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MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT

Australia

The present document reproduces the following laws and regulations¹, as notified by Australia under Article 63.2 of the Agreement (see document IP/N/1/AUS/1/Rev.1).

	<u>Page</u>
- Australian Wine and Brandy Corporation Act 1980 (Reprinted as at 30 April 1993)	2
- Australian Wine and Brandy Corporation Amendment Act 1993 (No. 93 of 1993)	65

¹In English only

REPRINT No. 2



**AUSTRALIAN WINE AND BRANDY CORPORATION
ACT 1980**

Reprinted as at 30 April 1993

REPRINT No. 2



AUSTRALIAN WINE AND BRANDY CORPORATION ACT 1980

Reprinted as at 30 April 1993

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Objects
4. Interpretation
- 5A. Declared winemakers organisations

PART II—THE AUSTRALIAN WINE AND BRANDY CORPORATION

6. Establishment of Corporation
7. Functions of Corporation
8. Powers of Corporation
9. Contracts for carriage of grape products
10. Power to enter into arrangements etc.
11. Committees

PART III—CONSTITUTION AND MEETINGS OF THE CORPORATION

12. Nature of Corporation
13. Membership of Corporation
14. Term of office of members
15. Deputy Chairperson
16. Leave of absence
17. Resignation of members
20. Termination of appointments
21. Disclosure of interests by members of Corporation
22. Meetings of Corporation

PART IVA—AUSTRALIAN WINE AND BRANDY CORPORATION SELECTION COMMITTEE

- 29A. Establishment of Committee
- 29B. Functions of Committee
- 29C. Powers of Committee

ii *Australian Wine and Brandy Corporation Act 1980*

TABLE OF PROVISIONS—continued

Section

- 29D. Minister may request nominations
- 29E. Selection of persons by Committee
- 29F. Nomination
- 29G. Minister may reject nominations
- 29H. Membership of Committee
- 29J. Acting Presiding Member
- 29K. Casual vacancy
- 29L. Remuneration and allowances of members of Committee
- 29M. Leave of absence
- 29N. Resignation
- 29P. Determination of appointment of members of Committee
- 29Q. Disclosure of interests by members of Committee
- 29R. Meetings of Committee
- 29S. Resolutions without meetings
- 29T. Staff and consultants

PART IVB—ANNUAL GENERAL MEETING OF THE INDUSTRY

- 29U. Interpretation
- 29V. List of winemakers
- 29W. Corporation to convene annual general meeting
- 29X. Purpose of annual general meeting
- 29Y. Conduct of annual general meeting
- 29Z. Voting at annual general meetings
- 29ZA. Minister to be notified of resolutions

PART V—STAFF

- 30. Employees

PART VA—OPERATION OF CORPORATION

Division 1—Corporate Plans

- 31. Corporation to develop corporate plans
- 31A. Agreement to corporate plans
- 31B. Variation of corporate plans by Corporation
- 31C. Variations of corporate plans at request of Minister
- 31D. Date of effect of variations
- 31E. Notice of variation of corporate plans

Division 2—Annual Operational Plans

- 31F. Corporation to develop annual operational plans
- 31G. Agreement to annual operational plans
- 31H. Variation of annual operational plans
- 31J. Notice of variation of annual operational plan

Division 3—Directions

- 31K. Directions to Corporation

PART VI—FINANCE

- 32. Payments to Corporation
- 33. Payments by Corporation to Commonwealth
- 34. Borrowing
- 34A. Corporation may give security
- 34B. Borrowings not otherwise permitted

Australian Wine and Brandy Corporation Act 1980

iii

TABLE OF PROVISIONS—continued**Section**

- 35. Application of money of Corporation
- 36. Investment
- 38. Application of Division 2 of Part XI of Audit Act
- 38A. Appointment of commercial auditors
- 39. Liability to taxation

PART VIA—LABEL INTEGRITY PROGRAM*Division 1—Preliminary*

- 39A. Object of Part
- 39B. Operation of Part
- 39C. Interpretation
- 39D. Sales with a label claim
- 39E. Penalties

Division 2—Records relating to Label Claims

- 39F. Wine manufacturers to keep records of receipt of wine goods
- 39G. Wine manufacturers to keep records of manufacture of certain single wines
- 39H. Wine manufacturers to keep records of manufacture of certain blends
- 39J. Wine manufacturers to keep records of sales of certain wine
- 39K. Wine manufacturers to keep records of disposals of certain wine
- 39L. Direct sales
- 39M. Wine manufacturers to keep records of transfers of certain wine
- 39N. Wine manufacturers to keep records of production of certain grape extract
- 39P. Wine manufacturers to keep records of sales of certain grape extract
- 39Q. Wine manufacturers to keep records of disposal of certain grape extract
- 39R. Wine manufacturers to keep records of transfers of certain grape extract
- 39S. Making of records
- 39T. Records to relate to a winery
- 39U. Keeping of records
- 39V. Record of person
- 39W. Characteristics to be recorded
- 39X. Record of variety
- 39Y. Record of region of origin
- 39Z. Record of blends etc.
- 39ZAAA. Offences in relation to record-keeping
- 39ZAA. Corporation may require records
- 39ZAB. Failure to comply with section 39ZAA notice
- 39ZAC. Corporation may retain records

Division 3—Inspection

- 39ZA. Appointment of inspectors
- 39ZB. Identity cards
- 39ZC. Monitoring powers of inspectors—exercised with consent
- 39ZD. Monitoring warrants
- 39ZE. Offence powers of inspectors—exercised with consent
- 39ZF. Offence related warrants
- 39ZG. Discovery of evidence
- 39ZH. Power to require persons to answer questions and produce documents

Division 4—Use of Records and Results of Inspection

- 39ZJ. Corporation to assist enforcement of laws on description of wine
- 39ZK. Proceedings not to lie against Corporation etc.
- 39ZL. Corporation may assist in relation to levy

iv *Australian Wine and Brandy Corporation Act 1980***TABLE OF PROVISIONS—continued**

Section

PART VII—MISCELLANEOUS

- 40. Remuneration and allowances of members of Corporation etc.
- 41. Indemnity
- 42. Corporation may require information
- 43. Delegation
- 44. Offences in relation to export of grape products
- 44A. Conduct by directors, servants or agents
- 45. Operation of certain laws not restricted
- 46. Regulations

**PART VIII—REPEAL OF CERTAIN ACTS AND CONSEQUENT
TRANSITIONAL PROVISIONS**

- 47. Interpretation
- 48. Repeal of certain Acts
- 49. Rights etc. of Board to vest in Corporation etc.
- 50. Instrument etc. not liable to stamp duty etc.
- 51. Application of moneys of Corporation
- 52. Moneys to be paid to Corporation in respect of levy etc.
- 53. Employees of Board
- 54. Report on operations of Board
- 55. Regulations

**SCHEDULE
ACTS REPEALED**



AUSTRALIAN WINE AND BRANDY CORPORATION ACT 1980

An Act to establish an Australian Wine and Brandy Corporation, and for related purposes

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Australian Wine and Brandy Corporation Act 1980*.¹

Commencement

2.¹ (1) Sections 1 and 2 and subsection 13 (4) shall come into operation on the date on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation.

Objects

3. (1) The objects of this Act are:

- (a) to promote and control the export of grape products from Australia;
- (b) to promote and control the sale and distribution, after export, of Australian grape products;
- (c) to promote trade and commerce in grape products among the States, between States and Territories and within the Territories; and
- (d) to improve the production of grape products, and encourage the consumption of grape products, in the Territories;

and this Act shall be construed and administered accordingly.

