



# Australian Wine and Brandy Corporation Regulations 1981

**Statutory Rules 1981 No. 156 as amended**

made under the

*Australian Wine and Brandy Corporation Act 1980*

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## Part 1 Preliminary

### 1 Name of Regulations [see Note 1]

These Regulations are the *Australian Wine and Brandy Corporation Regulations 1981*.

### 2 Repeal of the Wine Overseas Marketing (Licences) Regulations

Statutory Rules 1954 No. 88, 1959 No. 3 and 1973 No. 112 are repealed.

### 3 Interpretation

In these Regulations, unless the contrary intention appears:

*approved* means approved by the Corporation.

*Australian standard* means a standard:

- (a) within the meaning of the *Food Standards Australia New Zealand Act 1991*; and
- (b) as in force on 1 January 2005.

*export certificate* means a certificate issued by the Corporation under regulation 7.

*Food Standards Code* means the Australia New Zealand Food Standards Code:

- (a) within the meaning of the *Food Standards Australia New Zealand Act 1991*; and
- (b) as in force on 1 January 2005.

*GI* means geographical indication.

*GIC* means the Geographical Indications Committee established under section 40N of the Act.

*licence* means a licence granted under regulation 5.

*licensee* means the holder of a licence.

*proposed GI* has the meaning it has in subsection 40RA (1) of the Act.

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*relative*, in relation to an individual, means the spouse, parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of the individual.

*the Act* means the *Australian Wine and Brandy Corporation Act 1980*.

*vintage*, in relation to a grape, means the year in which the grape was harvested.

**4 Grape products**

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

- (a) it includes wine; and
- (b) it is derived in whole or in part from prescribed goods; and
- (c) it is not a grape product referred to in paragraph (a), (b) or (c) of that definition; and
- (d) an Australian standard applies to it.

## **Part 2                      General export controls**

### **5                      Grant of licences**

- (1) The Corporation may, on the application of a person and after taking into consideration the prescribed matters in relation to the person, grant to the person a licence to export grape products from Australia.
- (2) A licence granted under this regulation:
  - (a) shall be in accordance with an approved form; and
  - (b) remains in force for such period, not exceeding 3 years, as is specified in the licence, and may be renewed.
- (3) For the purposes of subregulation (1), the prescribed matters are:
  - (a) the financial standing of the applicant; and
  - (b) whether the applicant has a place of business in Australia; and
  - (c) the applicant's ability to obtain grape products from Australian suppliers; and
  - (d) matters applicable to the person that relate to the promotion of the export of grape products, including matters that may affect adversely the export trade in grape products; and
  - (e) any other matters relating to the promotion of the export of grape products; and
  - (f) whether the Corporation has cancelled a licence held by the applicant; and
  - (g) if the applicant is an individual — whether the Corporation has cancelled a licence held by a corporation of which the applicant was a director or a shareholder who held a controlling interest.

### **6                      Conditions of export — general**

- (1) The export of a grape product is prohibited unless:

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- (a) the exporter is a licensee; and
  - (b) the Corporation has approved:
    - (i) the purchaser of the product; or
    - (ii) the person to whom the product is consigned as an agent or representative of the purchaser, or the licensee, in the country to which the product is consigned; and
  - (c) the product is exported in accordance with any directions given to the licensee by the Corporation; and
  - (d) the product is sound and merchantable; and
  - (e) the licensee has given the Corporation, or allowed the Corporation to take, any samples of the product reasonably required by the Corporation for the purpose of determining the soundness and quality of the product; and
  - (ea) the exporter has complied with any request for further information made under subregulation 7 (3A); and
  - (f) the Corporation has issued an export certificate for the product.
- (2) Subregulation (1) does not apply to the export of a small quantity of grape product within the meaning given by subregulation (3) or (4).
- (3) A quantity of grape product is a *small quantity* of grape product if it is to be exported, whether or not to 1 consignee:
- (a) by 1 exporter, or by 2 or more exporters that are taken to be 1 exporter; and
  - (b) on 1 ship or aircraft to a single port of discharge; and
  - (c) in a total quantity of no more than 100 litres.
- (4) A quantity of grape product is a *small quantity* of grape product if it is any of the following:
- (a) a quantity of grape product that is contained in the personal luggage of a traveller;
  - (b) a quantity of grape product for the household of an individual who is moving house;
  - (c) a quantity of grape product that is intended to be displayed at a trade fair or comparable event;

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- (d) a quantity of grape product that is to be exported for a scientific or technical purpose;
  - (e) a quantity of grape product that is to be exported by a diplomatic, consular or similar establishment as part of the duty-free allowance of the establishment;
  - (f) a quantity of grape product that is held on board a means of international transport as victualling supplies;
  - (g) a quantity of grape product that is a commercial sample for a prospective buyer.
- (5) For paragraph (3) (a), 2 or more exporters are taken to be 1 exporter if the exporters are:
- (a) related bodies corporate (within the meaning of the *Corporations Act 2001*); or
  - (b) individuals who are relatives; or
  - (c) individuals who are acting in concert with each other.

**6AA Conditions of export — exports to EC countries**

- (1) The export of a grape product to an EC country is prohibited unless the exporter has given to the Corporation a written declaration signed by the exporter stating that the description and presentation of the product complies with the *Australian Wine and Brandy Corporation – Administrative Guideline – Labelling for EC Countries* in relation to the use of the following information:
- (a) the name, address and occupation of a person involved in marketing the product;
  - (b) the product type;
  - (c) the colour of the product;
  - (d) the vintage year;
  - (e) the name of a vine variety;
  - (f) the production method;
  - (g) a traditional expression;
  - (h) the name of a vineyard;
  - (i) the place where the product was bottled.

