Wine Australia Regulations 2018

made under the

Wine Australia Act 2013

Compilation No. 2

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About this compilation

This compilation

This is a compilation of the *Wine Australia Regulations 2018* that shows the text of the law as amended and in force on 28 March 2021 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name

This instrument is the *Wine Australia Regulations 2018*.

3 Authority

This instrument is made under the *Wine Australia Act 2013*.

4 Definitions

In this instrument:

Act means the *Wine Australia Act 2013*.

approval holder, in relation to a grape product approved under section 14, means the licensee to whom approval was given by the Authority.

associate of a person (the ***first person***) includes each of the following:

(a) a person who is or was a consultant, adviser, partner, representative on retainer, employer or employee of:
  (i) the first person; or
  (ii) a corporation of which the first person is an officer or employee or in which the first person holds shares;

(b) if the first person is an individual—a relative of the first person;

(c) a person directly or indirectly concerned in, or in a position to control or influence the conduct of, a business or undertaking of:
  (i) the first person; or
  (ii) a corporation of which the first person is an officer or employee or in which the first person holds shares;

(d) a corporation:
  (i) of which the first person, or any of the other persons mentioned in paragraphs (a) to (c), is an officer or employee; or
  (ii) in which the first person, or any of the other persons mentioned in paragraphs (a) to (c), holds shares;

(e) if the first person is a body corporate—a related body corporate (within the meaning of the *Corporations Act 2001*) of the first person.

Australia New Zealand Food Standards Code has the same meaning as in the *Food Standards Australia New Zealand Act 1991*.

Australian law means a law of the Commonwealth, or of a State or Territory.

child: without limiting who is a child of a person for the purposes of this instrument, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

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export certificate means a certificate issued to a licensee by the Authority under section 20.

foreign place name: see subsection 26(9).

GI means geographical indication.

licence means a licence granted under section 9.

licensee means the holder of a licence that is in force.

parent: without limiting who is a parent of a person for the purposes of this instrument, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this section.

party:

(a) in relation to a proceeding mentioned in Division 2 of Part 6—see section 35; and

(b) in relation to a proceeding mentioned in Division 3 of Part 6—see section 46; and

(c) in relation to a proceeding mentioned in Division 3 of Part 7—see section 65; and

(d) in relation to a proceeding mentioned in Division 4 of Part 7—see section 78.

proposed item has the meaning given by subsection 61(1).

relative, in relation to an individual, means the spouse, de facto partner (within the meaning of the *Acts Interpretation Act 1901*), parent or other ancestor, child or other descendant, brother or sister of the individual.

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Part 2—Definitions for the purposes of the Act

5 Grape product

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 for the purposes of the Act if:

(a) it includes wine; and

(b) it is derived in whole or in part from prescribed goods; and

(c) a standard, within the meaning of the *Food Standards Australia New Zealand Act 1991*, applies to it.

6 Prescribed geographical indication

For the purposes of the definition of ***prescribed geographical indication*** in subsection 4(1) of the Act, a geographical indication included in the Register in relation to Australia is prescribed.

6A Prescribed wine-trading agreement

For the purposes of paragraph (b) of the definition of ***prescribed wine-trading agreement*** in subsection 4(1) of the Act, 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.

Note: One effect of this section is that the United Kingdom will be an agreement country for the purposes of the Act while the Agreement referred to in this section is in force (see paragraph (b) of the definition of ***agreement country*** in subsection 4(1) of the Act).

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Part 3—Export controls

Division 1—Export conditions and exemptions

7 Conditions of export

For the purposes of paragraph 46(1)(c) of the Act and subject to section 8 of this instrument, the export of a consignment of a grape product is prohibited unless:

(a) the exporter of the consignment is a licensee; and

(b) the grape product is approved under section 14 of this instrument for export by the exporter; and

(c) if there are conditions on the approval—the export complies with the conditions; and

(d) an export certificate for the consignment is in force; and

(e) if there are conditions on the validity of the certificate—the export is in accordance with the conditions; and

(f) if the Authority has given a direction to the exporter under section 22 of this instrument—the export complies with the direction.

Note: It is an offence under section 44 of the Act to export a grape product if the export contravenes the regulations.

8 Exemptions

Exemption for small quantities

(1) Section 7 does not apply to the export of a consignment if the total quantity of grape products in the consignment is 100 litres or less.

(2) For the purposes of subsection (1), 2 or more consignments are taken to be a single consignment if they are exported:

(a) on a single ship or aircraft to a single port of discharge; and

(b) by a single exporter, or by 2 or more exporters who are:

(i) associated entities (within the meaning of section 50AAA of the *Corporations Act 2001*); or

(ii) individuals who are relatives; or

(iii) acting in concert with each other.

Exemption for certain purposes

(3) Section 7 does not apply to the export of any of the following:

(a) grape product that is contained in the personal luggage of a traveller;

(b) grape product, belonging to an individual who is moving house, that is for domestic use;

(c) grape product that is intended to be displayed at a trade fair or comparable event;

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(d) grape product that is exported for a scientific or technical purpose;

(e) grape product that is exported by a diplomatic, consular or similar establishment as part of the duty-free allowance of the establishment;

(f) grape product that is held on board a means of international transport as victualling supplies;

(g) grape product that is a commercial sample for a prospective buyer.

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Division 2—Export licences

9 Grant of licence

(1) A person may apply to the Authority, in a form approved in writing by the Authority, for a licence to export grape products from Australia.

(2) If a person applies in accordance with subsection (1), the Authority must:
  (a) grant the licence to the person in writing; or
  (b) refuse to grant the licence.

(3) In deciding whether to grant the licence, the Authority must consider the following matters:
  (a) the financial standing of the applicant;
  (b) whether the applicant has a place of business in Australia;
  (c) the applicant's ability to obtain grape products from Australian suppliers;
  (d) any matter relating to the applicant that may adversely affect the export trade in grape products;
  (e) any other matter relating to the promotion of the export of grape products that relates to the applicant;
  (f) whether the Authority has suspended or cancelled a licence held by:
    (i) the applicant; or
    (ii) an associate of the applicant;
  (g) whether the applicant is a fit and proper person.

(4) The Authority may consider any other matter relating to the promotion of the export of grape products.

(5) If the Authority refuses to grant the licence, the Authority must notify the applicant in writing of its decision and state in the notice the reasons for the decision.

10 Fit and proper person test for grant of licence

(1) In determining, for the purposes of paragraph 9(3)(g), whether the applicant is a fit and proper person, the Authority must have regard to the following matters:
  (a) whether the applicant or an associate of the applicant has been convicted of an offence against the Act;
  (b) whether a debt is due and payable by the applicant or an associate of the applicant under the Act;
  (c) whether wine export charge is due and payable by the applicant, or an associate of the applicant, and has not been paid;
  (d) whether a previous application made by the applicant or an associate of the applicant, for an approval of a grape product for export under section 14, for an export certificate or for any other approval under the Act, has been refused or such an approval or certificate has been revoked.

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(2) The Authority may also have regard to:
  (a) whether the applicant has been convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law (other than the Act); and
  (b) any other relevant matter.

(3) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

11 Period of licence

(1) A licence is in force for the period specified in the licence. The initial period must not be more than 3 years.

(2) The licensee may apply, in writing, for the period of the licence to be extended.

(3) If a licensee applies in accordance with subsection (2) the Authority may, by notice in writing given to the licensee, grant an extension, with the period of each extension being not more than 3 years.

12 Authority may request information from licensee

(1) The Authority may request the following kinds of information from a licensee:
  (a) information in respect of the licensee in relation to a matter mentioned in subsection 9(3);
  (b) information about the export, or intended export, of grape products by the licensee;
  (c) information relevant to calculation of the wine export charge payable by the licensee.

(2) The request must:
  (a) be made in writing; and
  (b) identify the information required; and
  (c) state the date by which the licensee must give the information to the Authority.

13 Suspension and cancellation of licence

(1) The Authority may, by notice in writing given to the licensee, suspend or cancel a licence in any of the following circumstances:
  (a) a material change occurs in respect of the licensee in relation to a matter mentioned in subsection 9(3);
  (b) the licensee:
    (i) changes the licensee's place of business in Australia; and
    (ii) does not inform the Authority in writing of the new place of business in Australia within 14 days of the change;

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(c) the licensee exports a grape product in contravention of a provision of the Act or this instrument;

(d) wine export charge is payable by the licensee, the charge is due for payment and the charge has not been paid.

(2) The Authority may, by notice in writing given to the licensee, suspend a licence if the licensee fails to comply with a request under section 12.

(3) A notice under subsection (1) or (2) must:

(a) if the licence is suspended—state the period of suspension; and

(b) state the reasons for the suspension or cancellation.

(4) The suspension or cancellation takes effect from the date of the notice.

(5) A suspension ends at the end of the period stated in the notice, unless the Authority ends the suspension earlier by notice in writing given to the licensee.

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Division 3—Approved grape products

14 Approval of grape product for export

(1) A licensee may apply to the Authority, in a form approved in writing by the Authority, for a grape product to be approved for export by the licensee.

(2) If a licensee applies in accordance with subsection (1), the Authority must:
  (a) approve the grape product, with or without conditions; or
  (b) refuse to approve the grape product.

(3) The Authority may approve the grape product if the Authority is satisfied that:
  (a) either:
    (i) the grape product complies with the Australia New Zealand Food Standards Code; or
    (ii) the ways in which the product does not comply will not compromise the reputation of Australian grape products; and
  (b) the grape product is sound and merchantable; and
  (c) 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 countries.

(4) However, 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) a registered geographical indication other than the term "Australia"; or
  (b) a registered translation.

(5) The Authority must refuse to approve the grape product if the licensee fails to comply with a request under section 16 in relation to the grape product.

Conditions

(6) Without limiting paragraph (2)(a), the Authority may impose a condition that limits the countries to which export is approved.

Example: Export might only be approved where the Authority is satisfied the grape product meets requirements of the importing country.

Notice of decision

(7) The Authority must notify the licensee in writing of its decision. If the Authority refuses to approve the grape product, or imposes conditions on the approval of the grape product, the notice must state the reasons for the decision.

Variation of conditions

(8) The Authority may, by notice in writing given to the approval holder, vary the conditions on an approval. The notice must state the reasons for the variation.

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Description and presentation

(9) This section applies as if a reference to wine in section 5C of the Act (meaning of description and presentation) included a reference to a grape product.

15 Approval holder may authorise another licensee to export grape product

(1) An approval holder for a grape product may authorise another licensee, by notice in writing given to the Authority, to export the grape product.

(2) While the authorisation is in force, the approval of the grape product also approves export by the authorised licensee.