Australian Wine and Brandy Corporation Act 1980

s. 4

(2) The Corporation shall perform its functions or exercise its powers only for the purpose of achieving an object specified in subsection (1).

Interpretation

4. (1) In this Act, unless the contrary intention appears:

“**annual general meeting**” means a meeting that the Corporation is required to convene under section 29W;

“**annual operational plan**” means a plan developed by the Corporation and approved by the Minister in accordance with Division 2 of Part VA;

“**Chairperson**” means the Chairperson of the Corporation;

“**commencing date**” means the date fixed under subsection 2 (2);

“**Committee**” means the Australian Wine and Brandy Corporation Selection Committee established by this Act;

“**corporate plan**” means a plan developed by the Corporation and approved by the Minister in accordance with Division 1 of Part VA;

“**Corporation**” means the Australian Wine and Brandy Corporation established by this Act;

“**declared winemakers organisation**” means an organisation declared to be a declared winemakers organisation by a declaration in force under section 5A;

“**Deputy Chairperson**” means the Deputy Chairperson of the Corporation;

“**dried grapes**” means grapes containing less than 60% of moisture;

“**fresh grapes**” means grapes containing not less than 60% of moisture;

“**grape product**” means:

- (a) wine manufactured in Australia from prescribed goods;
- (b) brandy distilled in Australia from any such wine;
- (c) grape spirit manufactured in Australia from prescribed goods and suitable for the fortifying of wine or the manufacture of brandy; or
- (d) a product (being prescribed goods or a product derived in whole or in part from prescribed goods) declared by the regulations to be a grape product for the purposes of this Act;

“**industry**” means the grape products industry in Australia;

“**member**” means a member of the Corporation and includes the Chairperson;

“**prescribed goods**” means:

- (a) fresh grapes;
- (b) dried grapes; and
- (c) grape juice, whether single-strength or concentrated;

Australian Wine and Brandy Corporation Act 1980

s. 5A

being grapes or grape juice produced in Australia;

“Presiding Member” means the Presiding Member of the Committee;

“year” means a period of 12 months commencing on 1 July.

(2) For the purposes of this Act:

- (a) the Chairperson may be referred to as the Chairman or the Chairwoman, as the case requires; and
- (b) the Deputy Chairperson may be referred to as the Deputy Chairman or the Deputy Chairwoman, as the case requires.

Declared winemakers organisations

5A. Where the minister considers that an organisation is a national organisation which is representative of winemakers, the Minister may, by notice in writing published in the *Gazette*, declare that organisation to be a declared winemakers organisation.

PART II—THE AUSTRALIAN WINE AND BRANDY CORPORATION**Establishment of Corporation**

6. There is established by this Act a corporation by the name of the Australian Wine and Brandy Corporation.

Functions of Corporation

7. The functions of the Corporation are:

- (a) to promote and control the export of grape products from Australia;
- (b) to encourage and promote the consumption and sale of grape products both in Australia and overseas;
- (c) to improve the production of grape products in Australia;
- (d) to conduct, arrange for, and assist in, research relating to the marketing of grape products; and
- (e) such other functions in connection with grape products as are conferred on the Corporation by this Act or the regulations.

Powers of Corporation

8. (1) Subject to this Act, the Corporation has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

Australian Wine and Brandy Corporation Act 1980

s. 9

(2) Without limiting the generality of subsection (1), the powers of the Corporation referred to in that subsection include power:

- (a) to control the export of grape products from Australia by determining the persons, other than the Corporation, who shall be permitted to export grape products and the conditions under which such exports will be permitted;
- (b) at the request of a person engaging, or proposing to engage, in the export of a grape product, to co-ordinate activities relating to the promotion of the export of the grape product;
- (c) where a grape product proposed to be exported from Australia to a foreign country meets the requirements of that country for importation into that country, issue certificates that the product meets those requirements;
- (d) to the extent required to promote the export of grape products from Australia, or the sale of grape products overseas, by persons other than the Corporation, to buy, sell or otherwise engage in trade in grape products and do all things necessary or convenient for engaging in that trade;
- (e) to engage, or make arrangements with, persons, organisations or companies to perform work, or act as agent, for the Corporation, whether in Australia or overseas;
- (f) to charge such fees as are fair and proper to enable the Corporation to meet costs incurred by the Corporation in administering licensing arrangements relating to the export of grape products (including costs in relation to the grant or renewal of licences) and in ensuring that persons who are licensed to export grape products comply with the condition under which the export of the grape products is permitted;
- (g) to charge for the provision of services, or the performance of work, by, or on behalf of, the Corporation; and
- (h) to waive the payment of fees and charges payable to the Corporation.

(3) Subject to subsection 31K (4), the Corporation shall endeavour to ensure, to the extent that it is practicable to do so, that the performance at any time of its functions and the exercise at any time of its powers is consistent with, and designed to give effect to, the provisions of any corporate plan and of any annual operational plan in force at that time.

Contracts for carriage of grape products

9. (1) The Corporation may, by notice published in the *Gazette*, approve a person as a carrier for the purposes of the carriage of a specified grape product to a specified place outside Australia.

Australian Wine and Brandy Corporation Act 1980

s. 9

(2) The Corporation may, by notice published in the *Gazette*, determine that a contract, or a contract included in a class of contracts, for the carriage of a specified grape product to a specified place outside Australia shall not be entered into except with the approval of the Corporation.

(3) An approval under subsection (2) may be given subject to such conditions (if any) as the Corporation determines.

(4) While an approval under subsection (1) is in force in relation to a place outside Australia, a person shall not enter into a contract with another person for the carriage by that other person of a grape product specified in the notice of approval to that place unless that other person is approved under that subsection in relation to that place.

Penalty: \$6,000.

(5) A person other than the Corporation shall not enter into a contract with another person for the carriage by that other person of a grape product in relation to which a notice under subsection (2) is in force to a place outside Australia specified in that notice except with the approval of the Corporation and in conformity with the conditions (if any) to which that approval is subject.

Penalty: \$6,000.

(6) Subsection (4) does not apply to the Corporation in relation to any grape product when acting on its own behalf or as the agent of the owner of the grape product or of a person having the authority to export the grape product.

(7) A collector or officer for the purposes of the *Customs Act 1901* may require a person who seeks to export from Australia to a place outside Australia in relation to which a notice under subsection (2) is in force a grape product specified in the notice, on making entry of the grape product under that Act and before the entry has been passed, to satisfy him that:

- (a) the contract for the carriage of the grape product to that place was entered into with the approval of the Corporation and in conformity with the conditions (if any) to which that approval is subject; and
- (b) the carrier undertaking the carriage of the grape product to that place is approved by the Corporation under subsection (1) as a carrier for the purposes of the carriage to that place of a grape product of a kind to which that contract relates;

and the collector or officer may refuse to pass the entry until that person has so satisfied him.

Australian Wine and Brandy Corporation Act 1980

s. 10

(8) A contract entered into for the carriage of a grape product to a place outside Australia is not unenforceable, voidable or void by reason only of the contract having been entered into in contravention of subsection (4) or (5).

Power to enter into arrangements etc.

10. Without limiting the generality of section 8, the Corporation may enter into arrangements or agreements with persons, authorities or organizations in Australia or overseas, or, with the consent of the Minister, with a State, for the purposes of the Corporation.

Committees

11. (1) The Corporation may appoint a committee to assist the Corporation in relation to a matter.

(1A) Without limiting subsection (1), the Corporation may appoint a committee under that subsection to perform the functions appropriate for an executive committee of the Corporation.