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- (2) In this regulation:

*Australian Wine and Brandy Corporation – Administrative Guideline – Labelling for EC Countries* means the document of that name approved by the Corporation in June 2003.

**6A Conditions of export — food standards**

- (1) The export of a grape product is prohibited unless:
- (a) the product complies with the Food Standards Code; or
  - (b) if the product does not comply with the Code — the Corporation approves, under subregulation (2), the export of the product by the exporter.
- (2) The Corporation may approve the export, by a particular exporter, of a grape product that does not comply with the Code if the Corporation is satisfied that:
- (a) the product meets any requirements for grape products imposed by the country to which the product is to be exported; and
  - (b) the non-compliance will not compromise the reputation of Australian grape products.
- (3) The approval must be given to the exporter in writing and must state:
- (a) the particulars of the non-compliance; and
  - (b) that the product must comply with the Code in any other respect.

**7 Export certificates**

- (1) A licensee may apply for an export certificate by notifying the Corporation of the proposed export of a grape product.
- (2) The licensee must notify the Corporation by lodging with it a notification of the proposed export of a grape product in an approved form.
- (3) A notification must be given at least 10 days before the day on which the grape product is to be exported.

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- (3A) For the purpose of considering a notification, the Corporation may request the licensee to give it information that satisfies the Corporation that a requirement relating to the description and presentation of the grape product under a Commonwealth, State or Territory law has been met.

*Example*

If a grape product is described as ‘organic’ and is a product to which the Export Control (Organic Produce Certification) Orders apply, the Corporation may ask the licensee who proposes to export the product to give the Corporation information that satisfies it that an organic produce certificate has been issued for the product.

- (3B) A request under subregulation (3A) must:
- (a) be made in writing within 3 working days after the Corporation receives the notification; and
  - (b) identify the requirement and the Commonwealth, State or Territory law under which it applies; and
  - (c) state the date by which the licensee must give the information to the Corporation.
- (4) If the export of the grape product would comply with the conditions for export that apply to it, the Corporation must issue an export certificate to that effect at least 3 days before the day on which the product is to be exported.
- (5) The Corporation may issue an export certificate by electronic means.
- (6) If the export of the grape product would not comply with the conditions for export that apply to it, the Corporation must:
- (a) refuse to issue an export certificate; and
  - (b) send a statement to that effect to the licensee, setting out the grounds on which the export would not comply with the conditions.
- (7) The Corporation may revoke an export certificate if the export of the grape product ceases, or would cease, to comply with the conditions for export that apply to the product.

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**8 Powers of Corporation**

The Corporation, or a person authorised by it, may give to a licensee written directions about the quantities of grape product that the licensee may export:

- (a) generally; or
- (b) to a country specified in the directions; or
- (c) to a person, agent or representative specified in the directions.

**9 Suspension and cancellation of licences**

- (1) The Corporation may suspend or cancel a licence if:
  - (a) a material change has occurred in respect of the licensee in relation to a matter referred to in subregulation 5 (3); and
  - (b) if the change is to the licensee's place of business in Australia — the licensee does not inform the Corporation of the new place of business in Australia within 14 days of the change.
- (2) The Corporation may suspend or cancel a licence if the licensee exports a grape product in contravention of a provision of the Act or these Regulations.
- (3) The Corporation may suspend or cancel a licence if:
  - (a) the licensee claims that the Corporation has given an approval in relation to the export of a grape product; and
  - (b) the Corporation has not given an approval of that kind in relation to the export.

**10 Application for review of decision**

An application may be made to the Administrative Appeals Tribunal for the review of:

- (a) a refusal by the Corporation under subregulation 5 (1) to grant a licence; or
- (aa) a decision by the Corporation under subregulation 6A (2) to approve, or refuse to approve, the export of a grape product that does not comply with the Food Standards Code; or

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- (b) a refusal by the Corporation under subregulation 7 (6) to issue an export certificate; or
- (c) a decision of the Corporation under subregulation 7 (7) to revoke an export certificate; or
- (d) a decision of the Corporation under regulation 9 to suspend or cancel a licence.

**11 Corporation may require information**

- (1) A person shall, if required to do so by the Corporation by notice in writing, furnish to the Corporation, within such time as is specified in the notice, such returns and information as are specified in the notice relating to the sale, disposal or export, or the intended sale, disposal or export, by the person of grape products.
- (2) A person to whom such a notice is given must not neglect or fail to furnish the return or information to the Corporation within the specified time.
- (2A) It is a defence to a prosecution under subregulation (2) if the defendant has a reasonable excuse.  
*Note* A defendant bears an evidential burden in relation to the matter set out in subregulation (2A) — see section 13.3 of the *Criminal Code*.
- (3) A person is not excused from furnishing a return or information that he is required to furnish by virtue of a notice given, or sent by post, to him under subsection (1) on the ground that the return or information might tend to incriminate him or make him liable to a penalty, but any return or information so furnished is not admissible in evidence against him in proceedings other than proceedings for an offence against subregulation (4).
- (4) A person shall not furnish to the Corporation a return or information that is false or misleading in a material particular.

Penalty: 10 penalty units.