(3) Subsection (2) does not permit the authorised licensee to authorise other licensees.

16 Authority may request information about grape product

(1) The Authority may make the following kinds of requests under this section in relation to a grape product:

(a) a request for records demonstrating that the grape product complies with the Australia New Zealand Food Standards Code in particular respects (such respects to be identified in the request);

(b) a request for records demonstrating that the grape product is sound and merchantable;

(c) a request for a sample of the grape product for the purpose of determining whether it is sound and merchantable;

(d) if the grape product is wine—a request for a copy of records kept under section 39F of the Act in relation to the wine, for the purpose of verifying a label claim used in the description and presentation of the wine (such label claim to be identified in the request).

(2) The request may be made to:

(a) a licensee who has applied for approval of the grape product under section 14; or

(b) an approval holder for the grape product.

(3) The request must:

(a) be made in writing; and

(b) state the date by which the licensee or approval holder must provide the records or sample to the Authority.

17 Suspension and revocation of approval

Suspension

(1) The Authority must, by notice in writing given to the approval holder, suspend the approval of a grape product if the approval holder fails to comply with a request under section 16 in relation to the grape product.

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(2) The Authority must, by notice in writing given to the approval holder, remove the suspension if the records or sample requested under section 16 is given to the Authority.

Revocation

(3) The Authority may, by notice in writing given to the approval holder, revoke the approval of a grape product if the Authority is no longer satisfied that the grape product meets the requirements of subsections 14(3) and (4).

(4) The notice must state the reasons for the decision.

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Division 4—Export certificates

18 Application for export certificate

(1) A licensee may apply, in a form approved in writing by the Authority, for a certificate for the export of a consignment of a grape product by the licensee.

(2) The application must be given to the Authority at least 5 days before the day on which the grape product is to be exported.

(3) The form of application approved by the Authority must require the application to identify the following:

(a) the day on which the grape product is to be exported;

(b) the country to which the grape product is to be exported;

(c) the person to whom the product will be consigned in that country.

19 Authority may request information about compliance with other laws

(1) If a licensee applies in accordance with section 18 for a certificate for the export of a consignment of a grape product, the Authority may ask the licensee to give the Authority information demonstrating that a requirement under an Australian law that relates to the description and presentation of the grape product has been met.

Example: If a grape product is described as "organic" and is a product that is prescribed organic goods under the *Export Control (Organic Goods) Rules 2021*, the Authority may ask the licensee to give the Authority information demonstrating that an organic goods certificate (within the meaning of those rules) has been issued for the product.

(2) The request must:

(a) be made in writing at least 2 days before the day on which the grape product is to be exported; and

(b) identify the requirement and the law under which it applies; and

(c) state when the licensee must give the information to the Authority, which must be before the day on which the grape product is to be exported.

(3) This section applies as if a reference to wine in section 5C of the Act (meaning of description and presentation) included a reference to a grape product.

20 Issue of export certificate

(1) If a licensee applies in accordance with section 18 for a certificate for the export of a consignment of a grape product by the licensee, the Authority must:

(a) issue the export certificate to the licensee in writing; or

(b) refuse to issue the export certificate;

before the day on which the consignment is to be exported.

(2) The Authority may issue the export certificate to the licensee if the Authority is satisfied that:

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(a) the grape product is approved under section 14 for export by the licensee; and

(b) if there are conditions on the approval—the export would comply with the conditions; and

(c) if the Authority makes a request for information under section 19 in relation to a requirement—the description and presentation of the grape product meets the requirement; and

(d) if the Authority has given a direction to the licensee under section 22—the export would comply with the direction.

(3) In deciding whether to issue the export certificate, the Authority may have regard to the person to whom the product will be consigned in the country to which the grape product is to be exported.

(4) The Authority must refuse to issue the export certificate if:

(a) the Authority reasonably believes that the grape product cannot lawfully be sold in the country to which it is to be exported; or

(b) the licensee fails to comply with a request under section 19 in relation to the consignment.

(5) The Authority may specify in the export certificate conditions on the validity of the certificate. If the Authority specifies conditions, the Authority must give the licensee written reasons for doing so.

(6) If the Authority refuses to issue the export certificate, the Authority must notify the licensee in writing of its decision and state in the notice the reasons for the decision.

21 Revocation of export certificate

(1) The authority may, by notice in writing given to the licensee, revoke an export certificate if the export of the grape product by the licensee no longer complies with the requirements of subsection 20(2).

(2) The notice must state the reasons for the decision.

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Division 5—Other matters

22 Direction by Authority on quantity of exports

The Authority may give to a licensee a written direction about the quantity of grape product that the licensee may export:

(a) generally; or

(b) to a country specified in the direction; or

(c) to a person, agent or representative specified in the direction.

23 Applications for review of decisions

Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Authority:

(a) a decision under section 9 to refuse to grant a licence;

(b) a decision under section 13 to suspend or cancel a licence;

(c) a decision under section 14 to refuse to approve a grape product for export;

(d) a decision under section 14 to impose conditions on the approval of a grape product for export (including through variation of the conditions on an existing approval);

(e) a decision under section 14 to approve a grape product that does not comply with the Australia New Zealand Food Standards Code;

(f) a decision under section 17 to revoke the approval of a grape product for export;

(g) a decision under section 20 to refuse to issue an export certificate;

(h) a decision under section 20 to specify conditions on the validity of an export certificate;

(i) a decision under section 21 to revoke an export certificate;

(j) a decision to give a direction under section 22.

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Part 4—Description and presentation of wine

24 Wine originating in more than one country

(1) For the purposes of subsection 40F(6) of the Act, if wine is made from grapes grown in more than one country, the description and presentation of the wine must identify the proportion of the wine that originated in each country.

(2) For the purposes of determining the countries of origin and the proportion from each country, the quantity of additives derived from grapes, not exceeding a total of 20ml/L, is excluded.

25 Grape varieties

(1) For the purposes of subsection 40F(6) of the Act, a name used for a variety in the description and presentation of wine originating in Australia must be a name of a variety, or a synonym of a name of a variety, that is recognised as a name or a synonym by at least one of the following organisations:
  (a) International Organisation of Vine and Wine;
  (b) International Union for the Protection of New Varieties of Plants;
  (c) International Plant Genetic Resources Institute.

(2) For the purposes of subsection 40F(6) of the Act, if wine originating in Australia is made from 2 or more varieties, the wine may be described and presented as being of a single variety only if at least 850ml/L of the wine is obtained from that variety.

(3) For the purposes of subsection 40F(6) of the Act, if the description and presentation of wine originating in Australia refers to more than one variety:
  (a) the description and presentation must list the varieties in descending order of their proportions in the wine; and
  (b) each variety named in the description and presentation must be present in greater proportion in the composition of the wine than any variety that is not named; and
  (c) in total, at least 850ml/L of the wine must be obtained from the named varieties.

(4) For the purposes of determining the proportion of the varieties under subsection (2) or (3), the quantity of products used for possible sweetening and cultures of microorganisms, not exceeding a total of 50ml/L, is excluded.

(5) For the purposes of this section, the volume of a fortified wine is to be calculated exclusive of the grape spirit or brandy (or both) added to the wine.

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26 Use of registered geographical indications

Use of GI registered in relation to Australia—limit on number of GIs and foreign place names

(1) For the purposes of subsection 40F(6) of the Act, if the description and presentation of wine uses one or more GIs registered in relation to Australia, the total number of registered GIs and foreign place names used in the description and presentation of the wine must be 3 or less.

Note: Subsection 4(1) of the Act defines ***registered geographical indication*** to mean a geographical indication included in Part 1 of the Register kept under section 40ZC of the Act. Subsection 40ZD(2) of the Act requires Part 1 of the Register to include particulars of any region or locality in relation to which a geographical indication is determined.

Use of one GI registered in relation to Australia

(2) For the purposes of subsection 40F(6) of the Act, if the description and presentation of wine:

(a) uses one GI registered in relation to Australia; and

(b) does not use a GI registered in relation to another country; and

(c) does not use a foreign place name;

at least 850ml/L of the wine must have been obtained from grapes grown in the region or locality in Australia in relation to which the GI is registered.

Use of one GI registered in relation to a foreign country

(3) For the purposes of subsection 40F(6) of the Act, if the description and presentation of wine:

(a) uses one GI registered in relation to another country; and

(b) does not use a GI registered in relation to Australia;

at least 850ml/L of the wine must have been obtained from grapes grown in the country, region or locality indicated by the GI.

Note: This subsection applies whether or not the description and presentation of the wine also uses one or more foreign place names.

Use of GI registered in relation to Australia with one or 2 other registered GIs

(4) For the purposes of subsection 40F(6) of the Act, if the description and presentation of wine:

(a) uses 2 or 3 registered GIs (at least one of which is registered in relation to Australia); and

(b) does not use a foreign place name;

the wine, and the description and presentation, must meet the requirements of subsection (5) of this section.

(5) For the purposes of subsection (4):

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(a) in total, at least 950ml/L of the wine must have been obtained from grapes grown in the regions or localities in relation to which those GIs are registered; and
(b) at least 50ml/L of the wine must have been obtained from each of those regions or localities; and
(c) the description and presentation must set out the registered GIs in descending order of the proportions of the relevant grapes in the wine.

Use of GI registered in relation to Australia with foreign place name

(6) For the purposes of subsection 40F(6) of the Act, if the description and presentation of wine uses:
(a) at least one GI registered in relation to Australia; and
(b) at least one foreign place name;
the wine, and the description and presentation, must meet the requirements of subsection (7) of this section.

(7) For the purposes of subsection (6):
(a) in total, at least 950ml/L of the wine must have been obtained from grapes grown in:
(i) the regions or localities in relation to which those GIs are registered; and
(ii) the countries, regions or localities identified by those foreign place names; and
(b) at least 50ml/L of the wine must have been obtained from each of those countries, regions or localities; and
(c) the description and presentation must set out the registered GIs and foreign place names in descending order of the proportions of the relevant grapes in the wine.

General

(8) For the purposes of this section:
(a) a word or term is not to be treated as a registered GI or a foreign place name, as the case may be, when it appears in the description and presentation because it is required by another law; and
(b) the volume of a fortified wine is to be calculated exclusive of the grape spirit or brandy (or both) added to the wine.

Example: For paragraph (a), 'Australia' and the name of a foreign country might appear in the description and presentation because they are required by section 24.

(9) In this instrument:

foreign place name, in relation to wine, means a word or expression that:
(a) is not a registered GI; and
(b) identifies a country, region or locality (other than Australia) in which the wine originated.

