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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Australian Wine and Brandy
Corporation Amendment Bill 2009**

No. , 2009

(Agriculture, Fisheries and Forestry)

**A Bill for an Act to amend the *Australian Wine and
Brandy Corporation Act 1980*, and for related
purposes**

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1 **A Bill for an Act to amend the *Australian Wine and***
2 ***Brandy Corporation Act 1980, and for related***
3 **purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Australian Wine and Brandy*
7 *Corporation Amendment Act 2009*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.

13

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
4. Schedule 3, Part 1	The 28th day after the day on which this Act receives the Royal Assent.	
5. Schedule 3, Part 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 4; and (b) the commencement of Schedule 1 to this Act.	
6. Schedule 3, Part 3	At the same time as the provision(s) covered by table item 4.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

1

3 Schedule(s)

2

Each Act that is specified in a Schedule to this Act is amended or

3

repealed as set out in the applicable items in the Schedule

4

concerned, and any other item in a Schedule to this Act has effect

5

according to its terms.

1
2 **Schedule 1—Amendments relating to the**
3 **Agreement between Australia and the**
4 **European Community on trade in wine**

5 **Part 1—Amendments**

6 *Australian Wine and Brandy Corporation Act 1980*

7 **1 Paragraph 3(1)(e)**

8 Omit “; and”, substitute “and other international agreements;”.

9 **2 Paragraph 3(1)(f)**

10 Repeal the paragraph.

11 **3 Subsection 4(1) (paragraph (a) of the definition of**
12 ***agreement country*)**

13 Omit “European Economic Community”, substitute “European
14 Community”.

15 **4 Subsection 4(1)**

16 Insert:

17 *country* has a meaning affected by subsection (2).

18 **5 Subsection 4(1)**

19 Insert:

20 *designated foreign country* has the meaning given by subsection
21 40K(3).

22 **6 Subsection 4(1) (definition of *EC country*)**

23 Omit “European Economic Community”, substitute “European
24 Community”.

25 **7 Subsection 4(1) (definition of *geographical indication*)**

26 Repeal the definition, substitute:

1 ***geographical indication***, in relation to wine goods, means an
2 indication that identifies the goods as originating in a country, or in
3 a region or locality in that country, where a given quality,
4 reputation or other characteristic of the goods is essentially
5 attributable to their geographical origin.

6 **8 Subsection 4(1) (definition of *modify*)**

7 Omit “or other” (wherever occurring).

8 **9 Subsection 4(1)**

9 Insert:

10 ***protection date*** for a registered traditional expression has the
11 meaning given by subsection 40DB(6).

12 **10 Subsection 4(1) (definition of *Register*)**

13 Repeal the definition, substitute:

14 ***Register*** means the Register of Protected Geographical Indications
15 and Other Terms kept under section 40ZC.

16 **11 Subsection 4(1)**

17 Insert:

18 ***registered additional term*** means a term that is included in Part 4
19 of the Register.

20 **12 Subsection 4(1) (definition of *registered ancillary*
21 *protected expression*)**

22 Repeal the definition.

23 **13 Subsection 4(1) (definition of *registered condition*)**

24 Repeal the definition.

25 **14 Subsection 4(1)**

26 Insert:

27 ***registered conditions of use***, in relation to:
28 (a) a registered geographical indication; or
29 (b) a registered translation of such an indication; or
30 (c) a registered traditional expression; or

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- 1 (d) a registered quality wine term; or
2 (e) a registered additional term;
3 means a condition of use included in the Register that is applicable
4 to the geographical indication, translation, traditional expression,
5 quality wine term or additional term (as the case may be).

6 **15 Subsection 4(1) (definition of *registered geographical***
7 ***indication*)**

8 Omit all the words after “included”, substitute “in Part 1 of the
9 Register”.

10 **16 Subsection 4(1)**

11 Insert:

12 *registered quality wine term* means a term that is included in Part 3
13 of the Register.

14 **17 Subsection 4(1) (definition of *registered traditional***
15 ***expression*)**

16 Omit all the words after “included”, substitute “in Part 2 of the
17 Register”.

18 **18 Subsection 4(1)**

19 Insert:

20 *registered translation* of a registered geographical indication
21 means a translation, included in Part 1 of the Register, of the
22 registered geographical indication.

23 **19 Subsection 4(1) (definition of *registered variety of grapes*)**

24 Repeal the definition.

25 **20 Subsection 4(1) (definition of *Registrar*)**

26 Repeal the definition, substitute:

27 *Registrar* means the Registrar of Protected Geographical
28 Indications and Other Terms established under subsection
29 40ZA(1).

30 **21 Subsection 4(1) (definition of *traditional expression*)**

1 Repeal the definition, substitute:

2 *traditional expression*, in relation to wine originating in a foreign
3 country, means a traditionally used name referring, in particular, to
4 the method of production or to the quality, colour or type of the
5 wine.

6 **22 Subsection 4(1)**

7 Insert:

8 *World Trade Organization* means the body of that name
9 established by the WTO Agreement, done at Marrakesh on
10 15 April 1994.

11 Note: The text of the WTO Agreement is set out in Australian Treaty Series
12 1995 No. 8 ([1995] ATS 8). In 2009, the text of an Agreement in the
13 Australian Treaty Series was accessible through the Australian
14 Treaties Library on the AustLII website (www.austlii.edu.au).

15 **23 After subsection 4(1)**

16 Insert:

17 *References to country*

18 (2) For the purposes of this Act, a reference to a country includes a
19 reference to a member of the World Trade Organization.

20 **24 Subsection 4(3)**

21 Omit “European Economic Community”, substitute “European
22 Community”.

23 Note: The following heading to subsection 4(3) is inserted “*Parties to prescribed wine trading*
24 *agreements*”.

25 **25 Section 5C**

26 After “addresses”, insert “, indications”.

27 **26 Paragraph 8(2)(aa)**

28 Repeal the paragraph, substitute:

29 (aa) to determine any conditions of use that are to be applicable to
30 any registered geographical indications and any registered
31 translations of such indications; and

32 Note 1: The following heading to subsection 8(1) is inserted “*General power*”.

1 Note 2: The following heading to subsection 8(2) is inserted “*Specific powers*”.

2 **27 Paragraph 8(2)(ab)**

3 Repeal the paragraph.

4 **28 Paragraphs 8(2)(ac) and (ad)**

5 Repeal the paragraphs, substitute:

6 (ac) to determine in relation to a foreign country:

7 (i) any traditional expressions that are to be registered in
8 relation to wines originating in that country (being
9 traditional expressions that are recognised in the laws
10 and regulations of that country for the purpose of the
11 description and presentation of wine); and

12 (ii) any conditions of use that are to be applicable to any or
13 all of those expressions; and

14 (ad) to determine:

15 (i) in relation to Australia—any terms that are to be
16 registered as additional terms in relation to wines
17 originating in Australia (being terms that are required to
18 be protected for the purpose of the description and
19 presentation of wine); and

20 (ii) in relation to a foreign country—any terms that are to be
21 registered as additional terms in relation to wines
22 originating in that country (being terms that are
23 recognised in the laws and regulations of that country
24 for the purpose of the description and presentation of
25 wine); and

26 (iii) in relation to a particular wine (regardless of origin)—
27 any terms that are to be registered as additional terms in
28 relation to that wine; and

29 (iv) any conditions of use that are to be applicable to any or
30 all of the terms referred to in subparagraphs (i) to (iii);
31 and

32 **29 Paragraph 8(2)(ae)**

33 Repeal the paragraph.

34 **30 After paragraph 8(2)(g)**

35 Insert:

1 (ga) without limiting paragraph (g), to charge fees for the
2 provision of services, or the performance of work, by or on
3 behalf of:
4 (i) the Corporation; or
5 (ii) the Geographical Indications Committee established by
6 section 40N;
7 in relation to the determination of geographical indications
8 and translations of such indications by the Geographical
9 Indications Committee (including determinations for the
10 omission of such indications and translations); and

11 **31 Subsection 8(2A)**

12 Omit “(ab), (ac), (ad) or (ae)”, substitute “(ac) or (ad)”.

13 Note 1: The following heading to subsection 8(2A) is inserted “*Requirements for determinations*
14 *by the Corporation*”.

15 Note 2: The following heading to subsection 8(2E) is inserted “*Review of determinations*”.

16 **32 Subsection 8(2F)**

17 Omit “(ab), (ac), (ad) or (ae)” (wherever occurring), substitute “(ac) or
18 (ad)”.

19 Note 1: The following heading to subsection 8(2G) is inserted “*Inclusion of particulars in the*
20 *Register*”.

21 Note 2: The following heading to subsection 8(3) is inserted “*Consistency with corporate and*
22 *operational plans*”.

23 **33 Subsection 38(4)**

24 Omit “(4)”.

25 **34 Subsection 38(4)**

26 After “geographical indications”, insert “, and translations of such
27 indications,”.

28 **35 Part VIB (heading)**

29 Repeal the heading, substitute:

30 **Part VIB—Protection of geographical indications**
31 **and other terms**

32 **36 Paragraph 40A(a)**

1 After “agreements”, insert “and other international agreements”.

2 **37 Sections 40C to 40H**

3 Repeal the sections, substitute:

4 **Subdivision A—Sale, export or import of wine with a false**
5 **description and presentation**

6 **40C Offence—sale, export or import of wine with a false description**
7 **and presentation**

- 8 (1) A person commits an offence if:
9 (a) the person sells, exports or imports wine; and
10 (b) the wine is sold, exported or imported by the person:
11 (i) in trade or commerce; and
12 (ii) with a false description and presentation.

13 Penalty: Imprisonment for 2 years.

14 Note: A court may impose a maximum fine of 120 penalty units instead of,
15 or in addition to, a term of imprisonment. A body corporate that is
16 convicted of an offence may be fined up to 5 times that maximum
17 fine. (See subsections 4B(2) and (3) of the *Crimes Act 1914*.)

- 18 (2) The description and presentation may be false even if it indicates
19 the country, region or locality (as the case may be) in which the
20 wine originated.

