

Australian Wine and Brandy Corporation Amendment Regulations 2000 (No. 1) 2000 No. 130

EXPLANATORY STATEMENT

STATUTORY RULES 2000 No 130

Issued by Authority of the Minister for Agriculture, Fisheries and Forestry

Australian Wine and Brandy Corporation Act 1980

Australian Wine and Brandy Corporation Amendment Regulations 2000 (No. 1)

Section 46 of the *Australian Wine and Brandy Corporation Act 1980* (the AVY'BC Act) provides that the Governor-General may make regulations necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Regulations amend the *Australian Wine and Brandy Corporation Regulations*.

The purpose of the Regulations is to remove the generic use of the word 'Riesling' to describe and

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present wine that is not made from the riesling grape variety. The opportunity has also been taken

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to do some minor housekeeping, on the Regulations.

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The Australian Wine and Brandy Corporation (the Corporation) recommended changes to the Regulations to facilitate the wine industry's wish to cease using 'Riesling' in a generic way. This also ensures compliance with the EU/Australia Wine Agreement, which provides for the phasing out of the generic use of the term 'Riesling' at a date to be agreed. The use of 'Riesling' as a generic term has been mainly confined to the Australian domestic market.

The Regulations give effect to the Corporation's recommendations.

The Regulations commence on 1 January 2001.

Details of the effects of the proposed changes to the Regulations are listed below.

Regulation 4

This provides a transitional period that enables the repealed regulation (Regulation 16) to apply during the marketing period.

Schedule 1 Amendments

[Item 1] Regulation 1 is amended to reflect the year of the *Australian Wine and Brandy Corporation Regulations* with the addition of 1981 to the name.

[Item 2] Regulation 13 and Schedule 1 are amended to reflect the present situation. Parts 1 and 2 of Schedule 1 are now redundant, in that the terms so listed were removed from Australian usage as from 31 December 1993 and 31 December 1997 respectively. This has also allowed Regulation 13 to be amended as sub-regulation 13(1) referred to Part 1 of the Schedule in total and sub-regulation 13(2) referred to Part 2 of the Schedule in total. This effectively left sub-regulation 13(3) as the only section with any validity. The amendment to Regulation 13 now refers to Schedule 1 as the only terms now applicable.

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[Item 31] Regulation 16 is removed. This Regulation referred to the use of the generic term 'Riesling' and allowed its use on packaging when the wine contents were not made from the riesling grape variety. The removal of the generic term and its substitute will create certainty for consumers when Purchasing 'Riesling' and will assist winemakers who produce varietal Riesling wines. At present the use of 'Riesling', as a generic term, is mainly used on 'cask wine', with the wine generally being made from sultana or muscat gordo blanco grape varieties.

[Item 41] adds Regulation 17(4) to allow for a marketing period, which will provide for wine produced and labelled 'Riesling' prior to the commencement date to be used during the marketing period. This marketing period is six months. This would mean wholesalers would have to dispose of stocks by 30 June 2001 but retailers, if they have stocks existing at that time, have until the stocks are exhausted. The major wine producers have been aware for some time of the change and indeed it is these very producers who have sought the removal of the term by the dates indicated. They have advised through their representative organisation, the Winemakers' Federation of Australia, that they as producers (the major wine producers also act as their own wholesalers, and it is this group who largely use the generic term 'Riesling') envisage no problems or costs in the changeover to another description. They have been using other terms on the wine cask for some years and as the packaging for the wine is continuously updated, and usually has a turnaround time of two months, they will be able to quickly adapt their present packaging.

[Item 5] and [Item 6] omits Regulation 19(3) and Regulation 20(7). These sub-regulations refer to Regulation 16, which is to be omitted, and to Regulation 15, which refers to the generic use of the term 'Lambrusco'. Regulation 15 allows the use of 'Lambrusco' on packaging when the wine contents were not made from the lambrusco grape variety. The lambrusco grape variety is not grown commercially in Australia and these particular sections now become redundant with the omission of Regulation 16 (riesling grapes are grown in Australia).

[Item 7] changes the Schedule heading to reflect the amended listing as described below.

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[Item 8] and [Item 9] amend Schedule 1 to remove Part 1 and Part 2 and remove

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the heading for Part 3. Parts 1 and 2 are now redundant, in that the terms listed were removed from Australian usage with effect from 31 December 1993 and 31 December 1997 respectively.

