

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN WINE AND BRANDY CORPORATION
AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

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

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OUTLINE

The Purpose of this Bill is to implement the EC/Australia Wine Agreement.

2. The Agreement improves access for Australian wines to the European Community (EC). It reduces the number of analyses required by the EC for certification of Australian wines from 8 to 3 and permits the more widespread marketing in the EC of Australian wines labelled with multi-varietal and multi-regional blends as well as certain sweet wines. The Agreement also provides for the mutual recognition of each Party's winemaking practices and standards and protects each Party's geographical names (referred to as geographical indications) and traditional expressions used for the description of wine. The Agreement will guarantee that the EC will require no additional certification for the export of Australian wine except in the case of legitimate health or consumer protection concerns.
3. The Bill will prevent the use of a registered geographical indication, either Australian or European, to describe a wine not originating from within the boundaries of the geographical indication in question. It will also prevent the use of a registered traditional expression to describe a wine not originating in the country for which the traditional expression is registered. The restrictions will apply to all description and presentation of wine including advertising. Interested parties will have the right to bring action, including injunctions against offenders.
4. The Bill provides for the gradual phase-out of Australia's use of European geographical indications which have entered into common use. Once the phase-out period has elapsed names such as "Claret" or "Chablis" will be reserved for wine originating from the place in question. The Bill also provides for marketing of existing stocks of Australian wine labelled with EC names for up to 3 years by wholesalers and for retailers until stocks are exhausted. Australian winemakers have already begun using varietal and brand names to replace European geographical indications.
5. In order to protect Australian geographical indications in the EC, and to enable wine labelled by region to be marketed in the EC, the boundaries of Australian geographical indications concerned must be defined. This Bill establishes a Geographical Indications Committee as a committee of the Australian Wine and Brandy Corporation (AWBC) to define the names and boundaries of Australian geographical indications for wine. Industry has agreed that the Geographical Indications Committee (GIC) will comprise three people, one nominated by the Winemakers' Federation of Australia (WFA), one by the Winegrape Growers' Council of Australia and a Presiding Member appointed by the AWBC. The GIC will publish proposed determinations and seek submissions from winemakers and winegrape growers and their organisations. There will be appeal rights to the Administrative Appeals Tribunal and the Federal Court.
6. The Bill establishes a Registrar of geographical indications to keep a public register of Australian geographical indications determined by the GIC and of protected EC geographical indications and traditional expressions.

7. The Bill recognises EC winemaking practices and standards by enabling the import into Australia of EC wine which conforms to the provisions of Annex 1 of the Agreement. The EC practices and standards differ in minor ways and in ways which do not endanger health, from the Australian standards. The wines must in all other respects conform with the Australian Food Standards Code for wine, P4. The WFA has applied to the National Food Authority to have the P4 standard for wine composition and labelling modernised and brought more closely into line with EC standards. The WFA application, even if accepted in its entirety, will not harmonise all EC and Australian winemaking practices.

FINANCIAL IMPACT STATEMENT

8. 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. The GIC will be funded by the AWBC which in turn is funded primarily from industry levies.

NOTES ON INDIVIDUAL CLAUSES

Clause 1: Short title

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

Clause 2: Commencement

10. Clause 2 provides for commencement when the Act receives Royal Assent.

Clause 3: Objects

11. This clause adds further objects to the Principal Act to allow the AWBC to implement commitments entered into under international wine trading agreements (the EC/Australia Wine Agreement is the first of these), and in order to do so, to determine the boundaries and the names of Australia's viticultural regions so that they can be protected under international agreements, and to determine the grape varieties that may be used in the production of wine as well as the conditions under which wines may be sold, imported or exported.

Clause 4: Interpretation

12. Clause 4 inserts into Section 4 definitions of new terms used in the Bill, and amends the definitions of some terms used in the Principal Act. 'Wine' is defined for the first time in the Bill. The Bill distinguishes between 'geographical indications' such as vineyards, which may continue to be used as they are now, and registered geographical indications which may be used only under the conditions set out in the Bill. The definition of 'prescribed goods' is broadened so that the AWBC can exercise export control over wines made in Australia (such as sparkling wines) which incorporate components of the wine blend sourced from other countries.