21 **40D False descriptions and presentations**

- 22 (1) This section has effect for the purposes of section 40C.
23 (2) Subject to sections 40DA and 40DB, the description and
24 presentation of wine is false if:
25 (a) it includes the name of a country, or any other indication that
26 the wine originated in a particular country, and the wine did
27 not originate in that country; or
28 (b) it includes a registered geographical indication, and the wine
29 did not originate in a country, region or locality in relation to
30 which the geographical indication is registered; or
31 (c) it includes a registered translation of a registered
32 geographical indication, and the wine did not originate in a

- 1 country, region or locality in relation to which the
2 geographical indication is registered; or
3 (d) it includes a registered traditional expression, and:
4 (i) the wine is not a wine in relation to which the
5 expression is registered; and
6 (ii) the wine is in a category of wine in relation to which the
7 expression is registered; and
8 (iii) the expression is in a language in relation to which the
9 expression is registered; or
10 (e) it is not in accordance with any provisions relating to the
11 description and presentation of wine as are prescribed for the
12 purposes of this paragraph.
- 13 (3) Subsection (2) does not limit what, apart from that subsection, is a
14 false description and presentation of wine.
- 15 (4) For the purposes of paragraphs (2)(b), (c) and (d):
16 (a) a registered geographical indication; or
17 (b) a registered translation of such an indication; or
18 (c) a registered traditional expression;
19 is included in the description and presentation of wine even if the
20 indication, translation or expression is accompanied by an
21 expression such as “kind”, “type”, “style”, “imitation”, “method”,
22 or any similar expression.

23 **40DA Circumstances in which description and presentation is not**
24 **false—general**

25 *Inclusion of geographical indication, translation or traditional*
26 *expression registered for more than one place*

- 27 (1) If:
28 (a) the description and presentation of wine includes an
29 indication or term that is a registered geographical indication,
30 a registered translation of such an indication, or a registered
31 traditional expression, in relation to a country, region or
32 locality; and
33 (b) the wine originated in that country, region or locality; and
34 (c) the description and presentation indicates that the wine
35 originated in that country, region or locality;
-

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1 then the description and presentation is not false merely because
2 the indication or term is also a registered geographical indication, a
3 registered translation of such an indication, or a registered
4 traditional expression, in relation to another country, region or
5 locality.

6 *Inclusion of common English word or term*

7 (2) If:

- 8 (a) the description and presentation of wine includes a word or
9 term that is a registered geographical indication, a registered
10 translation of such an indication, or a registered traditional
11 expression, in relation to a country, region or locality; and
12 (b) the word or term is a common English word or term; and
13 (c) the word or term is not used in such a way as to indicate that
14 the wine originated in the country, region or locality in
15 relation to which the geographical indication, translation or
16 traditional expression is registered; and
17 (d) the description and presentation indicates the country, region
18 or locality in which the wine originated; and
19 (e) the word or term is used in good faith;
20 then the description and presentation is not false merely because it
21 includes the word or term.

22 *Inclusion of name of individual or address of winery*

23 (3) The description and presentation of wine is not false merely
24 because it includes:

- 25 (a) the name of an individual who manufactured, sold, exported
26 or imported the wine; or
27 (b) if a person who manufactured, sold, exported or imported the
28 wine is, apart from this subsection, lawfully permitted to use
29 the name of an individual who previously manufactured,
30 sold, exported or imported the wine—the name of that
31 individual; or
32 (c) the address of the winery at which the wine was
33 manufactured.

1 **40DB Circumstances in which description and presentation is not**
2 **false—inclusion of registered traditional expressions**

3 *Inclusion of registered quality wine term*

4 (1) If:

- 5 (a) the description and presentation of wine includes a registered
6 quality wine term; and
7 (b) the wine originated in Australia; and
8 (c) the description and presentation indicates that the wine
9 originated in Australia or in a region or locality in Australia;
10 and
11 (d) the registered quality wine term is also a registered traditional
12 expression; and
13 (e) the wine is in a category of wine in relation to which the
14 expression is registered;

15 then the description and presentation is not false merely because it
16 includes the registered quality wine term.

17 *Wine originating in non-agreement country*

18 (2) The description and presentation of wine that originates in a
19 foreign country that is not an agreement country is not false merely
20 because it includes a term that is a registered traditional expression
21 if:

- 22 (a) the term is not used in such a way as to be likely to mislead
23 as to the country, region or locality in which the wine
24 originated; and
25 (b) the description and presentation indicates the country, region
26 or locality in which the wine originated; and
27 (c) the inclusion of the term in the description and presentation
28 does not constitute unfair competition within the meaning of
29 Article 10*bis* of the Paris Convention for the Protection of
30 Industrial Property of 20 March 1883 as amended.

31 Note: The text of the Convention is set out in Australian Treaty Series 1972
32 No. 12 ([1972] ATS 12). In 2009, the text of a Convention in the
33 Australian Treaty Series was accessible through the Australian
34 Treaties Library on the AustLII website (www.austlii.edu.au).

35 *Inclusion of trade mark*

36 (3) If:

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- 1 (a) the description and presentation of wine includes a trade
2 mark; and
3 (b) the trade mark contains or consists of a registered traditional
4 expression; and
5 (c) before the protection date for the traditional expression:
6 (i) the trade mark had been entered in good faith in the
7 Register of Trade Marks; or
8 (ii) the owner of the trade mark had acquired rights in the
9 trade mark through use in good faith;
10 then the description and presentation is not false merely because it
11 includes that trade mark.

12 *Inclusion of business name*

- 13 (4) If:
14 (a) the description and presentation of wine includes a business
15 name; and
16 (b) the business name contains or consists of a registered
17 traditional expression; and
18 (c) before the protection date for the traditional expression, the
19 business name was registered in good faith under the law of a
20 State or Territory;
21 then the description and presentation is not false merely because it
22 includes that business name.
23 (5) Subsection (4) does not limit subsection 40DA(3).

24 *Definition of protection date*

- 25 (6) In this Act, the **protection date** for a registered traditional
26 expression is:
27 (a) if the traditional expression is registered in relation to an
28 agreement country under paragraph 40ZD(2A)(a):
29 (i) unless subparagraph (ii) applies—the date on which the
30 prescribed wine-trading agreement to which that
31 country is a party was signed; or
32 (ii) if that agreement is modified after that date to include
33 the traditional expression and paragraph (b) does not
34 apply—the date on which the agreement is so modified;
35 or
-

- 1 (b) if the traditional expression is registered in relation to a
2 foreign country (whether or not an agreement country) under
3 paragraph 40ZD(2A)(b)—the date on which the traditional
4 expression is registered.

5 **Subdivision B—Sale, export or import of wine with a**
6 **misleading description and presentation**

7 **40E Sale, export or import of wine with a misleading description**
8 **and presentation**

- 9 (1) A person commits an offence if:
10 (a) the person sells, exports or imports wine; and
11 (b) the wine is sold, exported or imported by the person:
12 (i) in trade or commerce; and
13 (ii) with a misleading description and presentation.

14 Penalty: Imprisonment for 2 years.

15 Note: A court may impose a maximum fine of 120 penalty units instead of,
16 or in addition to, a term of imprisonment. A body corporate that is
17 convicted of an offence may be fined up to 5 times that maximum
18 fine. (See subsections 4B(2) and (3) of the *Crimes Act 1914*.)

- 19 (2) The description and presentation may be misleading even if it
20 indicates the country, region or locality (as the case may be) in
21 which the wine originated.

22 **40F Misleading descriptions and presentations**

- 23 (1) This section has effect for the purposes of section 40E.

24 *Inclusion of geographical indication, translation or traditional*
25 *expression*

- 26 (2) Subject to sections 40FA and 40FB, the description and
27 presentation of wine is misleading if:
28 (a) it includes a registered geographical indication, and the
29 indication is used in such a way as to be likely to mislead as
30 to the country, region or locality in which the wine
31 originated; or
32 (b) it includes a registered translation of a registered
33 geographical indication, and the translation is used in such a

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- 1 way as to be likely to mislead as to the country, region or
2 locality in which the wine originated; or
- 3 (c) it includes a registered traditional expression, and:
- 4 (i) the wine is not a wine in relation to which the
5 expression is registered; and
- 6 (ii) the wine is not in a category of wine in relation to which
7 the expression is registered; and
- 8 (iii) the expression is in a language in relation to which the
9 expression is registered; and
- 10 (iv) the expression is used in such a way as to be likely to
11 mislead that the wine originated in a country, region or
12 locality in relation to which the expression is registered
13 or that the wine is in a category of wine in relation to
14 which the expression is registered.
- 15 (3) For the purposes of subsection (2):
- 16 (a) a registered geographical indication; or
- 17 (b) a registered translation of such an indication; or
- 18 (c) a registered traditional expression;
- 19 is included in the description and presentation of wine even if the
20 indication, translation or expression is accompanied by an
21 expression such as “kind”, “type”, “style”, “imitation”, “method”,
22 or any similar expression.
- 23 *Inclusion of word resembling geographical indication, translation*
24 *or traditional expression*
- 25 (4) Subject to sections 40FA and 40FB, the description and
26 presentation of wine is misleading if:
- 27 (a) it includes an indication or term that so resembles a
28 registered geographical indication as to be likely to mislead
29 that the wine originated in a country, region or locality in
30 relation to which the indication is registered; or
- 31 (b) it includes a term that so resembles a registered translation of
32 a registered geographical indication as to be likely to mislead
33 that the wine originated in a country, region or locality in
34 relation to which the indication is registered; or
- 35 (c) both of the following apply:
- 36 (i) it includes a term that so resembles a registered
37 traditional expression as to be likely to mislead that the
-

- 1 wine originated in a country, region or locality in
2 relation to which the expression is registered or that the
3 wine is in a category of wine in relation to which the
4 expression is registered;
5 (ii) the wine originated in a foreign country that is not an
6 agreement country.

7 *Inclusion of name of individual or address of winery*

- 8 (5) The description and presentation of wine is misleading if:
9 (a) it includes:
10 (i) the name of an individual who manufactured, sold,
11 exported or imported the wine; or
12 (ii) if a person who manufactured, sold, exported or
13 imported the wine is, apart from this subsection,
14 lawfully permitted to use the name of an individual who
15 previously manufactured, sold, exported or imported the
16 wine—the name of that individual; or
17 (iii) the name or address of the winery at which the wine
18 was manufactured; and
19 (b) the name or address, as the case may be, is used in such a
20 way in the description and presentation as to be likely to
21 mislead as to the country, region or locality in which the
22 wine originated.

23 *Not in accordance with prescribed provisions*

- 24 (6) The description and presentation of wine is misleading if it is not in
25 accordance with any provisions relating to the description and
26 presentation of wine as are prescribed for the purposes of this
27 subsection.

28 *Ordinary meaning of misleading not affected*

- 29 (7) Subsections (2), (3), (4), (5) and (6) do not limit what, apart from
30 those subsections, is a misleading description and presentation of
31 wine.

1 **40FA Circumstances in which description and presentation is not**
2 **misleading—general**

3 *Inclusion of geographical indication, translation or traditional*
4 *expression registered for more than one place*

5 (1) If:

- 6 (a) the description and presentation of wine includes an
7 indication or term that is a registered geographical indication,
8 a registered translation of such an indication, or a registered
9 traditional expression, in relation to a country, region or
10 locality; and
11 (b) the wine originated in that country, region or locality; and
12 (c) the description and presentation indicates that the wine
13 originated in that country, region or locality;

14 then the description and presentation is not misleading merely
15 because the indication or term is, or resembles, a registered
16 geographical indication, a registered translation of such an
17 indication, or a registered traditional expression, in relation to
18 another country, region or locality.

