

1980

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
AUSTRALIAN WINE AND BRANDY CORPORATION BILL 1980

EXPLANATORY MEMORANDUM

(Circulated by the Minister for Primary Industry
the Hon. P.J. Nixon, M.P.)

Introductory Note

This memorandum explains the provisions of three cognate Bills, the main purposes of which are to restructure the statutory authority which administers certain Commonwealth policies towards the wine industry, and to make adjustments, consequent upon that restructuring, to the legislation providing for the levy on wine grapes which finances that authority and the legislation concerning its research activities.

The new authority, the Australian Wine and Brandy Corporation, will maintain the functions previously performed by the Australian Wine Board which it will replace. It will also have additional powers, most notably the power, subject to Ministerial approval, to trade on the export market. It will be given adequate provision to borrow for that purpose.

The Bills give effect to a Government decision which was announced by the Minister for Primary Industry in a Media Release dated 18 January 1980. The reorganisation is part of a process of review and modernisation of primary industry statutory marketing authorities which has been proceeding for several years.

The first Bill, the Australian Wine and Brandy Corporation Bill 1980, will establish an Australian Wine & Brandy Corporation to replace the Australian Wine Board. The Corporation will have three more members than the Board, and its Chairman will be appointed by the Government whereas the chairmen of the Board were elected by the members from among their number.

The Corporation will succeed to the Board's powers to regulate and control exports of wine and to improve the quality and promote the sales of Australian wine and brandy. In addition, it will have power to engage in export trade, subject to Ministerial approval, and will be enabled to borrow for this purpose, subject to the approval of the Treasurer, under Commonwealth guarantee.

The jurisdiction of the new Corporation will cover wine, brandy and rectified grape spirit. Although grape juice as such is not included, the Government considers that the Corporation should not be prevented from playing some part in grape juice disposal if grape surpluses occur. The Bill accordingly allows for regulations to be made to confer appropriate functions on the Corporation in relation to grape juice.

The second Bill, the Wine Grapes Levy Amendment Bill 1980, amends the Wine Grapes Levy Act 1979, to take account of the establishment of the Corporation in place of the Board.

The third Bill, the Wine Research Amendment Bill 1980, amends the Wine Research Act 1955, to take account of the Corporation replacing the Board.

More detailed explanations of the Sections of each of the Bills are contained in the notes which follow.

AUSTRALIAN WINE AND BRANDY CORPORATION BILL 1980

This Bill will establish the Australian Wine and Brandy Corporation to replace the Australian Wine Board. The new Corporation will have added powers, including the power to trade on the export market, subject to Ministerial approval, with adequate provision for borrowing for this purpose, subject to the Treasurer's approval.

Clause 1: Short Title

This clause provides for the Act to be cited as the Australian Wine and Brandy Corporation Act 1980.

Clause 2: Commencement

Clauses 1 and 2, and Sub-clause 12(4), which provides for elections to elect certain members of the Corporation, are to come into operation on the date of Royal Assent. The remainder of the Act is to come into operation on a date to be fixed by Proclamation.

Clause 3: Interpretation

This clause defines terms used in the Bill and the method of conversion, for the purposes of the Act, of a quantity of prescribed goods to their fresh grape equivalent. These definitions are self-explanatory. Sub-clause 3(3) provides that a manufacturer of grape products who uses less than 20 tonnes of fresh grapes and fresh grape equivalent of prescribed products in any year is not to be treated as a wine producer, for the purposes of the Act, during the next year.

Clause 4: Classes of Producers

This clause establishes, on the basis of usage of fresh grapes or their equivalent, three classes of producers, for purposes of election of commercial producer representatives on the Corporation.

Clause 5: Australian Wine and Brandy Corporation

This clause establishes the Australian Wine and Brandy Corporation.

Clause 6: Functions of Corporation

This clause defines the functions and objects of the Corporation, and restricts it to performing its functions, or exercising its powers, only for purposes of such objects, or under Parliament's law-making power, or under an authority conferred on it under State law.