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27 Vintages

(1) For the purposes of subsection 40F(6) of the Act, if:

(a) wine originating in Australia is made using grapes that were harvested in more than one vintage; and

(b) the description and presentation of the wine refers to one or more of those vintages;

the description and presentation of the wine must refer to all of the vintages in descending order of the proportions of the relevant grapes in the wine.

(2) Despite subsection (1), wine may be described and presented as being of one vintage if at least 850ml/L of the wine is obtained from grapes harvested in that vintage.

(3) For the purposes of subsection (2), the volume of a fortified wine is to be calculated exclusive of the grape spirit or brandy (or both) added to the wine.

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

28 Small quantities of wine

(1) For the purposes of the definition of ***small quantities*** in subsection 40J(1) of the Act, the following are declared to be small quantities of wine:

(a) a quantity of wine, not exceeding 100 litres, that is:

(i) exported in a single consignment; and

(ii) packed in labelled containers of a capacity of not more than 5 litres and fitted with a non-reusable closing device;

(b) a quantity of wine, not exceeding 30 litres, that is contained in the personal luggage of a traveller;

(c) a quantity of wine, not exceeding 30 litres, that is sent in a consignment by an individual to another individual;

(d) a quantity of wine, belonging to an individual who is moving house, that is for domestic use;

(e) a quantity of wine that is:

(i) intended to be displayed at an event, in Australia or an agreement country, that is a trade fair or comparable event for the purposes of the customs laws of the relevant country; and

(ii) packed in labelled containers of a capacity of not more than 2 litres and fitted with a non-reusable closing device;

(f) a quantity of wine, not exceeding 100 litres, that is imported into Australia or exported to an agreement country for a scientific or technical purpose;

(g) a quantity of 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;

(h) a quantity of wine that is held on board a means of international transport as victualling supplies.

(2) For the purposes of subparagraph (1)(a)(i), 2 or more consignments are taken to be a single consignment if they are exported:

(a) on a single ship or aircraft to a single port of discharge; and

(b) by a single exporter, or by 2 or more exporters who are:

(i) associated entities (within the meaning of section 50AAA of the *Corporations Act 2001*); or

(ii) individuals who are relatives; or

(iii) acting in concert with each other.

(3) For the purposes of paragraph 40J(4)(b) of the Act, conditions and procedures that form part of the description of a small quantity of wine in a paragraph of subsection (1) of this section are prescribed in relation to that small quantity.

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30 Variety names that are also geographical indications

For the purposes of subsection 40J(5) of the Act, wine is exempted from the operation of subsections 40C(1) and 40G(1) of the Act if:

(a) the description and presentation of the wine is false, or does not comply with registered conditions of use, only because of the use of a term that is recognised as the name of a variety, or a synonym of a name of a variety, by at least one of the following organisations:

(i) International Organisation of Vine and Wine;

(ii) International Union for the Protection of New Varieties of Plants;

(iii) International Plant Genetic Resources Institute; and

(b) the term is used to describe a variety of grapes from which the wine is made.

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

(1) For the purposes of subsection 40J(5) of the Act, wine is exempted from the operation of the offence provisions if:

(a) the description and presentation of the wine is false or misleading, or does not comply with registered conditions of use, only because of the use of a registered geographical indication, a registered translation, a registered traditional expression or a registered additional term; and

(b) the wine was lawfully produced before the day on which the offence provisions first applied to the use of the indication, translation, expression or term; and

(c) the indication, translation, expression or term is used by:

(i) a wholesaler of wine acting in the course of the wholesaler's business; or

(ii) a retailer of wine in the course of the retailer's business.

Note: ***The offence provisions*** is defined in subsection 40J(1) of the Act.

Marketing period

(2) The exemption in subsection (1) applies for a period, commencing on the day on which the offence provisions first apply to the use of the indication, translation, expression or term, of:

(a) for use in the description and presentation of fortified wines—5 years; and

(b) for use in the description and presentation of other wines—3 years.

(3) However, if a retailer has a stock of a wine at the end of the period mentioned in subsection (2), the exemption continues in relation to use by the retailer until that stock is exhausted.

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32 Use of trade marks in description of wine

Circumstances in which exemption applies

(1) Subsection (4) applies if:

(a) the Registrar of Trade Marks decides, under subsection 40RC(2) of the Act, that an objection to a proposed GI is made out, but the GI is subsequently registered in accordance with subsection 40ZD(2) of the Act; or

(b) the Registrar of Trade Marks decides, under section 71 of this instrument, that an objection to a proposed item is made out, but the item is subsequently registered in accordance with subsection 40ZD(2) of the Act; or

(c) a trade mark is registered or is the subject of a pending application under the *Trade Marks Act 1995* and:

(i) after the registration of, or application for, the trade mark, a GI or translation is proposed and registered; and

(ii) the GI or translation is identical to, or is likely to cause confusion with, the trade mark; or

(d) a trade mark listed in subsection (3) is identical to:

(i) a registered GI that indicates a foreign country or a region or locality in a foreign country; or

(ii) a registered translation of such a GI; or

(e) a trade mark listed in subsection (3) is likely to cause confusion with:

(i) a registered GI that indicates a foreign country or a region or locality in a foreign country; or

(ii) a registered translation of such a GI.

(2) If:

(a) paragraph (1)(a) or (b) applies; and

(b) the objection was on the ground that the proposed GI or proposed item is used in Australia:

(i) as the common name of a type or style of wine; or

(ii) as the name of a variety of grapes;

then a reference in subsection (4) to a trade mark is taken to be a reference to that name.

(3) For the purposes of paragraphs (1)(d) and (e), the trade marks are the following:

(a) Ilya;

(b) Karloff;

(c) Lienert of Mecklenburg;

(d) Lindauer;

(e) Montana;

(f) Salena Estate;

(g) The Bissy.

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Section 32

Exemption

(4) For the purposes of subsection 40J(5) of the Act, wine is exempted from the offence provisions if:

(a) the description and presentation of the wine is false or misleading, or does not comply with registered conditions of use, only because:

(i) the trade mark is used in the description and presentation; and

(ii) the trade mark is the same as or resembles the registered GI or registered translation; and

(iii) the wine did not originate in the country, region or locality indicated by the registered GI or registered translation; and

(b) the origin of the wine is shown in the description and presentation of the wine in a way that is not likely to mislead.

Note: ***The offence provisions*** is defined in subsection 40J(1) of the Act.

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Part 6—Determination of Australian GIs

Division 1—Modifications of the Act

33 Modifications of Division 4 of Part VIB of the Act

For the purposes of subsection 40PA(3) of the Act, the operation of Division 4 of Part VIB of the Act is modified as set out in Schedule 1 to this instrument.

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Division 2—Consideration of objections to determination of Australian GIs

34 Application of this Division

For the purposes of subsection 40RC(5) of the Act, this Division sets out the procedure to be followed, if the Registrar of Trade Marks receives an objection in relation to a proposed GI on a ground set out in section 40RB of the Act, in making decisions under subsections 40RC(2) and (3) of the Act.

35 Parties to proceedings

Each of the following is a ***party*** in relation to consideration of the objection:

(a) the person who made the objection;

(b) if an application was made for the determination of the proposed GI under section 40R of the Act—the applicant.

36 Evidence in relation to ground of objection and recommendation

(1) The Registrar of Trade Marks must send each party a written notice that:

(a) gives the name and address of any other party; and

(b) invites the party to file evidence relevant to whether the Registrar of Trade Marks should:

(i) decide the ground of objection is or is not made out; or

(ii) recommend to the Geographical Indications Committee that the proposed GI be determined despite the objection having been made out; and

(c) states that any evidence must be filed in the period of 3 months from the date of the notice.

Note: There may only be one party in some proceedings.

(2) The Registrar of Trade Marks must not send the notices until:

(a) the Registrar of Trade Marks has notified the Geographical Indications Committee under subsection 40RC(1) of the Act that the objection has been received; and

(b) the person who made the objection has paid the fee prescribed by section 42 of this instrument for dealing with the objection.

37 Evidence in answer

(1) If a party files evidence in response to a notice sent under section 36, the Registrar of Trade Marks must send the other party (if any) a written notice that:

(a) invites the other party to file evidence in answer; and

(b) states the period from the date of the notice in which evidence in answer may be filed.

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(2) The period stated for the purposes of paragraph (1)(b) must be at least 2 months.

(3) The Registrar of Trade Marks must also notify both parties, in writing, of the date by which a request for a hearing under section 39 must be made.

Note: There may only be one party in some proceedings.

38 New evidence

(1) A party may apply to the Registrar of Trade Marks, in writing, to file new evidence:
(a) after the end of a period specified by the Registrar of Trade Marks for the party to file evidence; and
(b) before the Registrar of Trade Marks makes a decision under subsection 40RC(2) or (3) of the Act.

(2) An application must:
(a) be accompanied by the fee prescribed by section 42; and
(b) include a statement:
(i) describing the new evidence; and
(ii) giving the reasons why the new evidence was not filed within the specified period.

(3) 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:
(a) set a date by which the new evidence must be filed; and
(b) notify the applying party of the date in writing.

(4) 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

(5) If the new evidence is filed by the date set under subsection (3), the Registrar of Trade Marks must send a written notice to the other party (if any) that:
(a) tells the other party that the new evidence is filed; and
(b) sets a reasonable period for the party to file evidence in answer to it.

(6) The Registrar of Trade Marks must also notify both parties, in writing, of the date by which a request for a hearing under section 39 must be made.

Note: There may only be one party in some proceedings.

39 Hearing and submissions

(1) If at least one notice is given under section 37 or subsection 38(5), any party may ask the Registrar of Trade Marks to conduct a hearing.

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(2) The request must be made to the Registrar of Trade Marks in writing no later than 1 month after the last day on which evidence may be filed in accordance with any notice given under section 37 or subsection 38(5).

(3) The request must be accompanied by the fee prescribed by section 42.

(4) If the Registrar of Trade Marks receives a request in accordance with subsections (1) to (3), he or she must:
  (a) send each party a written notice that:
    (i) informs the party a hearing will be held; and
    (ii) invites written submissions to be made before the hearing; and
  (b) conduct a hearing.

(5) If:
  (a) the objection was made on a ground mentioned in subsection 40RB(1) of the Act; and
  (b) the registered trade mark concerned is the subject of removal or cancellation proceedings;

the Registrar of Trade Marks must not conduct the hearing until the removal or cancellation proceedings are complete.

(6) The fee prescribed by section 42 for attendance at a hearing is payable by each party that attends the hearing.

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

(1) Evidence in relation to proceedings mentioned in this Division involving more than one party is not taken to be validly filed unless the party filing the evidence:
  (a) gives a copy of the evidence to the other party; and
  (b) includes, with the evidence being filed, a statement setting out when and how the copy was given to the other party.