(2) A committee established under this section shall consist of such persons, including at least 1 member of the Corporation, as the Corporation thinks fit.

PART III—CONSTITUTION AND MEETINGS OF THE CORPORATION

Nature of Corporation

12. (1) The Corporation:

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property and
- (d) may sue and be sued in its corporate name.

(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Corporation affixed to a document and shall presume that it was duly affixed.

Membership of Corporation

13. (1) The Corporation shall consist of:

- (a) a Chairperson;
- (b) a Government member; and
- (c) 6 other members.

Australian Wine and Brandy Corporation Act 1980

s. 14

(2) The members shall be appointed by the Minister in writing.

(3) The members shall be appointed as part-time members.

(4) The Minister shall not appoint a person to be a member referred to in paragraph (1) (c) unless the Minister is satisfied that the person has knowledge of, or experience in, winemaking, grape growing, marketing, finance, administration or business management.

(5) The members referred to in paragraph (1) (c) shall be appointed from persons nominated by the Selection Committee in accordance with section 29F.

(6) A member holds office on such terms and conditions (in respect of matters not provided for by this Act) as are determined by the Minister in writing.

(7) The performance of the functions and the exercise of the powers of the Corporation are not affected by reason only of there being a vacancy or vacancies in the membership of the Corporation.

Term of office of members

14. (1) Subject to this Act, the Chairperson or a member referred to in paragraph 13 (1) (c) holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but he or she is eligible for re-appointment.

(2) The member referred to in paragraph 13 (1) (b) holds office during the pleasure of the Minister.

(3) Subject to subsection (4), a person who has attained the age of 65 years shall not be appointed as a member and a person shall not be appointed as a member for a period that extends beyond the day on which the person will attain the age of 65 years.

(4) Subsection (3) does not apply to the appointment of a person as a member if the Minister is satisfied that that person possesses special skills that the Corporation requires for the performance of its functions.

(5) Whenever a vacancy occurs in the office of Chairperson or of a member referred to in paragraph 13 (1) (c) before the expiration of the person's term of office, the Minister may, in accordance with, and subject to, section 13, appoint a person to the office for the remainder of that period.

Australian Wine and Brandy Corporation Act 1980

s. 15

Deputy Chairperson

15. (1) The Minister shall, by writing signed by the Minister, appoint a member other than the Chairperson or the member referred to in paragraph 13 (1) (b) to be Deputy Chairperson of the Corporation.

(2) The Minister shall not appoint a member as the Deputy Chairperson unless the Minister has consulted with the Chairperson and the Presiding Member concerning the appointment.

(3) Subject to this Act, the Deputy Chairperson holds office for such period as is specified in the instrument of appointment, but he or she is eligible for re-appointment.

(4) The Minister may, at any time, terminate an appointment under subsection (1).

(5) A member holding office as Deputy Chairperson may resign that office by writing signed by him or her and delivered to the Minister.

(6) A member holding office as Deputy Chairperson ceases to hold that office if he or she ceases to be a member.

(7) Whenever a vacancy occurs in the office of Deputy Chairperson before the expiration of the period of his or her appointment, the Minister may, in accordance with this section, appoint another member to hold that office for the remainder of that period.

(8) While the office of Chairperson is vacant or the Chairperson is absent from Australia or is, for any other reason, unable to perform the functions of the office of Chairperson and the Deputy Chairperson is available to perform the functions of the office of Chairperson, the Deputy Chairperson has and may exercise all the powers, and shall perform all the functions, of the Chairperson under this Act.

Leave of absence

16. (1) The Minister may grant leave of absence to the Chairperson from a meeting or meetings of the Corporation.

(2) The Chairperson may grant leave of absence to another member from a meeting or meetings of the Corporation.

Resignation of members

17. A member may resign from the office of member by writing signed by the member delivered to the Minister.

Australian Wine and Brandy Corporation Act 1980

s. 20

Termination of appointments

20. (1) The Minister may terminate the appointment of a member by reason of the misbehaviour, or the physical or mental incapacity, of the member.

(4) If a member:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) fails, without reasonable excuse, to comply with his or her obligations under section 21;
- (c) being a member to whom subsection 40 (7) applies, fails, without reasonable excuse, to comply with the condition referred to in that subsection; or
- (d) is absent from 3 consecutive meetings of the Corporation otherwise than:
 - (i) on business of the Corporation undertaken with the approval of the Corporation or of a committee of the Corporation; or
 - (ii) on leave of absence granted under section 16;

the Minister shall terminate the appointment of the member.

Disclosure of interests by members of Corporation

21. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Corporation shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of that interest at a meeting of the Corporation.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Corporation and the member shall not, unless the Minister or the Corporation otherwise determines:

- (a) be present during any deliberation of the Corporation with respect to that matter; or
- (b) take part in any decision of the Corporation with respect to that matter.

(3) For the purpose of the making of a determination by the Corporation under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:

- (a) be present during any deliberation of the Corporation for the purpose of making the determination; or

Australian Wine and Brandy Corporation Act 1980

s. 22

(b) take part in the making by the Corporation of the determination.

(4) A member who is a wine maker or a grape grower shall not be taken to have a pecuniary interest in a matter being considered or about to be considered by the Corporation by reason only of being a winemaker or a grape grower.

Meetings of Corporation

22. (1) Subject to this section, meetings of the Corporation shall be held at such times and places as the Corporation from time to time determines.

(2) The Chairperson may at any time convene a meeting of the Corporation.

(3) At a meeting of the Corporation, 5 members constitute a quorum.

(4) The Chairperson shall preside at all meetings of the Corporation at which the Chairperson is present.

(5) If the Chairperson is not present, but the Deputy Chairperson is present, at a meeting of the Corporation, the Deputy Chairperson shall preside at that meeting.

(6) If neither the Chairperson nor the Deputy Chairperson is present at a meeting of the Corporation, the members present shall elect one of their number to preside at that meeting.

(7) A question arising at a meeting of the Corporation shall be decided by a majority of the votes of the members present and voting.

(8) The member presiding at a meeting of the Corporation has a deliberative vote and, in the event of an equality of votes, has a casting vote.

(9) The Corporation shall keep minutes of its proceedings.

(10) Subject to the preceding provisions of this section, the procedure at meetings of the Corporation shall be as determined by the Corporation.

(11) The Corporation may invite a person to attend a meeting of the Corporation for the purpose of advising or informing the Corporation on any matter.

(12) A person referred to in subsection (11) shall be paid such fees, allowances and expenses (if any) as the Corporation determines in respect of the person's attendance at a meeting of the Corporation.

Australian Wine and Brandy Corporation Act 1980

s. 29A

**PART IVA—AUSTRALIAN WINE AND BRANDY CORPORATION
SELECTION COMMITTEE**

Establishment of Committee

29A. A Committee by the name of the Australian Wine and Brandy Corporation Selection Committee is established.

Functions of Committee

29B. The functions of the Committee are:

- (a) to select persons to be nominated for appointment as members of the Corporation referred to in paragraph 13 (1) (c); and
- (b) to nominate persons so selected to the Minister for appointment as members of the Corporation.

Powers of Committee

29C. The Committee has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions.

Minister may request nominations

29D. The Minister may, by notice in writing given to the Presiding Member, request the Committee to give to the Minister, within the period specified in the notice:

- (a) written nominations of persons for appointment as members of the Corporation referred to in paragraph 13 (1) (c); or
- (b) where a casual vacancy occurs in the office of a member of the Corporation referred to in paragraph (a)—a written nomination of a person for appointment to that office.