19 *Inclusion of common English word or term*

20 (2) If:

- 21 (a) the description and presentation of wine includes a word or
22 term that is a registered geographical indication, a registered
23 translation of such an indication, or a registered traditional
24 expression, in relation to a country, region or locality; and
25 (b) the word or term is a common English word or term; and
26 (c) the word or term is not used in such a way as to indicate that
27 the wine originated in the country, region or locality in
28 relation to which the geographical indication, translation or
29 traditional expression is registered; and
30 (d) the description and presentation indicates the country, region
31 or locality in which the wine originated; and
32 (e) the word or term is used in good faith;

33 then the description and presentation is not misleading merely
34 because it includes the word or term.

1 **40FB Circumstances in which description and presentation is not**
2 **misleading—inclusion of registered traditional**
3 **expressions**

4 *Inclusion of registered quality wine term*

5 (1) If:

- 6 (a) the description and presentation of wine includes a registered
7 quality wine term; and
8 (b) the wine originated in Australia; and
9 (c) the description and presentation indicates that the wine
10 originated in Australia or in a region or locality in Australia;
11 and
12 (d) the registered quality wine term is also a registered traditional
13 expression; and
14 (e) the wine is in a category of wine in relation to which the
15 expression is registered;

16 then the description and presentation is not misleading merely
17 because it includes the registered quality wine term.

18 *Inclusion of trade mark*

19 (2) If:

- 20 (a) the description and presentation of wine includes a trade
21 mark; and
22 (b) the trade mark contains or consists of a registered traditional
23 expression; and
24 (c) before the protection date for the traditional expression:
25 (i) the trade mark had been entered in good faith in the
26 Register of Trade Marks; or
27 (ii) the owner of the trade mark had acquired rights in the
28 trade mark through use in good faith;

29 then the description and presentation is not misleading merely
30 because it includes that trade mark.

31 *Inclusion of business name*

32 (3) If:

- 33 (a) the description and presentation of wine includes a business
34 name; and

- 1 (b) the business name contains or consists of a registered
2 traditional expression; and
3 (c) the business name was registered in good faith under the law
4 of a State or Territory before the protection date for the
5 traditional expression;
6 then the description and presentation is not misleading merely
7 because it includes that business name.
- 8 (4) Subsection (3) does not limit subsection 40F(5).

9 **Subdivision C—Other provisions relating to sale, export or**
10 **import of wine**

11 **40G Sale, export or import of wine in contravention of registered**
12 **conditions of use**

- 13 (1) A person commits an offence if:
14 (a) the person sells, exports or imports wine; and
15 (b) the wine is sold, exported or imported by the person in trade
16 or commerce with a description and presentation that:
17 (i) includes an indication or term that is a registered
18 geographical indication, a registered translation of such
19 an indication, a registered traditional expression, a
20 registered quality wine term or a registered additional
21 term; and
22 (ii) does not comply with any registered conditions of use
23 applicable to that geographical indication, translation,
24 traditional expression, quality wine term or additional
25 term (as the case may be).

26 **Penalty:** Imprisonment for 1 year.

27 **Note:** A court may impose a maximum fine of 60 penalty units instead of, or
28 in addition to, a term of imprisonment. A body corporate that is
29 convicted of an offence may be fined up to 5 times that maximum
30 fine. (See subsections 4B(2) and (3) of the *Crimes Act 1914*.)

31 *Indication or term registered for more than one place*

- 32 (2) Subsection (1) does not apply if:
33 (a) the indication or term is registered in one or more Parts of the
34 Register in relation to one or more countries, regions or
35 localities; and
-

- 1 (b) the description and presentation complies with the registered
2 conditions of use applicable to the indication or term as
3 registered in one of those Parts for one of those countries,
4 regions or localities; and
5 (c) the wine originated in that country, region or locality; and
6 (d) the description and presentation indicates that the wine
7 originated in that country, region or locality.

8 Note: The defendant bears an evidential burden in relation to the matters in
9 this subsection. (See subsection 13.3(3) of the *Criminal Code*.)

10 *Indication or term is registered additional term for particular wine*

11 (3) Subsection (1) also does not apply if:

- 12 (a) the indication or term is a registered additional term for a
13 particular wine and is also either or both of the following:
14 (i) a registered additional term for another particular wine;
15 (ii) registered in one or more Parts of the Register in
16 relation to one or more countries, regions or localities;
17 and
18 (b) the description and presentation complies with the registered
19 conditions of use that are applicable to the indication or term
20 as registered:
21 (i) for one of those particular wines; or
22 (ii) in one of those Parts for one of those countries, regions
23 or localities; and
24 (c) either:
25 (i) if subparagraph (b)(i) applies—the wine is the particular
26 wine; or
27 (ii) if subparagraph (b)(ii) applies—the wine originated in
28 that country, region or locality, and the description and
29 presentation indicates that the wine originated in that
30 country, region or locality.

31 Note: The defendant bears an evidential burden in relation to the matters in
32 this subsection. (See subsection 13.3(3) of the *Criminal Code*.)

33 **38 Subsection 40J(1) (definition of *the offence provisions*)**

34 Repeal the definition, substitute:

35 *the offence provisions* means subsections 40C(1), 40E(1) and
36 40G(1).

1 **39 Subsection 40K(1)**

2 Omit “, 40G or 40H”, substitute “or 40G”.

3 **40 Paragraphs 40K(1)(b) and (c)**

4 Omit “an agreement country”, substitute “a designated foreign country”.

5 **41 At the end of section 40K**

6 Add:

7 (3) In this Act:

8 *designated foreign country* means a foreign country in relation to
9 which a geographical indication, translation of such an indication,
10 traditional expression, or additional term is registered.

11 **42 Subsection 40M(1)**

12 Repeal the subsection, substitute:

13 *National food standard modified*

14 (1) A national food standard that applies to wine has effect, in relation
15 to wine that originates in any foreign country, as if any requirement
16 in the standard to comply with particular oenological practices or
17 processes, or compositional requirements, in relation to wine were
18 replaced by a requirement to comply with the replacement
19 practices, processes or requirements under either subsection (1A)
20 or (1B).

21 *Practices, processes and requirements set out in wine-trading*
22 *agreements*

23 (1A) The replacement practices, processes or requirements under this
24 subsection are:

25 (a) subject to paragraph (b), the oenological practices or
26 processes, or compositional requirements, set out in a
27 prescribed wine-trading agreement as in force or existing
28 from time to time; or

29 (b) if, in accordance with such an agreement, Australia has been
30 notified of the authorisation of modifications of the
31 oenological practices or processes, or compositional
32 requirements, set out in the agreement—the oenological

1 practices or processes, or compositional requirements, as so
2 modified.

3 *Practices, processes and requirements prescribed by the*
4 *regulations*

5 (1B) The replacement practices, processes or requirements under this
6 subsection are the oenological practices or processes, or
7 compositional requirements, prescribed by the regulations in
8 relation to wine originating in any foreign country.

9 (1C) Regulations made for the purposes of subsection (1B):

10 (a) must not prescribe oenological practices or processes, or
11 compositional requirements, in relation to wine originating in
12 any foreign country unless the oenological practices or
13 processes, or compositional requirements, apply to wine
14 under the laws and regulations of a foreign country; and

15 (b) may prescribe oenological practices or processes, or
16 compositional requirements, by applying, adopting or
17 incorporating (with or without modification) a written
18 instrument or other document:

19 (i) as in force or existing at a particular time; or

20 (ii) as in force or existing from time to time.

21 Note: The heading to section 40M is altered by omitting “**agreement**” and substituting
22 “**foreign**”.

23 **43 Subsection 40M(2)**

24 Omit “or other”.

25 Note: The following heading to subsection 40M(2) is inserted “*Minister may suspend*
26 *operation of section*”.

27 **44 Paragraph 40P(1)(b)**

28 After “Part”, insert “(including determining any conditions of use
29 applicable to such GIs)”.

30 **45 At the end of paragraph 40P(1)(d)**

31 Add “or under the regulations”.

32 **46 Subsection 40PA(1) (note)**

33 Repeal the note, substitute:

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1 Note: Geographical indications, and translations of such indications, in
2 relation to wine originating in a foreign country are not determined
3 under this Division. They are determined by the Committee under
4 regulations made for the purposes of Division 4B (unless they are in a
5 prescribed wine-trading agreement).

6 **47 At the end of section 40PA**

7 Add:

8 (3) The regulations may modify the operation of this Division to
9 remove any inconsistency with the operation of regulations made
10 for the purposes of Division 4B.

11 **48 Section 40RB**

12 Omit “word or expression” (wherever occurring), substitute “word,
13 expression or other indication”.

14 **49 Paragraph 40T(1)(b)**

15 Omit “word or expression”, substitute “indication”.

16 **50 At the end of subsection 40T(1)**

17 Add:

18 ; and (c) determine any conditions of use that are to be applicable to
19 the geographical indication.

20 **51 Paragraph 40T(3)(b)**

21 Omit “a word or expression” (wherever occurring), substitute “an
22 indication”.

23 **52 Division 4A of Part VIB (heading)**

24 Repeal the heading, substitute:

25 **Division 4A—Omission of Australian registered geographical**
26 **indications**

27 **53 At the end of subsection 40ZAA(1)**

28 Add:

29 Note: Determinations for the omission of geographical indications, and
30 translations of such indications, in relation to wine originating in a
31 foreign country are not made under this Division. They are made by
32 the Committee under regulations made for the purposes of
33 Division 4B.

1 **54 At the end of section 40ZAA**

2 Add:

- 3 (3) The regulations may modify the operation of this Division to
4 remove any inconsistency with the operation of regulations made
5 for the purposes of Division 4B.

6 **55 After Division 4A of Part VIB**

7 Insert:

8 **Division 4B—Foreign geographical indications and translations**

9 **40ZAQ Determination of foreign geographical indications and**
10 **translations**

- 11 (1) The regulations may make provision for and in relation to the
12 determination of geographical indications, and translations of
13 geographical indications, in relation to wine originating in a
14 foreign country.

15 *Role of Committee*

- 16 (2) Without limiting subsection (1), the regulations may:
- 17 (a) provide for the Committee to deal with applications for the
18 determination of geographical indications, and translations of
19 such indications, in relation to wine originating in a foreign
20 country or a region or locality in a foreign country; and
 - 21 (b) provide for the Committee to make determinations of such
22 indications and translations (including determining any
23 conditions of use applicable to such indications and
24 translations); and
 - 25 (c) set out criteria for use by the Committee in making such
26 determinations; and
 - 27 (d) provide for review by the Administrative Appeals Tribunal of
28 such determinations.

