EXPLANATORY STATEMENT

Issued by Authority of the Assistant Minister for Agriculture and Water Resources,
Parliamentary Secretary to the Deputy Prime Minister and
Minister for Agriculture and Water Resources

Wine Australia Act 2013

Wine Australia Regulations 2018

Legislative Authority

The *Wine Australia Act 2013* (the Wine Australia Act) establishes Wine Australia (the ***Authority***) as a Statutory Authority with the following functions:

- investigate and evaluate the requirements for grape or wine research and development
- coordinate or fund the carrying out of grape or wine research and development activities
- monitor, evaluate, and report to the Parliament, the Minister and the representative organisations on grape or wine research and development activities that are coordinated or funded, wholly or partly, by the Authority
- assess, and report to the Parliament, the Minister and the representative organisations on, the impact, on the grape industry or wine industry, of grape or wine research and development activities that are coordinated or funded, wholly or partly, by the Authority
- facilitate the dissemination, adoption and commercialisation of the results of grape or wine research and development
- implement, facilitate and administer programs, as directed by the Minister, in relation to:
  - wine
  - cider (as defined by section 33‑1 of the *A New Tax System (Wine Equalisation Tax) Act 1999*)
  - international wine tourism, and services, products and experiences that complement international wine tourism
- administer grant programs in relation to wine (as defined by section 33‑1 of the *A New Tax System (Wine Equalisation Tax) Act 1999*), as directed by the Minister
- control the export of grape products from Australia
- promote the consumption and sale of grape products, both in Australia and overseas
- such other functions as are conferred on the Authority by:
  - the Wine Australia Act
  - the regulations
  - any other law, and
- do anything incidental to, or conducive to, the performance of any of the above functions.

Paragraph 8(2)(aaa) of the Wine Australia Act provides that in performing its functions as listed above, the Authority also has the power to do anything for the purpose of giving effect to a prescribed wine-trading agreement.

Section 46 of the Wine Australia Act provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Purpose

The *Wine Australia Regulations 2018* (the Regulations) prescribe controls to ensure the quality of grape products that include Australian wine and are exported; to implement Australia's international obligations and to ensure Australian wine that is exported complies with importing country requirements.

Requirements for the export of grape products including wine from Australia are set out in the Regulations. The Regulations prescribe the conditions that must be complied with and the exemptions to those conditions. For example, the Regulations require that:

- a grape product is approved for export by an exporter
- a grape product is sound and merchantable in order for it to be approved for export
- an export licence has been granted to the exporter, and
- an export certificate has been issued for the grape product.

The Regulations set out the requirements for the description and presentation of wine that is made in Australia for domestic consumption and export, and for wine imported into Australia. The requirements contain conditions for use of terms including grape varieties, registered geographical indications (GIs) and vintages. The Regulations also prescribe exemptions from the offences for false and misleading description and presentation of wine in Part VIB of the Act.

To give effect to Australia's obligations under relevant international trade agreements, the Regulations contain a number of provisions that enable Wine Australia to regulate the use of GIs on wine products, which include:

- the requirements for issuing an export certificate to export wine from Australia, ensuring label claims relating to GIs on exported wine are correct
- the criteria for the Geographical Indications Committee (the Committee) to determine Australian GIs
- the procedures to be taken by the Committee and the Registrar of Trade Marks when an objection is made against a determination of an Australian GI
- the procedure for the Committee to determine and omit foreign country GIs and their translations in Australia
- the phase-out periods for registered GIs and registered Traditional Expressions, and
- the rules for the use of pre-existing trade marks and rules for the use of GIs with vine-variety names and blended wines.

The *Wine Australia Legislation Amendment (Repeals and Consequential Amendments) Regulations 2018* will repeal the *Australian Grape and Wine Authority Regulations 1981* (the old Regulations). These Regulations provide transitional provisions to ensure rights and obligations under the old Regulations continue upon repeal of those Regulations.

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Background

The purpose of the Regulations is to remake and improve the *Australian Grape and Wine Authority Regulations 1981* (the old Regulations) prior to their automatic repeal (sunsetting) on 1 April 2018. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed according to the progressive timetable set out in section 50 of that Act. Legislative instruments generally cease to have effect after a specific date unless further legislative action is taken to extend their operation, such as remaking the instrument.

Impact and Effect

The Regulations prescribe a number of measures and obligations that are consistent with the old Regulations. The Regulations remake and improve the old Regulations, by not remaking redundant provisions, simplifying language and restructuring provisions for ease of navigation and administration. The key changes are:

- removing spent provisions
- halving export certificate notification periods for exporters
- enabling the Authority to refuse or suspend export licences to individuals with a history of non-compliance or that fail to pay the Wine Export Charge
- requiring the Authority to consider, prior to approving a grape product for export, whether the description and presentation of a grape product is appropriate having regard to requirements of the Act, other Australian laws and the laws of other countries, and
- clarifying criteria for determining Australian GIs.

The spent provisions that have not been remade relate to vine varieties (Hermitage and Lambrusco) exempted from offence provisions for a transitional period after the Agreement between Australia and the European Community on Trade in Wine*,* done at Brussels on 1 December 2008, entered into force. These provisions were repealed as the transitional period set out has now expired.

The notification period for an export certificate has been halved due to technological improvements, meaning that the Authority no longer needs 10 days' notice that a grape product will be exported. That is, licence holders may apply for an export certificate five days (or more) before they intend to export a consignment of grape product.

The Authority can now refuse, cancel or suspend an export licence of a person, or an associated person or entity, who has a history of non-compliance with reference to any previous refusal, suspension or cancellation of a licence by the Authority. This ensures the integrity of exports, as an exporter who has had their licence suspended or cancelled, or who has not been able to receive a licence, cannot engage a licenced exporter to export on their behalf. This provision does not prevent small producers from engaging a licenced exporter on their behalf, provided the producer is eligible for an export licence.

The Authority also has the ability to refuse, cancel or suspend an export licence for non-payment of the Wine Export Charge payable under the *Primary Industries (Customs) Charges Act 1999.* This change encourages timely payment of the charge, and decreases the administrative cost to the Australian Government in chasing up late payments and applying penalties.

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The criteria that the Committee must consider in determining Australian GIs has been clarified to make clearer which criterion is relevant to which component of the determination, that is: the determination of the area and its boundaries, and the determination of the indication to be used.

These changes do not change the substantive meaning or operation of the provisions from the old Regulations.

Consultation

The Winemakers' Federation of Australia and Australian Vignerons were consulted during the comprehensive review of the old Regulations. These industry representative bodies agreed that the old Regulations should be remade with minor amendments.

The Australian wine industry was also consulted through the Legislation Review Committee (LRC) of Wine Australia. The LRC, which includes representatives of the Winemakers' Federation of Australia and Australian Vignerons and other private members of the wine industry, recommended a number of amendments to the old Regulations.

The LRC also reviewed a draft of the Regulations and provided comments and recommended changes.

Prior to the making of the Regulations and in accordance with the Office of Best Practice Regulation's Guidance Note on sunsetting instruments, the Department of Agriculture and Water Resources assessed that the old Regulations were operating effectively and efficiently, and therefore a Regulation Impact Statement was not required (OBPR ID: 22343). This assessment was informed by the industry consultation process conducted during the sunsetting review.

Details/ Operation

Further details of the Regulations are set out in Attachment A.

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Regulations is a legislative instrument for the purposes of the *Legislation Act 2003*.

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ACRONYMS, ABBREVIATIONS and commonly used terms

Act	*Wine Australia Act 2013*
AAT	Administrative Appeals Tribunal
Authority	Wine Australia
Committee	the Geographical Indications Committee
Food Standards Code	the ***Australia New Zealand Food Standards Code*** defined by subsection 4(1) of the *Food Standards Australia New Zealand Act 1991*
FSANZ Act	*Food Standards Australia New Zealand Act 1991*
GI	Geographical Indication
Legislation Act	*Legislation Act 2003*
old Regulations	*Australian Grape and Wine Authority Regulations 1981*
registered trade mark	a ***registered trade mark*** means a trade mark whose particulars are entered in the Register of Trade Marks under the *Trade Marks Act 1995*
Regulations	*Wine Australia Regulations 2018*
Register	the Register of Protected Geographical Indications and Other Terms kept under section 40ZC of the Act
Registrar	the Registrar of Protected Geographical Indications and Other Terms established under subsection 40ZA(1) of the Act
Registrar of Trade Marks	the ***Registrar of Trade Marks*** is the Registrar of Trade Marks defined in the *Trade Marks Act 1995*

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Attachment A

Details of the Wine Australia Regulations 2018

This attachment sets out further details of the Regulations.

Part 1—Preliminary

Section 1 – Name

This section provides that the name of the Regulations is the *Wine Australia Regulations 2018.*

Section 2 – Commencement

This section provides for the Regulations to commence on 1 April 2018.

Section 3 – Authority

This section provides that the Regulations are made under the *Wine Australia Act 2013*.

Section 4 – Definitions

This section contains defined terms used in the Regulations. These definitions are set out below.

Act

This definition provides that the 'Act' means the *Wine Australia Act 2013.*

approval holder

This definition provides that an 'approval holder', for the purposes of section 14, means a person that has been granted a licence under section 9 who has gained approval for a grape product to be exported under section 14.

associate

This definition sets out the meaning of an 'associate' for the purposes of determining whether a licence to export grape products should be granted under section 9 and considering whether an applicant is fit and proper (under section 10).

An 'associate' can be a person or a corporation that is an associate of either:

- the person applying for the licence under section 9 (subsequently referred to as the 'first person'), or
- a corporation that: employs the first person; the first person is an officer of; or the first person holds shares in.

An 'associate' in this definition means a person who is:

- or was, a consultant, adviser, partner, representative on retainer, employer or employee
- a spouse, de facto partner, or other listed family member of the first person (a ***relative*)**, or
- a person who was directly or indirectly concerned with or in a position to control or influence the conduct of a business or an undertaking of the first person.

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An ‘associate’ in this definition also means a corporation that of any of the people taken to be an associate of the first person:

- employs
- that the associate is an officer of, or
- that the associate holds shares in.

Definitions of ***relative, child*** and ***parent*** are also provided in this section.

Australia New Zealand Food Standards Code

This definition provides that references to the ‘Australia New Zealand Food Standards Code’ has the same meaning as in the *Food Standards Australia New Zealand Act 1991.*

Australian law

This definition provides that an ‘Australian law’ is a law of the Commonwealth, or of a State or Territory of Australia.

child

This definition provides that a ‘child’ is someone who is a child of a person within the meaning of the *Family Law Act 1975.* This definition is not intended to limit the kinds of people that can be considered a ‘child’ for the purposes of the Regulations.

export certificate

This definition provides that an ‘export certificate’ is a certificate issued by the Authority under section 20 to a person holding a licence granted under section 9.

foreign place name

This definition provides that a ‘foreign place name’ has the meaning given by subsection 26(9), which means, in relation to wine, a word or expression that identifies a country, region or locality (other than Australia) that is not a registered GI.

Subsection 4(1) of the Act defines ***registered geographical indication*** as a GI that is included in Part 1 of the Register of Protected Geographical Indications and Other Terms (the Register) kept under section 40ZC of the Act.

GI

This definition provides that a ‘GI’ means geographical indication.

licence

This definition provides that a ‘licence’ is a licence granted under section 9, which is a licence to export grape products from Australia, granted by the Authority.

licensee

This definition provides that a ‘licensee’ is the holder of a licence granted under the Regulations that is in force.

parent

This definition provides that a ‘parent’ is someone that is a parent of a person, who is a child under the definition of ***child*** in this section. This definition is not intended to limit the kinds of people that can be considered a ‘parent’ for the purposes of the Regulations.

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party

This definition provides that a 'party' has different meanings in relation to proceedings set out in the Regulations. The following proceedings apply a corresponding definition of 'party', in relation to proceedings for:

- consideration of objections to determination of Australian GIs (Division 2 of Part 6): section 35
- decisions that a ground of objection to proposed GIs no longer exists (Division 3 of Part 6): section 46
- consideration of objections to determination of foreign GIs or translation of foreign GIs (Division 3 of Part 7): section 65, and
- decisions that a ground of objection to proposed items no longer exists (Division 4 of Part 7): section 78.

proposed item

This definition provides that a 'proposed item' has the meaning given by subsection 61(1), where the proposed item is either:

- an application for the determination of a GI, made under subsection 60(1), or
- an application for the determination of a translation of a GI, made under subsection 60(2).

relative

This definition provides that a 'relative', in relation to an individual, means the spouse, de facto partner, parent or other ancestor, child, or other descendant, brother or sister of the individual.

'De facto partner' has the same meaning as in the *Acts Interpretation Act 1901.*

Part 2—Definitions for the purposes of the Act

Section 5 – Grape product

This section provides that for the purposes of paragraph (d) of the definition of grape product in subsection 4(1) of the Act, a product is a ***grape product*** if:

- it includes wine
- it is derived in whole or in part from prescribed goods, and
- a standard, within the meaning of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), applies to it.

Under section 4 of the FSANZ Act, a 'standard' includes a standard that is included in the *Australia New Zealand Food Standards Code* (Food Standards Code).

Section 6 – Prescribed geographical indication

This section provides that a GI that relates to Australia and is included in the Register of Protected Geographical Indications and Other Terms (the Register) is a prescribed GI for the purposes of subsection 4(1) of the Act. The definition only includes GIs relating to Australia, and excludes foreign GIs listed in the Register, because it is used to verify label claims made on wines originating in Australia.

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Part 3—Export controls

Division 1—Export conditions and exemptions

This division sets out the export conditions and exemptions for the export of consignments of grape products.

Section 7 – Conditions of export

This section sets out the conditions that must be met in order for a consignment of a grape product to be exported, for the purposes of paragraph 46(1)(c) of the Act and subject to the exemptions provided by section 8.

A consignment will be prohibited from export unless:

- the exporter of the consignment is the holder of the export licence
- the grape product is approved under section 14 for export by the exporter (or a licensee authorised to export the grape product under section 15)
- if there are conditions on the approval, the export complies with the conditions
- the export certificate for the consignment is in force
- if there are conditions set for the validity of the export certificate, the export is in accordance with the conditions, and
- if the Authority has given a direction to the exporter under section 22, the export complies with the direction.

This section includes a note stating that it is an offence, under section 44 of the Act, to export a grape product if the export contravenes the Regulations, which includes the conditions of export set out in section 7.

Section 8 – Exemptions

This section sets out the exemptions from conditions for the export of consignments of grape products.

Exemptions for small quantities

If the total quantity of grape products in a consignment is 100 litres or less, the conditions of export in section 7 do not apply to the export of that consignment.

For the purposes of this exemption, consignments exported by two or more exporters will be considered a single consignment if the consignments are exported on a single ship or aircraft, to a single port and the exporters are a single exporter, or two or more exporters who are:

- associated entities, as defined in section 50AAA of the *Corporations Act 2001* (including individuals)
- individuals who are relatives, or
- acting in concert with each other.

This section is intended to prevent an individual or multiple exporters from using the exemption for small quantities in subsection 8(1) to circumvent the conditions of export set out in section 7. That is, an exporter or exporters cannot send multiple small consignments in the same shipment when they are in fact associated entities, relatives or are acting in concert with each other.