Clause 7: Powers of Corporation

This clause empowers the Corporation to perform its functions. It is specifically enabled to: make recommendations to the Minister in relation to the export of any grape product; arrange with persons, organisations or companies to perform work, or act, for the Corporation in Australia or overseas; and, with approval of the Minister, engage in trade in grape products.

Clause 8: Contracts for Carriage of Grape Products

This clause requires contracts for carriage of grape products to places outside Australia, and carriers undertaking the carriage of the grape products to such places, to be subject to Corporation approval.

Clause 9: Power to Enter into Arrangements

This clause empowers the Corporation to enter into arrangements or agreements for the purposes of the Corporation.

Clause 10: Appointment of Committees

This clause empowers the Corporation to appoint committees to assist it in aspects of its work. Committees may consist of such persons, including at least one Corporation member, as the Corporation thinks fit.

Clause 11: Nature of Corporation

This clause sets out the legal aspects of the nature of the Corporation.

Clause 12: Membership of Corporation

This clause provides that the membership of the Corporation shall be fourteen.

The Chairman is to be appointed by the Minister without any requirement of reference to other bodies. In addition to the Chairman, there is to be one member representing the Commonwealth Government, six members representing commercial producers, two to represent co-operative producers, and four to represent wine grape growers.

Of the six members to represent commercial producers, one is to represent small-scale producers, two to represent medium-scale producers and three to represent large-scale producers.

Representatives of commercial producers are to be elected by the commercial producers included in the particular class.

Members representing co-operative producers and members representing growers are to be appointed by the Minister on the nomination of the co-operatives organisation and the growers organisation respectively.

Clause 13: Term of Office of Members

This clause provides for each member to be appointed for a three year term, except that the member representing the Commonwealth Government is to hold office during the Minister's pleasure.

If a vacancy occurs among members representing commercial producers, the Minister may, subject to the regulations, appoint a person for the remainder of the three year period.

If a vacancy occurs in the office of Chairman or among members representing co-operative producers or growers, the Minister may, in accordance with Clause 12, appoint a person for the remainder of the three year period.

Clause 14: Deputy Chairman

This clause provides for the Corporation to appoint a Deputy Chairman, and sets the limit of his term of office. It also provides for his removal or resignation. When the Chairman is not available, the Deputy Chairman has all the powers, and shall perform all the functions, of the Chairman.

Clause 15: Elections for Offices

This clause provides for the Corporation to hold elections to determine candidates to be appointed to certain offices.

Clause 16: Deputies of Members

This clause provides for Ministerial appointment, and revocation of appointment, of the deputy of a member. It lays down criteria of eligibility, and empowers a deputy to attend meetings in absence of the member and to be deemed a member when so attending.

Clause 17: Leave of Absence

This clause provides that the Minister may grant leave of absence to members, upon terms and conditions as the Minister determines.

Clause 18: Resignation of Members

This clause provides for resignations by members.

Clause 19: Termination of Appointments

This clause empowers the Minister to terminate the appointment of a member by reason of misbehaviour or incapacity, and the appointment of a representative of co-operative producers or of wine grape growers at the request of the respective organisation. The Minister shall terminate the appointment of a member who becomes bankrupt, fails - without reasonable excuse - to disclose relevant pecuniary interests, or - being a member representing a class of commercial producers - ceases to be eligible as such, or - not being the member representing the Commonwealth - is absent (other than on Corporation business or on leave of absence) from three consecutive meetings of the Corporation or - if a member of Executive Committee - three consecutive meetings whether of Corporation or Executive Committee.

Clause 20: Disclosure of Interests

This clause requires members to disclose pecuniary interests in matters being, or about to be, considered, and provides for such disclosures to be recorded.

Clause 21: Meetings of Corporation

This clause provides for meetings to be held at such times and places as the Corporation determines. The Minister or the Chairman may convene a meeting at any time. The clause also establishes a quorum of eight, provides for the Chairman to preside at meetings at which he is present, for the member presiding to have a casting vote, if voting otherwise equal, as well as a deliberative vote, and for decisions to be made by a majority vote of all members present and voting. Minutes must be kept of all meetings. Advisors may be invited to a meeting to provide advice and information. In other respects the Corporation will determine meeting procedure.