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## **Part 3**                      **Exemption of wines from offence provisions**

### **12**            **Small quantities of wine**

- (1) For the purposes of the definition of *small quantities* in subsection 40J (1) of the Act, wine:
  - (a) that is contained in labelled containers, each of which:
    - (i) has a capacity of not more than 5 litres; and
    - (ii) is fitted with a non-reusable closing device; and
  - (b) that is exported, whether or not to 1 consignee:
    - (i) by 1 exporter, or by 2 or more exporters that are taken to be 1 exporter; and
    - (ii) on 1 ship or aircraft to a single port of discharge; and
    - (iii) in a total quantity of no more than 100 litres;

is declared to be a small quantity of wine.
- (2) For the purposes of the definition of *small quantities* in subsection 40J (1) of the Act, the following are declared to be small quantities of wine:
  - (a) a quantity of wine, not exceeding 30 litres, that is contained in the personal luggage of a traveller;
  - (b) a quantity of wine, not exceeding 30 litres, that is sent in a consignment by an individual to another individual;
  - (c) a quantity of wine for the household of an individual who is moving house;
  - (d) a quantity of wine:
    - (i) that is intended to be displayed in Australia, or an agreement country, at a trade fair, or a comparable event, for the purposes of the customs laws of the relevant country; and
    - (ii) that is packed in labelled containers of a capacity of not more than 2 litres and fitted with a non-reusable closing device;
  - (e) a quantity of wine, not exceeding 1 hectolitre, that is imported into Australia, or exported to an agreement

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- country, for the purpose of scientific or technical purposes;
- (f) a quantity of wine that is imported into Australia, or exported to an agreement country, by a diplomatic, consular or similar establishment as part of the duty-free allowance of the establishment;
  - (g) a quantity of wine that is held on board a means of international transport as victualling supplies.
- (3) For subparagraph (1) (b) (i), 2 or more exporters are taken to be 1 exporter if the exporters are:
- (a) related bodies corporate (within the meaning of the *Corporations Act 2001*); or
  - (b) individuals who are relatives; or
  - (c) individuals who are acting in concert with each other.

**13 Geographical indications and traditional expressions**

For subsection 40J (5) of the Act, the use of a geographical indication or traditional expression mentioned in Schedule 1 is exempted from the operation of sections 40C and 40E and subsection 40H (1) of the Act.

**14 Vine varieties: Hermitage**

For the purposes of subsection 40J (5) of the Act, the use of the name *Hermitage* to describe and present wine is exempted from the operation of subsections 40C (1), (2) and (3) and section 40E of the Act if:

- (a) the name is used as a synonym for the grape variety *Shiraz*; and
- (b) the wine originates in Australia; and
- (c) the wine is sold in a country other than an EC country.

**15 Vine varieties: Lambrusco**

For the purposes of subsection 40J (5) of the Act, the use of the name *Lambrusco* to describe and present wine is exempted from the operation of subsections 40C (1), (2) and (3) and section 40E of the Act if:

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- (a) the name is used to describe a style of wine traditionally made and marketed under that name; and
- (b) the name is not used to describe a variety of grapes from which the wine is made; and
- (c) the wine originates in Australia; and
- (d) the wine is sold in a country other than an EC country.

**17 Marketing periods for the use of geographical indications, registered traditional expressions and protected ancillary expressions**

- (1) For the purposes of subsection 40J (5) of the Act, the use of a registered geographical indication, a registered traditional expression or a protected ancillary expression to describe and present wine is exempted from the operation of the offence provisions within the meaning of subsection 40J (1) of the Act if:
  - (a) the offence provisions apply to the use of the indication or expression after the day on which this regulation commences; and
  - (b) the wine was lawfully produced before the day on which the offence provisions first apply to the use of the indication or expression; and
  - (c) the indication or expression is used by:
    - (i) a wholesaler of wine acting in the course of the wholesaler's business; or
    - (ii) a retailer of wine in the course of the retailer's business.
- (2) The exemption in subregulation (1) ceases to apply to the use of the indication or expression by a wholesaler at the end of the period of 3 years commencing on the day on which the offence provisions first apply to the use of the indication or expression.
- (3) The exemption in subregulation (1) ceases to apply to the use of the indication or expression by a retailer:
  - (a) at the end of the period of 3 years commencing on the day on which the offence provisions first apply to the use of the indication or expression; or

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- (b) if the retailer has a stock of the wine at the end of that period — when that stock is exhausted.
- (4) However, the exemption in subregulation (1) ceases to apply to the use of the name ‘Riesling’ permitted under the repealed regulations:
  - (a) for a wholesaler — at the end of 30 June 2001; or
  - (b) for a retailer:
    - (i) at the end of 30 June 2001; or
    - (ii) if the retailer has a stock of the wine at the end of that day — when the stock is exhausted.
- (5) In subregulation (4):  
*the repealed regulations* means regulation 16 and subregulations 19 (3) and 20 (7) of the Australian Wine and Brandy Corporations Regulations as in force immediately before 1 January 2001.