Selection of persons by Committee

29E. (1) The Committee shall not nominate a person for appointment as a member of the Corporation unless the person possesses one or more of the qualifications referred to in subsection 13 (4).

(2) The Committee shall not nominate a person for appointment as a member of the Corporation if:

- (a) the person is a member of the Committee; or
- (b) the person has been a member of the Committee within 12 months of the day on which the nomination is given to the Minister.

Australian Wine and Brandy Corporation Act 1980

s. 29F

Nomination

29F. (1) Where the Minister gives a request to the Presiding Member under section 29D:

- (a) the Committee shall, before the end of the period specified in the notice, select a person or persons to be nominated for appointment to the office or offices concerned; and
- (b) the Presiding Member shall, on behalf of the Committee before the end of that period, give to the Minister the written nomination or nominations concerned.

(2) The Committee shall give to the Minister only one nomination in respect of each appointment to be made by the Minister.

(3) Where the Committee proposes to nominate a person for appointment as a member of the Corporation, the Presiding Member shall cause to be prepared and attached to the nomination a statement setting out:

- (a) details of the person's qualifications and experience; and
- (b) such other information relating to the person as the Committee thinks will assist the Minister in considering whether to appoint the person.

(4) The Committee may nominate a person for appointment even though the Minister has previously rejected a nomination of that person or the Committee has previously decided not to nominate the person for appointment.

Minister may reject nominations

29G. Where the Minister is not satisfied that a person nominated by the Committee for appointment as a member of the Corporation should be appointed as such a member, the Minister may, by notice in writing given to the Presiding Member, reject the nomination and may include in that notice a further request under section 29D for a nomination of a person for appointment to the office concerned.

Membership of Committee

29H. (1) The Committee shall consist of the following members:

- (a) a Presiding Member; and
- (b) such other number of members as is determined by the Minister.

(2) The members of the Committee shall be appointed in writing by the Minister and, subject to this Act, hold office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but are eligible for re-appointment.

Australian Wine and Brandy Corporation Act 1980

s. 29J

(3) Each member of the Committee referred to in paragraph (1) (b) shall be a person who has been nominated by a declared winemakers organisation.

(4) All members of the Committee shall be appointed as part-time members.

(5) A person who is a member of the Corporation is not eligible to be appointed under subsection (2) as a member of the Committee.

(6) The appointment of a member of the Committee is not invalidated, and shall not be called in question, because of a defect or irregularity in or in connection with the member's nomination or appointment.

(7) The exercise of a power or the performance of a function by the Committee is not invalidated because of a vacancy or vacancies in the membership of the Committee.

Acting Presiding Member

29J. (1) The Minister may appoint a person to act as Presiding Member:

- (a) during a vacancy in the office of Presiding Member (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Presiding Member is absent from Australia or is, for any other reason, unable to perform the functions of the office of Presiding Member;

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

(2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The Minister may determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as the Presiding Member.

(4) The Minister may terminate an appointment made under subsection (1) at any time.

(5) Where a person is acting as Presiding Member in accordance with paragraph (1) (b) and the office of Presiding Member becomes vacant while the person is so acting, then, subject to subsection (2), the person may continue to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the day on which the vacancy occurred expires, whichever first happens.

Australian Wine and Brandy Corporation Act 1980

s. 29K

(6) The appointment of a person to act as Presiding Member ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.

(7) While a person is acting as Presiding Member, the person has and may exercise all the powers, and shall perform all the functions, of the Presiding Member under this Act.

(8) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that:

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Casual vacancy

29K. Where a member of the Committee ceases to hold office before the expiration of the term of office of the member of the Committee:

- (a) in the case of the Presiding Member—the Minister may appoint a person to be the Presiding Member until the expiration of that term; or
- (b) in the case of any other member of the Committee—the Minister may appoint a person to be a member until the expiration of that term.

Remuneration and allowances of members of Committee

29L. (1) A member of the Committee shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, the member shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*, other than subsections 7 (9) and (13) of that Act.

Leave of absence

29M. (1) The Minister may grant leave of absence to the Presiding Member from a meeting of the Committee.

(2) The Presiding Member may grant leave of absence to another member of the Committee from a meeting of the Committee.

Australian Wine and Brandy Corporation Act 1980

s. 29N

Resignation

29N. A member of the Committee may resign from office by writing signed by the member and delivered to the Minister.

Determination of appointment of members of Committee

29P. (1) The Minister may terminate the appointment of a member of the Committee by reason of misbehaviour or physical or mental incapacity.

(2) If a member of the Committee:

- (a)** becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b)** fails, without reasonable excuse, to comply with his or her obligations under section 29Q; or
- (c)** is absent, without leave of absence under section 29M, from 3 consecutive meetings of the Committee;

the Minister shall terminate the appointment of the member of the Committee.

Disclosure of interests by members of Committee

29Q. (1) A member of the Committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of that interest at a meeting of the Committee.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Committee and the member shall not, unless the Minister or the Committee otherwise determines:

- (a)** be present during any deliberation of the Committee with respect to that matter; or
- (b)** take part in any decision of the Committee with respect to that matter.

(3) For the purpose of the making of a determination by the Committee under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:

- (a)** be present during any deliberation of the Committee for the purpose of making the determination; or
- (b)** take part in the making by the Committee of the determination.

Australian Wine and Brandy Corporation Act 1980

s. 29R

(4) A member of the Committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee in accordance with section 29S shall, as soon as practicable after the relevant facts have come to the knowledge of the member, disclose the nature of that interest to the Minister.

(5) A member of the Committee who is required to make a disclosure under subsection (4) in respect of a matter shall not, unless the Minister otherwise determines, sign a document with respect to that matter in accordance with section 29S.

(6) A member of the Committee who is a winemaker shall not be taken to have a pecuniary interest in a matter being considered or about to be considered by the Committee by reason only of being a winemaker.

Meetings of Committee

29R. (1) Meetings of the Committee shall be held at such times and places as the Committee from time to time determines.

(2) A meeting of the Committee may be called by the Presiding Member.

(3) At a meeting of the Committee, a number one less than the number of members of the Committee constitutes a quorum.

(4) The Presiding Member shall preside at all meetings of the Committee at which the Presiding Member is present.

(5) If the Presiding Member is not present at a meeting of the Committee, the members of the Committee who are present shall elect one of their number to preside at the meeting.

(6) A question arising at a meeting of the Committee shall be decided by a majority of the votes of the members of the Committee present and voting.

(7) The member of the Committee presiding at a meeting of the Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(8) The Committee shall keep minutes of its proceedings.

Resolutions without meetings

29S. Where:

- (a) a copy of a document setting out a proposed resolution of the Committee comes into the possession of the number of members of the Committee constituting a quorum; and
- (b) a majority of those members sign a copy of the document;

Australian Wine and Brandy Corporation Act 1980

s. 29T

a resolution of the Committee in the terms set out in the document shall be deemed to have been passed at a meeting of the Committee on the day on which the copies of the document were signed or, if the members of the Committee who signed the copies of the document did not sign on the same day, on the latest day on which a copy of the document was signed by such a member.

Staff and consultants

29T. (1) The Presiding Member may, on behalf of the Committee, engage persons to perform administrative and clerical services in connection with the performance of its functions.

(2) The Presiding Member may, on behalf of the Committee, engage persons having suitable qualifications and experience as consultants to the Committee to assist the Committee in identifying persons suitable for nomination to the Minister.