29 *Role of Registrar of Trade Marks*

- 30 (3) Without limiting subsection (1), the regulations may also:
- 31 (a) provide for objections to be made to the Registrar of Trade
32 Marks in relation to the determination of proposed

- 1 geographical indications, and translations of such indications,
2 in relation to wine originating in a foreign country or a region
3 or locality in a foreign country; and
4 (b) set out the grounds on which such objections may be made;
5 and
6 (c) set out the procedure to be followed in dealing with such
7 objections (including the charging of fees, the holding of
8 hearings and the taking of evidence); and
9 (d) provide for the Registrar of Trade Marks to make
10 recommendations to the Committee in relation to the
11 determination of the proposed indications and translations.

12 **40ZAR Appeals against decisions of Registrar of Trade Marks**

- 13 (1) An appeal lies to the Federal Court against such decisions of the
14 Registrar of Trade Marks as are prescribed by the regulations
15 (being decisions under regulations made for the purposes of
16 subsection 40ZAQ(3)).
- 17 (2) The jurisdiction of the Federal Court to hear and determine appeals
18 against prescribed decisions is exclusive of the jurisdiction of any
19 other court except the jurisdiction of the High Court under
20 section 75 of the Constitution.
- 21 (3) On hearing an appeal against a prescribed decision, the Federal
22 Court may do any one or more of the following:
23 (a) admit further evidence orally, or on affidavit or otherwise;
24 (b) permit the examination and cross-examination of witnesses,
25 including witnesses who gave evidence before the Registrar
26 of Trade Marks;
27 (c) order an issue of fact to be tried as it directs;
28 (d) affirm, reverse or vary the prescribed decision;
29 (e) give any judgment, or make any order, that, in all the
30 circumstances, it thinks fit;
31 (f) order a party to pay costs to another party.
- 32 (4) The Registrar of Trade Marks may appear and be heard at the
33 hearing of an appeal to the Federal Court against a prescribed
34 decision.
- 35 (5) Except with the leave of the Federal Court, an appeal does not lie
36 to the Full Court of the Federal Court against a decision of a single

1 judge of the Federal Court in the exercise of its jurisdiction to hear
2 and determine appeals against prescribed decisions.

- 3 (6) The regulations may make provision about the practice and
4 procedure of the Federal Court in a proceeding under this section,
5 including provision:
6 (a) prescribing the time for starting the action or proceeding or
7 for doing any other act or thing; or
8 (b) for an extension of that time.

9 **40ZAS Decisions not to affect rights under Trade Marks Act**

10 A decision made under section 40ZAR, or under regulations made
11 for the purposes of section 40ZAQ, does not:

- 12 (a) create or affect a right under the *Trade Marks Act 1995* or at
13 common law in respect of a trade mark; or
14 (b) in any way pre-empt or affect a decision of the Registrar of
15 Trade Marks under the *Trade Marks Act 1995* in respect of a
16 pending application for the registration of a trade mark.

17 **40ZAT Determinations for the omission from the Register of foreign**
18 **geographical indications and translations**

- 19 (1) The regulations may make provision for and in relation to the
20 omission from the Register of registered geographical indications,
21 and registered translations of such indications, in relation to a
22 foreign country or a region or locality in a foreign country.
- 23 (2) Without limiting subsection (1), the regulations may:
24 (a) provide for the Committee to deal with applications for the
25 omission from the Register of registered geographical
26 indications, and registered translations of such indications, in
27 relation to a foreign country or a region or locality in a
28 foreign country; and
29 (b) provide for the Committee to make determinations for the
30 omission from the Register of such indications and
31 translations; and
32 (c) set out the grounds on which such determinations may be
33 made; and
34 (d) provide for review by the Administrative Appeals Tribunal of
35 such determinations.
-

1 **56 Division 5 of Part VIB (heading)**

2 Repeal the heading, substitute:

3 **Division 5—Register of Protected Geographical Indications**
4 **and Other Terms**

5 **57 Subsection 40ZA(1)**

6 Repeal the subsection, substitute:

7 (1) There is to be a Registrar of Protected Geographical Indications
8 and Other Terms.

9 **58 Paragraph 40ZB(a)**

10 Omit “Register of Protected Names”, substitute “Register of Protected
11 Geographical Indications and Other Terms”.

12 **59 Paragraph 40ZB(b)**

13 Omit “enter”, substitute “include”.

14 **60 Paragraph 40ZB(e)**

15 Repeal the paragraph, substitute:

16 (e) in accordance with the directions of the Corporation or the
17 Committee, to notify authorities and organisations in foreign
18 countries of the geographical indications, translations of such
19 indications, traditional expressions and additional terms
20 included in the Register.

21 **61 Subsection 40ZC(1)**

22 Omit “Register of Protected Names”, substitute “Register of Protected
23 Geographical Indications and Other Terms”.

24 Note: The heading to section 40ZC is replaced by the heading “**Register of Protected**
25 **Geographical Indications and Other Terms**”.

26 **62 Subsections 40ZD(1) and (2)**

27 Repeal the subsections, substitute:

28 *Parts of the Register*

29 (1) The Register is to be divided into 4 parts as follows:

30 (a) Part 1 is to include:

- 1 (i) geographical indications in relation to wines originating
2 in Australia, and any conditions of use applicable to
3 those indications; and
4 (ii) geographical indications in relation to wines originating
5 in a foreign country, any translations of those
6 indications, and any conditions of use applicable to
7 those indications or translations;
8 (b) Part 2 is to include traditional expressions in relation to wines
9 originating in a foreign country, and any conditions of use
10 applicable to those expressions;
11 (c) Part 3 is to include quality wine terms in relation to wines
12 originating in Australia, and any conditions of use applicable
13 to those terms;
14 (d) Part 4 is to include other terms (not being geographical
15 indications, translations of geographical indications,
16 traditional expressions, or terms referred to in paragraph (c)),
17 in relation to wines, and any conditions of use applicable to
18 those terms.

19 *Particulars that must be included in Part 1 of the Register*

- 20 (2) The Registrar must include in Part 1 of the Register (geographical
21 indications), in accordance with the directions of the Corporation,
22 the following particulars:
23 (a) in relation to Australia:
24 (i) Australia; and
25 (ii) the name of each State and internal Territory; and
26 (iii) any geographical indication determined by the
27 Committee under Division 4 to be a geographical
28 indication in relation to wines originating in Australia;
29 and
30 (iv) any region or locality in relation to which such a
31 geographical indication is determined; and
32 (v) any conditions of use applicable to such a geographical
33 indication;
34 (b) in relation to an agreement country:
35 (i) each geographical indication that, under a prescribed
36 wine-trading agreement to which that country is a party,
37 is a geographical indication in relation to wines
38 originating in that country; and

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- 1 (ii) any translation, recognised by that wine-trading
2 agreement, of each such geographical indication; and
3 (iii) any region or locality in relation to which each such
4 geographical indication is to be registered; and
5 (iv) any conditions of use applicable to a geographical
6 indication referred to in subparagraph (i) or a translation
7 referred to in subparagraph (ii);
8 (c) in relation to a foreign country (whether or not an agreement
9 country):
10 (i) any geographical indication determined by the
11 Committee, under regulations made for the purposes of
12 Division 4B, to be a geographical indication in relation
13 to wines originating in that country; and
14 (ii) any translation determined by the Committee, under
15 regulations made for the purposes of Division 4B, to be
16 a translation of such a geographical indication; and
17 (iii) any region or locality in relation to which each such
18 geographical indication is determined; and
19 (iv) any conditions of use applicable to a geographical
20 indication referred to in subparagraph (i) or a translation
21 referred to in subparagraph (ii).

22 *Particulars that must be included in Part 2 of the Register*

- 23 (2A) The Registrar must include in Part 2 of the Register (traditional
24 expressions), in accordance with the directions of the Corporation,
25 the following particulars:
26 (a) in relation to an agreement country:
27 (i) each traditional expression that is listed in relation to
28 wines originating in that country in a prescribed
29 wine-trading agreement to which that country is a party;
30 and
31 (ii) each wine originating in that country that is listed in that
32 wine-trading agreement in relation to each such
33 traditional expression; and
34 (iii) each category of wine that is listed in that wine-trading
35 agreement in relation to each such traditional
36 expression; and

- 1 (iv) each language that is listed in that wine-trading
2 agreement in relation to each such traditional
3 expression; and
4 (v) any conditions of use applicable to each such traditional
5 expression;
6 (b) in relation to a foreign country (whether or not an agreement
7 country):
8 (i) each traditional expression that is listed in the laws and
9 regulations of that country for the purpose of the
10 description and presentation of wines originating in that
11 country, and that is determined by the Corporation; and
12 (ii) each wine originating in that country that is listed in
13 those laws and regulations in relation to such a
14 traditional expression; and
15 (iii) each category of wine that is listed in those laws and
16 regulations in relation to such a traditional expression;
17 and
18 (iv) each language that is listed in those laws and regulations
19 in relation to such a traditional expression; and
20 (v) any conditions of use applicable to each such traditional
21 expression.

22 *Particulars that must be included in Part 3 of the Register*

- 23 (2B) The Registrar must include in Part 3 of the Register (quality wine
24 terms), in accordance with the directions of the Corporation, the
25 following particulars:
26 (a) each term (a **quality wine term**) that, under a prescribed
27 wine-trading agreement to which Australia is a party, is a
28 quality wine term in relation to wines originating in
29 Australia;
30 (b) any region or locality in relation to which each such term is
31 to be registered;
32 (c) any conditions of use applicable to each such term.

