

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture, Drought and Emergency Management

Wine Australia Amendment (Label Directory) Act 2020

Wine Australia Amendment (Label Directory) Regulations 2021

Legislative Authority

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

- Supporting grape or wine research and development activities, the growth of the wine industry and other industries that make wine, and the growth of international wine tourism
- Controlling the export of grape products from Australia, including through the use of a Label Directory containing digital colour images of grape product labels and other property rights
- Promoting the consumption and sale of grape products, both in Australia and overseas
- Enabling Australia to fulfil its obligations under prescribed wine-trading agreements and other international agreements.

Section 46 of the Act relevantly provides that the Governor-General may make regulations, not inconsistent with this Act, 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.

Subsection 45A(1) of the Act provides that the regulations may make provision for and in relation to the Authority establishing, maintaining and making publicly available a database, known as the Label Directory. Section 45A was inserted into the Act by the *Wine Australia Amendment (Label Directory) Act 2020* (the Amendment Act).

Purpose

The purpose of the *Wine Australia Amendment (Label Directory) Regulations 2021* (the Regulations) is to require Wine Australia, as the Authority, to establish and maintain a publicly available directory of images of labels that are attached to grape products, such as wine, intended for export from Australia (the Label Directory), as a part of Wine Australia's export controls.

Background

Section 7 of the Regulations sets out the conditions that must be met to export grape products from Australia. These conditions include a three-tiered process that occurs sequentially. An exporter must first be granted an export licence by the Authority. Once an exporter holds a licence, they must apply for individual grape products to be approved by the Authority for export (in accordance with section 14 of the Regulations). Finally, an export certificate must also be issued by the Authority for the export of individual consignments of grape product (in accordance with section 20 of the Regulations).

A label directory was initially proposed by the then Winemakers' Federation of Australia, (now Australian Grape and Wine Incorporated (AGW)), an industry representative organisation, to address the issue of counterfeit grape product labels in Australia's export markets for grape products. Counterfeit grape product labels are those that seek to mimic elements of the labels of other Australian wine producers for commercial gain and unfairly benefit from the reputation of those producers of grape products.

Impact and Effect

The Regulations implement an additional export control for grape products by requiring exporters of Australian grape products to provide digital colour images of grape product labels for grape products intended for export to the Authority as part of their application for an export certificate for those products.

The Regulations require the Authority to publish these labels on the publicly available Label Directory, which producers can use to ensure the integrity of their intellectual property in their grape product labels.

Consultation

In the course of developing the Amendment Act, the department undertook consultation on the proposal to develop the Label Directory over a period of four weeks from 21 September 2018 to 19 October 2018. Several submissions from stakeholders in the wine industry were received, the majority of which broadly supported the need for the Label Directory and the proposed model of the Label Directory.

One submission expressed concern that the proposal would increase the cost and complexity of business. Another submission expressed the view that the Label Directory would become part of the administration of processing orders and would eventually be automated. It is considered that the benefits of the Label Directory will outweigh initial administrative costs to industry.

Other submissions suggested that the Label Directory should not be made available to the public and should only be made available to levy payers and exporters of grape products. However, it is appropriate for the Label Directory to be publicly available because intellectual property rights in wine labels may vest in people other than exporters of grape products.

No submissions were received from members of the public.

Following this consultation, the Department refined the proposal for the Label Directory with Wine Australia and AGW. The Regulations are consistent with the consultation undertaken on the Amendment Act. The Department consulted with the Authority and IP Australia during the drafting of the Regulations. Neither the Authority nor IP Australia raised any concerns with the Regulations from an intellectual property perspective.

The Office of Best Practice Regulation has been consulted and advised that the Regulations are likely to have no more than minor regulatory impact and that a Regulation Impact Statement (RIS) is not required (OBPR ID Number: 25090).

Details/ Operation

Details of the Regulations are set out in Attachment A.

Other

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

Details of the *Wine Australia Amendment (Label Directory) Regulations 2021*

Section 1 – Name

This section provides that the name of the Regulations is the *Wine Australia Amendment (Label Directory) Regulations 2021* (the Amendment Regulations).

Section 2 – Commencement

This section sets out, in a table, the date that each provision contained in the Regulations commences.

This section provides that the Amendment Regulations commence at the same time as the *Wine Australia Amendment (Label Directory) Act 2020* commences. That Act commenced on 1 July 2021, in accordance with the *Wine Australia Amendment (Label Directory) Commencement Proclamation 2021*.

Section 3 – Authority

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

Section 4 – Schedules

This section provides that the Amendment Regulations are 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. The instrument that is amended is the *Wine Australia Regulations 2018* (the Regulations).

Schedule 1 – Amendments

Wine Australia Regulations 2018

Item 1 - Section 4

This item inserts an additional defined term for ***label directory*** into section 4 (Definitions). This definition provides that a ***label directory*** means the database referred to in new section 21A of the Regulations, discussed below.