(3) The terms and conditions of engagement of persons engaged under subsection (1) or (2) shall be such as are determined by the Committee.

PART IVB—ANNUAL GENERAL MEETING OF THE INDUSTRY

Interpretation

29U. (1) In this Part, unless the contrary intention appears:
“eligible winemaker”, in relation to a year, means a person on the list of winemakers prepared in that year;
“Levy Act” means the *Wine Grapes Levy Act 1979*;
“list of winemakers” means a list of winemakers prepared under section 29V.

(2) For the purposes of this Part and of regulations made for the purposes of this Part, where 2 or more persons become liable to pay levy imposed under the Levy Act because they are members of a partnership or are the trustees of a trust estate, that partnership or trust estate shall be taken to be the person liable to pay that levy.

(3) Where, under this Part, rights are conferred upon a body corporate, a partnership or a trust estate to participate at an annual general meeting, those rights shall be exercised by a natural person appointed, in writing, for the purpose by the body corporate, the members of the partnership or the trustees of the trust estate, as the case may be.

Australian Wine and Brandy Corporation Act 1980

s. 29V

List of winemakers

29V. (1) As soon as practicable after 30 September in each year that begins on or after 1 July 1987, the Department shall prepare and give to the Corporation a list of the persons who the Department, at the time of the preparation of the list, knows became liable to pay levy imposed during the immediately preceding year under the Levy Act.

(2) The Corporation shall not use a list of winemakers otherwise than for the purposes of this Part.

Corporation to convene annual general meeting

29W. (1) The Corporation shall, within 3 months after the annual report of the Corporation is laid before a House of the Parliament or after the list of winemakers is prepared in the year immediately following the year to which the annual report relates, whichever occurs last, or within such longer period as is approved by the Minister, but not earlier than 42 days after the preparation of that list, cause an annual general meeting of the industry to be convened at a time and place determined by the Corporation.

(2) The Corporation shall, not later than 42 days before the intended day of an annual general meeting in a year, send to each eligible winemaker for that year:

- (a) a notice of the day, time and place of the meeting; and
- (b) a copy of the most recent annual report of the Corporation.

Purpose of annual general meeting

29X. The purpose of an annual general meeting is to provide an opportunity for eligible winemakers:

- (a) to consider the most recent annual report of the Corporation;
- (b) to receive an address by the Chairperson with respect to the performance of the Corporation in the year to which the annual report relates and with respect to the economic outlook for the industry, and the intended activities of the Corporation, in the year next following that year;
- (c) to question the members of the Corporation concerning any aspect of the Corporation's activities during the year to which the annual report relates and any aspect of the intended activities of the Corporation; and
- (d) to debate, and vote upon, any motion relating to a matter within the responsibilities of the Corporation.

Australian Wine and Brandy Corporation Act 1980

s. 29Y

Conduct of annual general meeting

29Y. (1) An annual general meeting may be attended by:

- (a) the members of the Corporation;
- (b) eligible winemakers for the year in which the meeting is held;
- (c) persons invited by the Corporation to attend the meeting; and
- (d) such members of the staff of the Corporation as the Chairperson determines to be appropriate having regard to the business of the meeting.

(2) The Chairperson shall preside at an annual general meeting at which he or she is present.

(3) The Corporation shall cause a record to be kept of the proceedings of an annual general meeting of the industry.

Voting at annual general meetings

29Z. (1) An eligible winemaker for a year is entitled to vote upon any matter to be determined at the annual general meeting in that year and, for the purpose of so voting, to cast such number of votes as is calculated in accordance with a method determined by the regulations, being a method that has regard to the amount of the levy imposed during the immediately preceding year under the Levy Act for which the person became liable that is an amount of levy by reference to which payments are made to the Corporation under section 32.

(2) Regulations may provide for a procedure relating to voting at annual general meetings which will ensure that the amount referred to in subsection (1) for which a person became liable remains confidential.

Minister to be notified of resolutions

29ZA. The Corporation shall, when making a recommendation referred to in subsection 9 (2) of the Levy Act, notify the Minister of any resolution relating to the recommendation passed or defeated at the most recent annual general meeting, of the number of votes cast for the resolution and of the number of votes cast against the resolution.

Australian Wine and Brandy Corporation Act 1980

s. 30

PART V—STAFF

Employees

30. (1) The Corporation may engage such employees as it thinks necessary for the purposes of this Act.

(2) The terms and conditions of employment (including remuneration) of the person holding the position of principal employee (however described) of the Corporation shall be such as are, subject to the approval of the Minister, determined by the Corporation.

(3) The terms and conditions of employment (including remuneration) of an employee, other than the employee referred to in subsection (2), shall be such as are determined by the Corporation.

PART VA—OPERATION OF CORPORATION

Division 1—Corporate Plans

Corporation to develop corporate plans

31. (1) The Corporation shall, in accordance with this section, develop, for the purpose of the more effective performance by the Corporation of its functions, a plan:

- (a) defining what, in the opinion of the Corporation, should be the principal objectives of the Corporation;
- (b) giving a broad outline of the strategies that should, in the opinion of the Corporation, be pursued in achieving those objectives;
- (c) setting out the Corporation's assessment, for the period to which the plan relates, of the market outlook and the economic outlook for the industry.

(2) The first corporate plan shall relate to such period, being a period commencing on 1 November 1986 or such later day as the Minister approves and ending on 30 June 1989, 30 June 1990 or 30 June 1991, as the Corporation determines.

(3) Each subsequent corporate plan shall relate to such period, being a period of 3, 4 or 5 years commencing on the 1 July immediately following the end of the period to which the previous plan related, as the Corporation determines.

Australian Wine and Brandy Corporation Act 1980

s. 31A

Agreement to corporate plans

31A. (1) The Corporation shall cause a copy of a corporate plan prepared under section 31 to be given to the Minister:

- (a) in the case of the first plan—on or before 1 October 1986 or such later day as the Minister approves; or
- (b) in any other case—at least 3 months before the commencement of the period to which the plan relates.

(2) Where a copy of a corporate plan is given to the Minister, the Minister may, by notice in writing given to the Corporation:

- (a) agree to the plan; or
- (b) if the Minister is of the opinion that, in the interests of the industry or of a particular sector of the industry, the plan should be revised in some respect—request the Corporation to revise the plan appropriately.

(3) The Minister shall include in the notice of request under paragraph (2) (b) a statement setting out the Minister's reasons for making the request.

(4) Where the Corporation receives a request under paragraph (2) (b), the Corporation shall consider the request and statement of reasons, make such revision of the corporate plan as it considers appropriate and re-submit the revised plan to the Minister for the Minister's agreement.

(5) A corporate plan comes into force:

- (a) at the commencement of the period to which the plan relates; or
- (b) on the day on which the Corporation receives notice of the Minister's agreement;

whichever is the later.

Variation of corporate plans by Corporation

31B. (1) Subject to subsection (4), the Corporation shall not vary a corporate plan of its own motion except with the agreement of the Minister.

(2) Where the Corporation wishes to vary a corporate plan, the Corporation shall prepare written proposals for the variations and give a copy of the proposals to the Minister together with a statement setting out the Corporation's reasons for making the proposals.

(3) The Minister may, after considering proposals for variation of a corporate plan submitted under subsection (2) and the reasons for making those proposals, by notice in writing given to the Corporation, agree to or reject the proposals.

Australian Wine and Brandy Corporation Act 1980

s. 31C

(4) Nothing in this section prevents the Corporation making variations of a minor nature to a corporate plan.