Clause 22: Establishment of Executive Committee

This clause establishes an Executive Committee of the Corporation.

Clause 23: Powers and Functions of Executive Committee

This clause provides that the powers and functions of the Executive Committee shall be as the Corporation determines. The exercise of a power or performance of a function by the Executive Committee does not prevent exercise of the power or performance of the function by the Corporation.

Clause 24: Constitution of Executive Committee

This clause provides for the membership of the Executive Committee. The Chairman of the Corporation is appointed a member, and the other members, representing specified interests, are to be appointed by the Corporation.

Clause 25: Chairman of Executive Committee

This clause provides that the Chairman of the Corporation is Chairman of the Executive Committee.

Clause 26: Term of Office, Executive Committee

This clause provides for the term of office of each appointed member of the Executive Committee to commence on the date of his appointment or such later date as the Corporation determines and end immediately before the next following anniversary of the commencing date. A member shall cease to be a member of the Executive Committee if he ceases to be a member of the Corporation.

Clause 27: Resignation of Executive Committee Members

This clause permits a member of the Executive Committee, other than the Chairman, to resign on giving notice in writing. It also authorises the Corporation to appoint a member of the Corporation to replace the resigning member for the remainder, if any, of the latter's term of office.

Clause 28: Meetings of Executive Committee

This clause provides for meetings to be held at such times and places as the Committee determines. The Chairman may convene a meeting at any time. The clause also establishes a quorum of three, provides for the Chairman to preside at meetings at which he is present, for the member presiding to have a casting vote, if voting otherwise equal, as well as a deliberative vote, and for decisions to be made by a majority vote of all members present and voting. Minutes must be kept. A person may be invited to a meeting to provide advice or information. In other respects the Committee will determine meeting procedure.

Clause 29: Staff

This clause provides for the Corporation to engage such employees as it thinks necessary for the purposes of the Act. Terms and conditions of service are as determined by the Corporation, subject to the approval of the Public Service Board.

Clause 30: Rights of Public Servants Engaged

This clause provides for the retention of Australian Public Service rights by officers of that service who are engaged by the Corporation.

Clause 31: Payments to Corporation

This clause provides for the payment to the Corporation out of Consolidated Revenue of amounts equal to the amounts received by the Commonwealth on or after the commencing day, by virtue of the charges imposed on the industry by the Wine Grapes Charges Act 1929 (in its remaining period of application under the Wine Grapes Charges (Repeal) Act 1979) and by the Wine Grapes Levy Collection Act 1979. These funds finance the administration of the Corporation.

Clause 32: Payment by Corporation to Commonwealth

This clause provides for the Corporation to repay the Commonwealth amounts, refunded by the Commonwealth in respects of amounts paid or overpaid to the Commonwealth under the Wine Grapes Levy Collection Act 1979, and previously paid by the Commonwealth to the Corporation or its predecessor.

Clause 33: Borrowing

This clause provides the sole conditions on which the Corporation may borrow money and give security for such borrowings. The Treasurer may guarantee repayments, including interest, of borrowings.

Clause 34: Application of Moneys

This clause establishes the legitimate areas to which moneys received by the Corporation may be applied - other than investment, which is provided for in clause 35. These areas include expenses, charges, obligations and liabilities incurred, remuneration, fees etc payable, and other payments authorised or required, under this Act.

Cluase 35: Investment

This clause provides that moneys of the Corporation not immediately required may be invested in an approved manner.

Clause 36: Limit on Contracts

This clause forbids the Corporation to enter into contracts, other than contracts for the purchase or sale of any grape products, exceeding \$100,000, without the approval of the Minister.

Clause 37: Audit

This clause subjects the Corporation to Division 2, of Part XI, of the Audit Act 1901. This Division contains provisions relating to bank accounts, investment of moneys, the keeping of proper accounts, audit of the accounts and records of financial transactions and records relating to assets of the Corporation, and submission by the Corporation to the Minister of an annual report and financial statements for each year ending 30 June as soon as practicable after, but not more than six months after, 30 June.