(2) Evidence in relation to proceedings mentioned in this Division is not taken to be validly filed unless the party filing the evidence pays the fee prescribed by section 42.

41 Decision by Registrar of Trade Marks

(1) Subject to this section, 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 is requested, after the hearing has been held), make a decision under subsection 40RC(2) of the Act (and subsection 40RC(3) of the Act if applicable) by considering:
  (a) the notice published under subsection 40RA(2) of the Act; and
  (b) the objection; and
  (c) the evidence filed by the parties; and
  (d) if a hearing has been held—representations and material from the hearing and any written submissions by the parties; and

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(e) any other matter that the Registrar of Trade Marks considers relevant.

(2) If:

(a) the objection was made on a ground mentioned in subsection 40RB(1) of the Act; and

(b) the registered trade mark concerned is the subject of removal or cancellation proceedings;

the Registrar of Trade Marks must not make a decision under subsection 40RC(2) or (3) of the Act until the removal or cancellation proceedings are complete.

(3) The Registrar of Trade Marks must decide that the ground of objection is not made out if:

(a) the person objecting to the proposed GI does not file any evidence within the period mentioned in paragraph 36(1)(c); or

(b) the person objecting to the proposed GI withdraws the notice of objection before the Registrar of Trade Marks makes a decision about the objection.

Note: The Registrar of Trade Marks must notify the parties and the Geographical Indications Committee about his or her decision: see subsection 40RD(1) of the Act.

42 Fees

In proceedings mentioned in this Division, the fee specified in column 2 of an item in the following table is payable to the Registrar of Trade Marks in respect of a matter specified in column 1 of the item.

Fees for proceedings mentioned in this Division

	Column 1	Column 2
Item	**Matter**	**Fee**
1	Dealing with an objection	$500
2	Filing evidence under section 36, 37 or 38 (that is, evidence in support, evidence in answer or new evidence)	$375
3	Requesting a hearing under section 39	$500
4	Attendance at a hearing	$500 per day or part of a day, but any amount paid by the party under item 3 in relation to the hearing is deducted from the total
5	Applying to file new evidence under section 38	$100

43 Costs

The Registrar of Trade Marks must not make an order for costs in proceedings mentioned in this Division.

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

44 Application of this Division

For the purposes of subsection 40RE(2) of the Act, this Division sets out the procedure to be followed, if the Registrar of Trade Marks receives an application under paragraph 40RE(1)(b) of the Act for a decision that a ground of objection to a proposed GI no longer exists, in making a decision under subsection 40RE(1) of the Act.

45 Notice of application

The Registrar of Trade Marks must notify the Geographical Indications Committee in writing of the receipt and terms of the application under paragraph 40RE(1)(b) of the Act.

46 Parties to proceedings

Each of the following is a ***party*** in relation to determination of the application:

(a) the person who made the application;

(b) if the objection was made on a ground mentioned in subsection 40RB(1), (3) or (4) of the Act—the owner of the trade mark concerned;

(c) if the objection was made on the ground mentioned in subclause 1(2) of Schedule 1 to this instrument—the person who made the objection;

(d) if an application for the determination of the proposed GI was made under section 40R of the Act by a person other than the person mentioned in paragraph (a) of this section—the applicant for the determination of the proposed GI.

Note: Schedule 1 to this instrument modifies the operation of section 40RB of the Act.

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

(1) The Registrar of Trade Marks must send each party a written notice that:

(a) gives the name and address of each other party; and

(b) invites the party to file evidence relevant to whether the Registrar of Trade Marks should decide that the ground of objection no longer exists; and

(c) states that any evidence must be filed in the period of 3 months from the date of the notice.

(2) The Registrar of Trade Marks must not send the notices until:

(a) the Registrar of Trade Marks has notified the Geographical Indications Committee of the application under section 45; and

(b) the person who made the application has paid the fee prescribed by section 55 for dealing with the application.

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48 Evidence in answer

(1) 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:
  (a) invites the other party to file evidence in answer; and
  (b) states the period from the date of the notice in which evidence in answer may be filed.

(2) The period stated for the purposes of paragraph (1)(b) must be at least 2 months.

(3) The Registrar of Trade Marks must also notify all parties, in writing, of the date by which a request for a hearing under section 50 must be made.

49 New evidence

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

(2) An application must:
  (a) be accompanied by the fee prescribed by section 55; and
  (b) include a statement:
    (i) describing the new evidence; and
    (ii) giving the reasons why the new evidence was not filed within the specified period.

(3) 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:
  (a) set a date by which the new evidence must be filed; and
  (b) notify the applying party of the date in writing.

(4) 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

(5) If the new evidence is filed by the date set under subsection (3), the Registrar of Trade Marks must send a written notice to the other parties that:
  (a) tells the other parties that the new evidence is filed; and
  (b) sets a reasonable period for the parties to file evidence in answer to it.

(6) The Registrar of Trade Marks must also notify all parties, in writing, of the date by which a request for a hearing under section 50 must be made.

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50 Hearing and submissions

(1) If at least one notice is given under section 48 or subsection 49(5), any party may ask the Registrar of Trade Marks to conduct a hearing.

(2) The request must be made in writing to the Registrar of Trade Marks no later than 1 month after the last day on which evidence may be filed in accordance with any notice given under section 48 or subsection 49(5).

(3) The request must be accompanied by the fee prescribed by section 55.

(4) If the Registrar of Trade Marks receives a request in accordance with subsections (1) to (3), he or she must:
  (a) send each party a written notice that:
    (i) informs the party a hearing will be held; and
    (ii) invites written submissions to be made before the hearing; and
  (b) conduct a hearing.

(5) If:
  (a) the objection was made on a ground mentioned in subsection 40RB(1) of the Act; and
  (b) the registered trade mark concerned is the subject of removal or cancellation proceedings;

the Registrar of Trade Marks must not conduct the hearing until the removal or cancellation proceedings are complete.

(6) The fee prescribed by section 55 for attendance at a hearing is payable by each party that attends the hearing.

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

Evidence in relation to proceedings mentioned in this Division is not taken to be validly filed unless the party filing the evidence:
  (a) gives a copy of the evidence to each other party; and
  (b) includes, with the evidence being filed, a statement setting out when and how a copy was given to each other party; and
  (c) pays the fee prescribed by section 55.

52 Withdrawal of application

If the applicant under paragraph 40RE(1)(b) of the Act withdraws the application before the Registrar of Trade Marks makes a decision under subsection 40RE(1) of the Act, the Registrar of Trade Marks must:
  (a) notify the other parties in writing; and
  (b) continue the proceedings if requested to do so by another party, in writing, no later than 1 month after the date of the notice.

Note: If no party makes a request, the Registrar of Trade Marks must decide that the ground of objection continues to exist: see section 53.

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53 Decision by Registrar of Trade Marks

(1) Subject to this section, 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 is requested, after the hearing has been held), make a decision under subsection 40RE(1) of the Act by considering:
  (a) the evidence filed by the parties; and
  (b) if a hearing has been held—representations and material from the hearing and any written submissions by the parties; and
  (c) any other matter that the Registrar of Trade Marks considers relevant.

(2) If:
  (a) the objection relates to a registered trade mark; and
  (b) the registered trade mark is the subject of removal or cancellation proceedings;

  the Registrar of Trade Marks must not make a decision under subsection 40RE(1) of the Act until the removal or cancellation proceedings are complete.

(3) 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).

(4) The Registrar of Trade Marks must decide that the ground of objection continues to exist if:
  (a) the applicant under paragraph 40RE(1)(b) of the Act withdraws the application; and
  (b) no other party makes a request to continue the proceedings under section 52 of this instrument.

54 Notice of decision

(1) The Registrar of Trade Marks must, in writing, inform the Geographical Indications Committee and each party of the Registrar of Trade Mark's decision.

(2) After receiving notice of a decision from the Registrar of Trade Marks, the Presiding Member of the Committee must publish a notice:
  (a) setting out the proposed GI; and
  (b) stating that a decision of the Registrar of Trade Marks has been made in relation to the proposed GI; and
  (c) setting out the terms of the decision.

(3) The notice under subsection (2) is to be published in the manner that the Committee thinks appropriate.

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55 Fees

In proceedings mentioned in this Division, the fee specified in column 2 of an item in the following table is payable to the Registrar of Trade Marks in respect of a matter specified in column 1 of the item.

Fees for proceedings mentioned in this Division

	Column 1	Column 2
Item	**Matter**	**Fee**
1	Dealing with an application made under paragraph 40RE(1)(b) of the Act	$500
2	Filing evidence under section 47, 48 or 49 (that is, evidence in support, evidence in answer or new evidence)	$375
3	Requesting a hearing under section 50	$500
4	Attendance at a hearing	$500 per day or part of a day, but any amount paid by the party under item 3 in relation to the hearing is deducted from the total
5	Applying to file new evidence under section 49	$100

56 Costs

The Registrar of Trade Marks must not make an order for costs in proceedings mentioned in this Division.

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Division 4—Criteria for determining Australian GIs

57 Criteria for determining geographical indications

Determining the area and identifying its boundaries

(1) For the purposes of subsection 40T(2) of the Act, the Geographical Indications Committee is to have regard to the following criteria in deciding whether to determine an area, and in identifying the boundaries of the area:

(a) whether the area usually produces at least 500 tonnes of wine grapes in a year;

(b) whether the area includes at least 5 wine grape vineyards of at least 5 hectares each that do not have any common ownership (whether or not it also includes smaller vineyards);

(c) whether the area is a single tract of land;

(d) the degree to which the grape growing attributes of the area are:

(i) uniform; and

(ii) different from the grape growing attributes of neighbouring areas;

(e) the history of the founding and development of the area (as ascertained from local government records, newspaper archives, books, maps or other relevant material);

(f) natural features within or near the area, including rivers, valleys, hills and other topographical features;

(g) constructed features within or near the area, including roads, railways, towns and buildings;

(h) if an application was made to the Committee under section 40R of the Act—the boundary of the area suggested in the application;

(i) the degree to which the geological formation of the area is:

(i) uniform; and

(ii) different from the geological formation of neighbouring areas;

(j) the degree to which the climate of the area is uniform, having regard to the temperature, atmospheric pressure, humidity, rainfall, number of hours of sunshine and any other weather conditions experienced in the area throughout the year;

(k) whether the date on which harvesting a particular variety of wine grapes is expected to begin in the area is the same as the date on which harvesting grapes of the same variety is expected to begin in neighbouring areas;

(l) whether all of the area is within a natural drainage basin;

(m) whether water is available from an irrigation scheme:

(i) to a similar extent throughout the area; and

(ii) to a different extent compared to availability in neighbouring areas;

(n) the degree to which the elevation of the area is:

(i) uniform; and

(ii) different from the elevation of neighbouring areas;

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(o) whether there are any plans for the development of the area proposed by Commonwealth, State or municipal authorities and, if so, whether the development would affect the uniformity of the area or its distinctness from neighbouring areas;
(p) whether there are any relevant traditional divisions within the area;
(q) whether there is a common history of grape and wine production in the area, and whether this differs from the history in neighbouring areas.