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Exemption for certain purposes

The conditions for export (in section 7) do not apply to the export of grape product if the grape product is:

- contained in the personal luggage of a traveller
- for domestic use and belongs to an individual who is moving house
- intended for display at a trade fair or comparable event
- exported for a scientific or technical purpose
- exported by a diplomatic, consular or similar establishment as part of the duty free allowance of the establishment
- held on board a plane or vessel as part of its victualling supplies (that is, its beverage supply on international routes), or
- a commercial sample for a prospective buyer.

<u>Division 2—Export licences</u>

Section 9 – Grant of licence

This section provides that for a consignment of a grape product to be exported, the exporter of the consignment must hold a licence granted under this section as required under paragraph 7(a).

A licence to export grape products from Australia may be granted by the Authority when a person applies for a licence under this section. An application for a licence must be made in a form approved by the Authority, in writing.

On receiving an application for a licence as per subsection 9(1), the Authority must either grant the licence or refuse to grant the licence. A licence is granted when it is given to the person in writing. If the Authority decides not to grant a licence, it must notify the applicant in writing of its decision. The notice must state the reasons for the decision.

This section also prescribes the matters that the Authority must consider when deciding whether to grant a licence to a person to export grape products from Australia. In deciding whether to grant a licence under section 9, the Authority must consider the following matters:

- the applicant's financial standing
- the applicant's place (or places) of business, and whether it is in Australia
- the applicant's ability to source Australian grape products
- matters relating to the applicant that may have or have had a negative impact on the export trade in grape products
- matters relating to the applicant and the promotion of the export of grape products
- whether the Authority has suspended or cancelled a licence held by:
    - the applicant, or
    - an associate of the applicant, and
- whether the applicant is a fit and proper person (as set out in section 10).

The Authority may also consider any other matter relating to the promotion of the export of grape products, for example, the number of licences in force authorising the export of grape products in respect of which the applicant has applied for a licence.

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Section 10 – Fit and proper person test for grant of licence

This section sets out the fit and proper person test that the Authority must consider in deciding whether to grant a licence for a person to export grape products from Australia (under section 9).

In determining whether the applicant is a fit and proper person, the Authority must have regard to whether the applicant or their associate has:

- any convictions for offences against the Act
- any debts due and payable under the Act
- any wine export charges due and payable that have not been paid, or
- had a previous application for an approval of a grape product, an export certificate or any other form of approval under the Act refused or revoked.

The Authority may also have regard to whether the applicant has other convictions or orders to pay pecuniary penalties under any Australian law, or any other relevant matter.

This section does not affect the operation of Part VIIC of the *Crimes Act 1914.*

Section 11 – Period of licence

This section provides for the period that a licence granted under this division is in force. Licences are in force for the period set out in the licence, for a maximum of three years for the first period of the licence.

Licensees may apply, in writing, for the period of their licence to be extended. The Authority may grant extensions of up to three years upon such application in a notice to the licensee.

Section 12 – Authority may request information from licensee

This section provides that the Authority may request particular information from a person who was granted a licence under section 9. If the person holding the licence (the licensee) fails to comply with a request made under this section, they may have their licence suspended by the Authority under subsection 13(2).

The Authority may ask the licensee to provide information:

- about a matter listed in subsection 9(3) that the Authority relied upon in granting the licence to the licensee
- about the licensee's export, or intended export, of grape products, or
- that the Authority can use to calculate the wine export charge payable by the licensee.

For the Authority to request information from a licensee under this section it must be in writing, clearly identify the information required and state the deadline for the licensee to provide the information to the Authority.

Section 13 – Suspension and cancellation of licence

This section provides that the Authority may suspend or cancel a licence under this division by notice to the licensee. A suspension or cancellation can be issued where:

- a material change has occurred that affects the matters that the Authority has considered under subsection 9(3)
- the licensee changes their Australian place of business and does not inform the Authority of the new place of business within 14 days of the change

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- the licensee exports a grape product in contravention of the Act or Regulations, for example if the applicant does not comply with the conditions of export as set out in the Act or Regulations
- the licensee has not paid a wine export charge that they are liable to pay, and it is due for payment, or
- a request has been made under section 12 and the licensee has failed to comply with the request.

If the Authority decides to suspend or cancel the licence in any of the circumstances above, the Authority must notify the licensee in writing and:

- state the period of suspension if the licence is suspended, and
- state the reasons for the suspension or cancellation.

The suspension or cancellation of the licence will be in force from the date of the notice and ends at the end of the period stated in the notice, unless the Authority ends the suspension at an earlier time by giving written notice to the licensee.

Division 3—Approved grape products

This division provides the procedures and relevant conditions for a grape product to be approved for export from Australia. A grape product must be approved for export under section 14 in order to meet the conditions of export in section 7 (paragraph 7(b)).

Section 14 – Approval of grape product for export

This section sets out the conditions under which the Authority may approve a grape product for export from Australia, for the purposes of meeting the conditions of export in paragraph 7(b).

An application for approval of a grape product for export must be made in a form approved by the Authority, in writing.

On receiving an application for approval of a grape product for export as per subsection 14(1), the Authority must either approve the grape product (with or without conditions) or refuse to approve the grape product.

In determining whether to approve the grape product for export, the Authority must be satisfied that:

- the grape product is sound and merchantable
- the description and presentation of the grape product is appropriate – having regard to requirements of the Act, other Australian laws and the laws of other relevant countries, and
- the grape product complies with the Food Standards Code, or
    - if it does not comply, that the quality or presentation of the grape product is not compromised to the extent that it would negatively impact the reputation of Australian grape products.

In considering whether the description and presentation of the grape product is appropriate, the Authority would likely have regard to laws relating to labelling requirements such as alcohol percentage and warning labels, and GIs, as some countries recognise grape varieties used by Australian producers as GIs for use by a particular region or country.

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In considering whether the grape product complies with the Food Standards Code*,* the Authority will likely have regard to the requirements of the intended importing country. For example, the importing country may have a different definition of 'wine' for the purposes of labelling and presentation than the definition in the Food Standards Code.

The Authority must not approve a grape product other than wine, brandy or grape spirit if the description and presentation of the product includes a registered GI other than the term 'Australia' or a registered translation.

If the Authority has requested information from the licensee about the grape product under section 16, and the licensee fails to comply with the request, then the Authority must refuse to approve the grape product for export.

Conditions

The Authority may impose conditions on the approval of grape product for export. This may include imposing a condition that limits the countries to which the grape product can be exported. For example, the Authority might only approve export to countries where the Authority is satisfied the grape product meets the requirements of the importing country. The discretion to impose conditions on the approval of grape products for export does not limit the Authority's ability to refuse to approve the grape product under subsection 14(4).

The Authority may vary the conditions, by notifying the licensee in writing of its decision, and the reasons for the variation.

Notice of decision

The Authority must notify the licensee who applied for approval of a grape product under this section of its decision in writing. If the Authority refuses to approve the grape product, or imposes conditions on its approval under subsection 14(6), the notice must state the reasons for the decision.

Description and presentation

In this section, the meaning of 'description and presentation' provided by section 5C of the Act is applied to 'grape products' as it applies to 'wine' under that section.

Under section 5C of the Act, ***description and presentation*** is a reference to all names (including business names) or other descriptions, references (including addresses), indications, signs, designs and trade marks that are used to distinguish a wine. The ways of describing and presenting wine are taken to include appearing on the container, protective wrappings, and in documents and advertisements relating to the wine, as described in section 5C of the Act.

Section 15 – Approval holder may authorise another licensee to export grape product

This section provides that if a grape product is approved under section 14 for export by a licensee, that licensee or approval holder may authorise another licensee to export the grape product. The authorisation must be provided in writing to the Authority.

While the authorisation is in force, the authorised licensee is permitted to export the approved grape product.

Only the original licensee (the approval holder) is permitted to authorise other licensees. An authorised licensee is not permitted to authorise other licensees.

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Section 16 – Authority may request information about grape product

This section provides that the Authority can ask the licensee, who has applied for export approval of a grape product, or who already has export approval of a grape product (according to section 14), to:

- provide records that show that the grape product complies with the Food Standards Code
- provide records or samples that show that the grape product is sound and merchantable, or
- provide a copy of records to verify label claims relating to vintage, variety or GI, kept for the purposes of section 39F of the Act.

For the Authority to request information from a licensee or approval holder of a grape product under this section the request must be in writing and clearly state the deadline for the licensee to provide the information to the Authority.

Where a licensee does not comply with a request made under this section, the grape product will be refused approval for export (under subsection 14(5)). Where an approval holder does not comply with a request made under this section, the approval of the grape product will be suspended (under subsection 17(1)).

Section 17 – Suspension and revocation of approval

This section sets out the procedures for the Authority to suspend or revoke an approval of a grape product for export made under section 14.

Suspension

The Authority must suspend an approval of a grape product for export, in writing, if the approval holder fails to comply with a request for a record or sample made by the Authority under section 16. However, when the requested record or sample is given to the Authority, the suspension must be removed, in writing to the approval holder.

Revocation

The Authority may revoke the approval of a grape product for export if the Authority is no longer satisfied the grape product meets the requirements (under subsections 14(3) and (4)). The Authority must notify the licensee in writing of the revocation of approval. The notice must state the reasons for the decision.

Division 4—Export certificates

Section 18 – Application for export certificate

This section provides the process of applying for an export certificate in relation to a consignment of grape products. This involves the holder of the export licence submitting a written application to the Authority at least five days before the grape product is to be exported.

The application form for the export certificate must be approved by the Authority and identify the date the grape product is intended to be exported, the country that the grape product is to be exported to and the person who will be receiving the consignment.

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Section 19 – Authority may request information about compliance with other laws

This section provides that the Authority can ask a licensee, who has applied for an export certificate in accordance with section 18, to show that a requirement under an Australian law relating to the description and presentation of the grape product has been met.

For example, if a grape product is described as 'organic' and is a product to which the *Export Control (Organic Produce Certification) Orders* (Organic Orders) applies, the Authority may ask the export licence holder to give the Authority information demonstrating that an organic produce certificate has been issued for the product.

Any such request by the Authority must be made in writing at least two days before the grape product is intended to be exported, identify the requirement and the law under which it applies, and state the deadline for the export licence applicant to provide the information. The deadline to provide information must be before the intended date of export.

A minimum of two days' notice is provided for the Authority to make a request under this section as a licensee can apply for an export certificate up to five days before the intended date of export (under subsection 18(2)). Given this short window for consideration, the two-day period before export for a request to be made is reasonable. In practice, it is not uncommon for exports to be delayed and as exporters are only required to provide an intended day of export, this provides greater flexibility for a licensee to respond to requests made under this section.

In this section, the meaning of 'description and presentation' provided by section 5C of the Act is applied to 'grape products' as it applies to 'wine' under that section.

Under paragraph 8(2)(c) of the Act, the Authority has the power to issue certificates that grape products proposed for export meet importing country requirements. In this section, the Authority has the ability to ask for information to show that a grape product complies with an Australian law. This ability enables the Authority to demonstrate to importing countries that the grape product meets Australian law (which is broader than the Act). This generally ensures the reputation of Australian wine and grape products is upheld and is also a specific requirement of some countries.

An example of a relevant Australian law is the Organic Orders. Under section 1.06 of the Organic Orders, which applies to all organic produce including wine, ***organic produce*** is defined as produce that, for the purpose of marketing, is described as such. The description is not limited to the label of the product, and is therefore captured by the definition of 'description and presentation' in section 5C of the Act. Another example of an Australian law that must be complied with is the *National Measurement Act 1960,* which applies to all articles that are 'packed in advance ready for sale' (including grape products) and must be sold by measurement. The required marking must be applied on the package itself or on a label attached to or enclosed with, but visible within, the package.

Under section 5C of the Act, ***description and presentation*** is a reference to all names (including business names) or other descriptions, references (including addresses), indications, signs, designs and trade marks that are used to distinguish a wine. The ways of describing and presenting wine are taken to include appearing on the container, protective wrappings, and in documents and advertisements relating to the wine, as described in section 5C of the Act.

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Section 20 – Issue of export certificate

This section sets out the conditions under which the Authority can issue an export certificate.

If a licensee applies for an export certificate in accordance with section 18, the Authority must decide whether to issue the export certificate before the day on which the consignment is to be exported.

The Authority may issue an export certificate if it is satisfied that:

- the grape product is approved under section 14 for export by the licensee
- the export will meet any conditions required of approval
- if a request for information is made under section 19 in relation to a requirement of an Australian law, the description and presentation of the grape product meets those requirements
- if a direction on quantity of export (under section 22) from the Authority is given to the prospective licence holder the export would comply with the direction, and

The Authority may also have regard to the person whom the product may be consigned in the country of destination.

If the Authority reasonably believes that the grape product cannot be lawfully sold in the country which it is to be exported to, then the Authority must refuse to approve the grape product for export. In considering whether a grape product is not lawfully saleable in the destination country, the Authority is likely to have regard to whether the grape product meets the compositional and oenological (winemaking) practice standards of the intended importing country.

If the Authority requested information from the licensee about compliance with other laws under section 19, and the licensee fails to comply with the request, then the Authority must refuse to approve the grape product for export.

The Authority may impose conditions on the validity of export certificates.

If the Authority decides not to issue the export certificate, it must notify the applicant in writing the reasons for this decision.

Section 21– Revocation of export certificate

This section provides that the Authority may revoke, by notice in writing, an export certificate if the export of the grape product by the licensee no longer complies with the requirements outlined in subsection 20(2). The notice must state the reasons for the revocation.

Division 5—Other matters

Section 22 – Direction by Authority on quantity of exports

This section provides that the Authority may direct the quantity of grape product that the licensee may export. The direction must be in writing and may relate to the quantity:

- generally
- to a country specified in the direction, or
- to a person, agent or representative specified in the direction.

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Section 23 – Applications for review of decisions

This section describes certain decisions made by the Authority that a person may apply to the Administrative Appeals Tribunal for review. The decisions are to:

- refuse to grant a licence (under section 9)
- suspend or cancel a licence (under section 13)
- refuse to approve a grape product for export (under section 14)
- impose conditions on the approval of a grape product for export (including variation of the conditions on an existing approval) (under section 14)
- approve a grape product that does not comply with the Food Standards Code (under section 14)
- revoke the approval of a grape product for export (under section 17)
- refuse to issue an export certificate (under section 20)
- specify conditions on the validity of an export certificate (under section 20)
- revoke an export certificate (under section 21), and
- give a direction (under section 22).

Part 4—Description and presentation of wine

This part prescribes the circumstances where the description and presentation of wine will not be misleading for the purposes of the offence in section 40E of the Act, to sell, export or import wine with a misleading description and presentation.

Subsection 40F(6) of the Act provides that the description and presentation of wine is misleading if it is not in accordance with any provisions relating to the description and presentation of wine set out in the Regulations for the purposes of the subsection.

All the sections in this part are made for the purposes of subsection 40F(6) of the Act.

Section 24 – Wine originating in more than one country

This section provides for the description and presentation of wine that is made from grapes grown in more than one country. The description and presentation of wine made from grapes grown in more than one country must identify the proportion of wine made from grapes grown in each country.