Variations of corporate plans at request of Minister

31C. (1) The Minister may, by notice in writing given to the Corporation, request the Corporation to vary a corporate plan in the manner set out in the notice of request.

(2) Where the Minister makes a request under subsection (1), the Minister shall include in the notice of request a statement setting out the Minister's reasons for making the request.

(3) Where the Corporation receives a request under subsection (1), the Corporation shall consider the request and statement of reasons, prepare written proposals for such variation of the plan as the Corporation considers appropriate and submit those proposals to the Minister for the Minister's agreement.

(4) The Minister may, after considering proposals for variation of a corporate plan submitted under subsection (3), by notice in writing given to the Corporation, agree to or reject the proposals.

Date of effect of variations

31D. Where:

- (a) a corporate plan has come into force; and
- (b) a variation to the plan is agreed to by the Minister under section 31B or 31C or the Corporation makes a variation of a minor nature to the plan;

the plan shall continue in force on and after the day on which the Corporation receives notice of the Minister's agreement or the day on which the Corporation makes the variation of a minor nature, as the case may be, as if the Minister had originally agreed to the plan as so varied.

Notice of variation of corporate plans

31E. Where a variation of a corporate plan is agreed to by the Minister in accordance with section 31B or 31C, particulars of the variation shall be included in the annual report of the Corporation for the year in which the variation was made.

Australian Wine and Brandy Corporation Act 1980

s. 31F

Division 2—Annual Operational Plans

Corporation to develop annual operational plans

31F. (1) Subject to subsection (2), the Corporation shall, in relation to each financial year of a period to which a corporate plan relates or to which an intended corporate plan will relate, develop an annual operational plan setting out particulars of the action that the Corporation intends to take in order to give effect to or further, during that year, the matters set out in that corporate plan.

(2) The first annual operational plan shall relate to the period commencing on the day on which the first corporate plan comes into force and ending on the first 30 June after that day and, for the purposes of the operation of subsection (1) in relation to that first annual operational plan, references in that subsection to a financial year shall be read as references to the period to which that first plan relates.

(3) Each subsequent annual operational plan shall relate to the financial year commencing immediately after the end of the period to which the previous annual operational plan related.

Agreement to annual operational plans

31G. (1) The Corporation shall cause a copy of an annual operational plan prepared under section 31F to be given to the Minister:

- (a) in the case of the first plan—on or before 1 October 1986 or such later day as the Minister approves; or
- (b) in any other case—at least 2 months before the commencement of the period to which the plan relates.

(2) Where a copy of an annual operational plan is given to the Minister, the Minister may, by notice in writing given to the Corporation:

- (a) agree to the plan; or
- (b) if the Minister is of the opinion that the plan is inconsistent with the provisions of the corporate plan that relates, or the intended corporate plan that will relate, to a period that includes, or will include, the period to which the first-mentioned plan will relate—request the Corporation to revise the first-mentioned plan appropriately.

(3) The Minister shall include in the notice of a request under paragraph (2) (b) a statement setting out the Minister's reasons for making the request.

Australian Wine and Brandy Corporation Act 1980

s. 31H

(4) Where the Corporation receives a request under paragraph (2) (b), the Corporation shall consider the request and statement of reasons, make such revision of the annual operational plan as it considers appropriate and re-submit the revised plan to the Minister for the Minister's agreement.

(5) An annual operational plan comes into force:

- (a) at the commencement of the period to which the plan relates:
or
- (b) on the day on which the Corporation receives notice of the Minister's agreement;

whichever is the later.

Variation of annual operational plans

31H. (1) Sections 31B, 31C and 31D apply to annual operational plans in the same manner as those sections apply to corporate plans.

(2) Where, if a proposed variation of a corporate plan were to be agreed to by the Minister, a relevant annual operational plan would not be consistent with the provisions of the corporate plan, the Corporation shall, at the time of submitting to the Minister for agreement proposals for variation to the corporate plan, also submit to the Minister proposals for appropriate variations of that annual operational plan.

Notice of variation of annual operational plan

31J. Where a variation of an annual operational plan is agreed to by the Minister in accordance with section 31H, particulars of the variation shall be included in the annual report of the Corporation for the year in which the variation was made.

Division 3—Directions

Directions to Corporation

31K. (1) Except as provided by this section, the Corporation is not subject to direction by or on behalf of the Commonwealth Government.

(2) Subject to this section, where the Minister is satisfied that, because of the existence of exceptional circumstances, it is necessary to give a direction to the Corporation in order to ensure that the performance of the functions, or the exercise of the powers, of the Corporation does not conflict with major government policies, the

Australian Wine and Brandy Corporation Act 1980

s. 32

Minister may, by notice in writing to the Corporation, give the direction to the Corporation with respect to the performance of its functions and the exercise of its powers.

(3) The Minister shall not give a direction under subsection (2) unless and until the Minister has given the Chairperson:

- (a) notice in writing that the Minister is contemplating giving the direction; and
- (b) an adequate opportunity to discuss with the Minister the need for the proposed direction.

(4) The Corporation shall comply with any direction given under subsection (2).

(5) Where the Minister gives a direction to the Corporation under subsection (2):

- (a) the Minister shall cause a notice in writing setting out particulars of the direction to be published in the *Gazette* as soon as practicable after giving the direction;
- (b) the Minister shall cause a copy of that notice to be laid before each House of the Parliament within 15 sitting days of the House after giving the direction;
- (c) particulars of the direction shall be included in the annual report of the Corporation for the year in which the direction was given; and
- (d) that report shall include particulars of the impact of that direction on the operations of the Corporation.

PART VI—FINANCE

Payments to Corporation

32. There shall be paid to the Corporation out of the Consolidated Revenue Fund, which is appropriated accordingly, amounts equal to:

- (a) so much of the amounts from time to time received by the Commonwealth as levy under the *Wine Grapes Levy Act 1979* as is so received by virtue of subsection 6 (1), other than paragraph 6 (1) (g) of that Act; and
- (b) so much of the amounts (if any) received by the Commonwealth under section 5 of the *Wine Grapes Levy Collection Act 1979* or section 15 of the *Primary Industries Levies and Charges Collection Act 1991* as is attributable to non-payment of levy referred to in subsection 6 (1), other than paragraph 6 (1) (g), of the *Wine Grapes Levy Act 1979*.

Australian Wine and Brandy Corporation Act 1980

s. 33

Payments by Corporation to Commonwealth

33. Where a refund is made by the Commonwealth in accordance with section 7 of the *Wine Grapes Levy Collection Act 1979* or section 18 of the *Primary Industries Levies and Charges Collection Act 1991* in respect of an amount that has been paid or overpaid to the Commonwealth by way of an amount of levy that is payable to the Commonwealth by virtue of subsection 6 (1), other than paragraph 6 (1) (g), of the *Wine Grapes Levy Act 1979*, the Corporation shall pay to the Commonwealth an amount equal to the amount of the refund.

Borrowing

34. (1) The Corporation may, with the approval of the Minister:

- (a) borrow money otherwise than from the Commonwealth; or
- (b) raise money otherwise than by borrowing, on terms and conditions that are specified in, or consistent with, the approval.

(2) Without limiting the generality of subsection (1), the Corporation may, under that subsection, borrow money, or raise money otherwise than by borrowing, by dealing with securities.

(3) A borrowing of money, or a raising of money otherwise than by borrowing, under subsection (1), may be made, in whole or in part, in a currency other than Australian currency.

(4) An approval may be given under subsection (1) in relation to a particular transaction or in relation to transactions included in a class of transactions.

(5) An approval under subsection (1) shall be given in writing.