**17A Use of trade mark in description of wine (Act s 40J)**

- (1) This regulation applies if:
  - (a) the Registrar of Trade Marks decides, under subsection 40RC (2) of the Act, that an objection to a proposed GI is made out, and the GI is subsequently registered in accordance with section 40ZD (2) of the Act; or
  - (b) a trade mark is registered or is the subject of a pending application under the *Trade Marks Act 1995* and:
    - (i) after the registration of, or application for, the trade mark, a GI is proposed and registered; and
    - (ii) the trade mark is identical to, or is likely to be confused with, the GI.
- (2) For subsection 40J (5) of the Act, the use of the trade mark mentioned in subregulation (1) to describe and present wine that did not originate in a region or locality indicated by an Australian GI mentioned in subregulation (1) is exempted from the operation of the offence provisions (to the extent that the offence provisions relate to the use of a registered GI) if:

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- (a) the trade mark is used in the description and presentation of the wine; and
  - (b) the origin of the wine is shown in the description and presentation of the wine in a way that is not likely to mislead.
- (3) In subregulation (2):
- Australian GI* has the meaning it has in subsection 40P (1) of the Act.
- the offence provisions* has the meaning given in subsection 40J (1) of the Act.

## Part 4 Description and presentation of wine

### 18 Interpretation

In this Part, *wine* means wine that is offered for sale in Australia, imported into Australia or exported from Australia.

### 19 Grape blends produced in more than 1 country

- (1) For subsection 40F (5A) of the Act, if wine is made from a blend of grapes that is produced in more than one country, the description and presentation of the wine must set out:

- (a) the name of the blend produced in each country; and
- (b) the proportion of the total blend that was produced in each of the countries;

in a manner that mentions first the country in which the larger or largest proportion of the blend was produced.

- (2) For subsection 40F (5A) of the Act, if wine is produced in Australia from a blend of grapes that includes grapes that did not originate in Australia, the description and presentation of the wine must set out:

- (a) the name of the blend produced in each country; and
- (b) the proportion of the total blend that was produced in each of the countries;

in a manner that mentions first the country in which the larger or largest proportion of the blend was produced.

### 20 Grape varieties

- (1) For subsection 40F (5A) of the Act, if the description and presentation of wine refers to one or more varieties of grape, the description and presentation must identify all of the varieties in descending order of their proportions in the wine.

- (2) In spite of subregulation (1), wine may be described and presented as being of a particular variety of grape if it consists at least 850ml/L of that variety.

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- (3) In spite of subregulation (1), if:
- (a) wine consists of at least 850ml/L of a blend of no more than 3 varieties of grape; and
  - (b) the wine includes at least 200ml/L of each of those varieties;
- the wine must be described and presented as being of those particular varieties of grape.
- (4) In spite of subregulation (1), if:
- (a) wine consists of 1,000ml/L of a blend of no more than 5 varieties of grape; and
  - (b) the wine includes at least 50ml/L of each of those varieties;
- the wine must be described and presented as being of those particular varieties of grape.
- (5) For the purpose of determining the proportion of the varieties of grapes under subregulation (4), the variety, vintage and geographical indication of a culture of micro-organisms used in the manufacture of the wine, not exceeding a maximum of 50ml/L, is to be excluded.
- (6) For the purposes of this regulation, the volume of grapes in a fortified wine is to be calculated exclusive of the grape spirit or brandy (or both) added to the wine.

**21 Geographical indications**

- (1) For subsection 40F (5A) of the Act, if:
- (a) wine is made from a blend of grapes that come from different regions that have:
    - (i) if the wine is produced in Australia or an agreement country — registered geographical indications; or
    - (ii) in any other case — geographical indications; and
  - (b) the description and presentation of the wine refers to one or more of those indications;
- the description and presentation of the wine must set out the names of all of the indications in descending order of the proportions of the relevant grapes in the wine.

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- (2) In spite of subregulation (1), wine may be described and presented using a particular registered geographical indication if:
- (a) it is produced in Australia or an agreement country; and
  - (b) it consists of at least 850ml/L of a variety or varieties of grape that comes from a region that has that registered geographical indication.
- (3) In spite of subregulation (1), wine may be described and presented using a particular geographical indication if:
- (a) it is not produced in Australia or an agreement country; and
  - (b) it consists of at least 850ml/L of a variety or varieties of grape that comes from a region that has that geographical indication.
- (4) In spite of subregulation (1), wine may be described and presented using particular registered geographical indications if:
- (a) it is produced in Australia or an agreement country; and
  - (b) it consists of at least 950ml/L of a blend of varieties of grape that come from no more than 3 regions that have those registered geographical indications; and
  - (c) it includes at least 50ml/L of each of those varieties.
- (5) In spite of subregulation (1), wine may be described and presented using particular geographical indications if:
- (a) it is not produced in Australia or an agreement country; and
  - (b) it consists of at least 950ml/L of a blend of varieties of grape that come from no more than 3 regions that have those geographical indications; and
  - (c) it includes at least 50ml/L of each of those varieties.
- (6) For the purposes of this regulation, the volume of grapes in a fortified wine is to be calculated exclusive of the grape spirit or brandy (or both) added to the wine.

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**22 Vintages**

- (1) For subsection 40F (5A) of the Act, if:
  - (a) wine is made using grapes that were harvested in more than one vintage; and
  - (b) the description and presentation of the wine refers to one or more of those vintages;  
the description and presentation of the wine must refer to all of the vintages in descending order of the proportions of the relevant grapes in the wine.
- (2) In spite of subregulation (1), wine may be described and presented as being of one vintage if it consists of at least 850ml/L of a variety, or varieties, of grape harvested in that vintage.
- (3) For the purposes of subregulation (2), the volume of grapes in a fortified wine is to be calculated exclusive of the grape spirit or brandy (or both) added to the wine.