REGULATION IMPACT STATEMENT

AMENDMENTS TO THE *AUSTRALIAN WINE AND BRANDY*

CORPORATION REGULATIONS

Introduction

The Australian Wine and Brandy Corporation (AWBC) commenced operations on **1 July 1981**, succeeding the Australian Wine Board which had operated since 1929. The chief functions of the Corporation were initially to promote and control the export of grape products from Australia; and to encourage and promote the consumption and sale of grape products in both Australia and overseas. As a consequence of Australia's Wine Agreement with the EU (signed in 1994), these functions have been expanded to include a compliance regime for exports to the EU and the determination of conditions for the registration and use of wine expressions such as geographical indications.

In 1993, amendments to the AWBC Act and Regulations, in line with agreed text of the Wine Agreement (which has treaty status), included provisions on protection against false or misleading claims as to a country or region of origin of wine and included phase-out provisions on the use of certain EU names, which historically had been commonly used in Australia.

The Wine Agreement with the EU allows wine shipments to be cleared in Australia by the AWBC, which ensures all export labels are in accordance with EU requirements. Further, analytical testing required under EU law is able to be performed in Australia by accredited laboratories. This saves considerable time and ensures that in most cases exports reach their destinations promptly.

Australian wine is subject to the same general rules in the EU as wine which originates in the EU. Both parties have agreed to accept each other's differing wine manufacturing practices but to also adhere to the labelling laws of the importing Party. Thus the Agreement allows for Australian wines made by certain winemaking practices which are not otherwise permitted in the EU to be exported to the EU and a similar protocol is adopted for EU wines imported into Australia.

Problem being addressed

The use of grape varietal names in the description and presentation of wine are governed by Regulation 20 of the AWBC Regulations. Regulation 20 states inter alia that "wine may be described and presented as being of a particular variety of grape if it consists at least 850m11L of that variety." It also includes other rules covering the use of more than one grape variety in the blend of a wine. Regulation 20 does not force manufacturers to use a varietal name but if manufacturers choose to use a varietal name on a label then the wines must comply with the regulation.

However, there is an exception to these rules under Regulation 16 of the AWBC Regulations. Currently, Regulation 16 allows Australian wine producers to use the term Riesling as a generic term for a dry white even when a wine contains no component made from the Riesling grape variety. Approximately 30 million litres of generic Riesling is sold in Australia each year valued at around \$75 million retail. Wine labelled in this way is frequently sold in wine casks and 2 litre glass containers. It is also possible to sell wine in smaller containers in this way, however, this is not known to be a regular industry practice.

The producers of premium varietal Riesling wines made from Riesling grapes have long opposed this practice as they believe it provides scope for consumer confusion about their wines. The producers of generic Riesling have been on notice for at least six years that they will have to find alternative names for their products.

The Australia/EU Wine Agreement, which has treaty status, also permits the use of the generic term Riesling by Australian wine manufacturers until a date to be agreed. Negotiations on this and a number of clauses under the Wine Agreement are continuing.

Necessity for Government Action

Once matters under the Wine Agreement are finalised Australia will be obliged to rescind Regulation 16. The date put forward in negotiations (with industry agreement) for phasing-out the use of the generic term, Riesling, is 31 December 2000.

Objectives

The objectives of Government action are:

- * To meet Australia's obligations under the Australia/EU Wine Agreement to phase-out the term Riesling for non-riesling wines; and
- * To ensure truth-in-labelling on Australian wine labels.

Identification. of Options

Option 1. Not to Rescind Regulation 16

Once Wine Agreement matters are finalised, this will not be an option as Australia will be required to meet its treaty obligations. This option will not be considered further.

Option 2. Rescind Regulation 16, Amend Regulation 17 and inform Wine

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Manufacturers

This option would require;

(a) industry to cease, as of 31 December 2000, labelling wine as Riesling, where the wine does not otherwise meet the requirements of Regulation 20

(b) a reduction in the inventory period allowed in Regulation 17, in the case of Riesling only, from 3 years to 6 months for wholesale to ensure a quick phase-out of the generic term. Retailers will be able to continue to sell Riesling (from non-Riesling grapes) produced and labelled before 1 January 2001 until their stocks are exhausted.

Impact of Option 2

This has been a matter under consideration by the wine industry for many years beginning in the late 1980s in the lead up to negotiations on a wine agreement with the EU.

During 1992-1993 it was a matter raised in negotiations with the European Commission and was included in the final text of the Agreement which entered into force on 1 March 1994.

In the ensuing 5 years, it has been a matter requiring agreement on a date. As Australia has sought to conclude all outstanding matters as part of a package, dates were not offered until June 1999. Agreement has yet to be reached with the EU on these matters.