Clause 5: Insertion of new section

13. This clause extends the application of the Principal Act to all the external territories of Australia.

Clause 6: Insertion of new sections

14. Section 5A of the Principal Act empowers the Minister to 'declare', by publication in the *Gazette*, that a national organisation of winemakers is representative of winemakers. This amendment adds a new section 5B enabling the Minister to do the same thing with respect to a national organisation of winegrape growers.

15. This amendment is required to enable a national winegrape grower organisation to nominate a member to the GIC.

Meaning of 'description and presentation'

16. The Bill seeks to prevent the false or misleading 'description and presentation' of wines by restricting the circumstances under which certain EC, Australian and third party protected names may be used. The definition of description and presentation is broad and includes all names, including business names which appear on labels, containers, commercial documents and advertising.

Where wine originates

17. The EC/Australia Wine Agreement seeks to prevent (over time) the use of a geographical indications (such as 'Chablis') unless the wine in question genuinely originates in that place (eg Chablis, France).

Clause 7: Powers of Corporation

18. Under Clause 17, the AWBC is to establish a position of Registrar of Protected Names, whose function it is to establish and maintain the Register of Protected Names and to publish the boundaries of viticultural regions determined by the GIC (see Clause 17: 'Part VIB: Division 5 - Register of Protected Names').

19. This Clause extends the powers of the Corporation under Section 8 of the Principal Act so that it can determine conditions with regard to particular geographical indications, traditional expressions, ancillary protected expressions and winegrape varieties listed in the Register of Protected Names. These conditions for particular names include phase-out periods and the use of a name by more than one country.

20. It also sets down the formal procedures by which the Corporation's determinations are to be included in the Register and when they are to take effect, as well as providing for application to be made to the Administrative Appeals Tribunal for review of determinations and places an obligation on the Corporation Chairperson to publish determinations and notify interested persons of their right to make application to the Administrative Appeals Tribunal (AAT) for review of the determination.

Clause 8: Deputy Chairperson

21. This clause removes the ambiguity of there being a 'Presiding Member' of the AWBC Selection Committee and the Presiding Member of the GIC.

Clause 9: Insertion of new section

22. This clause removes the ambiguity of there being an AWBC Selection *Committee* and a Geographical Indications *Committee*.

Clause 10: Heading

23. This clause corrects a typographical error in the heading of Section 29P.

Clause 11: Directions to Corporation and Geographical Indications Committee

24. This clause enables the Minister, under exceptional circumstances, to give written directions to the Geographical Indications Committee.

Clause 12: Application of money of Corporation

25. This clause makes plain that the Committee and Presiding Member referred to in Section 35 of the Principal Act is the AWBC Selection Committee and Presiding Member and not the GIC and its Presiding Member.

Clause 13: Application of Division 2 of Part XI of Audit Act

26. This clause requires the GIC to report its determinations through the AWBC Annual Report.

Clause 14: Interpretation

27. Section 39C is amended to remove the definitions of the superseded term 'region of origin' from the Label Integrity provisions in Part VIA of the Act. This is superseded by the new term 'geographical indication', as defined in Clause 4.

Clause 15: Insertion of new section

28. (1) Section 39EA is inserted in the Principal Act after section 39E, as follows:

Time for bringing prosecutions

29. New Section 39EA allows prosecutions for offences under the Wine Label Integrity Program to be brought up to 7 years after the alleged offence took place. This is to allow for the special circumstances in the manufacture and maturing of wine such that up to 5 years may elapse between its manufacture and its eventual release onto the market. It may take a further 2 years to complete an audit and bring prosecutions.

30. (2) Section 39EA is not to be retrospective.

Clause 16: Repeal of section and substitution of new section

31. This clause requires that records which are required to be made must be made not more than 3 months after the event to be recorded occurred.

Clause 17: Insertion of new Part

32. Inserts Part VIB - Protection of Certain Names and Expressions, after Part VIA.

33. Part VIB implements commitments made under Title II - Reciprocal protection of wine names and related provisions on description and presentation, of the EC/Australian Wine Agreement.

Division 1 - Preliminary

Interpretation

34. New Section 40 clarifies that 'Committee' in this part is the GIC.

Object of this part

35. New Sub-section 40A says that the main object of the Part is to enable commitments made under international wine trading agreements to be met.

Additional operation of Part

36. New Sub-section 40B clarifies that this Part also relies on the corporation and trade and commerce powers of the Constitution.