In determining countries of origin, the quantity of additives derived from grapes up to two per cent (20ml/L) of the wine, is excluded.

Section 25 – Grape varieties

This section outlines the description and presentation requirements for grape varieties to be applied to wine originating in Australia.

Section 4 of the Act provides that a ***variety***, in relation to wine or grape extract, means the variety of the grapes from which the wine or grape extract was obtained.

A wine which includes the name of a grape variety in its description and presentation, must only use a name of a variety, or a synonym of a name of a variety that is recognised by one of the following organisations:

- International Organisation of Vine and Wine
- International Union for the Protection of New Varieties of Plants, or

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- International Plant Genetic Resources Institute.

A wine which is made from two or more varieties, may be described and presented as being made from single variety, if at least 85 per cent (850ml/L) of the wine is obtained from that variety.

A wine may be described and presented as more than one variety. However, to do so:

- the varieties must be listed in descending order of their proportions in the wine (largest to smallest)
- each variety named must be present in a greater proportion than any varieties which are not named, and
- at least 85 per cent (850ml/L) of the wine must be made from the named varieties.

In determining the proportion of grape varieties, the quantity of products used in the wine intended to sweeten and provide cultures of microorganisms, up to five per cent (50ml/L) of the wine, is excluded.

In determining the volume of a fortified wine, any added grape spirit or brandy (or both) are also excluded.

Section 26 – Use of registered geographical indications

This section outlines the requirements for using a registered GI or a foreign place name, in the description and presentation of wine. A registered GI is an Australian GI (for example, 'Barossa Valley') or foreign GI (for example, 'Bordeaux') which is included in Part 1 of the Register made under section 40ZC of the Act. The Register contains a list of GIs and traditional wine terms that are protected under Australian law.

This section limits the number of registered Australian GIs which can be used to describe and present a wine. In the description and presentation of wine, a maximum of three registered Australian GIs and foreign place names in total can be used. The subsections provide the requirements for each combination of Australian GIs and foreign place names that can be used in total, in describing and presenting the wine.

A ***foreign place name*** is a word or expression which identifies a country, region or locality (other than Australia) in which the wine originated, and is not a registered foreign GI (for example, 'Central Otago, New Zealand').

A wine may be described and presented as being from only one registered Australian GI and not any registered foreign GIs or foreign names. However to do so, at least 85 per cent (850ml/L) of the wine must be obtained from grapes grown in the region or locality of the Australian GI.

A wine may be described and presented as being from only one registered foreign GI and not any registered Australian GIs. However to do so, at least 85 per cent (850ml/L) of the wine must be obtained from grapes grown in the region or locality indicated by the GI.

A wine may be described and presented as being from one Australian GI and up to an additional two registered GIs (regardless of whether they are Australian or foreign GIs) and does not use a foreign place name. However to do so:

- at least 95 per cent (950ml/L) of the wine must be obtained from grapes grown in the region or locality indicated by the GIs
- at least five per cent (50ml/L) of the wine must be obtained from each of the regions or localities, and

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- the registered GIs are listed in descending order of the proportion of the relevant grapes in the wine (largest to smallest).

If a wine is described and presented as being from one Australian GI and up to two foreign place names, then:

- at least 95 per cent (950ml/L) of the wine must be obtained from grapes grown in the region or locality indicated by the Australian GI, and the countries, regions or localities identified by the foreign place names
- at least five per cent (50ml/L) of the wine must be obtained from each of the countries, regions or localities, and
- the registered GI and foreign place names are listed in descending order of the proportion of the relevant grapes in the wine (largest to smallest).

For this section, where a word or term (such as a place, name or country) is required to be used on a label by another law, the word or term is not to be treated as a registered GI. For example, Standard 1.2.2 of the Food Standards Code requires wine labels to provide the name and business address of the supplier of the wine. In practice, the address will be of the wine bottler, and may not be located in the GI from which the grapes were grown.

In determining the volume of a fortified wine for the purposes of this section, any added grape spirit or brandy (or both) are excluded.

Section 27 – Vintages

This section outlines the requirements for wine originating in Australia using vintages (year that grapes are harvested), in the description and presentation of wine.

A wine may be described and presented as being of one vintage. However, to do so, at least 85 per cent (850ml/L) of the wine must be obtained from that grapes harvested in that vintage.

In determining the volume of a fortified wine for the purposes of this section, any added grape spirit or brandy (or both) are excluded.

A wine may be described and presented as being from more than one vintage. The description and presentation of wine must refer to all vintages in descending order of the proportions of the relevant grapes in the wine.

Part 5—Exemption of wines from offences relating to description and presentation

This part outlines the exemptions to the offences in Part VIB of the Act relating to the sale, export and import of wine:

- with a false description and presentation (subsection 40C(1) of the Act)
- with a misleading description and presentation (subsection 40E(1) of the Act), and
- in contravention of a registered condition of use relating to a GI, translation, traditional expression, quality wine term or additional term (subsection 40G(1) of the Act).

The object of Part VIB of the Act is to regulate the sale, export and import of wine with respect to the description and presentation of wine for the primary purpose of enabling Australia to meet its international obligations under wine-trading agreements. Part VIB of the Act sets out the circumstances in which the description and presentation of wine is considered

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false or misleading, and establishes the Committee and arrangements for the determination and protection of Australian and foreign GIs.

Subsections 40J(2)–(4) of the Act provide that the offence provisions do not apply in relation to wines that:

- were made before the commencement of Part VIB of the Act
- are in transit through Australia
- originate in Australia or an agreement country, or
- are consigned in 'small quantities' as declared by the regulations (subsection 40J(1) of the Act) between Australia and an agreement country in accordance with any conditions or procedures set out in the regulations.

Subsection 40J(5) of the Act provides that the regulations may exempt wine from the offences listed above, subject to any conditions, generally or for a period of time.

All the sections in this part are made for the purposes of section 40 of the Act.

Section 28 – Small quantities of wine

This section declares 'small quantities' of wine, for the purposes of subsection 40J(1) of the Act, which exempts small quantities of wine from offences set out in subsections 40C(1), 40E(1) and 40G(1) of the Act.

The following quantities are declared to be ***small quantities*** of wine:

- up to, and including, 100 litres of wine, that is:
    - exported in one consignment
    - packed in labelled containers, not exceeding 5 litres in capacity, which are fitted with a non-reusable closing device
- up to, and including, 30 litres of wine that is in the personal luggage of a traveller
- up to, and including, 30 litres of wine that is sent by consignment from one person to another
- wine that belongs to a person who is moving house. This wine must be for domestic use only
- wine that is:
    - intended to be displayed at a trade fair or comparable event, in Australia or an agreement country, for the purposes of the customs laws of the relevant country
    - packed in labelled containers, not exceeding 2 litres in capacity, which are fitted with a non-reusable closing device
- up to, and including, 100 litres imported into Australia or exported to an agreement country for a scientific or technical purpose
- wine that is imported into Australia, or exported to an agreement country, by a diplomatic, consular, or similar establishment as part of the duty-free allowance of the establishment, or
- wine that is held on board a means of international transport as victualling supplies (that is, food and beverage supplies).

The section also provides that consignments exported by two or more exporters will be considered a single consignment if the consignments are exported on a single ship or aircraft, to a single port and the exporters are a single exporter, or two or more exporters who are:

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- associated entities, as defined in section 50AAA of the *Corporations Act 2001* (including individuals)
- individuals who are relatives, or
- acting in concert with each other.

This ensures that individuals and entities are not able to circumvent the quantity restrictions by sending multiple consignments from different, but related, entities.

This prevents an individual or multiple exporters from using the exemption for small quantities in subparagraph 28(1)(a)(i) to circumvent the requirements for description and presentation in subsection 40J(1) of the Act. That is, an exporter or exporters cannot send multiple small consignments in the same shipment when they are in fact associated entities, relatives or are acting in concert with each other.

This section also clarifies that the conditions and procedures set out in the declaration of ***small quantities*** are prescribed for those small quantities, for the purposes of paragraph 40J(4)(b) of the Act.

Section 29 – Geographical indication: Tokay

This section provides an exemption for wine with the description and presentation of the GI 'Tokay' from the offences in subsections 40C(1) and 40E(1) of the Act. This section will be repealed at the start of 1 September 2020.

This is consistent with Australia's international obligations under the Agreement between Australia and the European Community on Trade in Wine, done at Brussels on 1 December 2008, to phase out the use of 'Tokay' after a period of 10 years after its entry into force.

Section 30 – Variety names that are also geographical indications

This section provides an exemption from the following offences:

- false description and presentation (subsection 40C(1) of the Act), and
- contravention of registered conditions of use (subsection 40G(1) of the Act).

The exemption applies to wine where:

- the description and presentation of the wine is false or does not comply with registered conditions of use, only because the term is recognised as the name of a variety, or a synonym of a name of a variety by one of the following organisations:
    - International Organisation of Vine and Wine
    - International Union for the Protection of New Varieties of Plants, or
    - International Plant Genetic Resources Institute, and
- the term is used to describe a variety of grapes from which the wine is made.

This section allows wine to be described and presented as coming from grape varieties which may be similar to a registered GI. For example, it ensures that a producer can label their wine as being made from the grape variety 'Alicante Bouschet', despite the term 'Alicante' being a registered GI (from Spain).

Section 31 – Marketing periods for use of geographical indications, registered traditional expressions and registered additional terms

This section provides an exemption to a wholesaler, or retailer of wine, from the offences in subsections 40C(1), 40E(1), and 40G(1) of the Act. The exemption applies to wine where:

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- the description and presentation of the wine is false or misleading or does not comply with registered conditions of use of a registered GI, registered translation, registered traditional expression or a registered additional term
- the wine was lawfully produced before the day on which the provisions first applied to the use of the GI, translation, expression or term, and
- the GI, translation, expression or term is used by the wholesaler or retailer in the course of their business.

The timeframes for the exemption, as they apply to wholesalers, are:

- five years after the offence provisions first apply, for fortified wines, and
- three years after the offence provisions first apply, for all other wines.

The timeframes for the exemption, as they apply to retailers, are:

- five years after the offence provisions first apply, or until the retailer has exhausted all stock of fortified wines, for fortified wines, and
- three years after the offence provisions first apply, or until all stock is exhausted, for all other wines.

This section ensures that retailers and wholesalers are able to sell, export or import wine which they have in stock, despite the registration of a new GI, translation, expression or term.

Section 32 – Use of trade marks in description of wine

This section provides an exemption to wine from the offences in subsections 40C(1), 40E(1), and 40G(1) of the Act. The section applies if:

- the Registrar of Trade Marks decides that an objection to a proposed GI is made out under either subsection 40RC(2) of the Act (Australian GI), or section 71 (foreign GI), and the GI is then registered in Part 1 of the Register (under subsection 40ZD(2) of the Act)
- a trade mark is either registered or is the subject of a pending application under the *Trade Marks Act 1995* and the GI, or a GI that is identical or likely to cause confusion with the trade mark or translation, is proposed and registered
- a trade mark listed in subsection 32(3) is identical to a registered GI or a region or locality in an agreement country, or a registered translation of such a GI, or
- a trade mark listed in subsection 32(3) is likely to cause confusion with a registered GI or a region or locality from a foreign country, or a registered translation of such a GI.

In the first instance described above (paragraphs 32(1)(a) and (b)), where a proposed GI or item has been registered after an objection is made out, subsection 32(2) provides that the exemption in subsection 32(4) applies to a name where:

- the objection was made on the ground that the proposed GI or item is a common name of a type or style of wine, or
- the objection was made on the ground that the proposed GI or item is the name of a variety of grapes.

Subsection 32(3) contains a list of trade marks to which the exemption applies for the purposes of paragraphs 32(1)(d) and (e). These trade marks existed prior to the protection of the GIs and translations.

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Exemption

The section provides an exemption from the offences in subsections 40C(1), 40E(1), and 40G(1) of the Act in relation to a GI or translation if the description and presentation of wine uses a trade mark that is the same as or resembles the GI or translation and:

- the wine did not originate in the same country, region or locality indicated by the registered GI or translation, and
- the origin, as described and presented on the wine, is not likely to be misleading.

For example, 'Salena Estate' is a registered trade mark in Australia which is listed in the Regulations and the term 'Salina' is an Italian GI which is protected under the Agreement between Australia and the European Community on Trade in Wine and the Act. Section 32 provides that the trade mark 'Salena Estate' can continue to be used providing that the origin of the wine is shown in the description and presentation in such a way that is not likely to be misleading. Therefore, if a 'Salena Estate' Chardonnay were to use the GI 'South Australia' in its description and presentation, this would be accepted under the Regulations, as it mitigates against a consumer being misled that the wine was from Salina in Italy.

Part 6—Determination of Australian GIs

Division 1—Modifications of the Act

Section 33 – Modifications of Division 4 of Part VIB of the Act

Under section 40PA of the Act, the Regulations may modify the Act to ensure the operation of determining Australian and foreign GIs are aligned. The procedures for determining Australian and foreign GIs are to be aligned, in order to meet Australia's international obligations under wine-trading agreements.

This section modifies the operation of Division 4 of Part VIB of the Act as set out in Schedule 1 to the Regulations. The modification adds a ground of objection to determinations of Australian GIs to section 40RB of the Act. The additional ground is that a person may object to a proposed GI on the ground that it is used in Australia, as a common name of a type or style of wine or as a name of a grape variety. This ground is consistent with the ground of objection to determinations of foreign GIs and translations of foreign GIs set out in subsection 62(5).

Division 2—Consideration of objections to determination of Australia GIs

This division sets out the procedures for the Registrar of Trade Marks to follow in deciding whether there are grounds of objection to the determination of an Australian GI. This decision would be made where:

- the Committee has published a notice that an Australian GI is proposed (under section 40RA of the Act)
- an objection in relation to the proposed Australian GI has been received by the Registrar of Trade Marks
- the objection is made on a ground set out in section 40RB of the Act, and
- the objection is received within the timeframe set out in the notice of the proposed GI (which is at least one month)(under section 40RC of the Act).

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Under subsection 40RC(2) of the Act, the Registrar of Trade Marks must decide whether a ground of objection made in these circumstances is supported by the evidence provided, subject to the procedures set out in this division.

If the Registrar of Trade Marks decides that there is a ground of objection (under subsection 40RC(2) of the Act), subsection 40RC(3) of the Act provides that the Registrar of Trade Marks may make a recommendation to the Committee that the GI be determined, if the Registrar of Trade Marks is satisfied that it would be reasonable to determine the GI, despite the existence of the objection.

The procedures set out in this division are intended to be consistent with the procedures regarding a decision that there is a ground of objection to a proposed foreign GI or translation of a foreign GI, in Division 3 of Part 7.

Section 34 – Application of this Division

This section provides for the application of this division. Under subsection 40RC(5) of the Act, the Regulations may set out the procedure to be followed by the Registrar of Trade Marks to make a decision that there is a ground of objection to a proposed Australian GI, under subsections 40RC(2) and (3) of the Act. The procedures may include, but are not limited to, the charging of fees (section 42), the holding of hearings (section 39) and the taking of evidence (sections 36, 37 and 38).