## Part 5                      Criteria for determining geographical indications

### 23                      Determining geographical indications

For the purpose of making determinations under section 40T of the Act, the Geographical Indications Committee is to have regard to the criteria set out in this Part.

### 24                      Interpretation

In this Part:

*region* means an area of land that:

- (a) may comprise one or more subregions; and
- (b) is a single tract of land that is discrete and homogeneous in its grape growing attributes to a degree that:
  - (i) is measurable; and
  - (ii) is less substantial than in a subregion; and
- (c) usually produces at least 500 tonnes of wine grapes in a year; and
- (d) comprises at least 5 wine grape vineyards of at least 5 hectares each that do not have any common ownership, whether or not it also comprises 1 or more vineyards of less than 5 hectares; and
- (e) may reasonably be regarded as a region.

*subregion* means an area of land that:

- (a) is part of a region; and
- (b) is a single tract of land that is discrete and homogeneous in its grape growing attributes to a degree that is substantial; and
- (c) usually produces at least 500 tonnes of wine grapes in a year; and
- (d) comprises at least 5 wine grape vineyards of at least 5 hectares each that do not have any common ownership,

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whether or not it also comprises 1 or more vineyards of less than 5 hectares; and

- (e) may reasonably be regarded as a subregion.

*wine grape vineyard* means a single parcel of land that:

- (a) is planted with wine grapes; and  
(b) is operated as a single entity by:  
(i) the owner; or  
(ii) a manager on behalf of the owner or a lessee, irrespective of the number of lessees.

*zone* means an area of land that:

- (a) may comprise one or more regions; or  
(b) may reasonably be regarded as a zone.

**25 Criteria for determining geographical indications**

For the purposes of subsection 40T (2) of the Act, the Committee is to have regard to the following criteria:

- (a) whether the area falls within the definition of a subregion, a region, a zone or any other area;  
(b) the history of the founding and development of the area, ascertained from local government records, newspaper archives, books, maps or other relevant material;  
(c) the existence in relation to the area of natural features, including rivers, contour lines and other topographical features;  
(d) the existence in relation to the area of constructed features, including roads, railways, towns and buildings;  
(e) the boundary of the area suggested in the application to the Committee under section 40R;  
(f) ordinance survey map grid references in relation to the area;  
(g) local government boundary maps in relation to the area;  
(h) the existence in relation to the area of a word or expression to indicate that area, including:  
(i) any history relating to the word or expression; and

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- (ii) whether, and to what extent, the word or expression is known to wine retailers beyond the boundaries of the area; and
- (iii) whether, and to what extent, the word or expression has been traditionally used in the area or elsewhere; and
- (iv) the appropriateness of the word or expression;
- (i) the degree of discreteness and homogeneity of the proposed geographical indication in respect of the following attributes:
  - (i) the geological formation of the area;
  - (ii) the degree to which the climate of the area is uniform, having regard to the temperature, atmospheric pressure, humidity, rainfall, number of hours of sunshine and any other weather conditions experienced in the area throughout the year;
  - (iii) whether the date on which harvesting a particular variety of wine grapes is expected to begin in the area is the same as the date on which harvesting grapes of the same variety is expected to begin in neighbouring areas;
  - (iv) whether part or all of the area is within a natural drainage basin;
  - (v) the availability of water from an irrigation scheme;
  - (vi) the elevation of the area;
  - (vii) any plans for the development of the area proposed by Commonwealth, State or municipal authorities;
  - (viii) any relevant traditional divisions within the area;
  - (ix) the history of grape and wine production in the area.

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

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**26 Applications**

An application to the Committee under section 40R of the Act may be in a form approved by the Committee.

**27** *Note* Regulation 27 reserved for future use.

## **Part 6                      Objection to determination of GI based on pre-existing trade mark rights**

### **Division 1                  General**

#### **28                      Definition for Part 6**

In this Part:

*Registrar* means the Registrar of Trade Marks.

#### **29                      Parties to send copies of evidence to each other**

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

- (a) gives a copy of the evidence to each other party; and
- (b) includes, with the evidence being filed, a statement setting out the date, place and manner in which the copy was given to each other party.

#### **30                      Costs**

The Registrar is not entitled to make an order for costs in proceedings mentioned in this Part.

#### **31                      How fees are to be paid (Act s 40RC and s 40RE)**

For subsections 40RC (5) and 40RE (2) of the Act, a fee imposed under this Part must be paid to the Registrar.

**32      Note** Regulation 32 reserved for future use.

## **Division 2                      Consideration of objections**

### **33                      Application of Division 2 (Act s 40RC)**

For subsection 40RC (5) of the Act, this Division applies in relation to the making of a decision under subsection 40RC (2) of the Act.

### **34                      Definition for Division 2**

In this Division:

*party*, in relation to proceedings mentioned in this Division, means any of the following:

- (a) the applicant for the GI;
- (b) a person who makes an objection under paragraph 40RA (2) (b) of the Act;
- (c) a person who registers in response to a notice published under subregulation 35 (1).

### **35                      Objections**

- (1) If a person, in response to an invitation made under paragraph 40RA (2) (b) of the Act, files an objection to a proposed GI, the Registrar must publish a notice:
  - (a) stating that the objection has been filed; and
  - (b) inviting any interested person to register as a party to the proceedings; and
  - (c) stating that any registration under paragraph (b) must be made 1 month or less after the notice is published.
- (2) The notice must be published in a manner that the Registrar thinks appropriate.