33 *Particulars that must be included in Part 4 of the Register*

- 34 (2C) The Registrar must include in Part 4 of the Register (additional
35 terms), in accordance with the directions of the Corporation, the
36 following particulars:
37 (a) in relation to Australia:

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- 1 (i) each term (other than a geographical indication or a
2 quality wine term) that, under a prescribed wine-trading
3 agreement to which Australia is a party, is required to
4 be protected for the purpose of the description and
5 presentation of wine originating in Australia; and
- 6 (ii) any other term that the Corporation has determined is
7 required to be protected for the purpose of the
8 description and presentation of wine originating in
9 Australia; and
- 10 (iii) any region or locality in relation to which a term
11 referred to in subparagraph (i) or (ii) is to be registered;
12 and
- 13 (iv) any conditions of use applicable to a term referred to in
14 subparagraph (i) or (ii);
- 15 (b) in relation to an agreement country:
- 16 (i) each term (other than a geographical indication, a
17 translation of a geographical indication, or a traditional
18 expression) that, under a prescribed wine-trading
19 agreement to which that country is a party, is required to
20 be protected for the purpose of the description and
21 presentation of wine originating in that country; and
- 22 (ii) any region or locality in relation to which each such
23 term is to be registered; and
- 24 (iii) any conditions of use applicable to each such term;
- 25 (c) in relation to a foreign country (whether or not an agreement
26 country):
- 27 (i) each term (other than a geographical indication, a
28 translation of a geographical indication, or a traditional
29 expression) that is recognised in the laws and
30 regulations of that country for the purpose of the
31 description and presentation of wine originating in that
32 country, and that is determined by the Corporation; and
- 33 (ii) any region or locality in relation to which each such
34 term is to be registered; and
- 35 (iii) any conditions of use applicable to each such term;
- 36 (d) any other term (not being a geographical indication, a
37 translation of a geographical indication, a traditional
38 expression or a quality wine term) that the Corporation has
39 determined is required to be protected in relation to particular
40 wines, and any conditions of use applicable to those terms.
-

1 **63 Paragraph 40ZD(3)(a)**

2 After “Division 4”, insert “or under regulations made for the purposes
3 of Division 4B”.

4 **64 Clause 1 of the Schedule (definition of *nominated***
5 ***member*)**

6 Omit “or (c)”, substitute “, (c) or (d)”.

7 **65 Subclause 2(1) of the Schedule**

8 Omit “3 members as follows”, substitute “the following members”.

9 **66 At the end of subclause 2(1) of the Schedule**

10 Add:

11 ; (d) any other member prescribed by the regulations for the
12 purposes of this paragraph.

13 **67 At the end of subclause 10(3) of the Schedule**

14 Add:

15 Note: A different quorum may be prescribed by the regulations if the
16 Committee has more than 3 members. (See subclause (10).)

17 **68 At the end of subclause 10(7) of the Schedule**

18 Add:

19 Note: A different process for resolving questions may be prescribed by the
20 regulations if the Committee has more than 3 members. (See
21 subclause (10).)

22 **69 At the end of clause 10 of the Schedule**

23 Add:

- 24 (10) If one or more members are prescribed by the regulations for the
25 purposes of paragraph 2(1)(d):
26 (a) the number of members that constitutes a quorum at a
27 meeting of the Committee is the number (being a number
28 greater than 2) prescribed by the regulations for the purposes
29 of this paragraph; and
30 (b) if members who are present at a meeting of the Committee
31 are unable to agree on a question, the process that is to apply
32 is the process prescribed by the regulations for the purposes
33 of this paragraph.
-

1 ***Trade Marks Act 1995***

2 **70 Section 6**

3 Before “In this Act”, insert “(1)”.

4 **71 Section 6 (definition of *geographical indication*)**

5 Repeal the definition, substitute:

6 *geographical indication*, in relation to goods, means a sign that
7 identifies the goods as originating in a country, or in a region or
8 locality in that country, where a given quality, reputation or other
9 characteristic of the goods is essentially attributable to their
10 geographical origin.

11 **72 Section 6**

12 Insert:

13 *World Trade Organization* means the body of that name
14 established by the WTO Agreement, done at Marrakesh on
15 15 April 1994.

16 Note: The text of the WTO Agreement is set out in Australian Treaty Series
17 1995 No. 8 ([1995] ATS 8). In 2009, the text of an Agreement in the
18 Australian Treaty Series was accessible through the Australian
19 Treaties Library on the AustLII website (www.austlii.edu.au).

20 **73 At the end of section 6**

21 Add:

22 (2) For the purposes of this Act, a reference to a country includes a
23 reference to a member of the World Trade Organization.

24 **74 After paragraph 61(2)(a)**

25 Insert:

26 (aa) the sign is not recognised as a geographical indication for the
27 designated goods in the country in which the designated
28 goods originated; or

29 **75 At the end of section 61 (before the notes)**

30 Add:

- 1 (4) An opposition on a ground referred to in subsection (1) also fails if
2 the applicant establishes that:
3 (a) the sign consists of a word or term that is a geographical
4 indication; and
5 (b) the word or term is a common English word or term; and
6 (c) the applicant has not used, and does not intend to use, the
7 trade mark in relation to the relevant goods in a way that is
8 likely to deceive or confuse members of the public as to the
9 origin of the relevant goods.

10 **76 At the end of Subdivision A of Division 1 of Part 8**

11 Add:

12 **83A Amendment of registered trade mark—inconsistency with**
13 **international agreements**

- 14 (1) This section applies to a registered trade mark if:
15 (a) using the trade mark in relation to any or all of the goods or
16 services in respect of which the trade mark is registered
17 would be inconsistent with any relevant obligation of
18 Australia under an international agreement; and
19 (b) at the time when the particulars of registration of the trade
20 mark were entered in the Register, the obligation did not
21 exist.
- 22 (2) The registered owner of the registered trade mark may, in writing,
23 request the Registrar to do either or both of the following:
24 (a) amend the representation of the trade mark as entered in the
25 Register to remove or substitute part (but not the whole) of
26 the representation;
27 (b) amend the particulars entered in the Register in respect of the
28 trade mark to remove or substitute any or all of the
29 particulars.
- 30 (3) The Registrar must advertise the request for the amendment in the
31 *Official Journal*.
- 32 Note: In certain circumstances the Registrar need not advertise a request
33 under this subsection (see subsection (7)).
- 34 (4) A person may, as prescribed, oppose the granting of the request for
35 the amendment on the ground that, if the amendment is made, the

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- 1 trade mark will be substantially identical with, or deceptively
2 similar to:
- 3 (a) a trade mark registered in the name of the person in respect
4 of similar or closely related goods or similar or closely
5 related services; or
- 6 (b) a trade mark that is being used by the person in respect of
7 similar or closely related goods or similar or closely related
8 services.
- 9 Note: In certain circumstances a person cannot oppose the granting of a
10 request under this subsection (see subsection (7)).
- 11 (5) The Registrar may grant the request for the amendment if he or she
12 is satisfied that the amendment is reasonable, having regard to:
- 13 (a) the extent to which the amendment relates to the
14 inconsistency; and
- 15 (b) whether the amendment involves replacing a term (the
16 *existing term*) with another term that is recognised by the
17 industry in which the trade mark is used as being a substitute
18 for the existing term; and
- 19 (c) if a person has opposed the request for the amendment under
20 subsection (4)—the extent (if any) to which the ground on
21 which the request was opposed has been established; and
- 22 (d) in any case—any other relevant circumstance.
- 23 (6) The Registrar may grant the request for the amendment even if the
24 amendment would:
- 25 (a) substantially affect the identity of the trade mark; or
26 (b) extend the rights that the registered owner has under the
27 registration.
- 28 (7) If the Registrar is satisfied that the request for the amendment
29 would not be granted even in the absence of opposition under
30 subsection (4):
- 31 (a) the Registrar need not advertise the request in accordance
32 with subsection (3); and
- 33 (b) the request cannot be opposed, despite subsection (4); and
34 (c) the Registrar must refuse to grant the request.
- 35 (8) The registered owner who made the request for amendment, or a
36 person who opposes the request under subsection (4), may appeal
-

1 to the Federal Court from a decision of the Registrar under this
2 section.

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2

Part 2—Application and transitional provisions

3

77 Application of item 37

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(1) Subject to subitem (2), the amendment made by item 37 of this Schedule applies in relation to wine that is sold, exported or imported on or after the commencement of this Schedule.

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(2) If, before the commencement of this Schedule, wine has been exported from a foreign country for import into Australia, the amendment made by item 37 of this Schedule does not apply in relation to the sale or import of that wine on or after that commencement.

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78 Application of items 39 to 41

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The amendments made by items 39 to 41 of this Schedule do not apply in relation to proceedings for an offence against section 40C, 40E or 40G of the *Australian Wine and Brandy Corporation Act 1980* (as in force before the commencement of this Schedule) constituted by conduct engaged in before the commencement of this Schedule.

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79 Application of items 44 and 50

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The amendments made by items 44 and 50 of this Schedule apply in relation to determinations of geographical indications that are made on or after the commencement of this Schedule, whether the application for the determination was made before, on or after that commencement.

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80 Appointment of Registrar unaffected

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The amendment of section 40ZA of the *Australian Wine and Brandy Corporation Act 1980*, made by item 57 of this Schedule, does not affect the validity of an appointment under that section that is in force immediately before the commencement of this Schedule.

27

81 Application of items 71, 74 and 75

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The amendments made by items 71, 74 and 75 of this Schedule apply in relation to:

- (a) applications for the registration of trade marks that are made on or after the commencement of this Schedule; and
- (b) applications for the registration of trade marks that are, on that commencement, pending; and

1 (c) applications under section 88 of the *Trade Marks Act 1995*
2 that are made on or after that commencement in respect of
3 trade marks registered before, on or after that
4 commencement.

5 **82 Application of item 76**

6 The amendment made by item 76 of this Schedule applies in relation to
7 trade marks registered before, on or after the commencement of this
8 Schedule.

1
2 **Schedule 2—Label integrity program**

3 **Part 1—Amendments**

4 *Australian Wine and Brandy Corporation Act 1980*

5 **1 Subsection 4(1)**

6 Insert:

7 *blend* means wine manufactured by blending wines of different
8 vintages, varieties or geographical indications.

9 **2 Subsection 4(1)**

10 Insert:

11 *direct sale* means a sale of wine goods to a consumer.

12 **3 Subsection 4(1)**

13 Insert:

14 *examinable document* means:

- 15 (a) any document required to be kept:
16 (i) in relation to Part VIA—under Part VIA; or
17 (ii) in relation to Part VIB—under Part VIB; or
18 (iii) in relation to Part VII—under Part VII; or
19 (b) any wine label or other document relating to the vintage,
20 variety or geographical indication of wine goods; or
21 (c) any document relating to advertising the vintage, variety or
22 geographical indication of wine goods; or
23 (d) any other document that is relevant to monitoring or
24 enforcing compliance with a label law.

25 **4 Subsection 4(1)**

26 Insert:

27 *grape extract* means grape juice, must, or concentrate obtained
28 from grapes.

29 **5 Subsection 4(1)**

1 Insert:

2 ***inspection power***, in relation to wine premises, means:

- 3 (a) power to search any part of the premises; or
4 (b) power to inspect, examine, take measurements of, or conduct
5 tests (including by the taking of samples) concerning, any
6 wine goods or other thing on the premises; or
7 (c) power to take extracts from, and make copies of, any
8 examinable documents on the premises; or
9 (d) power to take onto the premises such equipment and
10 materials as the inspector requires for the purpose of
11 exercising any other inspection power on the premises.

12 **6 Subsection 4(1)**

13 Insert:

14 ***inspector*** means a person appointed under section 39ZA.