Section 35 – Parties to proceedings

This section sets out who is a ‘party’ in relation to an objection to a proposed Australian GI.

For the purposes of this division, and section 40RC of the Act, a ***party*** to proceedings is:

- the person who made the objection, either:
  - the registered owner of the registered trade mark (under subsection 40RB(1) of the Act)
  - a person who has an application pending for the registration of the trade mark under the *Trade Marks Act 1995* (under subsection 40RB(3) of the Act)
  - a person who claims to have trade mark rights in the trade mark that is not registered (under subsection 40RB(4) of the Act), or
  - a person who objects to the proposed GI on the ground that it is used in Australia (by operation of Schedule 1), and
- the applicant for the determination of the proposed Australian GI (under section 40R of the Act).

Under subsection 4(1) of the Act, a ***registered trade mark*** means a trade mark whose particulars are entered in the Register of Trade Marks under the *Trade Marks Act 1995.*

Section 36 – Evidence in relation to ground of objection and recommendation

This section sets out the procedure the Registrar of Trade Marks must follow after notifying the Committee that an objection has been received, and specifies the content of the notice the Registrar of Trade Marks must provide to parties in proceedings.

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After notifying the Committee under subsection 40RC(1) of the Act that an objection has been received, and the person making the objection has paid the relevant fee for dealing with the objection (prescribed by section 42), the Registrar of Trade Marks must send each party a written notice that:

- provides the name and address of each other party
- invites each party to file evidence relevant to:
    - the objection to the proposed Australian GI, or
    - whether the Registrar of Trade Marks should recommend that the proposed Australian GI be determined despite the objection, and
- states that evidence must be filed within three months from the date of the notice.

This section also includes a note that there may only be one party in some proceedings under this division. In these circumstances, the one party would be the person who made the objection. There may be no applicant for the determination of the proposed Australian GI subject to an objection that would be considered a party to proceedings, as the Committee may determine an Australian GI on its own initiative (under subsection 40Q(1) of the Act).

After the Committee has given notice under section 40RA of the Act, a person may make an objection to a proposed Australian GI that the Committee is considering determining on its own initiative, or that is different to a proposed GI applied for determination under section 40R of the Act (under paragraph 40T(3)(b) of the Act). That is, persons may object to proposed Australian GIs that are not a result of an application for a determination made under section 40R of the Act.

Section 37 – Evidence in answer

This section sets out the procedures the Registrar of Trade Marks must follow if a party files evidence in response to the notice under section 36.

If a party files evidence in response to a notice sent under section 36, the Registrar of Trade Marks must send each other party a written notice inviting evidence in answer, and stating the period from the date of the notice in which evidence in answer may be filed. The period stated to file evidence in answer must be at least two months.

The Registrar of Trade Marks must also notify all parties, in writing, of the deadline if they wish to request a hearing under section 39. As per subsection 39(2), the deadline must be no later than one month after the last day of the period for filing of evidence.

This section includes a note that there may be only one party in some proceedings in this division, due to the circumstances noted for subsection 36(1).

Section 38 – New evidence

This section sets out the procedures for parties to apply to file new evidence and for the Registrar of Trade Marks to respond.

A party may apply to the Registrar of Trade Marks, in writing, to file new evidence after the end of a period specified by the Registrar of Trade Marks for the party to file evidence and before the Registrar of Trade Marks decides whether there is a ground of objection (under subsection 40RC(2) of the Act) or before the Registrar of Trade Marks makes a recommendation to the Committee (under subsection 40RC(3) of the Act).

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The application must be submitted with payment of the fee for applying to file new evidence prescribed in section 42. If approved, the new evidence must be filed in accordance with section 40, including payment of the relevant fee prescribed by section 42. The application to file new evidence must also include a statement describing the new evidence and give the reasons why the new evidence was not filed within the specified period.

If, after considering the application, the Registrar of Trade Marks decides that it is reasonable to allow the filing of the new evidence, the Registrar of Trade Marks must set a period within which the new evidence must be filed, and notify the applying party of the final date for filing in writing.

If the Registrar of Trade Marks decides that it is not reasonable to allow the filing of the new evidence, the Registrar of Trade Marks must notify the applying party in writing that new evidence may not be filed.

Evidence in answer to new evidence

If the new evidence has been filed within the specified period, the Registrar of Trade Marks must send a written notice to each other party informing them that the new evidence has been filed, and set a reasonable period for the parties to file evidence in answer to it.

The Registrar of Trade Marks must also notify all parties, in writing, of the deadline if they wish to request a hearing under section 39. As per subsection 39(2), the deadline will be one month after the last day of the period for filing of evidence.

This section includes a note that there may be only one party in some proceedings in this division, due to the circumstances noted for subsection 36(1).

Section 39 – Hearing and submissions

This section sets out the procedures the Registrar of Trade Marks and parties to proceedings must follow if a notice inviting evidence in answer has been given (under subsection 37 or subsection 38(5)) and a party requests that the Registrar of Trade Marks conduct a hearing.

The request to conduct a hearing must be made in writing no later than one month after the last day on which evidence may be filed in accordance with any notice given under section 37 or subsection 38(5). The request must be submitted with payment of the fee for requesting a hearing prescribed in section 42.

The Registrar of Trade Marks must conduct a hearing if he or she receives a request to do so.

If the Registrar of Trade Marks receives a request to conduct a hearing, the Registrar of Trade Marks must send each party a written notice that informs the party a hearing will be held, and invites written submissions to be made before the hearing.

The Registrar of Trade Marks must not conduct the hearing until any removal or cancellation proceedings are complete, if:

- the objection relates to a registered trade mark, and
- the registered trade mark is the subject of those removal or cancellation proceedings.

Each party that attends the hearing is liable to pay the fee for attendance at a hearing prescribed in section 42, regardless of whether the party attends a whole, or part of, a day.

Section 40 – Parties must give copies of evidence to each other and pay filing fee

This section provides for the procedures to be followed for evidence filed by parties to be considered validly filed.

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For evidence to be considered validly filed, the party filing the evidence must:

- give a copy of the evidence to each other party
- include, with the evidence being filed, a statement setting out when and how a copy was given to each other party, and
- pay the fee for filing of evidence prescribed in section 42.

Section 41 – Decision by Registrar of Trade Marks

This section sets out the procedures, including the timeline, for the Registrar of Trade Marks to make a decision on the objection to the proposed Australian GI.

The Registrar of Trade Marks must, as soon as practicable after all periods for the filing of evidence or requesting conduct of a hearing have ended (and, if a hearing was requested, after this hearing was held), make a decision on whether there is a ground of objection, and if so, whether a recommendation should be made to the Committee to determine the proposed GI.

The Registrar of Trade Marks must do this by considering:

- the notice of the proposed Australian GI (as per subsection 40RA(2) of the Act)
- the objection
- the evidence filed by the parties
- if a hearing was held—representations and material from the hearing and any written submissions by the parties, and
- any other matter that the Registrar of Trade Marks considers relevant.

The Registrar of Trade Marks must not make a decision on whether there is a ground of objection to the proposed Australian GI until any removal or cancellation proceedings are complete, if:

- the objection relates to a registered trade mark, and
- the registered trade mark is the subject of those removal or cancellation proceedings.

The Registrar of Trade Marks must decide that the ground of objection is not made out if the person objecting to the proposed Australia GI does not file any evidence within three months from the date of the notice (set out in paragraph 36(1)(c)) or withdraws the notice of objection before the Registrar of Trade Marks has made a decision.

This section also includes a note that the Registrar of Trade Marks must notify each party and the Committee of the Registrar of Trade Marks' decision as per subsection 40RD(1) of the Act.

Section 42 – Fees

This section specifies the fees to be charged by the Registrar of Trade Marks in relation to dealing with an objection to a proposed Australian GI.

The section includes a table of fees for proceedings for the purposes of this division. Five matters are set out in Column 1 of the table, for which each party may be liable to pay the corresponding fee in Column 2 to the Registrar of Trade Marks:

- dealing with an objection (payable by the party making the objection): $500
- filing evidence in relation to the objection (section 36), evidence in answer (section 37) or new evidence (section 38): $375
- requesting a hearing under section 39: $500

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- attendance at a hearing: $500 per day or part of a day that the hearing is attended, with the fee for requesting a hearing deducted from the total amount payable, and
- applying to file new evidence under section 38: $100.

These fees have been calculated by reference to identified costs for dealing with an objection and are broadly aligned with the fees payable to the Registrar of Trade Marks prescribed in Schedule 9 of the *Trade Marks Regulations 1995*.

Section 43 – Costs

This section provides that the Registrar of Trade Marks must not make an order for costs in the proceedings for consideration of grounds of objection to the determination of a proposed Australian GI.

Division 3—Decision that ground of objection to proposed GI no longer exists

This division sets out the procedures for the Registrar of Trade Marks to follow in deciding whether a ground of objection to a proposed Australian GI no longer exists. This decision would be made where:

- a decision has been made that a ground of objection to a proposed GI is supported by the evidence provided (under subsection 40RC(2) of the Act), and
- a person applies in writing to the Registrar of Trade Marks for a decision that circumstances have changed since that decision, such that the ground of objection no longer exists (under paragraph 40RE(1)(b) of the Act).

Under subsection 40RE(1) of the Act, the Registrar of Trade Marks may decide that a ground of objection no longer exists, subject to the procedures set out in this division.

The procedures set out in this division are intended to be consistent with the procedures regarding a decision that a ground of objection to a proposed foreign GI or translation of a foreign GI no longer exists, in Division 4 of Part 7.

Section 44 – Application of this Division

This section provides for the application of this division. Under subsection 40RE(2) of the Act, the Regulations may set out the procedure to be followed by the Registrar of Trade Marks to make a decision that a ground of objection to a proposed Australian GI no longer exists, under subsection 40RE(1) of the Act. The procedures may include, but are not limited to, the charging of fees (section 55), the holding of hearings (section 50) and the taking of evidence (sections 47, 48 and 49).

Section 45 – Notice of application

This section provides that the Registrar of Trade Marks must notify the Committee in writing of the receipt and terms of the application under paragraph 40RE(1)(b) of the Act.

Section 46 – Parties to proceedings

This section sets out who is a ‘party’ in relation to an application that a ground of objection to a proposed Australian GI no longer exists.

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For the purposes of this division, and section 40RE of the Act, a ***party*** to proceedings in relation to determination of an application is:

- the person who made the application that a ground of objection to a proposed Australian GI no longer exists
- the person who made the objection, either:
  - the registered owner of the registered trade mark (under subsection 40RB(1) of the Act)
  - a person who has an application pending for the registration of the trade mark under the *Trade Marks Act 1995* (under subsection 40RB(3) of the Act)
  - a person who claims to have trade mark rights in the trade mark that is not registered (under subsection 40RB(4) of the Act), or
  - a person who objects to the proposed GI on the ground that it is used in Australia (by operation of Schedule 1), and
- the applicant for the determination of the proposed GI (under section 40R of the Act).

In this section, the person who made an application that a ground of objection no longer exists (under paragraph 40RE(1)(b) of the Act) may be different to the person who made the application for the Australian GI (under section 40R of the Act). Both of these people are considered parties for the purposes of this division.

This section of the regulation includes a note stating that Schedule 1 modifies the operation of section 40RB of the Act, which sets out the grounds of objection to determination of an Australian GI.

Section 47 – Evidence in relation to whether ground of objection no longer exists

This section sets out the procedure the Registrar of Trade Marks must follow after notifying the Committee that an application has been received, and specifies the content of the notice the Registrar of Trade Marks must provide to parties to proceedings.

After notifying the Committee under paragraph 40RE(1)(b) of the Act, and the person making the objection has paid the relevant fee prescribed by section 55, the Registrar of Trade Marks must send each party a written notice that:

- provides the name and address of each other party
- invites each party to file evidence relevant to whether the Registrar of Trade Marks should decide that the ground of objection no longer exists, and
- states that evidence must be filed within three months from the date of the notice.

Section 48 – Evidence in answer

This section sets out the procedures the Registrar of Trade Marks must follow if a party files evidence in response to the notice under section 47.

If a party files evidence in response to a notice sent under section 47, the Registrar of Trade Marks must send each other party a written notice that invites each other party to file evidence in answer, and states the period from the date of the notice in which evidence in answer may be filed. The period stated to file evidence in answer must be at least two months.

The Registrar of Trade Marks must also notify all parties, in writing, of the deadline if they wish to request a hearing under section 50. As per subsection 50(2), the deadline must no later than one month after the last day of the period for filing of evidence.

Section 49 – New evidence

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This section sets out the procedures for parties to file new evidence and for the Registrar of Trade Marks to respond.

A party may apply to the Registrar of Trade Marks, in writing, to file new evidence after the end of a period specified by the Registrar of Trade Marks for the party to file evidence, and before the Registrar of Trade Marks makes a decision under subsection 40RE(1) of the Act.

The application must be submitted with payment of the fee for applying to file new evidence prescribed in section 55. If approved, the new evidence must be filed in accordance with section 51, including payment of the relevant fee prescribed by section 55. The application must also include a statement describing the new evidence and giving the reasons why the new evidence was not filed within the specified period.

If, after considering the application, the Registrar of Trade Marks decides that it is reasonable to allow the filing of the new evidence, the Registrar of Trade Marks must set a date by which the new evidence must be filed, and notify the applying party of the date in writing.

If the Registrar of Trade Marks decides that it is not reasonable to allow the filing of the new evidence, the Registrar of Trade Marks must notify the applying party in writing that new evidence may not be filed.

Evidence in answer to new evidence

If the new evidence has been filed by the set date, the Registrar of Trade Marks must send a written notice to the other parties that new evidence has been filed, and set a reasonable period for the parties to file evidence in answer to it.

The Registrar of Trade Marks must also notify all parties, in writing, of the deadline if they wish to request a hearing under section 50. As per subsection 50(2), the deadline will be one month after the last day of the period for filing of evidence.

Section 50 – Hearing and submissions

This section sets out the procedures the Registrar of Trade Marks and parties to proceedings must follow if a notice inviting evidence in answer has been given (under section 48 or subsection 49(5)) and a party requests the Registrar of Trade Marks conduct a hearing.

The request to conduct a hearing must be made in writing no later than one month after the last day on which evidence may be filed in accordance with any notice given under section 48 or subsection 49(5). The request must be submitted with payment of the fee for requesting a hearing prescribed in section 55.

The Registrar of Trade Marks must conduct a hearing if he or she receives a request to do so.

If the Registrar of Trade Marks receives a request to conduct a hearing he or she must send each party a written notice that informs the party a hearing will be held, and invites written submissions to be made before the hearing.

The Registrar of Trade Marks must not conduct the hearing until any removal or cancellation proceedings are complete, if:

- the objection relates to a registered trade mark, and
- the registered trade mark is the subject of those removal or cancellation proceedings.

Each party that attends the hearing is liable to pay the fee for attendance at a hearing prescribed in section 55, regardless of whether the party attends a whole, or part of, a day.

Section 51 – Parties must give copies of evidence to each other and pay filing fee

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This section sets out the procedures for evidence filed by parties to be considered validly filed.

For evidence to be considered validly filed, the party filing the evidence must:

- give a copy of the evidence to each other party
- include, with the evidence being filed, a statement setting out when and how a copy was given to each other party, and
- pay the fee for filing of evidence prescribed in section 55.