Item 2 – At the end of subsection 13(1)

This item inserts a new paragraph 13(1)(e) into the Regulations. The effect of that amendment is that the Authority may, by written notice given to a licensee holding a licence granted under section 9, suspend or cancel an export licence if the Authority is satisfied that the licensee has made a false declaration as part of their application for an export certificate for a consignment of grape product under new subsection 18(2A). New subsection 18(2A) is inserted by item 4 below.

Item 3 – After Division 3 of Part 3

This item inserts new Division 3A – Provision of grape product labels in Part 3 of the Regulations.

New Division 3A sets out when licensees may provide grape product labels to the Authority.

New section 17A – Provision of grape product labels

New section 17A provides that licensees may provide digital colour images of grape product labels to the Authority for use in exports of consignments of grape products by the licensee.

The licensee may provide those images in connection with the licensee applying for an approval for a grape product to be exported under section 14, or at any time after the Authority gives the licensee an approval to export the grape product under that section.

Note 1 to this section states that before a licensee can be issued with an export certificate, the licensee must have provided the relevant digital colour images of the grape product labels to the Authority (see section 20).

Note 2 to this section states that section 21A deals with the Authority including those images in the Label Directory. New section 21A (inserted by item 7 below) contains information about establishing, maintaining and making publicly available the Label Directory and the contents of the Label Directory.

Item 4 – After subsection 18(2)

This item inserts new subsections 18(2A) and 18(2B) after subsection 18(2) of the Regulations.

Subsection 18(2A)

New subsection 18(2A) requires licensees to submit a written declaration as part of their application for a certificate for the export of a consignment of grape product that each grape product label for use in the consignment is a digital colour image that either:

- The licensee or another licensee has provided to the Authority under new section 17A (inserted by item 3 above); or
- Is in the Label Directory.

Subsection 18(2B)

This new subsection provides an exemption from the requirement in new subsection 18(2A). Specifically, the requirement to submit a written declaration under new subsection 18(2A) of the Regulations will not apply to a consignment to the extent that it consists of a grape product for export in one or more containers, where the volume of each container exceeds 20 litres.

This exemption has been inserted because containers of grape product that exceed 20 litres (that is, bulk wine) will not be sold in a retail setting and do not have any brand labelling

displayed at the time of export. Instead, bulk wine is usually bottled (or packaged) and labelled in market by an importer, who may not necessarily be the same entity as the licensee who exported the grape product.

However, the licensee may nevertheless choose to provide a digital colour image of the label that will be applied to that grape product in the export market to the Authority in accordance with new section 17A.

Item 5 – After paragraph 20(2)(b)

This item inserts new paragraph 20(2)(ba) in section 20 of the Regulations. Subsection 20(2) of the Regulations sets out the matters about which the Authority must be satisfied before issuing an export certificate to a licensee for the export of a consignment of grape product.

New paragraph 20(2)(ba) provides that the Authority must be satisfied that each grape product label for use in the consignment is a label, a digital colour image of which has been provided by either:

- The licensee or another licensee to the Authority under new section 17A; or
- Is in the Label Directory.

This new requirement ensures that export certificates of consignments of wine are only issued to licensees who have been transparent about the labels they intend to use in the consignment for export.

Item 6 – After subsection 20(2)

This item inserts new subsection 20(2A) after subsection 20(2) of the Regulations, which provides an exemption to the requirement in new paragraph 20(2)(ba) of the Regulations. The requirement in new paragraph 20(2)(ba) will not apply to a consignment to the extent that it consists of a grape product for export in one or more containers, where the volume of each container exceeds 20 litres.

This exception applies because containers of grape product that exceed 20 litres (that is, bulk wine) will not be sold in a retail setting and do not have any brand labelling displayed at the time of export.

Item 7 – After Division 4 of Part 3

This item inserts new Division 4A – Label Directory after Division 4 of the Regulations, which comprises new section 21A. Section 21A is made for the purposes of section 45A of the Act, which was inserted into the Act by the Amendment Act.

This new Division requires the Authority to establish, maintain and make publicly available a database called the Label Directory.

New subsection 21A(3) provides that the Label Directory must be kept in electronic form.

New subsection 21A(4) of the Regulations provides that if a digital colour image of a grape product label is provided to the Authority under section 17A by a licensee, the Authority must include the following information in the Label Directory:

- The image (including personal information in the image, such as a photograph of a person)
- If the image contains writing that is not in English – an English translation of that writing
- The date the image was included in the Label Directory.

The purpose of these provisions is to provide an electronic repository of grape product labels that can be searched by licensees and/or exporters of grape products, and by the public generally. Licensees/exporters will be able to use the Label Directory to ascertain whether other grape product labels in the Label Directory are potentially counterfeit versions of their own grape product labels.