Clause 38: Liability to Taxation

This clause provides for the Corporation to be subject to Commonwealth taxation other than income tax. The Corporation is not subject to State or Territory taxes except where otherwise provided by regulation.

Clause 39: Remuneration and Allowances

This clause provides for Corporation members and their deputies, and members of any committee established by the Corporation, to be paid remuneration in accordance with the determinations of the Remuneration Tribunal, or if no such determination is in operation, such remuneration as is prescribed. Such persons shall be paid allowances as prescribed. However, where a person to whom this clause applies is a Parliamentarian or a candidate for Parliament, that person shall only be reimbursed for expenses reasonably incurred on Corporation business.

Clause 40: Indemnity

This clause indemnifies members and deputies against liability for acts or defaults of the Corporation, or of the member or deputy acting as such.

Clause 41: Corporation May Require Information

This clause provides for the Corporation to require from the industry the furnishing of information which it considers necessary for it to perform its functions. The penalty for providing false or misleading information is \$1,000.

Clause 42: Delegation

This clause provides for the Corporation to delegate its powers.

Clause 43: Offences

This clause establishes a penalty of \$2,000 for exporting a grape product in contravention of the regulations.

Clause 44: Operation of Other Acts Not Affected

This clause provides that the Act does not affect the operation of the Customs Act 1901 or the Commerce (Trade Descriptions) Act 1905, or any regulations made under them.

Clause 45: Regulations

This clause provides for the Governor-General to make regulations under the Act. One of the first duties of the new Corporation will be to prepare recommendations to the Minister in respect of regulations.

The regulations may confer on the Corporation functions in relation to grape juice.

Clause 46: Interpretation

This clause provides that, in relation to repeal of certain Acts and consequent transition provisions, the word "Board" means the Australian Wine Board which the Corporation is to replace.

Clause 47: Repeal of Certain Acts

This clause provides for the repeal of certain Acts, under which the Australian Wine Board was established and maintained.

Clause 48: Rights, etc., of Board to Vest in Corporation, etc.

This clause vests in the Corporation the rights, property and assets of the Board immediately before the commencing date. It makes the Corporation liable for debts, liabilities or obligations of the Board at that time, and it substitutes the Corporation for the Board in continuing contracts and court proceedings.

Clause 49: Instrument etc., Not Liable to Stamp Duty, etc.

This clause exempts from stamp duty or other Commonwealth, State or Territory tax any instrument or document certified by the Department of Primary Industry as made in relation to the operation of Part VIII (Clauses 46-53 inclusive) of this Act.

Clause 50: Application of Moneys

This clause establishes that the Corporation may apply its moneys in payment of debts, liabilities and obligations of the Australian Wine Board after the commencement of this Act.

Clause 51: Moneys to be Paid to Corporation

This clause provides for payment to the Corporation, out of the Consolidated Revenue Fund, of moneys received by the Commonwealth before the commencement of this Act, under the Wine Grapes Charges Act 1929, the Wine Grapes Levy Act 1979, and as penalties under the Wine Grapes Levy Collection Act 1979, but not paid by the Commonwealth to the Australian Wine Board. Such payment shall be less any amount of refund to be paid by the Commonwealth under the Wine Grapes Levy Collection Act 1979.

Clause 52: Employees of Board

This clause provides that an existing employee of the Board shall be deemed to be engaged, on the commencing date of this Act, as an employee of the Corporation. The terms and conditions of employment applicable to him before the commencing date are deemed to be determined under this Act, but may be varied after the commencing date.

Clause 53: Report on Operations of Board

This clause requires the Corporation to report, within six months of the commencing date, to the Minister on the operations of the Board in the period from that period covered by its last report until immediately before the commencing date. The Minister shall lay a copy of the report before Parliament, together with a statement by himself on operation of the Wine Overseas Marketing Act 1929 during the same period, within 15 sitting days of receiving it. Members of the Board are required to furnish to the Corporation the information necessary for preparation of the report.

Clause 54: Regulations

This clause enables provision by regulation for continuing operation of licences and certificates of authority to export in force under regulations made under the Wine Overseas Marketing Act 1929.