Section 52 – Withdrawal of application

This section sets out the procedures for the Registrar of Trade Marks to respond if the application is withdrawn.

The Registrar of Trade Marks must notify the other parties in writing if the applicant under paragraph 40RE(1)(b) of the Act withdraws the application before the Registrar of Trade Marks has made a decision under subsection 40RE(1) of the Act.

The Registrar of Trade Marks must continue the proceedings if requested to do so by another party, in writing, no later than one month of the date of the notification of withdrawal.

This section includes a note that states if no party makes a request to continue the proceedings, the Registrar of Trade Marks must decide that the ground of objection continues to exist, as per section 53.

Section 53 – Decision by Registrar of Trade Marks

This section sets out the procedures including the timeline for the Registrar of Trade Marks to make a decision on the application.

The Registrar of Trade Marks must, as soon as practicable after all periods for the filing of evidence or requesting conduct of a hearing have ended (and, if a hearing was requested, after this hearing was held), make a decision on whether the ground of objection no longer exists. The Registrar of Trade Marks must do this by considering:

- the evidence filed by the parties
- if a hearing was held—representations and material from the hearing and any written submissions by the parties, and
- any other matter that the Registrar of Trade Marks considers relevant.

The Registrar of Trade Marks must not make a decision on whether the ground of objection no longer exists until any removal or cancellation proceedings are complete, if:

- the objection relates to a registered trade mark, and
- the registered trade mark is the subject of those removal or cancellation proceedings.

The Registrar of Trade Marks must decide that the ground of objection continues to exist if no party files evidence within the period mentioned in paragraph 47(1)(c) (three months from the date of the notice).

The Registrar of Trade Marks must decide that the ground of objection continues to exist if:

- the applicant, for a decision that the ground of objection no longer exists, withdraws the application, and
- no other party makes a request to continue the proceedings under section 52.

Section 54 – Notice of decision

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This section sets out the procedures the Registrar of Trade Marks and the Presiding Member of the Committee must undertake, once the Registrar of Trade Marks has made a decision.

The Registrar of Trade Marks must inform, in writing, the Committee and each party of the Registrar of Trade Marks' decision in relation to the existence of the ground of objection (under section 53).

After receiving notice of a decision from the Registrar of Trade Marks, the Presiding Member of the Committee must publish a notice:

- setting out the proposed GI
- stating that a decision of the Registrar of Trade Marks has been made in relation to the proposed GI, and
- setting out the terms of the decision.

The notice is to be published in the manner that the Committee thinks appropriate. For example, the Presiding Member of the Committee may publish a notice on the Authority's website.

Section 55 – Fees

This section specifies the fees to be charged by the Registrar of Trade Marks in relation to dealing with an application for a decision that a ground of objection to a proposed Australian GI no longer exists.

The section includes a table of fees for proceedings for the purposes of this division. Five matters are set out in Column 1 of the table, for which each party may be liable to pay the corresponding fee in Column 2 to the Registrar of Trade Marks:

- dealing with an application for a decision that a ground of objection no longer exists (payable by the party making the application): $500
- filing evidence in relation to the application (section 47), evidence in answer (section 48) or new evidence (section 49): $375
- requesting a hearing under section 50: $500
- attendance at a hearing: $500 per day or part of a day that the hearing is attended, with the fee for requesting a hearing deducted from the total amount payable, and
- Applying to file new evidence under section 49: $100.

These fees have been calculated by reference to identified costs for dealing with an objection and are broadly aligned with the fees payable to the Registrar of Trade Marks prescribed in Schedule 9 of the *Trade Marks Regulations 1995*.

Section 56 – Costs

This section provides that the Registrar of Trade Marks must not make an order for costs in proceedings mentioned in this division.

Division 4—Criteria for determining Australian GIs

Section 57 – Criteria for determining geographical indications

This section outlines the criteria which the Committee must have regard to when determining an Australian GI under section 40T of the Act. The section sets out the criteria for determining the boundaries of the GI, and the name of the GI (the indication).

Determining the area and identifying its boundaries

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In determining the area of the GI, and the boundaries of the area, the Committee is to have regard to the following criteria:

- whether the area usually produces at least 500 tonnes of wine grapes in a year
- whether the area includes at least five wine grape vineyards of at least five hectares each, that have different owners
- whether the area is a single tract of land
- the degree of uniformity of grape growing attributes and any differences in attributes from the neighbouring areas
- the history of the founding and development of the area
- natural features, landscape and topography of the area
- man-made structures in the area, including roads, railways, towns and buildings
- the boundary suggested by the applicant (if any) in seeking a determination of a GI
- the degree of uniformity in geological formation and any differences in formations in neighbouring areas
- the degree of uniformity in the climate, including: temperature, atmospheric pressure, humidity, rainfall and number of hours of sunshine and other weather experienced in the year
- the expected harvesting date of grape varieties in the proposed area, and whether this is different from neighbouring areas
- whether all of the area is within a natural drainage basin
- irrigation water availability, and whether it is consistent throughout the area, and different to neighbouring areas
- the degree of uniformity in elevation, including any differences in elevation from neighbouring areas
- proposals for development by all levels of government
- traditional divisions in the area, and
- the history of grape and wine production in the area, including any differences in the history from neighbouring areas.

The Committee must have regard to each of these criteria, and is able to make its own assessment as to the importance of each criteria. The weight given to each criteria will vary depending on the specific facts and circumstances of the application or proposed area. In determining a GI, the Committee is not prohibited from having regard to other relevant matters.

The section defines a ***wine grape vineyard*** as a single parcel of land which is planted with wine grapes, and is operated by the owner, or manager on behalf of the owner or lessee.

The Committee is to have regard to the size of an area, when considering the degree of uniformity of the area in relation to the criteria in subsection 57(1). In general, a smaller sized area is likely to have a higher degree of uniformity than a larger area.

Where the Committee is considering an area that is part of a larger area for which a GI has already been determined, the Committee must have regard to the degree of uniformity and distinct attributes of the smaller area compared with the larger. Similarly, the Committee must have regard to the degree of uniformity and distinct attributes of the smaller area compared with the larger when considering determining a GI for an area that includes a smaller area for which a GI has already been determined.

The Committee is able to use a range of maps to identify the boundaries of an area.

Determining the indication to be used

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In determining the name of a GI, the Committee is to have regard to the criteria in subsection 57(6). The criteria can be summarised as:

- history of the name
- how well the name is known by wine retailers outside the area
- traditional use of name to describe the area, and
- the appropriateness of the name.

The note to this section makes clear that the list of prescribed criteria to which the Committee is to have regard to in determining the area and name of a GI are not intended as an exhaustive list.

Part 7—Determination of foreign GIs and translations of foreign GIs

Division 1—Preliminary

Section 58 – Simplified outline of this Part

This section provides a simplified outline of the procedures for determining foreign GIs and translations of foreign GIs, set out in Part 7.

Section 59 – Purpose of Part

This section provides that this part (other than Division 5) sets out the procedures for the determination of foreign GIs and the translations of foreign GIs, relating to wine originating in a foreign country, for the purposes of subsection 40ZAQ(1) of the Act.

Division 5 of this part relates to appeals against a decision of the Registrar of Trade Marks and is not made for the purposes of subsection 40ZAQ(1) of the Act. The decisions of the Registrar of Trade Marks that can be appealed to the Federal court are set out in section 87 for the purposes of subsection 40ZAR(1) of the Act.

Section 60 – Applications for determination

This section provides that a person may apply in writing to the Committee for the determination of a GI or translation of a GI in relation to a foreign region, locality or country.

An application for the determination of a translation of a foreign GI may be made:

- after the foreign GI is registered, or
- at the same time as an application for determination of the foreign GI.

Division 2—Objections to determination of foreign GIs and translations of foreign GIs

This division sets out the procedures and grounds of objection to determination of a foreign GI or translation of a foreign GI for the purposes of subsection 40ZAQ(3) of the Act. The procedures for determining Australian and foreign GIs are to be aligned, in order to meet Australia's international obligations under wine-trading agreements. This division is made for the purposes of aligning the process for foreign GIs with Australian GIs set out in sections 40RA and 40RB of the Act.

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Section 61 – Notice to be given of proposed foreign GI or translation of foreign GI

This section outlines the procedure for publishing an application for a determination of a foreign GI or translation of a foreign GI.

This section provides the definition of 'proposed item' for the purpose of dealing with applications for foreign GIs and translations of foreign GIs in the Regulations. A ***proposed item*** is either:

- an application, that has been made in writing, to the Committee for the determination of a GI in relation to a foreign country or a region or area in a foreign country under subsection 60(1), or
- an application, which has been made in writing, to the Committee for the translation of a GI in relation to a foreign country or a region or area in a foreign country under subsection 60(2).

Proposed items must be published in a notice by the Presiding Member of the Committee. The notice must set out the details of the proposed item and invite written objections to be made to the Registrar of Trade Marks on a ground set out in section 62, on the basis that the proposed item is:

- identical to a trade mark
- likely to cause confusion with a trade mark, or
- used in Australia as the common name of a type or style of wine, or as name of a variety of grapes.

The period for objections to be made must also be stated in the notice, at a minimum of one month, to enable interested persons reasonable opportunity to consider and respond to the proposed item.

A single notice can be published if an application for a determination of a foreign GI and a translation of the GI is made at the same time. This facilitates proper consideration of the proposed foreign GI as it applies to labelling of wine in Australia because the translation is what will appear on the label of the wine sold in Australia that may interact with a trade mark.

Section 62 – Grounds of objection to determination of foreign GI or translation of foreign GI

This section outlines the reasons for which an objection can be made in relation to the determination of a foreign GI or translation of a foreign GI. Objections can be made by a person with respect to a trade mark or if the proposed item is otherwise used in Australia. The grounds for each of these objections is set out below.

Registered owner of a registered trade mark

A registered owner of a registered trade mark for the purposes of the *Trade Marks Act 1995* may object that:

- their trade mark consists of a word, expression or other indication that is identical to the proposed item
- their trade mark consists of a word, expression or other indication that the proposed item is likely to be confused with, or
- they have trade mark rights in the word, expression or other indication contained in the trade mark that the proposed item is likely to be confused with.

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An owner may object that they have trade mark rights in that word, expression or other indication even if the Register of Trade Marks suggests that the owner does not have trade mark rights to that word, expression or other indication.

Trade mark pending

A person who has an application pending for the registration of a trade mark under the *Trade Marks Act 1995*, may object to a proposed item where:

- the application was made in good faith:
    - the trade mark consists of a word, expression or other indication that is identical to the proposed item, or
    - the proposed item is likely to be confused with that word, expression or other indication, and
- the requirements under the *Trade Marks Act 1995* for accepting an application for registration of a trade mark appear to have been met regarding the trade mark applied for.

An additional ground can be included if after registration, the person (applicant) would have trade mark rights in the word, expression or other indication that the proposed item may be confused with (subparagraph 62(3)(c)(v)).

Trade mark not registered

A person who claims to have trade mark rights in a trade mark that is not registered under the *Trade Marks Act 1995* may object to a proposed item where:

- the trade mark consists of a word, expression or other indication that:
    - is identical to the proposed item, or
    - the proposed item is likely to be confused with
- the person has trade mark rights in that word, expression or other indication, and
- their rights were attained through use in good faith.

Common use

A person may otherwise object to a proposed item if it is used in Australia as the common name of a type or style of wine, or as the name of a variety of grapes.

Division 3—Consideration of objections to determination of foreign GIs or translation of foreign GIs

This division sets out the procedures for the Registrar of Trade Marks to follow in deciding whether there are grounds of objection to the determination of a foreign GI or translation of a foreign GI, for the purposes of subsection 40ZAQ(3) of the Act.

This division is made for the purposes of aligning the process for foreign GIs with Australian GIs set out in sections 40RC and 40RD of the Act. The procedures set out in this division are therefore also intended to be consistent with the procedures regarding a decision that there is a ground of objection to a proposed Australian GI, in Division 2 of Part 6.

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Section 63 – Application of this Division

This section provides for the application of this division. This division sets out the procedure to be followed by the Registrar of Trade Marks where:

- the Committee has published a notice that a foreign GI or translation is proposed (under section 61)
- an objection in relation to the proposed foreign GI or translation has been received by the Registrar of Trade Marks
- the objection is made on a ground set out in section 62, and
- the objection is received within the timeframe set out in the notice of the proposed foreign GI or translation under section 61 (which is at least one month).

Section 64 – Notice of objection

This section provides that the Registrar of Trade Marks must notify the Committee in writing that he or she has received an objection to a proposed foreign GI or translation of a foreign GI and outline the terms of the objection in the notice.

Section 65 – Parties to proceedings

This section sets out who is a 'party' in relation to an objection to a proposed foreign GI or translation of a foreign GI.

For the purposes of this division, a ***part***y to proceedings is:

- the person who made the objection, either:
    - o the registered owner of the registered trade mark (under subsection 62(1)
    - o a person who has an application pending for the registration of the trade mark under the *Trade Marks Act 1995* (under subsection 62(3))
    - o a person who claims to have trade mark rights in the trade mark that is not registered (under subsection 62(4)), or
    - o a person who objects to the proposed item on the ground that it is used in Australia (under subsection 62(5)), and
- the applicant for the determination of the proposed foreign GI or translation of the foreign GI (under section 60).

Under subsection 4(1) of the Act, a ***registered trade mark*** means a trade mark whose particulars are entered in the Register of Trade Marks under the *Trade Marks Act 1995*.

Section 66 – Evidence in relation to ground of objection and recommendation

This section sets out the procedure the Registrar of Trade Marks must follow after notifying the Committee that an objection has been received, and specifies the content of the notice the Registrar of Trade Marks must provide to parties in proceedings.

After notifying the Committee under section 64 that an objection has been received, and the person making the objection has paid the relevant fee for dealing with the objection (prescribed by section 74), the Registrar of Trade Marks must send each party a written notice that:

- provides the name and address of each other party
- invites each party to file evidence relevant to:
    - o the objection to the proposed foreign GI, or

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  - whether the Registrar of Trade Marks should recommend that the proposed foreign GI be determined despite the objection, and
- states that evidence must be filed within three months from the date of the notice.

Section 67 – Evidence in answer

This section sets out the procedures the Registrar of Trade Marks must follow if a party files evidence in response to a notice under section 66.

If a party files evidence in response to a notice sent under section 66, the Registrar of Trade Marks must send each other party a written notice inviting evidence in answer, stating the period from the date of the notice in which evidence in answer may be filed. The period stated to file evidence in answer must be at least two months.

The Registrar of Trade Marks must also notify all parties, in writing, of the deadline if they wish to request a hearing under section 69. As per subsection 69(2), the deadline must be no longer than one month after the last day of the period for filing of evidence.

Section 68 – New evidence

This section sets out the procedures for parties to apply to file new evidence and for the Registrar of Trade Marks to respond.

A party may apply to the Registrar of Trade Marks, in writing, to file new evidence after the end of a period specified by the Registrar of Trade Marks for the party to file evidence and before the Registrar of Trade Marks decides whether there is a ground of objection (under section 71) or before the Registrar of Trade Marks makes a recommendation to the Committee under section 72.