Note: In determining a geographical indication under subsection 40Q(1) of the Act, the Committee is not prohibited under the Act from having regard to any other relevant matters.

(2) For the purposes of paragraph (1)(b), a ***wine grape vineyard*** means a single parcel of land that is planted with wine grapes and operated as a single entity by:
(a) the owner; or
(b) a manager on behalf of the owner or a lessee (regardless of the number of lessees).

(3) In considering the degree of uniformity of an area with respect to attributes mentioned in subsection (1), the Committee is to have regard to the size of the area.

(4) In deciding whether to determine an area that:
(a) is part of a larger area for which a geographical indication has previously been determined; or
(b) includes a smaller area for which a geographical indication has previously been determined;

the Committee is to have regard to the degree of uniformity of the smaller of the 2 areas compared to the larger, and the distinct attributes of the smaller area.

(5) Without limiting the way in which the Committee may identify the boundaries of an area, the Committee may use:
(a) ordinance survey map grid references; or
(b) local government boundary maps.

Determining the indication to be used

(6) For the purposes of subsection 40T(2) of the Act, the Committee is to have regard to the following criteria in determining a word or expression as the indication to be used to indicate an area:
(a) any history relating to the word or expression;
(b) whether, and to what extent, the word or expression is known to wine retailers beyond the boundaries of the area;
(c) whether, and to what extent, the word or expression has been traditionally used in the area or elsewhere;
(d) the appropriateness of the word or expression.

Note: In determining a geographical indication under subsection 40Q(1) of the Act, the Committee is not prohibited under the Act from having regard to any other relevant matters.

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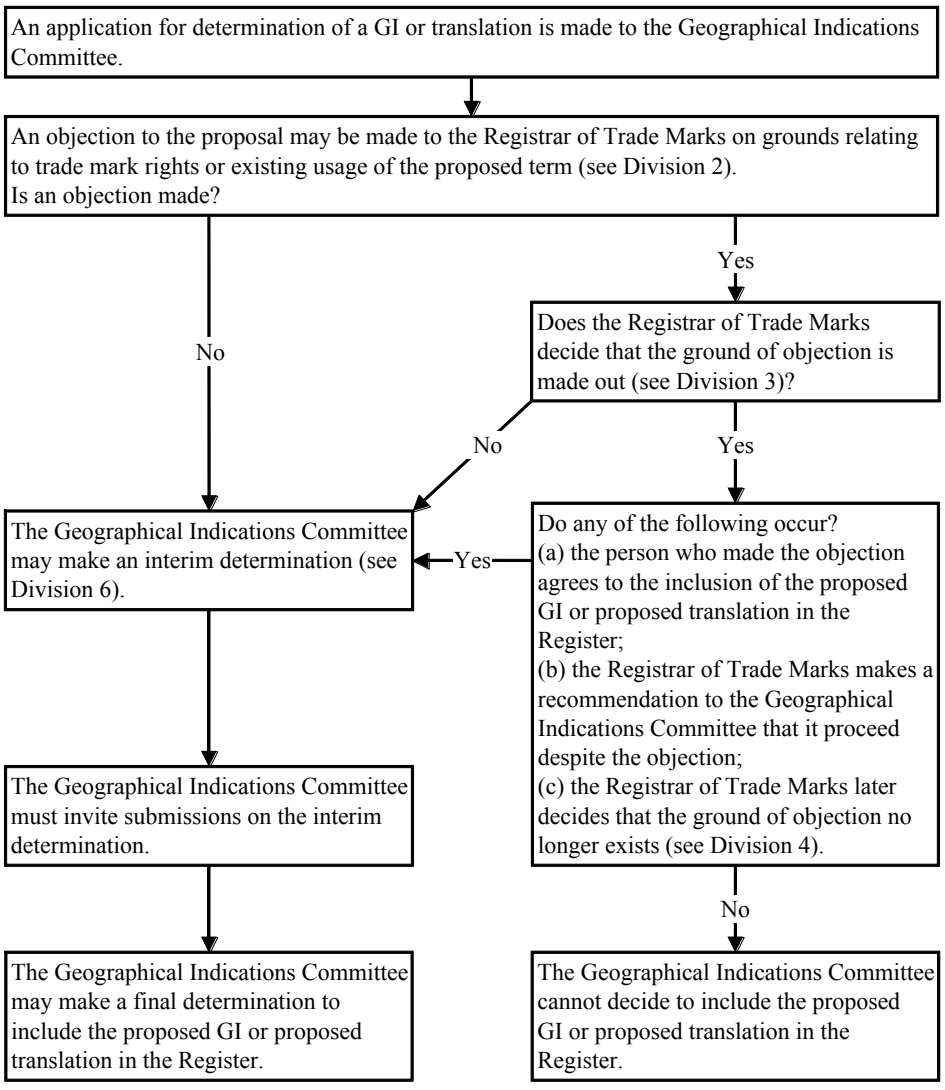
Part 7—Determination of foreign GIs and translations of foreign GIs

Division 1—Preliminary

58 Simplified outline of this Part

This Part sets out the procedure for including geographical indications that relate to foreign countries on the Register of Protected Geographical Indications and Other Terms. Translations of foreign geographical indications can also be included on the Register.

The procedure is as follows:



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> Decisions of the Registrar of Trade Marks can be appealed to the Federal Court (see Division 5). The final determination of the Geographic Indications Committee is reviewable by the Administrative Appeals Tribunal (see section 98).

59 Purpose of Part

For the purposes of subsection 40ZAQ(1) of the Act, this Part (other than Division 5) makes provision for the determination of geographical indications, and translations of geographical indications, in relation to wine originating in a foreign country.

60 Applications for determination

(1) A person may apply in writing to the Geographical Indications Committee for the determination of a GI in relation to a foreign country or a region or locality in a foreign country.

(2) A person may apply in writing to the Committee for the determination of a translation of a GI in relation to a foreign country or a region or locality in a foreign country.

(3) An application under subsection (2) for the determination of a translation of a GI may be made:
  (a) after the GI is registered; or
  (b) at the same time as an application under subsection (1) for the determination of the GI.

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

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

(1) The Presiding Member of the Geographical Indications Committee must publish a notice if:
  (a) an application has been made under subsection 60(1) for the determination of a GI (the ***proposed item***); or
  (b) an application has been made under subsection 60(2) for the determination of a translation of a GI (the ***proposed item***).

(2) The notice must:
  (a) set out the proposed item; and
  (b) invite persons to make written objections to the Registrar of Trade Marks in relation to the proposed item on a ground set out in section 62; and
  (c) invite the objections to be made within the period of not less than 1 month stated in the notice.

(3) If applications for determination of a GI and translation of the GI are made at the same time, the Presiding Member may publish a single notice in relation to both applications.

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

Registered owner of a registered trade mark

(1) The registered owner of a registered trade mark may object to the determination of a proposed item on one of the following grounds:
  (a) that the trade mark consists of a word, expression or other indication that is identical to the proposed item;
  (b) that:
    (i) the trade mark consists of a word, expression or other indication; and
    (ii) the proposed item is likely to cause confusion with that word, expression or other indication;
  (c) that:
    (i) the trade mark contains a word, expression or other indication; and
    (ii) the proposed item is likely to cause confusion with that word, expression or other indication; and
    (iii) the owner has trade mark rights in that word, expression or other indication.

(2) The owner may object on the ground specified in paragraph (1)(c) even if there are conditions or limitations entered on the Register of Trade Marks suggesting

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that the owner does not have trade mark rights to that word, expression or other indication.

Trade mark pending

(3) If a person has an application pending for the registration of a trade mark under the *Trade Marks Act 1995,* the person may object to the determination of a proposed item on one of the following grounds:

(a) that:

(i) the application was made in good faith; and

(ii) the trade mark consists of a word, expression or other indication that is identical to the proposed item; and

(iii) it appears that the requirements under the *Trade Marks Act 1995* for accepting an application for registration of a trade mark would be satisfied in respect of the trade mark applied for;

(b) that:

(i) the application was made in good faith; and

(ii) the trade mark consists of a word, expression or other indication; and

(iii) the proposed item is likely to cause confusion with that word, expression or other indication; and

(iv) it appears that the requirements under the *Trade Marks Act 1995* for accepting an application for registration of a trade mark would be satisfied in respect of the trade mark applied for;

(c) that:

(i) the application was made in good faith; and

(ii) the trade mark contains a word, expression or other indication; and

(iii) the proposed item is likely to cause confusion with that word, expression or other indication; and

(iv) it appears that the requirements under the *Trade Marks Act 1995* for accepting an application for registration of a trade mark would be satisfied in respect of the trade mark applied for; and

(v) after registration, the applicant would have trade mark rights in the word, expression or other indication.

Trade mark not registered

(4) If a person claims to have trade mark rights in a trade mark that is not registered, the person may object to the determination of a proposed item on one of the following grounds:

(a) that:

(i) the trade mark consists of a word, expression or other indication that is identical to the proposed item; and

(ii) the person has trade mark rights in that word, expression or other indication; and

(iii) the rights were acquired through use in good faith;

(b) that:

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(i) the trade mark consists of or contains a word, expression or other indication; and

(ii) the proposed item is likely to cause confusion with that word, expression or other indication; and

(iii) the person has trade mark rights in that word, expression or other indication; and

(iv) the rights were acquired through use in good faith.

Common use

(5) A person may object to the determination of a proposed item on the ground that the proposed item is used in Australia:

(a) as the common name of a type or style of wine; or

(b) as the name of a variety of grapes.

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

63 Application of this Division

This Division sets out the procedure to be followed if:

(a) the Registrar of Trade Marks receives an objection in relation to a proposed item on a ground that is set out in section 62; and

(b) the objection is received within the period stated in the notice published under section 61 in relation to the proposed item.

64 Notice of objection

The Registrar of Trade Marks must notify the Geographical Indications Committee in writing of the receipt and terms of the objection.

65 Parties to proceedings

Each of the following is a ***party*** in relation to consideration of the objection:

(a) the person who made the objection;

(b) the applicant under section 60 for determination of the proposed item.