(6) For the purposes of this section:

- (a) the issue by the Corporation of an instrument acknowledging a debt in consideration of:
 - (i) the payment or deposit of money; or
 - (ii) the provision of credit;

otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Corporation shall be deemed to be a raising by the Corporation, otherwise than by borrowing, of an amount of money equal to the amount of the money paid or deposited or the value of the credit provided, as the case may be; and

- (b) the obtaining of credit by the Corporation otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Corporation shall be deemed to

Australian Wine and Brandy Corporation Act 1980

s. 34A

be a raising by the Corporation, otherwise than by borrowing, of an amount of money equal to the value of the credit so obtained.

(7) In this section, “securities” includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents.

(8) A reference in this section to dealing with securities includes a reference to:

- (a) creating, executing, entering into, drawing, making, accepting, indorsing, issuing, discounting, selling, purchasing or re-selling securities;
- (b) creating, selling, purchasing or re-selling rights or options in respect of securities; and
- (c) entering into agreements or other arrangements relating to securities.

Corporation may give security

34A. The Corporation may give security over the whole or any part of its land or other assets for:

- (a) the repayment by the Corporation of money borrowed by the Corporation under paragraph 34 (1) (a) and the payment by the Corporation of interest (including any interest on that interest) on money so borrowed; or
- (b) the payment by the Corporation of amounts (including any interest) that the Corporation is liable to pay with respect to money raised by the Corporation under paragraph 34 (1) (b).

Borrowings not otherwise permitted

34B. The Corporation shall not borrow money, or raise money otherwise than by borrowing, except in accordance with section 34.

Application of money of Corporation

35. Subject to section 36, the moneys of the Corporation may be applied only:

- (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Corporation in or in connection with the performance of its functions, or the exercise of its powers, under this Act;
- (aa) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Presiding Member or the Committee in or in connection with the performance of the functions, or the exercise of the powers, of the Committee under this Act;

Australian Wine and Brandy Corporation Act 1980

s. 36

- (ab) in payment to the Commonwealth of amounts equal to the expenses incurred by the Commonwealth in relation to:
 - (i) the collection or recovery of amounts referred to in paragraph 32 (a) or (b); or
 - (ii) the administration of section 32;
- (b) in payment of any remuneration, allowances, fees or expenses payable under this Act; and
- (c) in making any other payments that the Corporation is authorized or required to make under this Act.

Investment

36. Without limiting the generality of section 63E of the *Audit Act 1901* in its application to the Corporation by virtue of section 38 of this Act, moneys of the Corporation not immediately required for the purposes of the Corporation may be invested in securities of, or guaranteed by, the Commonwealth or a State.

Application of Division 2 of Part XI of Audit Act

38. (1) It is hereby declared that the Corporation is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

(2) Division 2 of Part XI of the *Audit Act 1901* applies in relation to the Corporation:

- (a) as if the reference in subsection 63D (1) of that Division to an approved bank or approved banks included a reference to the Reserve Bank of Australia;
- (b) where an auditor for the Corporation has been appointed under section 38A, as if the references in sections 63G and 63H to the Auditor-General were references to the auditor so appointed; and
- (c) subject to the modification contained in subsection (3) of this section.

(3) Section 63H of the *Audit Act 1901* applies in relation to the Corporation as if the reference in subsection (1) of that section to as soon as practicable after 30 June in each year were a reference to as soon as practicable after, but not more than 6 months after, 30 June in each year.

Appointment of commercial auditors

38A. (1) The Corporation may request the Minister, in writing, to appoint a company auditor specified in the request to be the auditor of the Corporation.

Australian Wine and Brandy Corporation Act 1980

s. 39

(2) Where the Minister receives a request under subsection (1), the Minister shall cause particulars of the request to be given to the Auditor-General.

(3) Where particulars of a request under subsection (1) are given to the Auditor-General under subsection (2), the Auditor-General shall consider whether or not the company auditor referred to in the request is suitable to be the auditor of the Corporation and shall inform the Minister in writing of the Auditor-General's decision and of the reasons for that decision.

(4) Where the Auditor-General has informed the Minister that the Auditor-General is satisfied that a company auditor is suitable to be the auditor of the Corporation, the Minister shall cause to be given to the Chairman of the Joint Committee of Public Accounts particulars of the request and of the Auditor-General's advice.

(5) The Joint Committee of Public Accounts shall consider the advice given by the Auditor-General and shall inform the Minister in writing whether or not the Committee agrees to the appointment of the company auditor as the auditor of the Corporation.

(6) If the Joint Committee of Public Accounts informs the Minister that it agrees to the appointment of the company auditor as the auditor of the Corporation, the Minister may, in writing, appoint that auditor accordingly.

(7) Where the Minister makes or refuses to make an appointment under subsection (6), the Minister shall inform the Corporation, in writing, of the Minister's decision and, in the case of a refusal, of the reasons for that decision.

(8) In this section, "company auditor" means a firm carrying on the business of auditing accounts.

Liability to taxation

39. (1) The Corporation is subject to taxation (other than income tax) under the laws of the Commonwealth.

(2) Subject to subsection (3), the Corporation is not subject to taxation under a law of a State or Territory.

(3) The regulations may provide that subsection (2) does not apply in relation to taxation under a specified law.

Australian Wine and Brandy Corporation Act 1980

s. 39A

PART VIA—LABEL INTEGRITY PROGRAM

Division 1—Preliminary

Object of Part

39A. The object of this Part is to advance the objects of this Act by helping to ensure the truth, and the reputation for truthfulness, of statements made on wine labels, or made for commercial purposes in other ways, about the vintage, variety or region of origin of wine manufactured in Australia.

Operation of Part

39B. Without prejudice to its effect apart from this subsection, this Part has the effect it would have if the references in it to a wine manufacturer were, by express provision, confined to a wine manufacturer who is:

- (a) a foreign corporation, within the meaning of paragraph 51 (xx) of the Constitution; or
- (b) a trading or financial corporation formed within the limits of the Commonwealth, within the meaning of that paragraph; or
- (c) a corporation that is controlled by a corporation described by paragraph (a) or (b); or
- (d) a partnership at least one of the partners in which is a corporation described by paragraph (a), (b) or (c).

Interpretation

39C. In this Part, unless the contrary intention appears:

“approved” means approved by the Corporation in writing;

“blend” means wine manufactured by blending different wines;

“different wines” means wines that are different because at least one of their characteristics of vintage, variety or region of origin is different;

“direct sale” means a sale of wine to a consumer visiting a winery or ordering the wine from its manufacturer;

“examinable document” means:

- (a) any document required to be kept under this Part; or
- (b) any wine label or other document relating to the vintage, variety or region of origin of wine goods; or
- (c) any document relating to advertising the vintage, variety or region of origin of wine goods;

“geographical area” includes a vineyard, a district and a State, but does not include Australia or a larger area;

Australian Wine and Brandy Corporation Act 1980

s. 39C

“grape extract” means grape juice, must, or concentrate obtained from grapes;

“inspection power”, in relation to wine premises, means:

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

“inspector” means a person appointed under section 39ZA;

“label claim”, in relation to wine goods, means a claim about their vintage, variety or region of origin made on a wine label, in a commercial document or in an advertisement, and includes a claim so made about the vintage, variety or region of origin of wine goods from which they were manufactured;

“label law” means:

- (a) this Part; or
- (b) the regulations; or
- (c) another law of the Commonwealth relating to the description of wine; or
- (d) a law of a State or an internal Territory relating to the description of wine;

“label offence” means an offence against a label law;