The application must be submitted with payment of the fee for applying to file new evidence prescribed in section 74. If approved, the new evidence must be filed in accordance with section 70, including payment of the relevant fee prescribed by section 74. The application to file new evidence must also include a statement describing the new evidence and giving the reasons why the new evidence was not filed within the specified period.

If, after considering the application, the Registrar of Trade Marks decides that it is reasonable to allow the filing of the new evidence, he or she must set a period within which the new evidence must be filed, and notify the applying party of the final date for filing in writing.

If the Registrar of Trade Marks decides that it is not reasonable to allow the filing of the new evidence, he or she must notify the applying party in writing that new evidence may not be filed.

Evidence in answer to new evidence

If the new evidence has been filed within the specified period, the Registrar of Trade Marks must send a written notice to each other party informing them that the new evidence has been filed, and set a reasonable period for the parties to file evidence in answer to it.

The Registrar of Trade Marks must also notify all parties, in writing, of the deadline if they wish to request a hearing under section 69. As per subsection 69(2), the deadline will be one month after the last day of the period for filing of evidence.

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Section 69 – Hearing and submissions

This section sets out the procedures the Registrar of Trade Marks and parties to proceedings must follow if a notice inviting evidence in answer has been given (under section 67 or subsection 68(5)) and a party requests that the Registrar of Trade Marks conduct a hearing.

The request to conduct a hearing must be made in writing no later than one month after the last day on which evidence may be filed in accordance with any notice given under section 67 or subsection 68(5). The request must be submitted with payment of the fee for requesting a hearing prescribed in section 74.

The Registrar of Trade Marks must conduct a hearing if the Registrar of Trade Marks receives a request to do so.

If the Registrar of Trade Marks receives a request to conduct a hearing the Registrar of Trade Marks must send each party a written notice that informs the party a hearing will be held, and invites written submissions to be made before the hearing.

The Registrar of Trade Marks must not conduct the hearing until any removal or cancellation proceedings are complete, if:

- the objection relates to a registered trade mark, and
- the registered trade mark is the subject of those removal or cancellation proceedings.

Each party that attends the hearing is liable to pay the fee for attendance at a hearing prescribed in section 74, regardless of whether the party attends a whole, or part of, a day.

Section 70 – Parties must give copies of evidence to each other and pay filing fee

This section provides for the procedures to be followed for evidence filed by parties to be considered validly filed.

For evidence to be considered validly filed, the party filing the evidence must:

- give a copy of the evidence to each other party
- include, with the evidence being filed, a statement setting out when and how a copy was given to each other party, and
- pay the fee for filing of evidence prescribed in section 74.

Section 71 – Decision by Registrar of Trade Marks

This section sets out the procedures, including the timeline, for the Registrar of Trade Marks to make a decision on the objection to the proposed foreign GI or translation of a foreign GI.

The Registrar of Trade Marks must, as soon as practicable after all periods for the filing of evidence or requesting conduct of a hearing have ended (and, if a hearing was requested, after this hearing was held), make a decision on whether there is a ground of objection.

The Registrar of Trade Marks must do this by considering:

- the notice of the proposed foreign GI or translation of a foreign GI (as per section 61)
- the objection
- the evidence filed by the parties
- if a hearing was held—representations and material from the hearing and any written submissions by the parties, and
- any other matter that the Registrar of Trade Marks considers relevant.

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The Registrar of Trade Marks must not make a decision on whether there is a ground of objection to the proposed foreign GI or translation until any removal or cancellation proceedings are complete, if:

- the objection relates to a registered trade mark, and
- the registered trade mark is the subject of those removal or cancellation proceedings.

The Registrar of Trade Marks must decide that there is no ground of objection if the person objecting to the proposed foreign GI or translation does not file any evidence within three months from the date of the notice (set out in paragraph 66(1)(c)) or withdraws the notice of objection before the Registrar of Trade Marks has made a decision.

Section 72 – Recommendation by Registrar of Trade Marks to determine foreign GI or translation of foreign GI despite objection being made out

This section provides that the Registrar of Trade Marks may make a recommendation to the Committee regarding the Registrar of Trade Marks' decision, if the Registrar of Trade Marks has decided there is a ground of objection to the proposed foreign GI or translation (under subsection 71(1)).

The Registrar of Trade Marks may make a recommendation, in writing, that the Committee determine the proposed GI or translation regardless of the ground of objection if the Registrar of Trade Marks is satisfied that it is reasonable in the circumstances to make that recommendation.

The section includes two notes for guidance. Note 1 provides an example of a circumstance in which the Registrar of Trade Marks may determine that it is reasonable to make a recommendation to the Committee. The example is where the Registrar of Trade Marks is satisfied that the proposed foreign GI or translation of a foreign GI was already in use in Australia before the relevant trade mark rights existed or were claimed by the person who made the objection.

Note 2 states that if a recommendation is made under this section, the Committee will be empowered to determine a foreign GI or a translation of a foreign GI, under subsection 90(5).

In deciding whether to make a recommendation to the Committee, the Registrar of Trade Marks must have regard to Australia's international obligations in determining whether it is reasonable in the circumstances to make the recommendation.

Section 73 – Notice of decision

This section provides that the Registrar of Trade Marks must inform the Committee and each party, in writing, of a decision in relation to the objection under section 71 and any recommendation that has been made under section 72.

After receiving notice of a decision from the Registrar of Trade Marks, the Presiding Member of the Committee must publish a notice that:

- sets out the proposed foreign GI or translation
- states that a decision of the Registrar of Trade Marks has been made in relation to the proposed foreign GI or translation, and
- sets out the terms of the decision made under section 71 and any recommendation made under section 72 in relation to the proposed foreign GI or translation of a foreign GI.

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The Committee may publish the notice in any manner it considers appropriate. For example, the Presiding Member of the Committee could publish a notice on the Authority's website.

Section 74 – Fees

This section specifies the fees to be charged by the Registrar of Trade Marks in relation to dealing with an objection to a proposed foreign GI or translation of a foreign GI.

The section includes a table of fees for proceedings for the purposes of this division. Five matters are set out in Column 1 of the table, for which each party may be liable to pay the corresponding fee in Column 2 to the Registrar of Trade Marks:

- dealing with an objection (payable by the party making the objection): $500
- filing evidence in relation to the objection (section 66), evidence in answer (section 67) or new evidence (section 68): $375
- requesting a hearing under section 69: $500
- attendance at a hearing: $500 per day or part of a day that the hearing is attended, with the fee for requesting a hearing deducted from the total amount payable, and
- applying to file new evidence under section 68: $100.

These fees have been calculated by reference to identified costs for dealing with an objection and are broadly aligned with the fees payable to the Registrar of Trade Marks prescribed in Schedule 9 of the *Trade Marks Regulations 1995*.

Section 75 – Costs

This section provides that the Registrar of Trade Marks must not make an order for costs in the proceedings for consideration of grounds of objection to the determination of a proposed foreign GI or translation of a foreign GI.

Division 4—Decision that ground of objection to proposed item no longer exists

This division sets out the procedures for the Registrar of Trade Marks to follow in deciding whether a ground of objection to a proposed foreign GI or translation of a foreign GI no longer exists.

This decision would be made where:

- a decision has been made that a ground of objection to a proposed item is supported by the evidence provided (under section 71), and
- a person applies in writing to the Registrar of Trade Marks for a decision that circumstances have changed since that decision, such that the ground of objection no longer exists (under section 76).

The procedures set out in this division are intended to be consistent with the procedures regarding a decision that a ground of objection to a proposed Australian GI no longer exists, in Division 3 of Part 6.

Section 76 – Application for decision

This section provides for the application of this division. This division sets out the procedure to be followed by the Registrar of Trade Marks in deciding that a ground of objection to a proposed foreign GI or translation no longer exists, where:

- the Registrar of Trade Marks has decided that there is a ground of objection to a proposed foreign GI or translation of a foreign GI (under section 71), and

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- a person applies in writing to the Registrar of Trade Marks for a decision that circumstances have changed since that decision, such that the ground of objection no longer exists.

Section 77 – Notice of application

This section provides that the Registrar of Trade Marks must notify the Committee in writing that the Registrar of Trade Marks has received an application under section 76 that a ground of objection to a proposed foreign GI or translation of a foreign GI no longer exists and outline the terms of the application in the notice.

Section 78 – Parties to proceedings

This section sets out who is a 'party' in relation to an application that a ground of objection to a proposed foreign GI or translation no longer exists.

For the purposes of this division, a ***party*** to proceedings in relation to determination of an application is:

- the person who made the application that a ground of objection to a proposed item no longer exists
- the person who made the objection, either:
  - o the registered owner of the registered trade mark (under subsection 62(1))
  - o a person who has an application pending for the registration of the trade mark under the *Trade Marks Act 1995* (under subsection 62(3))
  - o a person who claims to have trade mark rights in the trade mark that is not registered (under subsection 62(4)), or
  - o a person who objects to the proposed foreign GI or translation of a foreign GI on the ground that it is used in Australia (under subsection 62(5)), and
- the applicant for the determination of the proposed item (under section 60).

In this section, the person who made an application that a ground of objection no longer exists (under section 76) may be different to the person who made the application for the foreign GI or translation of a foreign GI (under section 60). Both of these people are considered parties for the purposes of this division.

Section 79 – Evidence relevant to whether ground of objection no longer exists

This section sets out the procedure the Registrar of Trade Marks must follow after notifying the Committee that an application has been received, and specifies the content of the notice the Registrar of Trade Marks must provide to parties to proceedings.

After notifying the Committee under section 77, and the person making the objection has paid the relevant fee prescribed by section 87, the Registrar of Trade Marks must send each party a written notice that:

- gives the name and address of each other party
- invites each party to file evidence relevant to whether the Registrar of Trade Marks should decide that the ground of objection no longer exists, and
- states that evidence must be filed within three months from the date of the notice.

Section 80 – Evidence in answer

This section sets out the procedures the Registrar of Trade Marks must follow if a party files evidence in response to a notice under section 79.

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If a party files evidence in response to a notice sent under section 79, the Registrar of Trade Marks must send each other party a written notice that invites each other party to file evidence in answer, and states the period from the date of the notice in which evidence in answer may be filed. The period stated to file evidence in answer must be at least two months.

The Registrar of Trade Marks must also notify all parties, in writing, of the deadline if they wish to request a hearing under section 82. As per subsection 82(2), the deadline must be no later than one month after the last day of the period for filing of evidence.

Section 81 – New evidence

This section sets out the procedures for parties to file new evidence and for the Registrar of Trade Marks to respond.

A party may apply to the Registrar of Trade Marks, in writing, to file new evidence after the end of a period specified by the Registrar of Trade Marks for the party to file evidence, and before the Registrar of Trade Marks makes a decision under section 85.

The application must be submitted with payment of the fee for applying to file new evidence prescribed in section 87. If approved, the new evidence must be filed in accordance with section 83, including payment of the relevant fee prescribed by section 87. The application must also include a statement describing the new evidence and giving the reasons why the new evidence was not filed within the specified period.

If, after considering the application, the Registrar of Trade Marks decides that it is reasonable to allow the filing of the new evidence, he or she must set a date by which the new evidence must be filed, and notify the applying party of the date in writing.

If the Registrar of Trade Marks decides that it is not reasonable to allow the filing of the new evidence, he or she must notify the applying party in writing that new evidence may not be filed.

Evidence in answer to new evidence

If the new evidence has been filed by the set date, the Registrar of Trade Marks must send a written notice to the other parties that tells them that the new evidence has been filed, and set a reasonable period for the parties to file evidence in answer to it.

The Registrar of Trade Marks must also notify all parties, in writing, of the deadline if they wish to request a hearing under section 82. As per subsection 82(2), the deadline will be one month after the last day of the period for filing of evidence.

Section 82 – Hearing and submissions

This section sets out the procedures the Registrar of Trade Marks and parties to proceedings must follow if a notice inviting evidence in answer has been given (under section 80 or subsection 81(5)) and a party requests the Registrar of Trade Marks conduct a hearing.

The request to conduct a hearing must be made in writing no later than one month after the last day on which evidence may be filed in accordance with any notice given under section 80 or subsection 81(5). The request must be submitted with payment of the fee for requesting a hearing prescribed in section 87.

The Registrar of Trade Marks must conduct a hearing if the Registrar of Trade Marks receives a request to do so.

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If the Registrar of Trade Marks receives a request to conduct a hearing the Registrar of Trade Marks must send each party a written notice that informs the party a hearing will be held, and invites written submissions to be made before the hearing.

The Registrar of Trade Marks must not conduct the hearing until any removal or cancellation proceedings are complete, if:

- the objection relates to a registered trade mark, and
- the registered trade mark is the subject of those removal or cancellation proceedings.

Each party that attends the hearing is liable to pay the fee for attendance at a hearing prescribed in section 87, regardless of whether the party attends a whole, or part of, a day.

Section 83 – Parties must give copies of evidence to each other and pay filing fee

This section sets out the procedures for evidence filed by parties to be considered validly filed.

For evidence to be considered validly filed, the party filing the evidence must:

- give a copy of the evidence to each other party
- include, with the evidence being filed, a statement setting out when and how a copy was given to each other party, and
- pay the fee for filing of evidence prescribed in section 87.

Section 84 – Withdrawal of application

This section sets out the procedures for the Registrar of Trade Marks to respond if the application is withdrawn.

The Registrar of Trade Marks must notify the other parties in writing if the applicant under section 76 withdraws the application before the Registrar of Trade Marks has made a decision under section 85.

The Registrar of Trade Marks must continue the proceedings if requested to do so by another party, in writing, no later than one month after the date of the notification of withdrawal.

This section includes a note that states if no party makes a request to continue the proceedings, the Registrar of Trade Marks must decide that the ground of objection continues to exist, as per section 85.

Section 85 – Decision by Registrar of Trade Marks

This section sets out the procedures including the timeline for the Registrar of Trade Marks to make a decision on the application.

The Registrar of Trade Marks must, as soon as practicable after all periods for the filing of evidence or requesting conduct of a hearing have ended (and, if a hearing was requested, after this hearing was held), make a decision on whether the ground of objection no longer exists.

The Registrar of Trade Marks must do this by considering:

- the evidence filed by the parties
- if a hearing was held—representations and material from the hearing and any written submissions by the parties, and
- any other matter that the Registrar of Trade Marks considers relevant.

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The Registrar of Trade Marks must not make a decision on whether the ground of objection no longer exists until any removal or cancellation proceedings are complete, if:

- the objection relates to a registered trade mark, and
- the registered trade mark is the subject of those removal or cancellation proceedings.

The Registrar of Trade Marks must decide that the ground of objection continues to exist if no party files evidence within the period mentioned in paragraph 79(1)(c) (three months from the date of the notice).

The Registrar of Trade Marks must decide that the ground of objection continues to exist if:

- the applicant, for a decision that the ground of objection no longer exists, withdraws the application made under section 76, and
- no other party makes a request to continue the proceedings under section 84.

Section 86 – Notice of decision

This section sets out the procedures the Registrar of Trade Marks and the Presiding Member of the Committee must undertake, once the Registrar of Trade Marks has made a decision under section 85.