### **36                      Evidence**

Not less than 1 month after a notice is published under subregulation 35 (1), the Registrar must send each party a notice (an *invitation notice*) that:

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

- (b) invites the party to file evidence in relation to a decision about the matter; and
- (c) states that any evidence must be filed 3 months or less from the date of the invitation notice.

**37 Evidence in answer**

If a person files evidence in response to an invitation notice sent under regulation 36, the Registrar must send each party a notice that:

- (a) invites the party to file evidence in answer to another party's evidence; and
- (b) states that evidence in answer must be filed 2 months or less from the date of the notice sent under this regulation, or any longer period that the Registrar thinks is appropriate under the circumstances.

**38 Request for hearing**

- (1) Any party may, no more than 1 month after the end of the period given under paragraph 37 (b) for the acceptance of evidence in answer, ask the Registrar to conduct a hearing.
- (2) The Registrar must agree to a request made under subregulation (1).

**39 New evidence**

- (1) At any time before the Registrar makes a decision about an objection to a proposed GI, but after the end of a period specified by the Registrar for the filing of evidence, a party may apply to the Registrar, in writing, to file new evidence.
- (2) An application must include a statement:
  - (a) describing the new evidence; and
  - (b) giving the reasons why the new evidence was not filed within the specified period.
- (3) If, after considering the application, the Registrar decides that it is reasonable to allow the filing of the new evidence, he or she must set a date by which the new evidence must be filed.

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- (4) If the new evidence is filed by the date mentioned in subregulation (3), the Registrar must send a notice to the other parties telling them that the new evidence is filed and setting a reasonable period for the parties to file evidence in answer to it.

**40            Decision by Registrar**

- (1) The Registrar must, as soon as is practicable after the last day set for evidence to be filed, make a decision under subsection 40RC (2) of the Act by considering:
- (a) the notice published under subsection 40RA (2) of the Act and any related documents; and
  - (b) the documents filed by the parties; and
  - (c) any other matter that the Registrar thinks is relevant.
- (2) If a hearing is held, the Registrar must also invite submissions from the parties and consider the submissions.

**41            No decision if trade mark subject to removal or cancellation proceedings**

The Registrar must not make a decision under subsection 40RC (2) of the Act if the registered trade mark concerned is the subject of removal or cancellation proceedings.

**42            Withdrawal of objection**

If a person objecting to a proposed GI:

- (a) does not file evidence within the period mentioned in paragraph 36 (c); or
- (b) withdraws the notice of objection before the Registrar makes a decision about the objection;

the Registrar must decide that the ground of the objection is not made out.

*Note* The Registrar must notify the parties and the GIC about his or her decision: see subsection 40RD (1) of the Act.

**43 Fees**

- (1) In proceedings mentioned in this Division, the fees specified in column 3 of an item in the following table are payable in respect of a matter specified in column 2 of the item.
- (2) The Registrar must disregard any matter until the fee for the matter is paid.

<b>Item</b>	<b>Matter</b>	<b>Fee (\$)</b>
1	Filing a notice of objection in response to an invitation under paragraph 40RA (2) (b) of the Act	500
2	Registering as a party to proceedings in response to a notice published under subregulation 35 (1)	250
3	Applying to file new evidence under subregulation 39 (1)	100
4	Filing evidence under regulation 36, 37 or 39 (that is, evidence in support, evidence in answer or new evidence)	375
5	Requesting a hearing under subregulation 38 (1)	500
6	Attending a hearing	500 per day or part of a day

- (3) If a person requests a hearing and pays the fee mentioned in item 5 of the table in respect of the hearing, the fee in item 6 of the table applies to the person only for the second and any subsequent day of the hearing.

*Note* No fee is payable under item 2 of the table by a person applying for a GI.

## **Division 3                      Application for decision that ground of objection no longer exists**

### **44                      Application of Division 3 (Act s 40RE)**

For subsection 40RE (2) of the Act, this Division applies in relation to the making of a decision under subsection 40RE (1).

### **45                      Definition for Division 3**

In this Division;

*claimant* means an applicant for a decision under paragraph 40RE (1) (b) of the Act.

*party*, in relation to proceedings mentioned in this Part, means any of the following:

- (a) the claimant;
- (b) the owner of the trade mark concerned;
- (c) a person who registers in response to a notice published under subregulation 46 (1).

### **46                      Claims**

- (1) If the Registrar receives an application from a claimant, the Registrar must publish a notice:
  - (a) stating that the application has been made; and
  - (b) inviting any interested person to register as a party to the proceedings; and
  - (c) stating that any registration under paragraph (b) must be made 1 month or less after the notice is published.
- (2) The notice must be published in a manner that the Registrar thinks appropriate.
- (3) The Registrar must also give a notice in writing to the following, stating that the application has been made:
  - (a) the owner of the trade mark concerned;
  - (b) any person who asked the GIC to determine a GI that could be confused with the trade mark.

**47 Evidence**

Not less than 1 month after a notice is published under subregulation 46 (1), the Registrar must send each party a notice (an *invitation notice*) that:

- (a) gives the name and address of each other party; and
- (b) invites the party to file evidence in relation to a decision about the matter; and
- (c) states that any evidence must be filed 3 months or less after the date of the invitation notice.

**48 Decision if no evidence is filed**

If no party files evidence within the period mentioned in paragraph 47 (c), the Registrar must:

- (a) decide that the claim is not made out; and
- (b) notify the parties and the GIC, in writing, of the decision.