Division 2 - Provisions relating to sale, export or import of wine

Sale, export or import of wine with a false description and presentation

37. New Sub-section 40C makes it an offence in trade or commerce to knowingly sell, export or import wine with a false description and presentation, and makes clear that it is not a defence when labelling wine with a registered geographical indication or other protected name to add the true origin of the wine. For example, when the Bill protects the EC geographical indication 'Chablis', it will not be a defence to the offence to label the wine 'Australian Chablis' or 'Chablis', 'Product of Australia'.

38. This section prescribes a penalty which is broadly commensurate with penalties for similar types of offences under the Trade Practices Act 1974, the Trade Marks Act 1955, and the Copyright Act 1968.

Meaning of 'false description and presentation'

39. New Sub-section 40D sets out in detail the circumstances under which the description and presentation of a wine is false, without limiting the meaning of the offence to the situations described.

40. New Sub-section 40D(5) makes clear that if a protected name is registered for more than one country, a description and presentation including that protected name is not false merely because of that fact.

41. New Sub-section 40D(6) enables an individual to use their personal name or that of their predecessor in business in the description and presentation of a wine even where that name is identical with a protected name. It also permits a protected name to be used in the address of the winery.

Sale, export or import of wine with a misleading description and presentation

42. New Sub-section 40E makes it an offence to knowingly sell, export or import wine with a misleading description and presentation, and specifies the penalty.

43. The prescribed penalty is broadly commensurate with penalties for similar types of offences under the Trade Practices Act 1974, the Trade Marks Act 1955, and the Copyright Act 1968.

Meaning of 'misleading description and presentation'

44. Sets out in detail the circumstances under which the description and presentation of a wine is misleading, without limiting the meaning to the situations described.

45. Although new sub-section 40D(6) allows the use of an individual's personal name, the personal name of their predecessor in business or the winery address even where that name is a protected name, new sub-section 40F(5) specifies that the name is not to be used in a misleading way.

46. New Sub-section 40F(7) allows the use of a protected name by more than one country where it is registered for use by more than one country and is not used in a misleading way.

Sale, export or import of wine in contravention of certain registered conditions

47. New Sub-section 40G enables trade in wine to occur where conditions have been set on the use of protected names, expressions or grape varieties. However, these conditions must be included in the Register. For example, Article 11.2 of the Agreement permits the continued use of the French geographical indication "Hermitage" by Australian winemakers as a synonym for the vine variety Shiraz. Such a condition allowing continued use could be included in the Register, pending agreement on a phase-out date on such use of this geographical indication.

48. This sub-section makes it an offence under the Act to knowingly breach these conditions on use and specifies a penalty which is broadly commensurate with penalties for similar types of offences under the Trade Practices Act 1974, the Trade Marks Act 1955, and the Copyright Act 1968.

Blending requirements and oenological practices and processes

49. Section 40H will amend the Act to allow regulations to be made concerning blending rules for wine sold, exported or imported; and, for oenological practices and processes and compositional and other requirements for wine for export. Where oenological practices and processes and blending requirements are set out in Regulations made under this Act, Section 40H makes it an offence to knowingly sell, import or export wine unless the wine was manufactured in accordance with the relevant Regulations. It also specifies a penalty for the offence which is broadly commensurate with penalties for similar types of offences under the Trade Practices Act 1974, the Trade Marks Act 1955, and the Copyright Act 1968.

50. The Regulations on oenological practices and processes and blending requirements will enable implementation of commitments made under Articles 4 and 11 of the EC/Australia Wine Agreement.

Exception for certain wines

51. New Sub-section 40J exempts certain wines from the offence provisions of Sections 40C, 40E, 40G and 40H. It also provides for Regulations to be made regarding exemptions

Prosecution of offences

52. New Sub-section 40K sets out who may institute prosecution of offences under sections 40C, 40E, 40G or 40H. It implements commitments made under Article 10 of the EC/Australia Wine Agreement.

Injunctions

53. New Sub-section 40L provides for injunctions to be made by the Federal Court to prevent actions that are in contravention of this Division (Provisions relating to sale, export or import of wine). Applications for injunctions may be made by or on behalf of interested persons. 'Interested persons' are defined for the purposes of such applications.