The Registrar of Trade Marks must inform the Committee and each party, in writing, of his or her decision in relation to the existence of the ground of objection to the proposed foreign GI or translation of a foreign GI (under section 85).

After receiving notice of a decision from the Registrar of Trade Marks, the Presiding Member of the Committee must publish a notice:

- setting out the proposed foreign GI or translation of a foreign GI
- stating that a decision of the Registrar of Trade Marks has been made in relation to the proposed foreign GI or translation of a foreign GI, and
- setting out the terms of the decision made under section 85.

The Committee may publish the notice in any manner it considers appropriate. For example, the Presiding Member may publish a notice on the Authority's website.

Section 87 – Fees

This section specifies the fees to be charged by the Registrar of Trade Marks in relation to dealing with application made under section 76.

The section includes a table of fees for proceedings for the purposes of this division. Five matters are set out in Column 1 of the table, for which each party may be liable to pay the corresponding fee in Column 2 to the Registrar of Trade Marks:

- making an application under section 76: $500
- filing evidence in relation to the objection (section 79), evidence in answer (section 80) or new evidence (section 81): $375
- requesting a hearing under section 82: $500
- attendance at a hearing: $500 per day or part of a day that the hearing is attended, with the fee for requesting a hearing deducted from the total amount payable, and
- applying to file new evidence under section 81: $100.

These fees have been calculated by reference to identified costs for dealing with an objection and are broadly aligned with the fees payable to the Registrar of Trade Marks prescribed in Schedule 9 of the *Trade Marks Regulations 1995*.

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Section 88 – Costs

This section provides that the Registrar of Trade Marks must not make an order for costs in proceedings mentioned in this division.

Division 5—Appeals against decisions of Registrar of Trade Marks

Section 89 – Decisions appellable to Federal Court

This section outlines the decisions made by the Registrar of Trade Marks in relation to a foreign GI or translation of a foreign GI that can be appealed to the Federal Court.

Subsection 40ZAR(1) of the Act provides the jurisdiction of the Federal Court to hear and determine appeals against prescribed decisions of the Registrar of Trade Marks. The following decisions of the Register of Trade Marks are prescribed:

- a decision that a ground of objection is or is not made out (subsection 71(1))
- a recommendation that a proposed foreign GI or proposed translation of a foreign GI (the proposed item) be determined or a refusal to make such a recommendation (subsection 72(1)), and
- a decision that a ground of objection no longer exists or a refusal to make such a decision (subsection 85(1)).

Division 6—Determination of foreign GIs and translations of foreign GIs

Section 90 – When Geographical Indications Committee may proceed to make a determination

This section provides the circumstances under which the Committee may make a determination of a foreign GI or translation of a foreign GI.

The Committee may make a determination regarding a proposed item if no objection was made to the proposed item (section 62) within the period outlined in the published notice (section 61).

If an objection was made, the Committee must not make a determination until it has published a notice of the Registrar of Trade Mark's decision regarding the objection (subsection 73(2)). The circumstances under which the Committee may make a determination when an objection is made are set out below.

Ground of objection not made out

The Committee may determine a foreign GI or translation of a foreign GI where the Registrar of Trade Marks has decided an objection to the proposed item is not made out (under section 71) if:

- all appeals and reviews of the decision regarding the proposed item have been finalised, and
- following this, the decision following after any finalised appeals or reviews is that an objection has not been made out in relation to the proposed item.

Ground of objection made out and person agrees to determination being made

The Committee may determine a foreign GI or a translation of a foreign GI where a ground of objection is supported, if the person who objected to the proposed item agrees, in writing to the Committee, to the determination of the proposed item.

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Ground of objection made out and a recommendation is made under section 72

The Committee may determine a foreign GI or a translation of a foreign GI where a ground of objection is supported if:

- a recommendation has been made by the Registrar of Trade Marks to the Committee that the proposed item should be determined despite the objection (section 72)
- all appeals and reviews of the decision regarding the proposed item have been finalised, and
- the Registrar of Trade Marks's recommendation to determine the proposed item still stands.

Ground of objection made out and decision made under section 85

The Committee may determine a foreign GI or a translation of a foreign GI where a ground of objection is supported if:

- a decision has been made by the Registrar of Trade Marks that the grounds for objection no longer exists (section 85)
- all appeals and reviews of the decision regarding the objection have been finalised, and
- the Registrar of Trade Marks' decision that the ground of objection no longer exists still stands.

No determination of translation without corresponding GI

The Committee must not determine a translation of a foreign GI if the application for the determination of the translation was made at the same time as an application for the determination of the GI and the Committee decided not to determine the corresponding foreign GI due to one of the reasons outlined above in this section.

Section 91 – Consultation by Geographical Indications Committee

This section outlines who the Committee may consult with in the determination or translation of a GI. The Committee may consult with any person or organisation it considers appropriate in the determination of a foreign GI or translation of a foreign GI.

Section 92 – Determining foreign GIs

This section outlines the information the Committee must consider in determining a foreign GI.

When determining a foreign GI the Committee must:

- identify the boundaries of the area of the proposed GI
- determine the details to be used to indicate that area
- determine any conditions of use for the GI, and
- consider whether the GI is protected by law in the country it is located in.

When determining a foreign GI, the Committee must not:

- determine a GI different to that proposed in the application (subsection 60(1))
- determine boundaries different to that proposed in the application, or
- consider any submissions to the extent that the submission asserts a trade mark right regarding the proposed GI.

The Committee may consider in its determination any other material it considers relevant.

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Section 93 – Determining translations

This section outlines the information the Committee must consider in determining a translation of a foreign GI.

When determining a translation of a foreign GI the Committee must:

- identify the relevant GI to the translation
- determine the translation to be used
- determine any conditions of use for the translation, and
- consider whether the translation expresses or suggests the significance of the relevant GI.

When determining a translation of a foreign GI, the Committee must not:

- determine a different translation to that proposed in the application (subsection 60(2)), or
- consider any submissions to the extent that the submission asserts a trade mark right regarding the proposed translation.

The Committee may consider in its determination any other material it considers relevant.

Section 94 – Interim determination

This section outlines when a determination of the Committee is considered an interim determination.

An interim determination is a determination made by the Committee regarding the determination or translation of a foreign GI (under sections 92 and 93). This interim determination does not come into force until it is finalised under section 96.

Section 95 – Publication of notice of interim determination

This section outlines the process for publishing an interim determination for determination of a foreign GI or translation of a foreign GI.

Interim determinations must be published in a notice by the Presiding Member of the Committee. The notice must state that the interim determination has been made, the terms of the determination and invite persons to make written submissions to the Committee. The closing period for submission must also be stated in the notice, with a minimum of one month provided for submissions to be made.

A single notice can be published by the Presiding Member of the Committee if interim determinations are made for both a foreign GI and a translation of the foreign GI.

The Committee may publish the notice in any manner it considers appropriate. For example, the Presiding Member of the Committee may publish a notice on the Authority's website.

Section 96 – Final determination

This section outlines when the Committee may make a final determination. The Committee may make a final determination after considering any submission made to it.

Section 97 – Publication of notice of final determination

This section outlines the process for publishing a final determination made under section 96.

Final determinations must be published in a notice by the Presiding Member of the Committee. The Presiding Member of the Committee must also give notice to the person who

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applied for the determination of a foreign GI or translation of a foreign GI (under section 60) and any person who has made an objection that has been considered by the Registrar of Trade Marks under Division 3. The notice must state that the final determination has been made and the terms of the determination. The notice must also include a statement that communicates the following:

- Applications for review of the determination may be made to the Administrative Appeals Tribunal by a person, or on behalf of a person, whose interests are affected by the determination:
    - applications may be made in writing and request a statement of reasons for the decision in accordance with section 28 of the *Administrative Appeals Tribunal Act 1975.*
- Applications to the Administrative Appeals Tribunal cannot be made regarding the decisions below (rather, appeals may be made to the Federal Court under section 89):
    - decisions by the Registrar of Trade Marks that a ground of objection is or is not supported (section 71)
    - recommendations by the Registrar of Trade Marks to determine or translate a foreign GI (section 72), or
    - decisions by the Register of Trade Marks in relation to a ground of objection no longer existing (section 85).

If the above information is not included as a statement in the published notice, it does not affect the validity of the final determination.

A single notice can be published by the Presiding Member of the Committee if final determinations are made for both a foreign GI and a translation of the foreign GI.

The Committee may publish the notice in any manner it considers appropriate. For example, the Presiding Member of the Committee may publish a notice on the Authority's website or in a national newspaper.

Section 98 – Review of final determination

This section provides the circumstances under which an application for review of final determinations made under section 96 can be made.

Applications can be made to the Administrative Appeals Tribunal for review of final determinations made by the Committee. For decisions made by the Registrar of Trade Marks (section 71, 72 and 85), appeals may be made to the Federal Court (further details on this are provided in section 89).

An application to the Administrative Appeals Tribunal must be made within 28 days of the publication of the notice of determination and include the terms of the determination and the required statement (section 97). While subsection 29(8) of the *Administrative Appeals Tribunal Act 1975* provides that extensions of application deadlines may be granted, the Regulations do not provide for extensions beyond 28 days after publication of the notice of determination.

No extensions are provided as interested persons are given ample opportunity to comment on the determination of a foreign GI. Before the final determination is made, the Committee must publish notifications that a foreign GI or translation of a foreign GI is proposed (see section 61) and an interim determination must be made regarding the foreign GI or translation of a foreign GI (see section 95).

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Each of these notices must provide at least a one month period for interested persons to respond accordingly. Further, in circumstances where a person has objected to the proposed foreign GI or translation, parties to those proceedings can appeal decisions of the Registrar of Trade Marks to the Federal Court (see section 89). Any appeals must be finalised before the Committee makes its determination. These procedures afford further time for consideration of the determination before it was finalised.

Section 99 – Date of effect of final determination

This section outlines the process for how a determination of a foreign GI or translation of a foreign GI comes into force.

The Presiding Member of the Committee must give the Registrar of Trade Marks and the Chair of the Authority a copy of the final determination so that the particulars or textual descriptions regarding the determination can be included in the Register of Protected Geographical Indications.

A copy of the final determination should be provided as soon as practicable after notice of the determination has been published for 28 days.

If an application is made to the Administrative Appeals Tribunal for review of the determination, a copy of the final determination should be provided as soon as practicable after the Administrative Appeals Tribunal has made a decision.

The final determination comes into force on the day the particulars or textual descriptions of the determination are added to the Register.

If a final determination is made regarding the translation of a foreign GI, it does not come into force and textual descriptions must not be included in the Register if the foreign GI to which the translation relates is not included in the Register.

Part 8—Omission from the Register of foreign GIs and translations of foreign GIs

Division 1—Preliminary

Section 100 – Simplified outline of this Part

This section provides a simplified outline of the procedures for omission of foreign GIs and translations of foreign GIs from the Register, set out in Part 8.

Section 101 – Purpose of Part

This section details the purpose of Part 8, which is to provide for the omission of foreign GIs from the Register and for registered translations relating to foreign GIs. This part is made for the purposes of subsection 40ZAT(1) of the Act.

The procedures for determining and omitting Australian and foreign GIs are to be aligned, in order to meet Australia's international obligations under wine-trading agreements.

Division 2 of this part is intended to align with the process for omission of an Australian GI on the ground that it is not being used, as set out in Part VIB, Division 4A, Subdivision B of the Act. As this division also applies to translations of foreign GIs, the procedures take into account how translations are to be considered in determining omission from the Register. It is for this reason that a person may apply for omission of a translation of a foreign GI due to loss of significance under Division 2.

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Distinct from section 40ZAB of the Act, the Committee cannot make a determination to omit a foreign GI or translation of a foreign GI due to non-use on its own initiative under this Part.

Division 3 of this part is intended to align with the process for omission of an Australian GI on the ground that it is no longer required, as set out in Part VIB, Division 4A, Subdivision C of the Act.

Division 2—Omission for non-use or loss of significance

Section 102 – Application for omission of foreign GI or translation of foreign GI

This section provides for the application for the omission of a foreign GI on the ground that it is no longer in use.

If an application is made to omit a foreign GI from the Register, and a translation of that GI is included in the Register, the application is taken to be for omission of both the foreign GI and the translation. This is because a translation cannot exist without an associated registered GI.

A person may separately apply to the Committee to omit a translation of a foreign GI from the Register on the basis that it no longer expresses or suggests the significance of the GI for which it was registered.

Section 103 – Further information concerning application

This section provides that the Committee may require the applicant to provide further information. If the applicant does not comply with the request to provide further information, the application is taken to have been withdrawn.

Section 104 – Notice by Geographical Indications Committee

This section sets out the procedure the Committee must follow when an application to omit a foreign GI or translation of a foreign GI under section 102 is received. The Presiding Member of the Committee must publish a notice that:

- states that an application for the omission of a foreign GI or translation of a foreign GI has been made (under section 102)
- sets out the foreign GI or translation of a foreign GI referred to in the application, and
- invites written submissions to the Committee regarding the application, within one month of the notice.

The notice may be published in any matter the Committee considers appropriate. For example, the Presiding Member of the Committee could publish a notice on the Authority's website.

Section 105 – Determination by Geographical Indications Committee

This section sets out the procedures and matters the Committee must have regard to in making a determination on whether to omit a registered GI, registered translation of a GI, or both, after the Committee has considered the application made under section 102 and any submissions made in response (under section 104).

The Committee must determine whether to omit the GI or translation that is the subject of the application for omission or not.

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Omission of GI

The Committee may make a determination to omit a registered GI on the grounds of non-use where it is satisfied that the foreign GI has been registered for more than five years before the date of the notice under section 104, the GI has not been used in the three years before the date of the notice published under section 104, and there are no special circumstances that have caused the non-use.

The Committee must be satisfied that the foreign GI has not been used if:

- wine for commercial use originating in the country, regional or locality indicated by the GI has not been produced
- wine originating in the country, region or locality indicated by the GI has not been described and presented for sale in Australia using the GI or a registered translation of the GI, and
- wine originating in the country, region or locality indicated by the GI has not been described and presented for sale in the country of origin using the GI or a registered translation of the GI.

For the purposes of being satisfied that no special circumstances exist, special circumstances exist if:

- the country, region or locality indicated by the GI has been affected by a natural disaster such as fire, drought or some other disaster, and
- as a result of being affected by this disaster, there has not been a production of wine for commercial use originating in the country, region or locality indicated by the GI during the period of three years immediately before the date of the notice (under section 104).

Omission of translation of GI

The Committee may make a written determination to omit a translation of a GI if it is satisfied that the translation no longer expresses or suggests the significance of the GI for which it is registered. The translation can be omitted on this basis without the relevant GI being omitted, if the application under section 102 was for omission of both the GI and its translation. However, the Committee must make a determination to omit a translation of a GI if it makes a determination to omit the relevant GI. This is because a translation cannot exist without an associated registered GI.

Section 106 – Notice of determination

This section provides that where a determination is made under section 105, the Presiding Member of the Committee must:

- inform the applicant in writing of the Committee's determination, and
- if a determination to omit a GI, a GI translation, or both, from the Register is made, publish a notice setting out the terms of the determination in any manner the Committee considers appropriate.