15 **7 Subsection 4(1)**

16 Insert:

17 ***label claim***, in relation to wine goods:

- 18 (a) means a written claim that is made or implied about the wine
19 goods' vintage, variety or prescribed geographical indication,
20 including such a claim that is made or implied:
21 (i) on a label; or
22 (ii) in a record that is required to be kept under section 39F;
23 or
24 (iii) in any other commercial document; or
25 (iv) in an advertisement; and
26 (b) includes such a claim about the vintage, variety or prescribed
27 geographical indication of any other wine goods from which
28 the wine goods were manufactured.

29 **8 Subsection 4(1)**

30 Insert:

31 ***label law*** means:

- 32 (a) in relation to Part VIA:
33 (i) that Part; and

- 1 (ii) regulations made for the purposes of that Part; and
2 (iii) another law of the Commonwealth relating to the
3 description of wine goods; and
4 (iv) a law of a State or an internal Territory relating to the
5 description of wine goods; and
6 (b) in relation to Part VIB:
7 (i) Part VIB; and
8 (ii) regulations made for the purposes of Part VIB; and
9 (c) in relation to Part VII—regulations made under this Act
10 relating to the export of grape products from Australia.

11 9 Subsection 4(1)

12 Insert:

13 *label offence* means:

- 14 (a) in relation to Part VIA—an offence against a label law
15 (within the meaning of paragraph (a) of the definition of
16 *label law*); and
17 (b) in relation to Part VIB—an offence against a label law
18 (within the meaning of paragraph (b) of the definition of
19 *label law*); and
20 (c) in relation to Part VII—an offence against section 44.

21 10 Subsection 4(1)

22 Insert:

23 *manufacture* wine includes making a blend.

24 11 Subsection 4(1)

25 Insert:

26 *manufacturer* of wine goods means a person who operates an
27 establishment at which:

- 28 (a) wine is manufactured; or
29 (b) grape extract is manufactured, being grape extract that is
30 used or intended to be used in manufacturing wine; or
31 (c) wine goods are otherwise processed, modified or packaged.

32 12 Subsection 4(1) (definition of *originate*)

1 After “wine”, insert “or grape extract that is used or intended to be used
2 in manufacturing wine”.

3 **13 Subsection 4(1)**

4 Insert:

5 *package*, in relation to wine, means a container in which the wine
6 is sold or transferred for sale.

7 **14 Subsection 4(1)**

8 Insert:

9 *prescribed geographical indication* means a geographical
10 indication that is prescribed by the regulations for the purposes of
11 this definition.

12 **15 Subsection 4(1)**

13 Insert:

14 *principal employee* means the person holding the position of
15 principal employee (however described) of the Corporation.

16 **16 Subsection 4(1)**

17 Insert:

18 *relevant agency* has the meaning given by section 39ZL.

19 **17 Subsection 4(1)**

20 Insert:

21 *variety*, in relation to wine or grape extract, means the variety of
22 the grapes from which the wine or grape extract was obtained.

23 **18 Subsection 4(1)**

24 Insert:

25 *vintage* means:

26 (a) in relation to grapes—the year (within the ordinary meaning
27 of the term, as affected by subsection (2A)) in which the
28 grapes were harvested; or

29 (b) in relation to wine or grape extract—the year (within the
30 ordinary meaning of the term, as affected by subsection (2A))

1 in which the grapes from which the wine or extract was
2 manufactured or obtained were harvested.

3 **19 Subsection 4(1)**

4 Insert:

5 *wine goods* means:

6 (a) wine; or

7 (b) grapes, or grape extract, used or intended to be used in
8 manufacturing wine.

9 **20 Subsection 4(1)**

10 Insert:

11 *wine label* means a label attached to, or writing or other sign
12 appearing on, a bottle or other package of wine.

13 **21 Subsection 4(1)**

14 Insert:

15 *wine premises* means any premises, place or conveyance where it
16 is reasonable to assume that wine goods or examinable documents
17 are or might be located.

18 **22 Subsection 4(1) (at the end of the definition of *year*)**

19 Add:

20 Note: This definition does not apply in relation to the definition of *vintage*
21 (see that definition and subsection (2A)).

22 **23 Before subsection 4(3)**

23 Insert:

24 *Harvesting grapes*

25 (2A) For the purposes of the definition of *vintage*, grapes that are
26 harvested on or after 1 July in a calendar year, and before or on
27 31 December of that calendar year, are taken to have been
28 harvested in the next calendar year.

29 **24 Section 5D**

30 Repeal the section, substitute:

1 **5D Where wine or grape extract originates**

2 For the purposes of this Act:

- 3 (a) a wine, or a grape extract that is used or intended to be used
4 in manufacturing wine, is taken to have originated in a
5 country only if the wine or extract is made from grapes
6 grown within the territory of that country; and
7 (b) a wine, or a grape extract that is used or intended to be used
8 in manufacturing wine, is taken to have originated in a
9 particular region or locality of a country only if the wine or
10 extract is made from grapes grown in that region or locality.

11 **25 Subsection 30(2)**

12 Omit “person holding the position of principal employee (however
13 described) of the Corporation shall”, substitute “principal employee are
14 to”.

15 **26 Subsection 30(3)**

16 Omit “employee referred to in subsection (2), shall”, substitute
17 “principal employee, are to”.

18 **27 Sections 39B to 39EA**

19 Repeal the sections, substitute:

20 **39B Operation of Part**

21 Without prejudice to its effect apart from this section, this Part has
22 the effect it would have if the references in it to a person (the
23 **record keeper**) to whom this Part applies were, by express
24 provision, confined to:

- 25 (a) a record keeper who is one of the following (a **constitutional**
26 **corporation or partnership**):
27 (i) a foreign corporation, within the meaning of paragraph
28 51(xx) of the Constitution;
29 (ii) a trading or financial corporation formed within the
30 limits of the Commonwealth, within the meaning of that
31 paragraph;
32 (iii) a corporation that is controlled by a corporation
33 described in subparagraph (i) or (ii);

- 1 (iv) a partnership in which at least one of the partners is a
2 corporation described in subparagraph (i), (ii) or (iii); or
3 (b) a record keeper by or through whom a constitutional
4 corporation or partnership carries out its business functions
5 and activities; or
6 (c) a record keeper who (whether directly or indirectly) supplies
7 wine goods to a constitutional corporation or partnership.

8 **39C Persons to whom this Part applies**

- 9 (1) This Part applies to the following persons, except as provided by
10 subsection (3):
11 (a) a person who grows grapes that are wine goods;
12 (b) a manufacturer of wine goods;
13 (c) a person who supplies or receives wine goods (including a
14 person who sells the wine goods wholesale or retail or who
15 exports the wine goods);
16 (d) a person specified by the regulations for the purposes of this
17 section;
18 (e) an agent who takes possession of wine goods on behalf of a
19 person mentioned in any of paragraphs (a) to (d).

20 Note: This Part applies only to the extent that the wine goods originate in
21 Australia (see subsection (4)).

- 22 (2) For the purposes of paragraph (1)(d), the regulations may specify:
23 (a) a class of person to whom this Part applies; or
24 (b) circumstances in which this Part applies to a specified class
25 of person.
26 (3) The regulations may specify that, despite subsection (1), this Part
27 does not apply to:
28 (a) a specified class of person; or
29 (b) a specified class of person in specified circumstances.
30 (4) This Part applies only to the extent that the wine goods originate in
31 Australia.

32 **28 Sections 39F to 39ZAAA**

33 Repeal the sections, substitute:

1 **39F Obligation to keep records**

- 2 (1) A person (the *record keeper*) to whom this Part applies (under
3 section 39C) must keep written records that show the following
4 details in relation to wine goods:
5 (a) the identity of the record keeper;
6 (b) the kind of wine goods to which the record relates;
7 (c) the date the record keeper receives the wine goods;
8 (d) the identity of the person from whom the wine goods are
9 received by the record keeper;
10 (e) the quantity of the wine goods received by the record keeper;
11 (f) the vintage, variety and prescribed geographical indication of
12 the wine goods received by the record keeper;
13 (g) details of steps taken by the record keeper that changed or
14 affected any of the following:
15 (i) the vintage, variety or prescribed geographical
16 indication of the wine goods;
17 (ii) the tank or other place or thing in which the wine goods
18 were stored;
19 (iii) the volume of the wine goods stored in any such tank,
20 place or thing;
21 (h) the date the record keeper supplies the wine goods;
22 (i) the identity of the person to whom the wine goods are
23 supplied by the record keeper;
24 (j) the quantity of the wine goods that are supplied by the record
25 keeper;
26 (k) the vintage, variety and prescribed geographical indication of
27 the wine goods supplied by the record keeper;
28 (l) any other details in relation to the wine goods that are
29 prescribed by the regulations for the purposes of this section.

30 Note 1: Records are required to be kept only to the extent that wine goods
31 originate in Australia (see subsection 39C(4)).

32 Note 2: See sections 39G and 39H for additional rules relating to the
33 requirements of this section.

34 Note 3: A person commits an offence if the person fails to keep a record in
35 accordance with this subsection (see section 39J).

36 *Period for keeping records*

- 37 (2) A record must be kept under subsection (1) for the period:
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- 1 (a) beginning:
2 (i) when the event, circumstance or state of affairs that is
3 required to be recorded occurs; or
4 (ii) if a record is required to be made before it can be kept—
5 at the end of 3 days after the day that such an event,
6 circumstance or state of affairs occurs; and
7 (b) ending 7 years after that time.

8 Note: A person commits an offence if the person fails to keep a record in
9 accordance with this subsection (see section 39J).

10 *Requirement to provide and keep a copy of a record in relation to*
11 *supply of wine goods*

- 12 (3) A person who is required to keep a record under subsection (1)
13 must, on the day the person supplies the wine goods, provide a
14 copy of the record kept under paragraphs (1)(h), (j) and (k) to the
15 person to whom the wine goods are supplied (except as provided
16 by subsection 39G(2)).

17 Note: A person commits an offence if the person fails to provide a copy of a
18 record in accordance with this subsection (see section 39K).

- 19 (4) A person to whom wine goods are supplied must keep the copy of
20 the record provided under subsection (3) for the period:
21 (a) beginning on the day the person receives the copy; and
22 (b) ending 7 years after that time.

23 Note: A person commits an offence if the person fails to keep a copy of a
24 record in accordance with this subsection (see section 39K).

- 25 (5) To avoid doubt, the same copy of a record may be kept for the
26 purposes of paragraphs (1)(c), (e) and (f) and subsection (4).

27 **39G When certain details are not required to be kept**

28 *Grape growers not required to keep certain records*

- 29 (1) A person who grows grapes is not required to keep a record
30 showing details required under paragraphs 39F(1)(c) to (f) in
31 relation to the grapes grown.