66 Evidence in relation to ground of objection and recommendation

(1) The Registrar of Trade Marks must send each party a written notice that:

(a) gives the name and address of the other party; and

(b) invites the party to file evidence relevant to whether the Registrar of Trade Marks should:

(i) decide the ground of objection is or is not made out; or

(ii) recommend to the Geographical Indications Committee that the proposed GI be determined despite the objection having been made out; and

(c) states that any evidence must be filed in the period of 3 months from the date of the notice.

(2) The Registrar of Trade Marks must not send the notices until:

(a) the Registrar of Trade Marks has notified the Geographical Indications Committee of the objection under section 64; and

(b) the person who made the objection has paid the fee prescribed by section 74 for dealing with the objection.

67 Evidence in answer

(1) If a party files evidence in response to a notice sent under section 66, the Registrar of Trade Marks must send the other party a written notice that:

(a) invites the other party to file evidence in answer; and

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(b) states the period from the date of the notice in which evidence in answer may be filed.

(2) The period stated for the purposes of paragraph (1)(b) must be at least 2 months.

(3) The Registrar of Trade Marks must also notify both parties, in writing, of the date by which a request for a hearing under section 69 must be made.

68 New evidence

(1) A party may apply to the Registrar of Trade Marks, in writing, to file new evidence:
(a) after the end of a period specified by the Registrar of Trade Marks for the party to file evidence; and
(b) before the Registrar of Trade Marks makes a decision under section 71.

(2) An application must:
(a) be accompanied by the fee prescribed by section 74; and
(b) include a statement:
(i) describing the new evidence; and
(ii) giving the reasons why the new evidence was not filed within the specified period.

(3) 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:
(a) set a date by which the new evidence must be filed; and
(b) notify the applying party of the date in writing.

(4) 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

(5) If the new evidence is filed by the date set under subsection (3), the Registrar of Trade Marks must send a written notice to the other party that:
(a) tells the other party that the new evidence is filed; and
(b) sets a reasonable period for the party to file evidence in answer to it.

(6) The Registrar of Trade Marks must also notify both parties, in writing, of the date by which a request for a hearing under section 69 must be made.

69 Hearing and submissions

(1) If at least one notice is given under section 67 or subsection 68(5), any party may ask the Registrar of Trade Marks to conduct a hearing.

(2) The request must be made in writing to the Registrar of Trade Marks no later than 1 month after the last day on which evidence may be filed in accordance with any notice given under section 67 or subsection 68(5).

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(3) The request must be accompanied by the fee prescribed by section 74.

(4) If the Registrar of Trade Marks receives a request in accordance with subsections (1) to (3), he or she must:
  (a) send each party a written notice that:
    (i) informs the party a hearing will be held; and
    (ii) invites written submissions to be made before the hearing; and
  (b) conduct a hearing.

(5) If:
  (a) the objection was made on a ground mentioned in subsection 62(1); and
  (b) the registered trade mark concerned is the subject of removal or cancellation proceedings;

the Registrar of Trade Marks must not conduct the hearing until the removal or cancellation proceedings are complete.

(6) The fee prescribed by section 74 for attendance at a hearing is payable by each party that attends the hearing.

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

Evidence in relation to proceedings mentioned in this Division is not taken to be validly filed unless the party filing the evidence:
  (a) gives a copy of the evidence to the other party; and
  (b) includes, with the evidence being filed, a statement setting out when and how a copy was given to the other party; and
  (c) pays the fee prescribed by section 74.

71 Decision by Registrar of Trade Marks

(1) Subject to this section, 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 is requested, after the hearing has been held), make a decision in writing whether the ground of objection is or is not made out by considering:
  (a) the notice published under section 61; and
  (b) the objection; and
  (c) the evidence filed by the parties; and
  (d) if a hearing has been held—representations and material from the hearing and any written submissions by the parties; and
  (e) any other matter that the Registrar of Trade Marks considers relevant.

(2) If:
  (a) the objection was made on a ground mentioned in subsection 62(1); and
  (b) the registered trade mark concerned is the subject of removal or cancellation proceedings;

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the Registrar of Trade Marks must not make a decision under subsection (1) until the removal or cancellation proceedings are complete.

(3) The Registrar of Trade Marks must decide that the ground of objection is not made out if:

(a) the person objecting to the proposed item does not file any evidence within the period mentioned in paragraph 66(1)(c); or

(b) the person objecting to the proposed item withdraws the notice of objection before the Registrar of Trade Marks makes a decision about the objection.

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

(1) If:

(a) the Registrar of Trade Marks decides that the ground of objection is made out; and

(b) the Registrar of Trade Marks is satisfied that it is reasonable in the circumstances to recommend to the Geographical Indications Committee that the proposed item be determined despite the objection having been made out;

the Registrar of Trade Marks may make that recommendation to the Committee in writing.

Note 1: For example, it may be reasonable for the Registrar of Trade Marks to make such a recommendation if the Registrar of Trade Marks is satisfied that the proposed item was in use in Australia before the trade mark rights arose.

Note 2: If a recommendation is made under this section, the Committee may determine a GI or a translation of a GI: see subsection 90(5).

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

73 Notice of decision

(1) The Registrar of Trade Marks must, in writing, inform the Geographical Indications Committee and each party of the Registrar of Trade Marks's decision in relation to the objection under section 71 and any recommendation that has been made under section 72.

(2) After receiving notice of a decision, the Presiding Member of the Committee must publish a notice:

(a) setting out the proposed item; and

(b) stating that a decision of the Registrar of Trade Marks has been made in relation to the proposed item; and

(c) setting out the terms of the decision made under section 71 and any recommendation made under section 72 in relation to the proposed item.

(3) The notice under subsection (2) is to be published in the manner that the Committee thinks appropriate.

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74 Fees

In proceedings mentioned in this Division, the fee specified in column 2 of an item in the following table is payable to the Registrar of Trade Marks in respect of a matter specified in column 1 of the item.

Fees for proceedings mentioned in this Division

	Column 1	Column 2
Item	**Matter**	**Fee**
1	Dealing with an objection	$500
2	Filing evidence under section 66, 67 or 68 (that is, evidence in support, evidence in answer or new evidence)	$375
3	Requesting a hearing under section 69	$500
4	Attendance at a hearing	$500 per day or part of a day, but any amount paid by the party under item 3 in relation to the hearing is deducted from the total
5	Applying to file new evidence under section 68	$100

75 Costs

The Registrar of Trade Marks must not make an order for costs in proceedings mentioned in this Division.

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

76 Application for decision

If the Registrar of Trade Marks has made a decision under section 71 that a ground of objection to a proposed item has been made out, a person may apply in writing to the Registrar of Trade Marks for a decision that circumstances have changed since that decision was made, such that the ground of objection no longer exists.

77 Notice of application

If the Registrar of Trade Marks receives an application under section 76, the Registrar of Trade Marks must notify the Geographical Indications Committee in writing of the receipt and terms of the application.

78 Parties to proceedings

Each of the following is a ***party*** in relation to determination of an application under section 76:

(a) the person who made the application;

(b) if the objection was made on a ground in subsection 62(1), (3) or (4)—the owner of the trade mark concerned;

(c) if the objection was made on a ground in subsection 62(5)—the person who made the objection;

(d) if the applicant for the determination of the proposed item was not the person mentioned in paragraph (a)—the applicant for the determination of the proposed item.

79 Evidence relevant to whether ground of objection no longer exists

(1) The Registrar of Trade Marks must send each party a written notice that:

(a) gives the name and address of each other party; and

(b) invites the party to file evidence relevant to whether the Registrar of Trade Marks should decide that the ground of objection no longer exists; and

(c) states that any evidence must be filed in the period of 3 months from the date of the notice.

(2) The Registrar of Trade Marks must not send the notices until:

(a) the Registrar of Trade Marks has notified the Geographical Indications Committee of the application under section 77; and

(b) the person who made the application under section 76 has paid the fee prescribed by section 87 for dealing with the application.

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80 Evidence in answer

(1) 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:
  (a) invites the other party to file evidence in answer; and
  (b) states the period from the date of the notice in which evidence in answer may be filed.

(2) The period stated for the purposes of paragraph (1)(b) must be at least 2 months.

(3) The Registrar of Trade Marks must also notify all parties, in writing, of the date by which a request for a hearing under section 82 must be made.

81 New evidence

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

(2) An application must:
  (a) be accompanied by the fee prescribed by section 87; and
  (b) include a statement:
    (i) describing the new evidence; and
    (ii) giving the reasons why the new evidence was not filed within the specified period.

(3) 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:
  (a) set a date by which the new evidence must be filed; and
  (b) notify the applying party of the date in writing.

(4) 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

(5) If the new evidence is filed by the date set under subsection (3), the Registrar of Trade Marks must send a written notice to the other parties that:
  (a) tells the other parties that the new evidence is filed; and
  (b) sets a reasonable period for the parties to file evidence in answer to it.

(6) The Registrar of Trade Marks must also notify all parties, in writing, of the date by which a request for a hearing under section 82 must be made.

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82 Hearing and submissions

(1) If at least one notice is given under section 80 or subsection 81(5), any party may ask the Registrar of Trade Marks to conduct a hearing.

(2) The request must be made in writing to the Registrar of Trade Marks no later than 1 month after the last day on which evidence may be filed in accordance with any notice given under section 80 or subsection 81(5).

(3) The request must be accompanied by the fee prescribed by section 87.

(4) If the Registrar of Trade Marks receives a request under subsection (1), he or she must:

(a) send each party a written notice that:

(i) informs the party a hearing will be held; and

(ii) invites written submissions to be made before the hearing; and

(b) conduct a hearing.

(5) If:

(a) the objection relates to a registered trade mark; and

(b) the registered trade mark is the subject of removal or cancellation proceedings;

the Registrar of Trade Marks must not conduct a hearing until the removal or cancellation proceedings are complete.

(6) The fee prescribed by section 87 for attendance at a hearing is payable by each party that attends the hearing.

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

Evidence in relation to proceedings mentioned in this Division is not taken to be validly filed unless the party filing the evidence:

(a) gives a copy of the evidence to each other party; and

(b) includes, with the evidence being filed, a statement setting out when and how a copy was given to each other party; and

(c) pays the fee prescribed by section 87.

84 Withdrawal of application

If the applicant under section 76 withdraws the application before the Registrar of Trade Marks makes a decision under section 85, the Registrar of Trade Marks must:

(a) notify the other parties in writing; and

(b) continue the proceedings if requested to do so by another party, in writing, no later than 1 month after the date of the notice.

Note: If no party makes a request, the Registrar of Trade Marks must decide that the ground of objection continues to exist: see section 85.