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Section 107 – AAT review of determinations

This section provides that an application may be made to the Administrative Appeals Tribunal to review determinations made by the Committee in relation to the omission of GIs under section 105. The application must be made within 28 days after notice of the determination is published in accordance with the notice of determination (under section 106).

No extensions are provided as interested persons are given ample opportunity to comment on the omission of a foreign GI or translation. Before the determination is made, the Committee must publish a notification that an application to omit a foreign GI or translation has been made (see section 104). The notice must provide at least a one month period for interested persons to respond accordingly. Further, the ground for application to omit a foreign GI or translation in this division is non-use or loss of significance (section 102). In these circumstances it is not deemed necessary to provide additional time for review of the determination as the Committee must be satisfied the GI or translation has not been used (under section 105), and it is unlikely that other persons would be interested in maintaining a GI or translation that is no longer used or significant.

Section 108 – Date of effect of determination to omit item

This section provides the date of effect for the determination to omit a foreign GI and related procedural matters.

If the Committee decides to omit a foreign GI or a translation of a foreign GI, or both, from the Register, the Presiding Member of the Committee must give the Registrar of Protected Geographical Indications and Other Terms (the Registrar) a copy of the determination made under section 105.

On receiving the copy of the determination, the Presiding Member of the Committee must also give a copy to the Chair of the Authority and the Registrar must remove the item from the Register as soon as practicable after:

- the Administrative Appeals Tribunal has made a decision, if there has been a review of the determination under section 107, or
- the 28th day after notice of the determination is published under section 106.

The determination of the Committee takes effect on the day on which the foreign GI or translation, or both, are omitted from the Register.

The 'Registrar of Protected Geographical Indications and Other Terms' is established under subsection 40ZA(1) of the Act.

Division 3—Omission because GI not protected in country of origin and not used in Australia

This division provides for applications to be made to the Committee for a foreign GI to be removed from the Register because the GI is not protected in the country the GI originates from, and it is not in use in Australia.

There is no review mechanism for a decision that a GI be removed in the circumstances set out in this division as it is intended to mirror the procedure for omission of Australian GIs from the Register because they are no longer required, as set out in Part VIB, Division 4A, Subdivision C of the Act. Under international trade agreements, Australia is obliged to ensure consistency in dealing with the registration of Australian and foreign GIs under the Act and the Regulations.

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Section 109 – Application for omission of foreign GI

This section provides for the application to omit a foreign GI from the Register, based on the ground that it is not protected in its country of origin and is not in use in Australia. These requirements ensure Australia meets its international obligations.

Section 110 – Further information concerning application

This section provides that for the purposes of determining an application, the Committee may, by notice in writing, require the applicant to provide further information.

If the applicant does not comply with the request to provide the further information, the application will be taken to have been withdrawn.

Section 111 – Notice by Geographical Indications Committee

This section sets out the procedure the Committee must follow when an application to omit a foreign GI under section 109 is received. The Presiding Member of the Committee must publish a notice that:

- states that an application has been made for the omission of a foreign GI because it is not protected in its originating country or used in Australia (under section 109)
- sets out the GI referred to in the application, and
- invites written submissions to the Committee regarding the application, within one month of the notice.

The notice is to be published in any manner that the Committee considers appropriate. For example, the Presiding Member of the Committee could publish a notice on the Authority's website.

Section 112 – Determination by Geographical Indications Committee

This section provides that the Committee must make a determination to omit the GI from the Register if it is satisfied that:

- the GI is not protected by the laws of the country where the GI is located, and
- in the three years before the date of the notice (under section 111), wine originating in the country, region or locality indicated by the GI has not been described and presented for sale in Australia using the GI or a registered translation of the GI.

If the Committee is not satisfied of these two matters, it must make a determination in writing not to omit the GI or translation.

If the Committee makes a determination to omit a GI and this GI has an associated registered translation, then this translation must also be omitted. This is due to the fact that a translation cannot exist without an associated registered GI.

Section 113 – Notice of Determination

This section sets out the requirements for the Committee to notify persons of its decision to omit a foreign GI from the Register. The Presiding Member of the Committee must:

- give a notice of the Committee's determination to the applicant for the omission, and
- publish a notice setting out the determination and its terms in any manner the Committee considers appropriate.

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Section 114 – Date of effect of determination to omit foreign GI

This section provides the date of effect for the final determination to omit a foreign GI and related procedural matters.

If the Committee decides to omit a GI from the Register, the Presiding Member must give a copy of the determination to the Registrar so that the particulars of the determination can be omitted from the Register as soon as practicable. No timing is prescribed for the Registrar to remove the GI from the Register as there is no review mechanism for the ground of omission that a GI is not protected in its originating country or used in Australia.

When the Presiding Member of the Committee provides a copy of the determination to the Registrar, a copy of the determination must also be given to the Chair of the Authority.

The determination of the Committee takes effect on the day on which particulars of the GI are omitted from the Register.

Part 9—Miscellaneous

Section 115 – Delegation

This section provides that the Authority may, by writing under its common seal, delegate any or all of its powers under these Regulations to an employee of the Authority.

The section would provide that the Authority would not be able to delegate the power to delegate, or to suspend or cancel an export licence under section 13. This limitation is appropriate, as the license holder (and potentially its associates) would no longer be able to export any grape products.

The ability to delegate powers under the Regulations is required because under section 13 of the Act, the Authority is made up of the directors of the Authority (including a Chair). The delegation of powers in this arrangement is intended to be to the employees of the Authority, who are engaged under section 30 of the Act. It would be impractical for all of the powers and functions of the Authority, under the Act or Regulations, to be exercised by its directors. It is for this reason that section 43 of the Act similarly empowers the Authority to delegate all of its powers under the Act to a person or committee established under section 11 of the Act (other than the power of delegation or the powers under subsection 30(2) of the Act to determine the terms and conditions of employment). For the purposes of the Regulations, the powers to be delegated primarily sit within Part 3, which involves making decisions and requesting information for the control of grape products for export.

It is appropriate for the Authority to be able to delegate powers to employees in relation to:

- approving (section 14), suspending or revoking (section 17) a product approval, and
- issuing (section 20) and revoking (section 21) an export certificate.

These powers are required to be used in a timely manner, to enable licence holders to export grape product, but more importantly stop non-compliant products—which could affect the reputation of Australian wine more broadly—from being exported. The powers are therefore delegated broadly to employees of the Authority for the purposes of administrative necessity.

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When determining whether it is necessary or reasonable for an employee of the Authority to be delegated a power under these Regulations, it is intended that regard will be had to any skills, training or relevant experience of that person, including whether appropriate training is required. For instance, in practice the following employees would exercise these powers:

- auditors for the purposes of the Label Integrity Scheme
- administrators of the Wine Export Approvals system, and
- wine sample analysts.

The Authority's audit team conducts over 400 audits of records each year to ensure claims made about regional, varietal or vintage provenance of wine can be substantiated (that would be required by proposed paragraph 14(3)(c)), making it impractical for senior officers to carry out this function. The Wine Export Approvals (WEA) system is operated by the Authority to manage documentation for the application, assessment and issuing of wine export approvals that would be made under proposed Part 3. While each year, approximately 1,200 samples are collected and submitted for chemical analysis to ensure compliance with the Food Standards Code (that would be required by proposed sections 14 and 16).

Section 116 – Authority may use computer programs to make decisions

This section provides that the Authority may use computer programs to make decisions under the Regulations.

Where a computer program makes a decision under the Regulations, this decision is deemed to be made by the Authority. However, if the computer program has made a decision in error, the Authority can make a decision that replaces the decision of the computer program or arrange for the computer program to make another decision.

The section provides that a computer program cannot make a decision to:

- suspend or cancel an export licence (section 13)
- suspend or revoke a product approval (section 17), or
- revoke an export certificate (section 21).

This limitation is appropriate as these decisions require evidence of non-compliance.

This section is intended to apply for the operation of the Wine Export Approvals (WEA) system, controlled by the Authority. The WEA is a web-based system that allows persons intending to export grape products to obtain documentation electronically. The decisions that are made by the WEA relate to the granting of export licences, approval of grape products and issuing of export certificates under Part 3. This section would also apply were another computer program used by the Authority for decision-making under the Regulations, including new versions or replacement programs of the WEA.

Part 10—Transitional provisions

Division 1—On commencement

This division provides transitional arrangements for the export of grape products and the determination of GIs on commencement of the Regulations, with regard to the repeal of the *Australian Grape and Wine Authority Regulations 1981* (the ***old Regulations***) by the *Wine Australia Legislation Amendment (Repeals and Consequential Amendments) Regulations 2018.*

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Section 117 – Export controls

This section provides transitional arrangements for the export of grape products controlled under the old Regulations.

If a licence was granted to a person to export grape products under regulation 5 of the old Regulations and that licence was:

- in force or suspended immediately before the commencement of the Regulations, the licence is deemed to be granted under section 9, and
- suspended immediately before the commencement of the Regulations, the licence is deemed to be granted under section 9 and suspended under section 13 for the same period.

If an export certificate was issued for the export of a grape product under regulation 7 of the old Regulations and the certificate was not revoked and the relevant export had not occurred immediately before the commencement of the Regulations, the certificate is deemed to be issued under section 20.

If an export certificate was issued by the Authority to a licensee for an export of a grape product under regulation 7 of the old Regulations, that grape product is deemed to be approved under section 14 for export by the licensee.

If a direction was given under regulation 8 of the old Regulations and was in force immediately before the commencement of the Regulations, the direction is deemed to be given under section 22.

Section 118 – Determination of GIs

This section provides transitional arrangements for the determination of GIs on commencement of the Regulations, and repeal of the old Regulations. Parts of the old Regulations continue to apply in the following circumstances in relation to:

- the determination of a GI under Part VIB, Division 4 of the Act, if a notice about the determination was published under section 40RA of the Act before the repeal
- an application under subsection 40RE(1) of the Act that was made before the repeal
- the determination of a foreign GI or translation if a notice about the proposed foreign GI or translation was published under regulation 57 of the old Regulations, and
- an application that a ground of objection no longer exists (made under regulation 73), or for omission of a foreign GI (made under regulation 97 or 104) or translation of a foreign GI (made under regulation 97) of the old Regulations.

Schedule 1—Modifications of Division 4 of Part VIB of the Act

This schedule relates to modifications of Division 4 of Part VIB of the Act (section 33).

Clause 1 – Grounds of objection to the determination of a geographical indication

This schedule provides the grounds for objection to the determination of a GI (as per 40RB of the Act) are now modified by adding the additional ground of objection. This is whereby a person may object to the determination of a proposed GI on the ground that the proposed GI is used in Australia either as the common name of a type or style of wine, or as the name of a variety of grapes.

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Under section 40PA of the Act, the Regulations may modify the Act to ensure the operation of determining Australian and foreign GIs are aligned. The procedures for determining Australian and foreign GIs are to be aligned, in order to meet Australia's international obligations under wine-trading agreements. The modification adds a ground of objection to determinations of Australian GIs to section 40RB of the Act. This ground is consistent with the ground of objection to determinations of foreign GIs and translations of foreign GIs set out in subsection 62(5).

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Attachment B

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Wine Australia Regulations 2018

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1 Overview of the Wine Australia Regulations 2018

The *Australian Grape and Wine Authority Regulations 1981* (old Regulations) are scheduled to sunset under section 50 of the *Legislation Act 2003*. This Disallowable Legislative Instrument will enable the old Regulations to be remade without significant amendments. The amendments, technical in nature, include repealing spent provisions and halving export licence approval waiting periods for exporters.

2 Human rights implications

This Legislative Instrument engages the right to privacy in relation to matters which must be considered in deciding whether to grant an export licence. Section 9 of the Regulations requires that the Authority (Wine Australia) must consider a range of matters, including the financial standing of the applicant and whether the applicant is a fit and proper person. In determining whether an applicant is a fit and proper person, Wine Australia is required to have regard to whether the applicant or an associate of the applicant has been convicted of an offence against the *Wine Australia Act 2013* (Cth) (the Wine Australia Act) and whether the applicant has been convicted of an offence against, or ordered to pay a pecuniary penalty, under any Australian law.[1]

The right to privacy is also engaged in section 12 of the Regulations which permits Wine Australia to request the same information as under section 9 of the Regulations from an export licensee. In accordance with section 13 of the Regulations, this information may be used to suspend or cancel an export licence in circumstances where a material change has occurred.

The right to privacy is protected under Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Article 17 of the ICCPR provides that no person should be subjected to any arbitrary or unlawful interference with their privacy and that everyone has the protection of the law against this type of interference. Interference with a person's privacy must only be in circumstances where it is 'necessary for reaching a legitimate aim, as well as in proportion to the aim and the least intrusive option available'.[2]

[1] Section 10 of the Consequential Regulations.
[2] Office of United Nations High Commissioner for Human Rights, *The Right to Privacy in the Digital Age* UN Doc A/HRC/27/37 (2014), paragraph 23.

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The privacy principles of the ICCP are embodied in the *Privacy Act 1988* (Cth) (the Privacy Act). The Privacy Act includes 13 Australian Privacy Principles (APPs) which set out the requirements in relation to a number of aspects of privacy law, including collection, use and disclosure. Under section 6 of the Privacy Act, information such as the financial standing of a person constitutes personal information. Information relating to a person's criminal record is considered sensitive information, which is a subset of personal information.

APP 3 of the Privacy Act outlines the requirements for the collection of personal information. Subclause 3.1 of APP 3 of the Privacy Act states that an agency (such as Wine Australia) must not collect personal information unless the information is reasonably necessary for, or directly related to, one or more of the agency's functions or activities.

Pursuant to paragraph 7(f) of the Wine Australia Act, Wine Australia is required to control the export of grape products from Australia. One of the methods by which Wine Australia does this by requiring exporters to hold an export licence. Taking into account the financial standing of an applicant for an export licence allows Wine Australia to assess the financial stability of the applicant and whether the applicant has the necessary means to conduct an export wine business.

Subclause 3.1 of APP 3 of the Privacy Act deals with the collection of sensitive information and states that an agency must not collect sensitive information about an individual unless the individual consents to the collection of the information and the information is reasonably necessary for, or directly related to, one or more of the agency's functions or activities.

Collection of information such as an export licence applicant's criminal record, including whether an exporter or an associate of an exporter has been convicted of an offence against the Wine Australia Act, is information which an individual has consented to provide as part of the application process for an export licence. Provision of this information is reasonably necessary for Wine Australia to perform its function of controlling the export of grapes, as it allows Wine Australia to assess whether an applicant is likely to comply with the Wine Australia Act, which is a condition of an export licence.

APP 6 of the Privacy Act regulates the use and disclosure of personal information. In compliance with this provision, the personal information collected from export licence applicants will only be used for the purposes of deciding whether to grant an export licence or determining whether to suspend or cancel a licence, unless otherwise permitted under the APPs.

3 Conclusion

This Legislative Instrument is compatible with human rights as the collection and use of personal information complies with both the privacy principles in the ICCPR and the requirements under the Privacy Act.

Senator the Hon. Anne Ruston

Assistant Minister for Agriculture and Water Resources

Parliamentary Secretary for the Deputy Prime Minister and Minister for Agriculture and Water Resources

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