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Direct sales

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(2) A person is not required to keep a record showing details required under paragraphs 39F(1)(h) to (k) in relation to wine goods that are sold by the person in direct sales. However, if the person does not keep such a record, the person must instead keep a record showing:

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- (a) the period during which wine goods were sold by the person in direct sales; and
- (b) the total quantity of those wine goods sold by the person during the period; and
- (c) the vintage, variety and prescribed geographical indication of those wine goods sold by the person during the period.

A copy of a record kept in accordance with this section is not required to be provided under subsection 39F(3).

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(3) The period referred to in paragraph (2)(a) of this section must not be longer than one year.

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39H Details required under section 39F

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Variety of wines

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(1) Details required under paragraph 39F(1)(f) or (k) or subparagraph 39F(1)(g)(i) may show any name by which a variety of wine goods is known (if the variety is known by more than one name).

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Identity of a person

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(2) Details required under paragraph 39F(1)(a), (d) or (i) must include:

- (a) sufficient particulars of a person's name and address to identify the person; and
- (b) if the person receives wine goods from or at, or supplies wine goods from or to, a winery—sufficient particulars of the name and address of the winery to identify the winery.

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Manufacturing wine

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(3) Details required under paragraph 39F(1)(g) in relation to wine goods must be in a form that allows:

- (a) an audit trail containing a history of the changes to the wine goods to be readily traced from the record; and

- 1 (b) details of the steps taken and the results of the steps to be
2 readily checked for discrepancies by following the sequence
3 of the steps recorded.

4 *Blends*

- 5 (4) Details required under subsection 39F(1) in relation to wine that is
6 a blend of wines (the *blended wines*) of different vintages, varieties
7 or prescribed geographical indications, must show:
8 (a) what proportions of the blend are represented by each
9 blended wine; and
10 (b) the vintage, variety or prescribed geographical indication of
11 each blended wine.

12 *Grape extract*

- 13 (5) Details required under subsection 39F(1) in relation to grape
14 extract derived from grapes of different vintages, varieties or
15 prescribed geographical indications must show:
16 (a) what proportions of the wine goods are derived from each
17 kind of grape; and
18 (b) the vintage, variety or prescribed geographical indication of
19 each kind of grape.

20 **39J Offences relating to record-keeping requirements**

21 *Failure to keep a record in accordance with requirements*

- 22 (1) A person commits an offence if:
23 (a) the person is a person to whom this Part applies; and
24 (b) the person is required to keep records in relation to wine
25 goods under subsections 39F(1) and (2); and
26 (c) the person has not kept a record in accordance with
27 subsection 39F(1) or (2), or section 39G or 39H, in relation to
28 the wine goods.

29 Penalty: 2 years imprisonment.

30 *Label claims not supported by records*

- 31 (2) A person commits an offence if:
32 (a) the person is a person to whom this Part applies; and

- 1 (b) the person is required to keep records in relation to wine
2 goods under subsections 39F(1) and (2); and
3 (c) the person makes a label claim in relation to the wine goods;
4 and
5 (d) either:
6 (i) a record kept by the person under those subsections in
7 relation to the wine goods conflicts with the label claim;
8 or
9 (ii) the records kept by the person under those subsections
10 are inadequate to support the label claim.

11 Penalty: 2 years imprisonment.

12 *Keeping a false or misleading record*

- 13 (3) A person commits an offence if:
14 (a) the person is a person to whom this Part applies; and
15 (b) the person is required to keep records under subsections
16 39F(1) and (2) in relation to wine goods; and
17 (c) a record kept by the person under those subsections is false or
18 misleading; and
19 (d) the person knows the record is false or misleading.

20 Penalty: 2 years imprisonment.

- 21 (4) Subsection (3) does not apply if the record is not false or
22 misleading in a material particular.

23 Note: A defendant bears an evidential burden in relation to the matter in
24 subsection (4). (See subsection 13.3(3) of the *Criminal Code*.)

25 **39K Offences relating to requirement to provide and keep a copy of**
26 **a record in relation to the supply of wine goods**

27 *Failure to provide a copy of a record in relation to the supply of*
28 *wine goods*

- 29 (1) A person commits an offence if:
30 (a) the person is a person to whom this Part applies; and
31 (b) the person is required to provide a copy of a record in
32 relation to wine goods under subsection 39F(3); and

1 (c) the person does not provide a copy in accordance with that
2 subsection in relation to the wine goods.

3 Penalty: 2 years imprisonment.

4 *Failure to keep a copy of a record in relation to the supply of wine*
5 *goods*

6 (2) A person commits an offence if:

7 (a) the person is a person to whom this Part applies; and

8 (b) the person is provided with a copy of a record in relation to
9 wine goods under subsection 39F(4); and

10 (c) the person does not keep the copy in accordance with that
11 subsection in relation to the wine goods.

12 Penalty: 2 years imprisonment.

13 **39L Time for bringing prosecutions**

14 Despite section 15B of the *Crimes Act 1914*, a prosecution for an
15 offence under:

16 (a) section 39J may be brought at any time within 7 years after
17 the requirement to keep the relevant record arose; and

18 (b) section 39K may be brought at any time within 7 years after
19 the requirement to provide or keep a copy of the relevant
20 record arose.

21 **39M Single wines and blends etc.**

22 The prosecution does not have to prove, in relation to wine goods,
23 that the wine goods are:

24 (a) a blend; or

25 (b) grape extract derived from grapes of different vintages,
26 varieties or prescribed geographical indications;

27 in order to prove an offence under section 39J if the prosecution
28 proves that, in either case, the defendant would have committed an
29 offence against that section.

30 **29 Subsection 39ZAA(1)**

31 Repeal the subsection, substitute:

1 (1) The Corporation may give a written notice to a person requiring
2 the person, within a specified period and in a specified manner, to
3 do either or both of the following:

4 (a) if the person's name and address appears on a wine label as
5 the supplier (within the meaning of the Australia New
6 Zealand Food Standards Code (as defined by the *Food*
7 *Standards Australia New Zealand Act 1991*) of the wine—
8 provide specified information in relation to records that this
9 Division requires to be kept;

10 (b) if the Corporation has reason to believe that the person holds
11 or controls a record that this Division requires to be kept—
12 produce the record to the Corporation.

13 **30 Section 39ZAB**

14 Repeal the section, substitute:

15 **39ZAB Failure to comply with section 39ZAA notice**

16 (1) A person commits an offence if:

17 (a) the person is given a notice under section 39ZAA; and

18 (b) the person refuses or fails to comply with the notice.

19 Penalty: 2 years imprisonment.

20 (2) Subsection (1) does not apply if complying with the notice would
21 tend to incriminate the person.

22 Note: A defendant bears an evidential burden in relation to the matters in
23 subsection (2). (See subsection 13.3(3) of the *Criminal Code*.)

24 **31 Paragraph 39ZB(2)(b)**

25 Omit “an approved form”, substitute “a form approved by the
26 Corporation”.

27 **32 Paragraph 39ZJ(1)(c)**

28 Repeal the paragraph, substitute:

29 (c) a person who is prosecuting (or proposing to prosecute), or
30 taking (or proposing to take) other proceedings against, a
31 person under section 39J or 39K.

32 **33 Subsections 39ZL(1A) and (2)**

33 Repeal the subsections, substitute:

Schedule 2 Label integrity program

Part 1 Amendments

1 (2) The Corporation may, with a person's consent, give to a relevant
2 agency information that is:

3 (a) kept by, or held on behalf of, the person; and

4 (b) obtained by the Corporation under this Part.

5 (3) A person is taken to have consented to giving information under
6 subsection (2) if the occupier of the wine premises where the
7 information is kept or held gave such consent.

8 (4) In this Act:

9 *relevant agency* means an Agency (within the meaning of the
10 *Public Service Act 1999*) with responsibilities relating to the levy
11 or charge.

12 **34 Section 40ZF**

13 Repeal the section, substitute:

14 **40ZF Inspection powers**

15 The provisions of Part VIA relating to inspections, including
16 Division 4 of that Part, apply in relation to this Part in the same
17 way as they apply in relation to Part VIA.

18 **35 Subsection 44(2)**

19 Repeal the subsection, substitute:

20 (2) The provisions of Part VIA relating to inspections, including
21 Division 4 of that Part, apply in relation to this section in the same
22 way as they apply in relation to that Part.

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Part 2—Application and transitional provisions

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36 Application of amendments

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(1) The amendments made by this Schedule apply in relation to any event, circumstance or state of affairs that is required to be recorded under section 39F of the *Australian Wine and Brandy Corporation Act 1980* (as inserted by item 28 of this Schedule) that occurs on or after the commencement of this Schedule.

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(2) Despite the amendments made by this Schedule to provisions of the *Australian Wine and Brandy Corporation Act 1980*, those provisions (as in force immediately before the commencement of this Schedule) continue to apply (after that time) to records that are required to be made and kept under Division 2 of Part VIA of that Act immediately before that time.

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37 Preservation of instruments

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The amendment made by the item of this Schedule listed in column 1 of the table does not affect the continuity of any instrument listed in column 2 of the table that is in force under the *Australian Wine and Brandy Corporation Act 1980* immediately before the commencement of this Schedule.

Continuity of instruments

Item	Column 1 Item of this Schedule	Column 2 Instrument
1	Item 25	Terms and conditions determined under subsection 30(2)
2	Item 26	Terms and conditions determined under subsection 30(3)
3	Item 29	A notice given under section 39ZAA
4	Item 31	A form approved by the Australian Wine and Brandy Corporation under paragraph 39ZB(2)(b)

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Schedule 3—Compliance

Part 1—Main amendments

Australian Wine and Brandy Corporation Act 1980

1 Section 9

Repeal the section.

2 At the end of section 39A

Add:

Note: The Federal Court may grant an injunction under section 44AB if a person has engaged, is engaging or proposes to engage in conduct that contravenes this Part.

3 Subsection 39ZB(3) (penalty)

Repeal the penalty, substitute:

Penalty: 1 penalty unit.

4 At the end of section 39ZC

Add:

Note: An inspector may also exercise powers under this section for the purposes of Parts VIB and VII (see sections 40ZF and 44).

5 At the end of subsection 39ZD(1)

Add:

Note 1: An inspector may apply for a warrant under this section by telephone or fax under section 39ZI.

Note 2: An inspector may also apply for a warrant under this section for the purposes of Parts VIB and VII (see sections 40ZF and 44).

6 Section 39ZE

Repeal the section, substitute:

39ZE Offence powers of inspectors—exercised with consent

(1) An inspector may enter wine premises if:

- 1 (a) the inspector has reasonable grounds for suspecting that there
2 is on the premises a particular thing that may afford evidence
3 of the commission of a label offence; and
4 (b) the inspector has produced his or her identity card for
5 inspection by the occupier of the premises; and
6 (c) the occupier of the premises has consented to the entry.

7 Note: An inspector may also exercise powers under this section for the
8 purposes of Parts VIB and VII (see sections 40ZF and 44).