Further, new subsection 21A(5) provides that if a licensee is an exporter of grape product in relation to which the digital colour image of the grape product label has been included in the Label Directory, the Authority must also include the following information (including personal information) in the Label Directory:

- If the exporter has an ACN and/or an ARBN (within the meaning of the *Corporations Act 2001*) that ACN/ARBN
- If the exporter has an ABN (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*) – that ABN
- For each export of a consignment of a grape product by the exporter, the day on which the grape product is to be, or was, exported; and either:
 - If the Authority is not aware of the country in which the grape product is intended for retail sale – the country in which the grape product is to be, or was, exported; or
 - If the Authority is aware of the country in which the grape product is intended for retail sale – that country.

The purpose of this provision is to require the Authority to keep and display records of the consignments of wine that are exported, and the countries to which they are exported or intended for sale, by exporters who have provided images of their grape product labels to the Authority.

New subsection 21A(6) provides that the Authority may vary the contents of the Label Directory (including for the purpose of correcting any error in the Label Directory).

The purpose of this provision is to ensure the Authority can maintain and make corrections to the Label Directory in accordance with subsections 45A(1) and (5) of the Amendment Act. This will ensure that grape product labels of licensees and exporters remain up to date.

Items 8 and 9 – Part 10 (heading) and
At the end of Part 10

Item 8 repeals the heading for Part 10 ‘Transitional provisions’ and substitutes a new heading ‘Application and transitional provisions’.

New Division 2 of Part 10 sets out the application and transitional provisions for the Regulations.

New subsection 119(1) provides that paragraph 13(1)(e) applies in relation to licences granted before, on or after the commencement of this section.

The effect of subsection 119(1) is that the Authority would have the discretion to suspend or cancel a licence to export grape product if satisfied the licensee made a false declaration, on or after the commencement of the Regulations, that a grape product label for use in a consignment is a digital colour image of which has been provided to the Authority. This new discretion would apply equally to current licensees and future licensees.

It is important that this provision apply to licences granted before commencement because licenses are only applied for once and renewed annually thereafter. If the power to suspend or cancel a license in circumstances in new paragraph 13(1)(e) were only to apply to licenses granted on or after commencement, a large number of licensees would not be subject to that provision.

However, the conduct covered by paragraph 13(1)(e) of the Regulations (being that the Authority is satisfied that a licensee has made a false declaration under subsection 18(2A)), does not apply to a licensee’s conduct before the commencement of the Regulations.

New subsection 119(2) provides that section 17A applies in relation to persons who became licensees before, on or after the commencement of this section.

The effect of subsection 119(2) is that a licensee may provide digital colour images of grape product labels for use in exports of consignments of grape product by the licensee before, on, or after the commencement of the Regulations. It is important that section 17A apply to persons who became licensees before commencement to give these people the opportunity to provide images of their grape product labels to the Authority and thus have their labels included in the Label Directory, including any grape product labels in existence prior to the commencement of the Regulations.

New subsection 119(3) provides that new subsection 18(2A) and paragraph 20(2)(ba) apply in relation to applications made under section 18 on or after the commencement of this section.

The effect of new subsection 119(3) is that:

- The requirement for a licensee to provide a written declaration with their application for an export certificate that each grape product label for use in the consignment is a label, a digital colour image of which has been provided to the Authority under new section 17A or is in the Label Directory

- The requirement that the Authority be satisfied that each grape product label for use in the consignment has been provided to the Authority under section 17A or is in the Label Directory before issuing an export certificate for that consignment

apply to applications for export certificates made on or after commencement.

Statement of Compatibility with Human Rights

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

Wine Australia Amendment (Label Directory) Regulations 2021

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 Regulations

The *Wine Australia Amendment (Label Directory) Regulations 2021* (the Regulations) amend the *Wine Australia Regulations 2018* to enable Wine Australia—the statutory authority under section 6 of the *Wine Australia Act 2013* (the Act)—to establish and maintain a publicly available database (Label Directory) of images attached to wine and other grape products.

The Label Directory will be in the form of an electronic database and will be able to be accessed by members of the public.

The purpose of the Label Directory is to address the issue of counterfeit grape product labels in Australia’s export markets for grape products. Counterfeit grape product labels are those that seek to mimic elements of the labels of other Australian wine producers for commercial gain and unfairly benefit from the reputation of those producers of grape products.

The Regulations:

- Provide for the establishment and maintenance of the Label Directory
- Provide for the Label Directory to be publicly available
- Provide for the Label Directory to include digital colour images of grape product labels and other information in relation to the grape products and those exporting them
- Allow licensees of grape products to provide digital colour images of grape product labels to the Authority for use in the exports of consignments of grape products by the licensee
- Require licensees (with the exception of those exporting bulk wine) to submit a written declaration as part of their application for a certificate for the export of a consignment of grape product that each grape product label for use in the consignment is a digital colour image that has either been provided to the Authority or is in the Label Directory
- Allow the Authority to suspend or cancel an export license if the Authority is satisfied that the licensee has made a false declaration as part of their application for an export certificate for a consignment of grape product that the label for use in the consignment has been provided to the Authority or is in the Label Directory.

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The measures in the Regulations are consistent 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*, as the Regulations do not engage any human rights issues.

The Hon. David Littleproud MP
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