**49 Evidence in answer**

If a person files evidence in response to an invitation notice sent under regulation 47, the Registrar must send each party a notice that:

- (a) invites the party to file evidence in answer to another party's evidence; and
- (b) states that evidence in answer must be filed 2 months or less from the date of the notice sent under this regulation, or any longer period that the Registrar thinks is appropriate under the circumstances.

**50 Request for hearing**

- (1) Any party may, no more than 1 month after the end of the period given under paragraph 49 (b) for the acceptance of evidence in answer, ask the Registrar to conduct a hearing.
- (2) The Registrar must agree to a request made under subregulation (1).

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**51            New evidence**

- (1) At any time before the Registrar makes a decision about whether a ground of objection to a proposed GI no longer exists, but after the end of a period specified by the Registrar for the filing of evidence, a party may apply to the Registrar, in writing, to file new evidence.
- (2) An application must include a statement:
  - (a) describing the new evidence; and
  - (b) giving the reasons why the new evidence was not filed within the specified period.
- (3) If, after considering the application, the Registrar decides that it is reasonable to allow the filing of the new evidence, he or she must set a date by which the new evidence must be filed.
- (4) If the new evidence is filed by the date mentioned in subregulation (3), the Registrar must send a notice to the other parties telling them that the new evidence is filed and setting a reasonable period for the parties to file evidence in answer to it.

**52            Decision by Registrar**

- (1) The Registrar must, as soon as is practicable after the last day set for evidence to be filed, make a decision under subsection 40RE (1) of the Act by considering:
  - (a) the documents filed by the parties; and
  - (b) any other matter that the Registrar thinks is relevant.
- (2) If a hearing is held, the Registrar must also invite submissions from the parties and consider the submissions.

**53            Withdrawal of claims**

- (1) If, before the Registrar makes a decision under this Division, the claimant withdraws the claim, the Registrar must continue the proceedings if requested to do so by another party.
- (2) However, if no party makes a request to continue, the Registrar must:
  - (a) make no decision about the matter; and

(b) notify the parties and the GIC, in writing, accordingly.

**54 No decision if trade mark subject to removal or cancellation proceedings**

The Registrar must not make a decision under 40RE (1) of the Act if the trade mark concerned is the subject of removal or cancellation proceedings.

**55 Fees for claim that ground of objection no longer exists (Act s 40RE)**

- (1) In proceedings mentioned in this Division, the fees specified in column 3 of an item in the following table are payable in respect of a matter specified in column 2 of the item.
- (2) The Registrar must disregard any matter until the fee for the matter is paid.

Item	Matter	Fee (\$)
1	Making an application for a decision under paragraph 40RE (1) (b) of the Act	500
2	Registering as a party in response to a notice under subregulation 46 (1)	250
3	Applying to file new evidence under regulation 51	100
4	Filing evidence under regulation 47, 49 or 51 (that is, evidence in support, evidence in answer or new evidence)	375
5	Requesting a hearing under regulation 50	500
6	Attending a hearing	500 per day or part of a day

- (3) If a person requests a hearing and pays the fee mentioned in item 5 of the table in respect of the hearing, the fee in item 6 of the table applies to the person only for the second and any subsequent day of the hearing.

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## **Part 7                      Miscellaneous**

### **60                      Delegation**

- (1) The Corporation may, by writing under its common seal, delegate any or all of its powers under these Regulations (except this power of delegation) to a person or to a committee appointed under section 11 of the Act.
- (2) A power delegated under subregulation (1), if exercised by the delegate, is taken to have been exercised by the Corporation.
- (3) A delegation under subregulation (1) does not prevent the exercise of a power by the Corporation.

## **Schedule 1      Geographical indications and traditional expressions**

(regulation 13)

Burgundy  
Chablis  
Champagne  
Claret  
Graves  
Marsala  
Moselle  
Port  
Sauternes  
Sherry  
White Burgundy

**Table of Instruments**

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**Notes to the *Australian Wine and Brandy Corporation Regulations 1981*****Note 1**

The *Australian Wine and Brandy Corporation Regulations 1981* (in force under the *Australian Wine and Brandy Corporation Act 1980*) as shown in this compilation comprise Statutory Rules 1981 No. 156 amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

All relevant information pertaining to application, saving or transitional provisions prior to 1 January 2001 is not included in this compilation. For subsequent information *see* Table A.

**Table of Instruments**

<b>Year and number</b>	<b>Date of notification in <i>Gazette</i> or FRLI registration</b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
1981 No. 156	23 June 1981	1 July 1981 ( <i>see Gazette</i> 1981, No. S123)	
1986 No. 161	30 June 1986	1 July 1986	R. 8
1993 No. 374	24 Dec 1993	24 Dec 1993	—
1994 No. 338	11 Oct 1994	11 Oct 1994	—
2000 No. 130	28 June 2000	1 Jan 2001	R. 4 [see Table A]
2001 No. 76	27 Apr 2001	27 Apr 2001	—
2002 No. 60	5 Apr 2002	5 Apr 2002	—
2003 No. 191	31 July 2003	1 Aug 2003	—
2004 No. 252	26 Aug 2004	1 Jan 2005 ( <i>see r. 2</i> )	—
2005 No. 39	24 Mar 2005 ( <i>see F2005L00752</i> )	25 Mar 2005	—
2005 No. 245	15 Nov 2005 ( <i>see F2005L03397</i> )	16 Nov 2005	—

