

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture and Water Resources

Wine Australia Act 2013

Wine Australia Amendment (Trade with United Kingdom) Regulations 2019

Legislative Authority

The *Wine Australia Act 2013* (the Act) enables Australia to fulfil its obligations under prescribed wine-trading agreements and other international agreements.

Section 46 of the 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.

Section 8(1) of the Act confers a general power on the Authority (Wine Australia) to do all things necessary or convenient to be done for, or in connection with, the performance of its functions. These functions are outlined in section 7. Paragraph 8(2)(aaa) relevantly provides that the Authority's powers include the power to do anything for the purpose of giving effect to a 'prescribed wine-trading agreement'.

Purpose

The purpose of the *Wine Australia Amendment (Trade with United Kingdom) Regulations 2019* (the Regulations) is to ensure that Australia can give domestic effect to the *Agreement on Trade in Wine between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland* (AU-UK Wine Agreement) and to ensure that wine trade with the United Kingdom (UK) can continue uninterrupted, post-Brexit.

One of the objects of the Act, as provided in subsection 3(d) is 'to enable Australia to fulfil its obligations under prescribed wine-trading agreements and other international agreements'. Countries that are party to these agreements are called 'agreement countries'. Both the Act and *Wine Australia Regulations 2018* (Wine Regulations) include provisions that apply in relation to 'agreement countries'. These provisions include offences related to the sale, export or import of wine with a false or misleading description and presentation.

The Regulations amend the Wine Regulations to declare the AU-UK Wine Agreement, as a 'prescribed wine-trading agreement' for the purposes of paragraph 4(1)(b) of that definition in the Act.

Background

Trade in wine between Australia and the UK is currently facilitated by the *Agreement between Australia and the European Community on Trade in Wine* (EC-AU Wine Agreement). Australia gives domestic effect to the EC-AU Wine Agreement through the Act and the Wine Regulations. The EC-AU Wine Agreement comes within the scope of the Act because it is a 'prescribed wine-trading agreement' under subsection 4(1) of the Act. The UK is recognised under subsection 4(1) of the Act as an 'agreement country' by virtue of its inclusion as an 'EC country'.

On 29 March 2017, the UK informed the European Council (EC) of its intention to leave the European Union (EU), officially triggering the procedure under Article 50 of the Treaty of Lisbon. As a result, it is anticipated the UK will no longer be a member of the EU after 29 March 2019 (UK time).

In order to ensure the continued facilitation of trade in wine between Australia and the UK post-Brexit, the AU-UK Wine Agreement was signed in London on 18 January 2019. The AU-UK Wine Agreement covers key issues related to trade in wine originating in Australia and the UK. It provides for the bilateral acceptance of each country's authorised winemaking techniques and covers simplified wine certification and labelling arrangements. It also ensures ongoing reciprocal recognition and protection of each country's geographical indications (and other terms) in relation to wine.

The timing of the entry into force of the AU-UK Wine Agreement is subject to the final terms of the UK's withdrawal from the EU. On 25 November 2018, the European Council endorsed the draft *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community* (UK-EU Withdrawal Agreement). However, the UK-EU Withdrawal Agreement must pass through the UK and EU Parliaments. The UK-EU Withdrawal Agreement sets out the terms of the UK's exit from the EU and includes a provision for a transition period (article 126). During the proposed transition period, the UK would remain bound by obligations stemming from EU-third country agreements as if it remained an EU Member State.

If the UK-EU Withdrawal Agreement is not agreed to and a 'no-deal Brexit' occurs, the EC-AU Wine Agreement will cease to apply to the UK once the UK leaves the EU on 29 March 2019, and the AU-UK Wine Agreement will enter into force on that date. Similarly, if the UK-EU Withdrawal Agreement is agreed and includes a transition period, the EC-AU Wine Agreement will cease to apply to the UK at the end of the transition period and the AU-UK Wine Agreement will not enter into force until that period comes to an end.

The Regulations have been made to ensure that the AU-UK Wine Agreement is ready to enter into force on 29 March 2019 if needed.

Impact and Effect

The Regulations ensure that Australia can give domestic effect to the new AU-UK Wine Agreement and ensure that wine trade with the UK can continue uninterrupted, post-Brexit. The Regulations declare the AU-UK Wine Agreement as a 'prescribed wine-trading agreement' for the purposes of paragraph 4(1)(b) of that definition within the Act. The effect of this is it will enable the UK to be recognised as an 'agreement country' for the purposes of the Act, while the AU-UK Wine Agreement is in force.

