but there is no requirement that these records be accurate and complete. The legislation also requires that a manufacturer must provide records, if the Corporation requests them, even if they are self-incriminating, but the manufacturer is then protected from prosecution should the records disclose false labelling.

4. This Bill aims to rectify these deficiencies by making it an offence to knowingly or recklessly fail to make or keep such records, or to make or keep inaccurate or incomplete records. The Bill also provides that a person may, with reasonable excuse, refuse a request from the Corporation to provide Label Integrity Program records. The Bill provides that it is a reasonable excuse for a person to refuse to provide such records where they are self-incriminating. Where a person chooses, with reasonable excuse, not to provide Label Integrity Program records, the Corporation may still exercise its inspection powers to obtain the records and will be able to use those records to initiate a prosecution.

5. The final change in the Bill honours a commitment made by the Government in 1989 to the Senate Standing Committee for the Scrutiny of Bills. The first of the two amendments involved will enable a person to copy evidence seized by a label integrity inspector. The second reduces the maximum period of validity of an offence warrant from one month to seven days.

### FINANCIAL IMPACT STATEMENT

6. The proposals put forward in the Bill will not affect Commonwealth expenditure and will have no staffing implications for the Department of Primary Industries and Energy as the Corporation is funded primarily from industry levies.

## NOTES ON INDIVIDUAL CLAUSES

### Clause 1 : Short title

7. The Act will be called the Australian Wine and Brandy Corporation Amendment Act 1992.

### Clause 2 : Commencement

8. Clause 2 provides commencement on the day on which the Act receives Royal Assent. Clause 4 commences 28 days after the Act receives Royal assent.

### Clause 3

9. In this clause several additional sections are added after section 39Z of the Principal Act.

#### Corporation may require records

10. The first of these, section 39ZAA, gives the Australian Wine and Brandy Corporation the power to request, in writing, a record required under the Label Integrity Program from a person whom it has reason to believe holds or controls such a record.

#### Failure to comply with section 39ZAA notice

11. Under section 39ZAB a person must provide the requested record within the period specified in the request unless the person has a reasonable excuse for not doing so. This section provides that it is a reasonable excuse for a person to refuse to provide Label Integrity Program records where they are self-incriminating.

#### Corporation may retain records

12. Section 39ZAC provides that the Corporation may keep a record for 60 days or, if a prosecution for a label offence is initiated within the 60 days, until proceedings and appeals are concluded. Persons who would be entitled to inspect the record if it were not in the Corporation's possession must be given reasonable access to inspect or copy that record if they wish to do so.

13. The aim of the amendments in clause 3 is to correct technical deficiencies in the Label Integrity Program which are likely to impair the enforcement of the current legislation. The Australian Wine and Brandy Corporation Act 1980 requires manufacturers to keep Label Integrity Program records, but there is no requirement that the records be accurate and complete. Further, under the existing legislation, where the Corporation requests a manufacturer to provide Label Integrity Program records the manufacturer must provide these records even if they are self-incriminating, but the manufacturer is then protected from prosecution should the

records disclose false labelling. Thus the present provisions are ineffective in enabling any prosecution for false labelling.

14. The amendments in clause 3 will enable the Corporation to instigate a prosecution where Label Integrity Program records provided at the Corporation's request disclose false labelling (see clause 4), while retaining the right of a person with reasonable excuse to refuse to provide such records. The Bill provides that it is a reasonable excuse to refuse to provide the records where they are self-incriminating. Where a person chooses, with reasonable excuse, not to provide the records the Corporation may still exercise its inspection powers to obtain Label Integrity Program records and will be able to use those records to initiate a prosecution. Thus the original intention of the legislation will be achieved.

#### Clause 4

15. Under this clause an additional section is inserted before section 39ZAA.

#### Offences in relation to record-keeping

16. Where Label Integrity Program records are required to be kept under the Principal Act this section makes it an offence to knowingly or recklessly fail to make or keep a Label Integrity Program record, or to keep an incorrect or incomplete record. This section remedies a deficiency in the existing Act which requires a person to keep Label Integrity Program records but which does not make it an offence to make or keep records which are false or misleading.

#### Clause 5 : Discovery of evidence

17. This clause amends the Principal Act to allow a person to copy Label Integrity Program evidence where it is a book, record, or document which has been seized by an Australian Wine and Brandy Corporation inspector who had entered their premises under a warrant regarding the possible commission of a label offence.

#### Clause 6 : Corporation may require information

18. This clause amends section 42 of the Principal Act to remove the Label Integrity Program provisions from the ambit of section 42. At present, section 42 enables the Corporation to require a person to provide information, including Label Integrity Program records, to the Corporation on request.

19. In the 1989 amendments to the Principal Act to create the Label Integrity Program, section 42 was amended to include Label Integrity Program records in the range of information which could be requested under section 42. Because the range of information a person must provide under section 42 is so wide, the section protects a person from prosecutions arising from the information provided. A winery which under section 42 gives Label Integrity Program records to the Corporation which disclose false labelling is indemnified from prosecution, thereby defeating the purpose of the legislation. In retrospect, it is clear that section 42 was

never an appropriate vehicle to use to call for Label Integrity Program records. Clauses 3 and 4 of this Bill remedy this situation. Under clause 3 the Corporation may require a person to provide Label Integrity Program records, but a person may with reasonable excuse refuse to provide the records. Any Label Integrity Program information provided to the Corporation will then be regarded as having been provided voluntarily and will be admissible in prosecutions. Clause 4 makes it an offence to knowingly or recklessly fail to make or keep a Label Integrity Program record or to keep an incorrect or false record.

20. Section 42 would remain unchanged with regard to other types of information, so that the Corporation will continue to be able to call for other information, with the obligation that it be truthfully provided. However, the Corporation will not be able to use such information in prosecutions. This is consistent with the current separation of Commonwealth and State/Territory responsibilities for policing of wine labelling. Policing of wine content and labelling, other than Label Integrity Program provisions, remains a State/Territory responsibility.

#### Clause 7 : Further amendments

21. Under this clause a number of minor amendments are made to the Principal Act. Firstly, the Principal Act is amended to remove a number of individual penalties regarding the provision of Label Integrity Program records to the Corporation. These individual penalties will be replaced by the same penalty under clause 4 of this Bill.

22. Secondly, the maximum period of validity of an offence warrant is reduced from one month to seven days. The purpose of this amendment is to protect privacy.

23. The final amendment seeks to remedy a drafting error in the Principal Act which, if it had been drafted correctly, would have enabled an inspector to seize other evidence which afforded evidence of a label offence.



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