9 *Consent*

- 10 (2) Before obtaining the consent of the occupier for the purposes of
11 paragraph (1)(c), an inspector must inform that occupier that he or
12 she may refuse consent.
13 (3) A consent has no effect unless the consent is voluntary.

14 *Inspector's powers while on premises*

- 15 (4) The inspector may do the following while on the premises:
16 (a) exercise inspection powers;
17 (b) secure a thing pending the obtaining of a warrant under
18 section 39ZF to seize it if the inspector has reasonable
19 grounds for suspecting that the thing may afford evidence of
20 the commission of a label offence.

21 *Withdrawal of consent*

- 22 (5) The inspector may exercise powers under paragraph (4)(b) even if
23 the occupier's consent is withdrawn after being given. Otherwise,
24 the inspector must leave the premises if the occupier's consent is
25 withdrawn after being given.

26 **7 At the end of subsection 39ZF(1)**

27 Add:

28 Note 1: An inspector may apply for a warrant under this section by telephone
29 or fax under section 39ZI.

30 Note 2: An inspector may also apply for a warrant under this section for the
31 purposes of Parts VIB and VII (see sections 40ZF and 44).

32 **8 Section 39ZH**

33 Repeal the section, substitute:

1 **39ZH Power to require persons to answer questions and produce**
2 **documents**

- 3 (1) An inspector who is on wine premises that the inspector has
4 entered under a warrant issued under section 39ZD or 39ZF may
5 require any person on the premises to:
6 (a) answer any questions put by the inspector; and
7 (b) produce any examinable documents requested by the
8 inspector.

9 Note: An inspector may also exercise powers under this section for the
10 purposes of Parts VIB and VII (see sections 40ZF and 44).

- 11 (2) A person commits an offence if:
12 (a) the person is required to answer a question or produce an
13 examinable document under subsection (1); and
14 (b) the person refuses or fails to comply with the requirement.

15 Penalty: 30 penalty units.

- 16 (3) Subsection (2) does not apply if the answer to the question, or the
17 producing of the document, would tend to incriminate the person.

18 Note: The defendant bears an evidential burden in relation to the matter in
19 subsection (3). (See subsection 13.3(3) of the *Criminal Code*.)

20 **39ZI Search warrants by telephone and other electronic means**

21 *Application for warrant*

- 22 (1) If, in an urgent case, an inspector considers it necessary to do so,
23 the inspector may apply to a magistrate by telephone, fax or other
24 electronic means for a warrant under section 39ZD or 39ZF in
25 relation to particular wine premises.

26 *Voice communication*

- 27 (2) The magistrate may require communication by voice to the extent
28 that it is practicable in the circumstances.

29 *Information*

- 30 (3) Before applying for the warrant, the inspector must prepare an
31 information of the kind mentioned in subsection 39ZD(2) or
32 39ZF(2) in relation to the wine premises that sets out the grounds

1 on which the warrant is sought. If it is necessary to do so, the
2 inspector may apply for the warrant before the information is
3 sworn or affirmed.

4 *Issue of warrant*

- 5 (4) If the magistrate is satisfied:
- 6 (a) after having considered the terms of the information; and
 - 7 (b) after having received such further information (if any) as the
8 magistrate requires concerning the grounds on which the
9 issue of the warrant is being sought;
- 10 that there are reasonable grounds for issuing the warrant, the
11 magistrate may complete and sign the same form of warrant that
12 would be issued under section 39ZD or 39ZF (as the case requires).

13 *Notification*

- 14 (5) If the magistrate completes and signs the warrant, the magistrate
15 must inform the applicant, by telephone, fax or other electronic
16 means, of:
- 17 (a) the terms of the warrant; and
 - 18 (b) the day on which and the time at which the warrant was
19 signed; and
 - 20 (c) the day (not more than one week after the magistrate
21 completes and signs the warrant) on which the warrant ceases
22 to have effect.

23 *Form of warrant*

- 24 (6) The applicant must then complete a form of warrant in the same
25 terms as the warrant completed and signed by the magistrate,
26 stating on the form the name of the magistrate and the day on
27 which and the time at which the warrant was signed.

28 *Completed form of warrant to be given to magistrate*

- 29 (7) The applicant must also, not later than the day after the day the
30 warrant is executed, or expires (if the warrant has not been
31 executed first), send to the magistrate:
- 32 (a) the form of warrant completed by the applicant; and
 - 33 (b) the information referred to in subsection (3), which must
34 have been duly sworn or affirmed.

1 *Attachment*

2 (8) The magistrate is to attach to the documents provided under
3 subsection (7) the warrant completed by the magistrate.

4 *Authority of warrant*

5 (9) A form of warrant duly completed under subsection (6) is authority
6 for the same powers as are authorised by the warrant signed by the
7 magistrate.

8 (10) If:

- 9 (a) it is material, in any proceedings, for a court to be satisfied
10 that an exercise of a power was authorised by this section;
11 and
12 (b) the warrant signed by the magistrate authorising the exercise
13 of the power is not produced in evidence;
14 the court must assume, unless the contrary is proved, that the
15 exercise of the power was not authorised by such a warrant.

16 **39ZIA Offences relating to warrants by telephone and other**
17 **electronic means**

18 *Offence for stating incorrect names in warrants by telephone and*
19 *other electronic means*

20 (1) A person commits an offence if:

- 21 (a) the person states a name of a magistrate in a document; and
22 (b) the document purports to be a form of warrant under
23 section 39ZI; and
24 (c) the name is not the name of the magistrate who issued the
25 warrant.

26 Penalty: Imprisonment for 2 years.

27 *Offence for unauthorised form of warrant*

28 (2) A person commits an offence if:

- 29 (a) the person states a matter in a form of warrant under
30 section 39ZI; and
31 (b) the matter departs in a material particular from the form
32 authorised by the magistrate.

1 Penalty: Imprisonment for 2 years.

2 *Offence for execution etc. of unauthorised form of warrant*

3 (3) A person commits an offence if:

4 (a) the person executes a document or presents a document to a
5 person; and

6 (b) the document purports to be a form of warrant under
7 section 39ZI; and

8 (c) the document:

9 (i) has not been approved by a magistrate under that
10 section; or

11 (ii) departs in a material particular from the terms
12 authorised by the magistrate under that section.

13 Penalty: Imprisonment for 2 years.

14 *Offence for giving unexecuted form of warrant*

15 (4) A person commits an offence if:

16 (a) the person gives a magistrate a form of warrant under
17 section 39ZI; and

18 (b) the document is not the form of warrant that the person
19 executed.

20 Penalty: Imprisonment for 2 years.

21 **9 Subsection 39ZJ(1)**

22 Omit "or section 42".

23 **10 Subsection 39ZL(1A)**

24 Omit "or under section 42".

25 **11 At the end of section 40A**

26 Add:

27 Note: The Federal Court may grant an injunction under section 44AB if a
28 person has engaged, is engaging or proposes to engage in conduct that
29 contravenes this Part.

30 **12 Section 40L**

31 Repeal the section.

1 **13 Section 42**

2 Repeal the section.

3 **14 Subsections 44(1) and (1A)**

4 Repeal the subsections, substitute:

5 (1) A person commits an offence if:

- 6 (a) the person exports a grape product from Australia; and
7 (b) the export of the grape product contravenes the regulations.

8 Penalty: Imprisonment for 6 months.

9 Note: The Federal Court may grant an injunction under section 44AB if a
10 person has engaged, is engaging or proposes to engage in conduct that
11 contravenes this section.

12 **15 After section 44AA**

13 Insert:

14 **44AB Injunctions**

15 (1) The Federal Court may grant an injunction if a person has engaged,
16 is engaging or proposes to engage in any conduct that contravenes
17 the following:

- 18 (a) Part VIA (label integrity program);
19 (b) Part VIB (protection of geographical indications and other
20 terms);
21 (c) section 44 (offence in relation to export of grape products);
22 (d) regulations made for the purposes of the provisions
23 mentioned in paragraphs (a) to (c).

24 (2) The injunction may:

- 25 (a) restrain the person from engaging in the conduct; and
26 (b) if the Court thinks it desirable to do so—require the person to
27 do a particular act.

28 (3) An application for an injunction may be made by, or on behalf of,
29 the following persons:

- 30 (a) the Corporation;
31 (b) a declared wine makers organisation;
32 (c) a declared wine grape growers organisation;

- 1 (d) a person who is a manufacturer of wine, or a grower of wine
2 grapes, in Australia or an agreement country;
- 3 (e) an organisation established under the law of Australia or of
4 an agreement country whose objects or purposes include any
5 of the following:
- 6 (i) the promotion of the manufacture of wine, the growing
7 of wine grapes or the marketing of wine;
- 8 (ii) the promotion or protection of the interests of persons
9 engaged in the manufacture of wine, the growing of
10 wine grapes or the marketing of wine;
- 11 (iii) the promotion or protection of the interests of
12 consumers of wine.
- 13 (4) The Court may grant an interim injunction pending a determination
14 of an application for an injunction.
- 15 (5) The Court may discharge or vary an injunction granted under this
16 section.
- 17 (6) The power of the Court to grant an injunction restraining a person
18 from engaging in conduct may be exercised:
- 19 (a) whether or not it appears to the Court that the person intends
20 to engage again, or to continue to engage, in conduct of that
21 kind; and
- 22 (b) whether or not the person has previously engaged in conduct
23 of that kind.
- 24 (7) The powers conferred on the Federal Court by this section are in
25 addition to, and not in derogation of, any other powers of the
26 Court.

27 **16 Subparagraph 46(1)(h)(i)**

28 Omit "\$1,000", substitute "50 penalty units".

29 **17 Subparagraph 46(1)(h)(ii)**

30 Omit "\$5,000", substitute "250 penalty units".

Schedule 3 Compliance

Part 2 Amendment contingent on the commencement of Schedule 1 to this Act

1

2

**Part 2—Amendment contingent on the
commencement of Schedule 1 to this Act**

3

4

Australian Wine and Brandy Corporation Act 1980

5

18 Paragraphs 44AB(3)(d) and (e)

6

Omit “an agreement”, substitute “a designated foreign”.

1

2 **Part 3—Application and transitional provisions**

3 **19 Preservation of injunctions**

4 The repeal of section 40L of the *Australian Wine and Brandy*
5 *Corporation Act 1980* by item 12 of this Schedule does not affect the
6 continuity of any injunction that is in force under that section
7 immediately before the commencement of this Part.

8 **20 Application of item 14**

9 The amendment made by item 14 of this Schedule applies to the export
10 of a grape product from Australia after the commencement of this Part.

11 **21 Application of item 15**

12 The amendment made by item 15 of this Schedule applies to conduct
13 engaged in, or proposed to be engaged in, after the commencement of
14 this Part.