However, both the AWBC and the peak industry winemakers' body, the Winemakers' Federation of Australia (WFA), have notified Agriculture, Fisheries and Forestry -Australia, that is the wish of industry to phase-out the use of Riesling as a generic term by 31 December 2000. This has been the industry position since 1997. The Winegrape Growers' Council of Australia, the peak, independent winegrape growers' organisation, also supports this position.

Manufacturers of generic (or non-varietal) Riesling

Generic (or non-varietal) Riesling is frequently sold in wine casks and 2 litre glass containers. Four wine companies, including Australia's three largest wine companies, manufacture almost all of the generically labelled Riesling wine. They also produce varietal Riesling wines. These companies are members of WFA. WFA's members produce 98% of wine exports and 92% of Australian wine production.

Agriculture, Fisheries and Forestry - Australia has sought estimates from WFA of any costs of relabelling wine packages to meet the new requirements. WFA advises that the costs to manufacturers will be negligible as cask manufacturers change their labels/packaging regularly, about every two months, so they have not needed to specifically target budgets to cease using the word Riesling for non-Riesling wines.

Manufacturers of varietal Riesling

Those businesses that produce varietal Riesling expect to benefit in the marketplace with the removal of generic Riesling, as market confidence in Riesling wines is predicted to improve.

Wholesale and retail businesses

It is expected that the arrangements to phase-out the generic use of Riesling will also have no impact on wholesale and retail industries. While the amendment to Regulation 17 will reduce the period the wholesaler has to clear stocks from 3 years to 6 months this brings no hardship. In relation to Riesling sold in containers of a least two litres, the manufacturers are also the wholesalers. Thus they are able to easily coordinate ceasing manufacture on 31 December 2000 of generic Riesling and then reducing their wholesale stocks.

Retailers will be able to continue selling this wine until their stocks are exhausted. As much of this wine is sold in casks and has a relatively short shelf life, it is expected that retailers will not have this stock on hand much past the 6 months in which the wholesalers are able to continue selling this wine. These arrangements will also enable them to exhaust existing stock while introducing the replacement wines to their customers.

Small Business

In theory, the impact of these amendments on small business is the same as for the rest of the industry. In reality, small wine businesses (and in fact the vast number of all wine businesses) do not produce generic Riesling and thus there is no negative impact on them.

Consumers

The deletion of Regulation 16 will remove any confusion that consumers may currently have between varietal and non-varietal Riesling and progress the industry's move from generic labelling to varietal labelling. Consumers who are better informed about a product will have more faith in its integrity and reliability.

Australian Wine and Brandy Corporation

It is not expected that these changes will require any greater regulatory responsibilities for the AWBC nor require the appointment of further staff nor the adoption of further administrative procedures. It will also be easier to promote Australian varietal Riesling wines overseas as any possible room for confusion with non-varietal Riesling wines will have been removed.

Consultation

AWBC is the statutory promotional and regulatory body for the wine industry. WFA the peak winemakers' industry body has two electoral colleges, the Australian Regional Winemakers' Forum, representing regional (small) winemakers and the Australian Wine and Brandy Producers' Association representing medium and large winemakers. Thus there are appropriate channels to ensure winemaking businesses are part of the process in considering changes to Australia's wine law.

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These proposed amendments are the result of extensive consultation within industry over a long period of time. AWBC, WFA and WGCA support these amendments. The Australian wine industry has agreed to cease, as of 31 December 2000, labelling wine as Riesling, where the wine does not otherwise meet the requirements of Regulation 20. The industry has also agreed to reduce the inventory reduction period allowed in Regulation 17, in the case of Riesling only, from 3 years to 6 months for wholesale.

Conclusion and Recommended Option

The only way to meet both Australia's obligation under the Australia/EU Wine Agreement and to have consistent wine labelling laws is to delete Regulation 16 and amend Regulation 17 to reduce the inventory reduction period from 3 years to six months.

The recommended option is Option 2 to rescind Regulation 16 and amend Regulation 17 and to make certain that sufficient information is circulated to wine businesses, industry bodies etc. ensuring compliance requirements are well known and understood.

Implementation and Review

The AWBC has already sent a bulletin to wine manufacturers advising them that after 31 December 2000, wine will no longer be able to be labelled as Riesling if it does not meet the requirements of Regulation 20 (i.e. to be labelled Riesling a wine must contain at least 85% Riesling wine). Further, winemakers will be notified again by WFA and the AWBC prior to the date of effect (31 December 2000).

Apart from being able to progress matters through their representative organisations, winemakers are also able to bring forward and consider motions to change industry policy and legislation at the AWBC annual general meeting.

The AWBC will be responsible for enforcing the amended regulations.

23 February 2000