54. The Federal Court is also empowered to make interim injunctions or terminate or vary injunctions granted.

Application of national food standards to wines imported from agreement countries

55. This section implements commitments made under Title I - Oenological practices and processes and compositional requirements for wine, of the EC/Australia Wine Agreement.

56. It provides for trade in wine between agreement countries to continue even where there are differences between their respective food standards relating to wine. Where such differences exist, the oenological processes and practices set out in Annex 1 of the Agreement are to take precedence over national food standards in agreement countries. Wine from an agreement country must in all other respects comply with the national food standard.

57. This section, by referring to national food standards, also enables the Australian Quarantine and Inspection Service to inspect imported wine for compliance with this Bill.

58. It also provides for suspension of these provisions by the Minister, where the Minister is satisfied that their continued operation would endanger human health. Arrangements for such suspensions are also specified.

Division 3 - Establishment, functions and powers of Geographical Indications Committee

Establishment of Committee

59. New Section 40N establishes the GIC. The functions of the GIC are to name and define the boundaries of Australia's geographical indications.

Division 4 - Australian geographical indications

Power of Committee to determine geographical indications

60. New Sub-section 40P empowers the GIC to determine the name and boundaries of a geographical indication, either on its own initiative or on application from a person or body specified in new Sub-section 40R. Its determinations must be in writing, signed by the Presiding Member.

Applications for determinations

61. New Sub-section 40R specifies which class of persons or organisations may apply to the Committee for a determination of a geographical indication. Eligibility is restricted to winegrape growers, winemakers and their organisations.

Consultation by the Committee

62. New Sub-section 40S sets out obligatory and optional consultation arrangements for the GIC, such that it must consult with the declared winegrape grower and winemaker organisations, and may consult with anyone else it considers appropriate.

Making of determinations

63. New Sub-section 40T provides that, in making its determinations, the GIC must determine both the boundaries and the names of the regions or localities for which it makes determinations. The Committee is to be guided by any criteria set down by Regulations under the Act. The Committee is not to be bound by either the boundaries or the names proposed in any applications to it.

Interim determination

64. New Sub-section 40U provides that all determinations made by the Committee are interim determinations in the first instance.

65. This is to ensure that there is adequate opportunity for public comment on interim determinations.

Publication of notice of interim determination

66. New Section 40V places an obligation on the Presiding Member of the Committee to publish a notice indicating that an interim determination has been made. The notice is to invite written submissions, and a period of no less than a month is to be allowed for such submissions.

Final determination

67. New Sub-section 40W says that a final determination may be made by the Committee after it has considered written submissions.

Publication of notice of final determination

68. New Sub-section 40X places an obligation on the Presiding Member of the Committee to publish a notice indicating that a final determination has been made. The notice is to indicate that application may be made under the Administrative Appeals Tribunal Act 1975 for review of the determination.

Review of final determination

69. New Sub-section 40Y allows application to be made to the Administrative Appeals Tribunal for review of final determinations and sets out conditions under which such applications may be made.

Date of effect of final determination

70. New Sub-section 40Z sets out the procedure by which a final determination is to be included in the Register.

71. It places an obligation on the Presiding Member to copy the final determination to the Registrar so that the details can be included in the Register, and also to provide a copy to the Chairperson of the Corporation. This may be delayed until the Administration Appeals Tribunal makes a decision, where it has received applications for review of the final determination; otherwise as soon as possible after the 28th day after the publication of the notice of the determination.

72. Final determinations are to take effect on the day they are included on the Register.

Division 5 - Register of Protected Names

Registrar

73. New Sub-section 40ZA provides that the position of Registrar is to be established. The Registrar is to be an employee of the Corporation, and if the appointed Registrar is unable for some reason to perform his/her duties, another Corporation employee must be appointed to act in the position.

Functions of Registrar

74. New Sub-section 40ZB sets out the functions of the Registrar. These are to maintain the Register in keeping with requirements set out under 'Contents of Register' in new Section 40ZD to provide administrative support to the Committee, to publish maps or other documents showing the boundaries of regions and localities for which the Committee has made determinations, and to notify the authorities in foreign countries of the geographical indications and traditional expressions relating to Australian wines that are included in the Register.

