

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 39

Subject: *Australian Wine and Brandy Corporation Act 1980*

Australian Wine and Brandy Corporation Amendment Regulations 2005 (No. 1)

The *Australian Wine and Brandy Corporation Act 1980* (the Act) establishes the Australian Wine and Brandy Corporation (AWBC) as a Statutory Authority to promote and control the export of grape products from Australia and encourage and promote the consumption and sale of grape products both in Australia and overseas.

Section 46 of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Australian Wine and Brandy Corporation Regulations 1981* (the Principal Regulations) prescribe the powers of the AWBC to control wine exports.

The Regulations amend the Principal Regulations. The purpose of the Regulations is to make a number of technical and administrative amendments that update and clarify the functions of the AWBC.

In particular the amendments:

- allow the AWBC, when determining the granting of an export licence, to consider whether the applicant has a place of business in Australia;
- provide a new definition of “small quantity” of grape product;
- allow those consignments that qualify as “small quantities” to be exported without a licence and without AWBC approval;
- make it a condition of issuing an export certificate that exporters must confirm, on AWBC request, that their label claims have met Commonwealth, State or Territory law (for example if labelling describes the grape product as ‘organic’ the AWBC may ask the exporter for proof that the product has been issued with a organic produce certificate);
- remove the power of the AWBC to determine the minimum price of Australian wine sold overseas; and
- allow the AWBC to delegate any of its powers under the Principal Regulations to a person or one of its Committees appointed under the Act.

The Australian wine industry has been consulted through the Legislation Review Committee (LRC) of the AWBC. The LRC includes representatives of the Winemakers’ Federation of Australia and other members of the wine industry. The Board of AWBC support the amendments and will communicate the changes to the industry.

The Act specifies no conditions that need to be met before this power to make the Regulations may be exercised.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

DETAILS OF THE AUSTRALIAN WINE AND BRANDY CORPORATION AMENDMENT REGULATIONS 2005 (No. 1)

Regulation 1 provides for the name of the Regulations to be the *Australian Wine and Brandy Corporation Amendment Regulations 2005 (No. 1)*.

Regulation 2 provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 provides that Schedule 1 amends the *Australian Wine and Brandy Corporation Regulations 1981* (the Principal Regulations).

Schedule 1 Amendments

Item [1] Regulation 3, definition of *Australian standard*

This item amends the definition of Australian standard to reflect the change of name of the *National Food Authority Act 1991* to the *Food Standards Australia New Zealand Act 1991*. This item also applies the *Food Standards Australia New Zealand Act 1991* as it stood on 1 January 2005.

Item [2] Regulation 3, definition of *Food Standards Code*

This item amends the definition of *Food Standards Code* to;

- reflect the change of name of the Food Standards Code to the Australia New Zealand Food Standards Code; and
- reflect the change of name of the *National Food Authority Act 1991* to the *Food Standards Australia New Zealand Act 1991*.

This item also applies the Australia New Zealand Food Standards Code as it stood on 1 January 2005.

Item [3] Regulation 3, after definition of *proposed GI*

This item introduces a definition of “relative” in relation to an individual. A definition of relative is required because items 6 and 14 provide that two or more exporters are taken to be one exporter if they are relatives.

Item [4] After paragraph 5 (3) (a)

This item inserts a new paragraph (b) which requires the AWBC to take into account whether an applicant for an export licence has a place of business in Australia. This is to ensure that the AWBC can mount a prosecution against an exporter.

Item [5] After paragraph 6 (1) (e)

This item inserts a new paragraph (ea) providing as a condition of export that the exporter must comply with any request for further information made under subregulation 7(3A) (see item 7 below).

Item [6] Subregulation 6 (2)

This item inserts new subregulations (2), (3), (4) and (5) that provides that a small quantity of grape product could be exported without a licence and without AWBC approval. The item defines the circumstances in which a consignment of grape product would be considered a small quantity.

The item establishes the circumstances in which two or more exporters are considered to be one exporter for the purpose of the definition of a small quantity.

An effect of this item is to prevent the unintended consequence of the previous Regulation whereby shipments of grape product could be split into batches of less than 100 litres to avoid the requirement to obtain an export licence.

Item [7] After subregulation 7 (3)

This item inserts new subregulations (3A) and (3B) that provides the AWBC with the power to require the applicant for an export licence to provide, on request, information that the claims made in the description and presentation of a grape product have met relevant Commonwealth, State or Territory law. It sets out the conditions under which the AWBC can make this request.

Item [8] Regulation 8

This item substitutes existing regulation 8 and removes the powers of the AWBC to determine the minimum prices for sales of grape products to be exported. This is a power that the AWBC has not used and did not wish to retain.

Item [9] Subregulations 9 (1), (2) and (3)

This item replaces the existing subregulations with a new subregulation 9 (1) that removes reference to contravening the minimum sale price of grape product for the purpose of suspending or cancelling an export licence. This follows on from the removal of the power of the AWBC to set a minimum sale price.

Item [10] Subregulation 9 (4)

This item renumbers the subregulation as a consequence of item 9.

Item [11] Subregulation 9 (5)

This item renumbers the subregulation as a consequence of item 9.

Item [12] Paragraph 10 (d)

This item removes references to subregulations of regulation 9 that were removed as a consequence of item 9.

Item [13] Paragraph 12 (1) (b)

This item amends the definition of “small quantities” of wine to make it consistent with the amendment of subregulation 6(2) (as amended by Item 6) and in so doing clarify when a wine for export does not need to comply with the labelling laws set out in the Act.

Item [14] Subregulation 12 (3)

This item substitutes subregulation 3 to provide for the circumstances in which 2 or more exporters are taken to be 1 exporter for the purpose of exemption from the offence provisions.

Item [15] After Part 6

This item inserts a new Part 7 that provides the AWBC power to delegate all of its powers under the Principal Regulations to a person or committee appointed under section 11 of the Act. This item removes any potential questions about the legal capacity of AWBC staff to make decisions under the Principal Regulations.