One of the requirements for the AU-UK Wine Agreement to enter into force, in accordance with Article 10 of the AU-UK Wine Agreement, is that Australia and the UK provide formal notification of completion of all required internal procedures (which includes any amendments to enabling legislation). The enabling legislation for Australia, for the AU-UK Wine Agreement, is the Act and the Wine Regulations. For Australia to be able to provide this notification to the UK, amendments to the Wine Regulations are required. The AU-UK Wine Agreement enters into force on the later of the date on which the EC-AU Wine Agreement

ceases to apply to the UK or the date of receipt of the later of Australia's or the UK's notifications confirming completion of their internal procedures.

The Regulations commence at the same time as the AU-UK Wine Agreement enters into force for Australia. At that time, the AU-UK Wine Agreement is declared as a 'prescribed wine-trading agreement' and so the UK will be considered an 'agreement country' as defined in section 4 of the Act. The Regulations provide that the Secretary of the Department of Agriculture and Water Resources is required, by notifiable instrument, to announce the time the AU-UK Wine Agreement enters into force for Australia. However, the Regulations do not commence at all if the AU-UK Wine Agreement does not enter into force for Australia.

Consultation

The Department of Foreign Affairs and Trade (DFAT), the Department of the Prime Minister and Cabinet, the Attorney-General's Department and the Department of Industry, Innovation and Science were consulted on the drafting of the AU-UK Wine Agreement.

The Office of International Law, Attorney-General's Department and DFAT were consulted on the Regulations.

The Department of Agriculture and Water Resources was also advised by the Office of Best Practice Regulation that a regulatory impact statement was not required (ID: 24447).

Details/ Operation

Section 1 – Name

This section provides that the name of the Regulations is the *Wine Australia Amendment (Trade with United Kingdom) Regulations 2019*.

Section 2 – Commencement

This section provides for the Regulations to commence at the same time as the *Agreement on Trade in Wine between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland*, done at London on 18 January 2019, enters into force for Australia. However, the section provides that the provisions of the instrument do not commence at all if the Agreement does not enter into force for Australia.

The section further provides that the Secretary of the Department must announce, by notifiable instrument, the time the Agreement enters into force for Australia.

Section 3 – Authority

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

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Item 1 adds section 6A to the end of Part 2 of the *Wine Australia Regulations 2018*. Section 6A provides that the *Agreement on Trade in Wine between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland*, done at London on 18 January 2019, is declared to be a prescribed wine-trading agreement for the purposes of paragraph (b) of that definition in subsection 4(1) of the *Wine Australia Act 2013*.

A note is added at the end of section 6A. The note states that one effect of section 6A is that the UK will be an agreement country for the purposes of the Act while the Agreement referred to in section 6A is in force. The note directs the reader to paragraph (b) of the definition of agreement country in subsection 4(1) of the Act.

The Regulations give the new AU-UK Wine Agreement the same legal status as the EC-AU Wine Agreement.

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 the **Attachment**.

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

Attachment

Statement of Compatibility with Human Rights

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

Wine Australia Amendment (Trade with United Kingdom) Regulations 2019

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*.

Overview of the *Wine Australia Amendment (Trade with United Kingdom) Regulations 2019*

The purpose of the *Wine Australia Amendment (Trade with United Kingdom) Regulations 2019* (the Regulations) is to ensure that Australia can give domestic effect to the *Agreement on Trade in Wine between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland* (AU-UK Wine Agreement) and to ensure that wine trade with the United Kingdom (UK) can continue uninterrupted, post-Brexit.

One of the objects of the *Wine Australia Act 2013* (the Act), as provided in subsection 3(d) is ‘to enable Australia to fulfil its obligations under prescribed wine-trading agreements and other international agreements’. Countries that are party to these agreements are called ‘agreement countries’. Both the Act and *Wine Australia Regulations 2018* (Wine Regulations) include provisions that apply in relation to ‘agreement countries’. These provisions include offences related to the sale, export or import of wine with a false or misleading description and presentation.

The Regulations amend the Wine Regulations to declare the AU-UK Wine Agreement, as a ‘prescribed wine-trading agreement’ for the purposes of paragraph 4(1)(b) of that definition in the Act.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon. David Littleproud MP
Minister for Agriculture and Water Resources