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85 Decision by Registrar of Trade Marks

(1) Subject to this section, 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 is requested, after the hearing has been held), decide whether the ground of objection no longer exists by considering:

(a) the evidence filed by the parties; and

(b) if a hearing has been held—representations and material from the hearing and any written submissions by the parties; and

(c) any other matter that the Registrar of Trade Marks considers relevant.

(2) If:

(a) the objection relates to a registered trade mark; and

(b) the registered trade mark is the subject of removal or cancellation proceedings;

the Registrar of Trade Marks must not make a decision under subsection (1) until the removal or cancellation proceedings are complete.

(3) 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).

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

(a) the applicant under section 76 withdraws the application; and

(b) no other party makes a request to continue the proceedings under section 84.

86 Notice of decision

(1) The Registrar of Trade Marks must, in writing, inform the Geographical Indications Committee and each party of the Registrar of Trade Marks's decision.

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

(a) setting out the proposed item; and

(b) stating that a decision of the Registrar of Trade Marks has been made in relation to the proposed item; and

(c) setting out the terms of the decision.

(3) The notice under subsection (2) is to be published in the manner that the Committee thinks appropriate.

87 Fees

In proceedings mentioned in this Division, the fee specified in column 2 of an item in the following table is payable to the Registrar of Trade Marks in respect of a matter specified in column 1 of the item.

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Fees for proceedings mentioned in this Division		
	Column 1	**Column 2**
Item	**Matter**	**Fee**
1	Making an application for a decision under section 76	$500
2	Filing evidence under section 79, 80 or 81 (that is, evidence in support, evidence in answer or new evidence)	$375
3	Requesting a hearing under section 82	$500
4	Attendance at a hearing	$500 per day or part of a day, but any amount paid by the party under item 3 in relation to the hearing is deducted from the total
5	Applying to file new evidence under section 81	$100

88 Costs

The Registrar of Trade Marks must not make an order for costs in proceedings mentioned in this Division.

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Division 5—Appeals against decisions of Registrar of Trade Marks

89 Decisions appellable to Federal Court

For the purposes of subsection 40ZAR(1) of the Act, decisions of the Registrar of Trade Marks made under the following provisions of this instrument are prescribed:

(a) subsection 71(1) (a decision that a ground of objection is or is not made out);

(b) subsection 72(1) (a recommendation that a proposed item be determined or a refusal to make such a recommendation);

(c) subsection 85(1) (a decision that a ground of objection no longer exists or a refusal to make such a decision).

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

90 When Geographical Indications Committee may proceed to make a determination

(1) The Geographical Indications Committee may determine a GI or translation of a GI if no objection on a ground set out in section 62 was made to the proposed item within the period stated in the notice published under section 61 in relation to the proposed item.

(2) If an objection was made, the Committee:
  (a) must not proceed to make a determination until the Committee has, in accordance with subsection 73(2), published a notice of the Registrar of Trade Mark's decision on the objection; and
  (b) may only make a determination in the circumstances set out in the following subsections.

Ground of objection not made out

(3) The Committee may determine a GI or translation of a GI that was the subject of a decision under section 71 if:
  (a) all appeals against, or reviews of, the decision in relation to the proposed item have been finalised; and
  (b) the decision standing after the appeals and reviews have been finalised is that a ground of objection has not been made out in relation to the proposed item.

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

(4) The Committee may determine a GI or translation of a GI that is the subject of a decision that a ground of objection has been made out, if the person who objected to the determination of the proposed item has agreed, by notice in writing given to the Committee, to the determination of the proposed item.

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

(5) The Committee may determine a GI or translation of a GI that is the subject of a decision that a ground of objection has been made out, if:
  (a) a recommendation has been made to the Committee under section 72 that the proposed item should be determined despite the ground of objection having been made out; and
  (b) all appeals against, or reviews of, the decision to make that recommendation have been finalised; and
  (c) the decision standing after the appeals and reviews have been finalised is that the recommendation is made.

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Ground of objection made out and decision made under section 85

(6) The Committee may determine a GI or translation of a GI that is the subject of a decision that a ground of objection has been made out, if:
  (a) a decision has been made under section 85 that the ground of objection no longer exists; and
  (b) all appeals against, or reviews of, the decision that the ground no longer exists have been finalised; and
  (c) the decision standing after the appeals and reviews have been finalised is that the ground no longer exists.

No determination of translation without corresponding GI

(7) However, the Committee must not determine a translation of a GI if:
  (a) the application for determination of the translation under subsection 60(2) was made at the same time as an application for determination of the GI was made under subsection 60(1); and
  (b) the Committee is not permitted under this section to proceed to determine the GI.

91 Consultation by Geographical Indications Committee

In determining a GI or translation of a GI, the Geographical Indications Committee may consult any organisation or person it thinks appropriate.

92 Determining foreign GIs

(1) In determining a GI, the Geographical Indications Committee must:
  (a) identify in the determination the boundaries of the area or areas in the region or locality to which the determination relates; and
  (b) determine the indication to be used to indicate that area or those areas; and
  (c) determine any conditions of use that are to be applicable to the GI.

(2) The Committee must not:
  (a) determine a GI that is different from the GI proposed in the application under subsection 60(1); or
  (b) determine boundaries different from those proposed in the application.

(3) The Committee must have regard to whether the GI is protected by the laws of the country where the area is located.

(4) The Committee may have regard to any other matter it considers relevant.

(5) However, the Committee must not consider any submission to the extent that the submission asserts a trade mark right in respect of the proposed GI.

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93 Determining translations

(1) In determining a translation of a GI, the Geographical Indications Committee must:
  (a) identify the GI to which the translation relates; and
  (b) determine the translation to be used; and
  (c) determine any conditions of use that are to be applicable to the translation.

(2) The Committee must not determine a different translation to the translation that was proposed in the application under subsection 60(2).

(3) The Committee:
  (a) must consider whether the translation conveys or evokes the significance of the GI to which it relates; and
  (b) may consider any other matter it considers relevant.

(4) However, the Committee must not consider any submission to the extent that the submission asserts a trade mark right in respect of the proposed translation.

94 Interim determination

(1) A determination by the Geographical Indications Committee under section 92 or 93 is to be an interim determination in the first instance.

(2) An interim determination does not have effect.

95 Publication of notice of interim determination

(1) The Presiding Member of the Geographical Indications Committee must publish a notice, stating that the interim determination has been made and setting out the terms of the determination, in any manner that the Committee thinks appropriate.

(2) The notice must invite persons to make written submissions to the Committee in relation to the determination within a period of not less than 1 month that is stated in the notice.

(3) If interim determinations are made of both a GI and a translation of the GI, the Presiding Member may publish a single notice in relation to both determinations.

96 Final determination

After considering any submissions made to it, the Geographical Indications Committee may make a final determination.

97 Publication of notice of final determination

(1) The Presiding Member of the Geographical Indications Committee must publish a notice, stating that a final determination has been made and setting out the terms of the determination, in any manner that the Committee thinks appropriate.

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(2) The Presiding Member of the Geographical Indications Committee must also give the notice to:

(a) the person who applied for the determination under section 60; and

(b) any person who made an objection to the proposed item that was considered by the Register of Trade Marks under Division 3.

(3) The notice must include a statement to the effect that:

(a) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made, by or on behalf of any person whose interests are affected by the determination, to the Administrative Appeals Tribunal for review of the determination; and

(b) unless subsection 28(4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of that person for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the determination; and

(c) if a decision has been made under section 71, 72 or 85 of this instrument before the final determination:

(i) no application to the Administrative Appeals Tribunal may be made in respect of that decision; and

(ii) an appeal lies to the Federal Court in respect of that decision under section 89 of this instrument.

(4) If final determinations are made of both a GI and a translation of the GI, the Presiding Member may publish a single notice in relation to both determinations.

(5) Any failure to comply with subsection (3) in relation to a determination does not affect the validity of the determination.

98 Review of final determination

(1) Applications may be made to the Administrative Appeals Tribunal for review of final determinations made by the Geographical Indications Committee under section 96.

Note: Under section 89, an appeal lies to the Federal Court from a decision under section 71, 72 or 85.

(2) Despite paragraph 29(1)(d) and subsection 29(2) of the *Administrative Appeals Tribunal Act 1975*, an application to the Tribunal for review of a final determination must be made within 28 days after notice of the determination is published in accordance with section 97 of this instrument.

(3) Despite subsection 29(8) of the *Administrative Appeals Tribunal Act 1975*, an application under subsection 29(7) of that Act in respect of a final determination must be made before the time fixed by subsection (2) of this section ends.

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99 Date of effect of final determination

(1) The Presiding Member of the Geographical Indications Committee must give a copy of a final determination made under section 96 to the Registrar so that particulars of the determination can be included in the Register:

(a) if an application is made to the Administrative Appeals Tribunal under section 98 for review of the determination—as soon as practicable after the decision of the Tribunal on the review is given; or

(b) otherwise—as soon as practicable after the 28th day after notice of the determination is published in accordance with section 97.

(2) When the Presiding Member gives a copy of a final determination to the Registrar, the Presiding Member must also give a copy to the Chair of the Authority.

(3) A final determination of the Committee takes effect on the day on which particulars of the determination are included in the Register.

(4) However, a final determination in relation to a translation of a GI does not take effect, and particulars must not be included in the Register, if the GI to which it relates is not included in the Register.

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

Division 1—Preliminary

100 Simplified outline of this Part

This Part sets out the procedure for omitting geographical indications that relate to foreign countries, and translations of those geographical indications, from the Register of Protected Geographical Indications and Other Terms.

There are 2 grounds on which a person may apply to the Geographical Indications Committee for a decision to omit a GI. The first ground is that the GI is not in use, because wine is not being produced in the area to which the GI relates. The second ground is that the GI is no longer protected in the country of origin. Under both grounds, the Committee must also consider the use of the GI in the sale of wine in Australia.

A person may also apply to the Committee for a separate decision to omit a translation, on the ground that the translation no longer conveys or evokes the significance of the GI for which it was registered.

If it receives an application, the Committee must publish a notice inviting submissions.

Determinations made by the Committee on the ground of non-use (for GIs) or loss of significance (for translations) are reviewable by the Administrative Appeals Tribunal.

101 Purpose of Part

For the purposes of subsection 40ZAT(1) of the Act, this Part provides for the omission from the Register of registered geographical indications, and registered translations of such indications, in relation to a foreign country or a region or locality in a foreign country.

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

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

(1) A person may apply to the Geographical Indications Committee to omit from the Register a GI in relation to a foreign country or a region or locality in a foreign country, on the ground that the GI is not in use.

(2) If an application is made to omit a 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 GI and the translation.