**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
Heading to Part 1.....	ad. 1993 No. 374
R. 1.....	am. 1993 No. 374 rs. 2000 No. 130
R. 3.....	am. 1986 No. 161 rs. 1993 No. 374 am. 2004 No. 252; 2005 No. 39
R. 4.....	rs. 1993 No. 374
<b>Part 2</b>	
Heading to Part 2.....	ad. 1993 No. 374
R. 5.....	am. 1986 No. 161; 1993 No. 374; 2005 No. 39
R. 6.....	rs. 1993 No. 374 am. 2005 No. 39
R. 6AA.....	ad. 2003 No. 191
R. 6A.....	ad. 1993 No. 374 rs. 2005 No. 245
R. 7.....	rs. 1993 No. 374 am. 2005 No. 39
R. 8.....	am. 1993 No. 374 rs. 2005 No. 39
R. 9.....	am. 1986 No. 161; 1993 No. 374; 2005 No. 39
R. 10.....	am. 1986 No. 161; 1993 No. 374; 2005 Nos. 39 and 245
R. 11.....	am. 1993 No. 374; 2002 No. 60
<b>Part 3</b>	
Part 3.....	ad. 1993 No. 374
R. 12.....	rep. 1986 No. 161 ad. 1993 No. 374 am. 2005 No. 39
R. 13.....	ad. 1993 No. 374 rs. 2000 No. 130
R. 14.....	ad. 1993 No. 374
R. 15.....	ad. 1993 No. 374
R. 16.....	ad. 1993 No. 374 rep. 2000 No. 130
R. 17.....	ad. 1993 No. 374 am. 2000 No. 130
R. 17A.....	ad. 2004 No. 252

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Part 4</b>	
Heading to Part 4.....	rs. 2001 No. 76
Part 4.....	ad. 1993 No. 374
R. 18.....	ad. 1993 No. 374
Heading to r. 19.....	rs. 2001 No. 76
R. 19.....	ad. 1993 No. 374 am. 2000 No. 130; 2001 No. 76
Heading to r. 20.....	rs. 2001 No. 76
R. 20.....	ad. 1993 No. 374 am. 2000 No. 130; 2001 No. 76
Heading to r. 21.....	rs. 2001 No. 76
R. 21.....	ad. 1993 No. 374 am. 1994 No. 338; 2001 No. 76
Heading to r. 22.....	rs. 2001 No. 76
R. 22.....	ad. 1993 No. 374 am. 2001 No. 76
<b>Part 5</b>	
Part 5.....	ad. 1994 No. 338
R. 23.....	ad. 1994 No. 338
R. 24.....	ad. 1994 No. 338
R. 25.....	ad. 1994 No. 338
R. 26.....	ad. 1994 No. 338
R. 27.....	ad. 2004 No. 252
<b>Part 6</b>	
Part 6.....	ad. 2004 No. 252
<b>Division 1</b>	
R. 28.....	ad. 2004 No. 252
R. 29.....	ad. 2004 No. 252
R. 30.....	ad. 2004 No. 252
R. 31.....	ad. 2004 No. 252
R. 32.....	ad. 2004 No. 252
<b>Division 2</b>	
R. 33.....	ad. 2004 No. 252
R. 34.....	ad. 2004 No. 252
R. 35.....	ad. 2004 No. 252
R. 36.....	ad. 2004 No. 252
R. 37.....	ad. 2004 No. 252
R. 38.....	ad. 2004 No. 252
R. 39.....	ad. 2004 No. 252
R. 40.....	ad. 2004 No. 252

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
R. 41.....	ad. 2004 No. 252
R. 42.....	ad. 2004 No. 252
R. 43.....	ad. 2004 No. 252
<b>Division 3</b>	
R. 44.....	ad. 2004 No. 252
R. 45.....	ad. 2004 No. 252
R. 46.....	ad. 2004 No. 252
R. 47.....	ad. 2004 No. 252
R. 48.....	ad. 2004 No. 252
R. 49.....	ad. 2004 No. 252
R. 50.....	ad. 2004 No. 252
R. 51.....	ad. 2004 No. 252
R. 52.....	ad. 2004 No. 252
R. 53.....	ad. 2004 No. 252
R. 54.....	ad. 2004 No. 252
R. 55.....	ad. 2004 No. 252
<b>Part 7</b>	
Part 7.....	ad. 2005 No. 39
R. 60.....	ad. 2005 No. 39
Schedule heading.....	rep. 2000 No. 130
<b>Schedule 1</b>	
Heading to Schedule 1 .....	ad. 2000 No. 130
Schedule .....	ad. 1993 No. 374 am. 2000 No. 130

Table A

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**Table A                      Application, saving or transitional provisions**

**Statutory Rules 2000 No. 130**

**4                      Transitional**

- (1) Regulation 16 of the Australian Wine and Brandy Corporation Regulations, as in force immediately before 1 January 2001, continues to apply during the marketing period to the use of the name 'Riesling' to describe and present wine if:
  - (a) the wine was produced and labelled before 1 January 2001; and
  - (b) the name is used by:
    - (i) a wholesaler of wine in the course of the wholesaler's business; or
    - (ii) a retailer of wine in the course of the retailer's business.
- (2) In subregulation (1):

*during the marketing period* means from 1 January 2001 until:

  - (a) for a wholesaler — the end of 30 June 2001; or
  - (b) for a retailer:
    - (i) the end of 30 June 2001; or
    - (ii) if the retailer has a stock of the wine at the end of that day — the stock is exhausted.