Register of Protected Names

75. New Sub-section 40ZC enables the Register of Protected Names to be kept by computer.

Contents of Register

76. New Sub-section 40ZD prescribes the various parts into which the Register is to be divided, so that the different classes of words and expressions eg geographical indications, traditional expressions, as well as any conditions relating to them, can be kept separately for Australia and for agreement and non-agreement countries.

77. It also prescribes that the Registrar, in accordance with the directions of the Corporation, is to enter into the Register geographical indications, traditional expressions and other registered expressions relating to Australia, agreement countries and non-agreement countries, as well as grape varieties registered for use in winemaking in Australia together with any conditions applying to the use of such expressions or grape varieties in the description and presentation of wines.

78. A protected name which is registered for more than one country may be used by all of those countries, subject to any conditions set out in the Register.

Inspection of Register

79. New Sub-section 40ZE places an obligation on the Registrar to make the Register available for inspection by anyone during business hours. Access may be by means of a computer terminal or printout, and a copy of all or a part of the Register may be provided for a specified fee.

Clause 18: Remuneration and allowances of members of Corporation etc

80. Section 40 (to be renumbered as Section 41A) is amended to provide for remuneration of members of the GIC established by section 40N.

Clause 19: Repeal of section 48

81. Section 48 (Schedule) repealed Acts superseded by the Australian Wine and Brandy Corporation Act 1980, and is no longer required.

Clause 20: Additional amendments

82. Replaces the superseded term 'region of origin' in the Wine Label Integrity Program in Part VIA of the Act and replaces it with the term 'geographical indication' in a number of subsections and paragraphs.

Clause 21: Schedule

83. Repeals the Schedule (Section 48) of the Principal Act with Schedule (Section 21) to this Bill. This Schedule sets out the administrative arrangements relating to the Geographical Indications Committee.

Interpretation

84. Defines key terms used in the Schedule.

Membership of Committee

85. Sets out the membership of the GIC. The composition of the GIC has been designed to ensure that it is cost-effective and that both winemakers and winegrape growers are represented on it in an appropriate balance. The Corporation nominates the Presiding Member, because the GIC, while it has separate legal status, is to operate under the Australian Wine and Corporation Act 1980 (as amended), and is accountable in the first instance to the Corporation, and through the Corporation, to Parliament.

86. There are also provisions to ensure that the efficiency of the operations of the Committee is not impeded by technical/procedural disputes relating to its composition.

87. The Geographical Indications Committee is to have three members, all part-time, and all appointed by the Chairperson of the Corporation: a Presiding Member nominated by the Corporation; one member nominated by a declared winemakers' organisation; and a member nominated by one declared winegrape growers' organisation.

Acting Presiding Member

88. In keeping with the overall design of the Committee as a small and cost-effective body, these provisions ensure that the Committee can continue its work under an acting Presiding Member, if for some reason a Presiding Member has not been appointed or the incumbent is overseas or otherwise unable to perform his/her duties.

89. Accordingly there are also provisions designed to ensure that the work of the Committee is not impeded by technical/procedural disputes over the appointment of an acting Presiding Member.

Alternate members of the Committee

90. To ensure that the Committee can maintain an appropriate balance of representation when a member is absent or when his/her appointment expires, these provision allow the Chairman of the Corporation to appoint an alternate member nominated in writing by the relevant declared organisation.

91. These provisions set out the conditions and responsibilities of appointment for an alternate member of the Committee.

Term of office

92. Sets out term of office of Presiding Member and other members.

Resignation

93. Sets out arrangements for resignation of Committee members.

Termination of appointment

94. Sets out circumstances under which appointments to the Committee must be terminated by the Corporation.

Leave of absence

95. Sets out arrangements for leave of absence for Presiding Members and Committee members.

Disclosure of interests by Committee members

96. These provisions are designed to prevent members taking part in determinations where they have a financial interest in the matter to be determined.

Meetings

97. Sets out rules for meetings of the GIC, such that the work of the GIC is not unduly delayed. The GIC is to ensure it keeps minutes of its meetings and records the reasons for its determinations (as these are subject to appeal). Meetings may proceed when only two members are present, but where a 2-member meeting is unable to agree, the issue may be deferred.

Staff and consultants

98. Sets out arrangements between the Committee and the Corporation for administrative and expert support for the Committee from staff and consultants.

Information for inclusion in Corporation's annual report

99. Sets out Committee's reporting obligations under section 63H of the Audit Act 1901.



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