(3) A person may apply to the Committee to omit a registered translation from the Register on the ground that the translation no longer conveys or evokes the significance of the GI for which it was registered.

103 Further information concerning application

(1) For the purposes of determining an application made under section 102, the Geographical Indications Committee may, by notice in writing, require the applicant to provide such further information as the Committee directs, within the period specified in the notice.

(2) If the applicant does not comply with this requirement, the application is taken to have been withdrawn.

(3) The notice must include a statement about the effect of subsection (2).

104 Notice by Geographical Indications Committee

If the Geographical Indications Committee receives an application under section 102, the Presiding Member of the Committee must publish a notice in the manner that the Committee thinks appropriate:

(a) setting out the registered GI, registered translation of a GI, or both, that the application under section 102 relates to; and

(b) stating that an application under section 102 has been made; and

(c) inviting persons to make written submissions to the Committee in relation to the application within the period of not less than 1 month that is stated in the notice.

105 Determination by Geographical Indications Committee

(1) After considering any submissions made to it in response to a notice under section 104, the Geographical Indications Committee must determine whether to omit the registered GI, registered translation of a GI, or both, that the application under section 102 relates to.

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Omission of GI

(2) The Committee may, in writing, make a determination to omit a GI if the Committee is satisfied of the following matters:
  (a) that the GI has been registered for more than 5 years before the date of the notice under section 104;
  (b) that the GI has not been used during the 3 years before the date of the notice under section 104;
  (c) that no special circumstances exist in relation to the country, region or locality indicated by the GI that would preclude the making of a determination to omit the GI from the Register.

(3) For the purposes of paragraph (2)(b), a GI has not been used if:
  (a) there has not been a production of wine for commercial use originating in the country, region or locality indicated by the GI; and
  (b) 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
  (c) 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.

(4) For the purposes of paragraph (2)(c), special circumstances exist if:
  (a) the country, region or locality indicated by the GI has been affected by fire, drought or some other disaster; and
  (b) as a result of being so affected, there has not been a production of wine for commercial use originating in the country, region or locality indicated by the GI during the 3 years immediately before the date of the notice under section 104.

Omission of translation of GI

(5) The Committee may, in writing, make a determination to omit a translation of a GI if the Committee is satisfied that the translation no longer conveys or evokes the significance of the GI for which it was registered.

(6) If the application under section 102 is for omission of both a GI and its translation, the Committee may make a determination to omit the translation without omitting the GI if the Committee is satisfied of the matter in subsection (5) in relation to the translation.

(7) The Committee must make a determination to omit a translation of a GI if it makes a determination to omit the GI.

106 Notice of determination

(1) The Presiding Member of the Geographical Indications Committee must:
  (a) give a notice of the Committee's determination to the applicant; and

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(b) if the determination made is to omit a GI, a translation of a GI or both a GI and its translation from the Register—publish a notice setting out the terms of the determination.

(2) The notice under paragraph (1)(b) is to be published in the manner that the Committee thinks appropriate.

107 AAT review of determinations

(1) Applications may be made to the Administrative Appeals Tribunal for review of determinations made by the Geographical Indications Committee under section 105.

(2) Despite paragraph 29(1)(d) and subsection 29(2) of the *Administrative Appeals Tribunal Act 1975*, an application to the Tribunal for review of a determination under section 105 of this instrument must be made within 28 days after notice of the determination is published in accordance with section 106 of this instrument.

(3) Despite subsection 29(8) of the *Administrative Appeals Tribunal Act 1975*, an application under subsection 29(7) of that Act in respect of a determination under section 105 of this instrument must be made before the time fixed by subsection (2) of this section ends.

108 Date of effect of determination to omit item

(1) If a determination made by the Geographical Indications Committee under section 105 is a determination to omit a GI, a translation of a GI or both a GI and its translation from the Register, the Presiding Member of the Committee must give a copy of the determination to the Registrar so that particulars of the determination can be omitted from the Register:

(a) if an application is made to the Administrative Appeals Tribunal under section 107 for review of the determination—as soon as practicable after the decision of the Tribunal on the review is given; or

(b) otherwise—as soon as practicable after the 28th day after notice of the determination is published in accordance with section 106.

(2) When the Presiding Member gives a copy of the determination to the Registrar, the Presiding Member must also give a copy to the Chair of the Authority.

(3) The determination of the Committee takes effect on the day on which particulars of the item or items are omitted from the Register.

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

109 Application for omission of foreign GI

A person may apply to the Geographical Indications Committee to omit from the Register a GI in relation to a foreign country or a region or locality in a foreign country, on the ground that the GI is not protected in the country to which it relates and is not in use in Australia.

110 Further information concerning application

(1) For the purposes of determining an application made under section 109, the Geographical Indications Committee may, by notice in writing, require the applicant to provide such further information as the Committee directs, within the period specified in the notice.

(2) If the applicant does not comply with this requirement, the application is taken to have been withdrawn.

(3) The notice must include a statement about the effect of subsection (2).

111 Notice by Geographical Indications Committee

If the Geographical Indications Committee receives an application under section 109, the Presiding Member of the Committee must publish a notice in the manner that the Committee thinks appropriate:

(a) stating that an application under section 109 has been made and setting out the GI; and

(b) inviting persons to make written submissions to the Committee in relation to the application within the period of not less than 1 month that is stated in the notice.

112 Determination by Geographical Indications Committee

(1) After considering any submissions made to it in response to a notice under section 111, the Geographical Indications Committee must determine whether to omit the GI.

(2) The Committee must make a determination to omit the GI from the Register if it is satisfied of the following matters:

(a) the GI is not protected by the laws of the country where the area indicated by the GI is located;

(b) in the 3 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.

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(3) The Committee must make a determination in writing not to omit the GI from the Register if it is not satisfied of either or both of the matters in subsection (2).

(4) If the Committee makes a determination to omit a GI for which there is a registered translation, the Committee must also make a determination to omit the translation.

113 Notice of determination

The Presiding Member of the Geographical Indications Committee must:

(a) give a notice of the Committee's determination to the applicant; and

(b) publish a notice setting out the terms of the determination in any manner that the Committee thinks appropriate.

114 Date of effect of determination to omit foreign GI

(1) If the determination made by the Geographical Indications Committee under section 112 is to omit the GI from the Register, the Presiding Member of the Committee must give a copy of the determination to the Registrar so that particulars of the determination can be omitted from the Register as soon as practicable.

(2) When the Presiding Member gives a copy of the determination to the Registrar, the Presiding Member must also give a copy to the Chair of the Authority.

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

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Part 9—Miscellaneous

115 Delegation

The Authority may, by writing under its seal, delegate any or all of its powers under this instrument to an employee of the Authority, except:

(a) this power of delegation; and

(b) the power under section 13 to suspend or cancel a licence.

116 Authority may use computer programs to make decisions

(1) The Authority may arrange for the use, under the Authority's control, of computer programs for any purposes for which the Authority may make decisions under this instrument.

(2) However, the following decisions must not be made by the operation of a computer program under such an arrangement:

(a) a decision under section 13 to suspend or cancel a licence;

(b) a decision under section 17 to suspend or revoke the approval of a grape product;

(c) a decision under section 21 to revoke an export certificate.

(3) A decision made by the operation of a computer program under such an arrangement is, for the purposes of this instrument, taken to be a decision made by the Authority.

(4) If the Authority is satisfied that a decision made by the operation of a computer program under such an arrangement is incorrect, the Authority may substitute another decision.

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Part 10—Transitional provisions

Division 1—On commencement

117 Export controls

(1) A licence granted under regulation 5 of the *Australian Grape and Wine Authority Regulations 1981* (the ***old Regulations***) that is in force immediately before the commencement of this instrument is taken to have been granted under section 9 of this instrument.

(2) A licence granted under regulation 5 of the old Regulations that is suspended under regulation 9 of the old Regulations immediately before the commencement of this instrument is taken:
  (a) to have been granted under section 9 of this instrument; and
  (b) suspended under section 13 of this instrument for the same period as it was suspended under the old Regulations.

(3) An export certificate issued under regulation 7 of the old Regulations is taken to have been issued under section 20 of this instrument if, immediately before the commencement of this instrument:
  (a) the export certificate had not been revoked; and
  (b) the export of grape product for which the certificate was issued had not occurred.

(4) A grape product is taken to have been approved under section 14 of this instrument for export by a licensee if:
  (a) the licensee applied, under regulation 7 of the old Regulations, for an export certificate for export of the grape product; and
  (b) the Authority issued a certificate on the last such application by the licensee.

(5) A direction given under regulation 8 of the old Regulations that is in force immediately before the commencement of this instrument is taken to have been given under section 22 of this instrument.

118 Determination of GIs

Despite 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*:

(a) the old Regulations, as in force immediately before the repeal, continue to apply in relation to the determination of a GI under Division 4 of Part VIB of the Act (including any decision under section 40RC of the Act on an objection) if a notice about the determination was published under section 40RA of the Act before the repeal; and

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(b) the old Regulations, as in force immediately before the repeal, continue to apply in relation to an application under subsection 40RE(1) of the Act that was made before the repeal; and

(c) Part 6A of the old Regulations, as in force immediately before the repeal, continues to apply in relation to the determination of a foreign GI or translation of a foreign GI (including any decision under Division 3 of that Part on an objection) if a notice about the determination was published under regulation 57 of the old Regulations; and

(d) Part 6A of the old Regulations, as in force immediately before the repeal, continues to apply in relation to an application that was made under regulation 73, 97 or 104 of the old Regulations.

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

Note: See section 33.

1 Grounds of objection to the determination of a geographical indication

(1) The operation of section 40RB of the Act is modified by adding the additional ground of objection set out in subclause (2).

Modification

(2) A person may object to the determination of a proposed GI on the ground that the proposed GI is used in Australia:

(a) as the common name of a type or style of wine; or

(b) as the name of a variety of grapes.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Wine Australia Regulations 2018	16 Mar 2018 (F2018L00286)	1 Apr 2018 (s 2(1) item 1)	
Wine Australia Amendment (Trade with United Kingdom) Regulations 2019	28 Mar 2019 (F2019L00438)	1 Jan 2021 (s 2(1) item 1)	—
Export Control Legislation (Repeals and Consequential Amendments) Regulations 2021	25 Mar 2021 (F2021L00336)	Sch 2 (items 13, 14): 3 am (A.C.T.) 28 Mar 2021 (s 2(1) item 1)	—

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Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2	rep LA s 48D
Part 2	
s 6A	ad F2019L00438
Part 3	
Division 4	
s 19	am F2021L00336
Part 5	
s 29	rep 1 Sept 2020 (s 29(2))

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