“made”, in relation to a claim, includes implied;

“manufacturer”, in relation to wine, means the wine manufacturer who operates the winery where the wine is made;

“manufacturing wine” includes blending different wines;

“package”, in relation to wine, means a container in which the wine is sold or transferred for sale;

“principal employee” means the person holding the position of principal employee (however described) of the Corporation;

“region of origin” means:

- (a) in relation to grapes—any geographical area in which they were grown; or
- (b) in relation to wine or grape extract—any geographical area in which the grapes from which it was obtained were grown;

“single wine” means a wine other than a blend;

Australian Wine and Brandy Corporation Act 1980

s. 39D

“supplier”, in relation to wine goods received by a wine manufacturer, means:

- (a) where the wine manufacturer produced them—the wine manufacturer; or
- (b) where another person produced them—the person who supplied them to the wine manufacturer;

“variety”, in relation to wine or grape extract, means the variety of the grapes from which it was obtained;

“vintage” means:

- (a) in relation to grapes—the year in which they were harvested; or
- (b) in relation to wine or grape extract—the year in which the grapes from which it was obtained were harvested;

“wine” includes a grape product declared by the regulations to be wine for the purposes of this Part;

“wine goods” means wine, grapes or grape extract;

“wine label” means a label attached to a bottle or other package of wine and includes that part of a package of wine on which there is writing;

“wine manufacturer” means a person who operates a winery;

“wine premises” means a winery or other premises occupied by a wine manufacturer, and includes premises at which wine goods or examinable documents are held on behalf of a wine manufacturer;

“winery” means an establishment at which:

- (a) wine is manufactured for commercial purposes; or
- (b) grape extract is manufactured for use in the manufacture of wine for commercial purposes;

and, in relation to a wine manufacturer, means a winery operated by the manufacturer.

Sales with a label claim

39D. (1) For the purposes of this Part, wine is sold with a label claim if a label claim is made in relation to the wine when or before it is sold.

(2) For the purposes of this Part, where a blend is sold with a label claim, the claim not only relates to the blend but also relates to a wine used in the blend unless:

- (a) the claim is one that the blend, or wine used in the blend, has a particular characteristic; and
- (b) the first-mentioned wine does not have, but another wine used in the blend does have, that characteristic.

Australian Wine and Brandy Corporation Act 1980

s. 39E

Penalties

39E. (1) Penalties of \$15,000 specified in this Part are for offences committed by corporations.

(2) Where a natural person is convicted of any offence against this Part for which such a penalty is specified, the maximum penalty for the offence is \$3,000.

Division 2—Records relating to Label Claims

Wine manufacturers to keep records of receipt of wine goods

39F. A wine manufacturer who receives wine goods for processing at the manufacturer's winery must make and keep a record in writing of their receipt showing:

- (a) the date of their receipt; and
- (b) their quantity; and
- (c) their vintage, variety and region of origin; and
- (d) the identity of their supplier.

Wine manufacturers to keep records of manufacture of certain single wines

39G. (1) This section applies to a single wine if its manufacturer:

- (a) intends to sell the wine with a label claim; or
- (b) where the wine was manufactured on behalf of another person—knows that that person intends to sell the wine with a label claim; or
- (c) intends to use the wine in manufacturing a blend on the manufacturer's behalf and sell the blend with a label claim relating to the wine; or
- (d) intends to use the wine in manufacturing a blend on behalf of another person and knows that that person intends to sell the blend with a label claim relating to the wine.

(2) A wine manufacturer who manufactures a single wine to which this section applies must make and keep a record in writing of its manufacture showing:

- (a) the date of its manufacture; and
- (b) its quantity; and
- (c) such of its characteristics as are required by section 39W.

Australian Wine and Brandy Corporation Act 1980

s. 39H

Wine manufacturers to keep records of manufacture of certain blends

39H. (1) This section applies to a blend if its manufacturer:

- (a) intends to sell the blend with a label claim; or
- (b) where the blend was manufactured on behalf of another person—knows that that person intends to sell the blend with a label claim.

(2) A wine manufacturer who manufactures a blend to which this section applies must make and keep a record in writing of its manufacture showing:

- (a) the date of its manufacture; and
- (b) its quantity; and
- (c) such of its characteristics as are required by section 39W.

Wine manufacturers to keep records of sales of certain wine

39J. (1) This section applies to the sale of wine by a wine manufacturer if the manufacturer makes a label claim in relation to the wine.

(2) A wine manufacturer who sells wine in a sale to which this section applies must make and keep a record in writing of the sale showing:

- (a) subject to section 39L, the date of the sale; and
- (b) subject to section 39L, the wine's quantity; and
- (c) such of the wine's characteristics as are required by section 39W; and
- (d) subject to subsections (3) and (4), the identity of the purchaser.

(3) Where:

- (a) a wine manufacturer sells wine packaged for sale to consumers; and
- (b) the package has a wine label showing that the wine was made by, and setting out the name and address of, the manufacturer

the manufacturer is not required to make and keep a record of the identity of the purchaser.

(4) Where a wine manufacturer sells wine in a direct sale, the manufacturer is not required to make and keep a record of the identity of the purchaser.

Australian Wine and Brandy Corporation Act 1980

s. 39K

Wine manufacturers to keep records of disposals of certain wine

39K. (1) Where a wine manufacturer:

- (a) manufactures wine on behalf of another person at the manufacturer's winery; and
- (b) disposes of the wine in accordance with the instructions of that person;

this section applies to the disposal if the manufacturer:

- (c) makes a label claim in relation to the wine; or
- (d) knows that that person intends to sell the wine with a label claim.

(2) A wine manufacturer who disposes of wine by a disposal to which this section applies must make and keep a record in writing of the disposal showing:

- (a) subject to section 39L, the date of the disposal; and
- (b) subject to section 39L, the wine's quantity; and
- (c) such of the wine's characteristics as are required by section 39W; and
- (d) the identity of that person; and
- (e) subject to subsections (3) and (4), where it is disposed of by being delivered to a person other than that person—the identity of the person to whom it is delivered.

(3) Where:

- (a) a wine manufacturer disposes of wine by delivering the wine to a person other than the person on whose behalf it was manufactured; and
- (b) the wine is packaged for sale to consumers; and
- (c) the package has a wine label showing that the wine was made by, and setting out the name and address of, the manufacturer;

the manufacturer is not required to make and keep a record of the identity of the person to whom it is delivered.

(4) Where a wine manufacturer disposes of wine in a direct sale, the manufacturer is not required to make and keep a record of the identity of the person to whom it is delivered.

Direct sales

39L. Where wine manufactured at a winery is sold in direct sales, then, in respect of such wine:

- (a) in relation to which identical label claims are made by the wine manufacturer who operates the winery; and
- (b) sold during a particular period (not being longer than a year);

Australian Wine and Brandy Corporation Act 1980

s. 39M

the manufacturer may, instead of making and keeping a record of the date of sales and quantities, make and keep a record of the period and of the total quantity of the wine sold in the period.

Wine manufacturers to keep records of transfers of certain wine

39M. (1) Where a wine manufacturer transfers wine from a winery of the manufacturer to another winery of the manufacturer for use in manufacturing a blend, this section applies to the transfer if the manufacturer:

- (a) makes a label claim in relation to the wine; or
- (b) intends to sell the blend with a label claim relating to the wine; or
- (c) where the blend is to be manufactured on behalf of another person—knows that that person intends to sell the blend with a label claim relating to the wine.

(2) A wine manufacturer who transfers wine in a transfer to which this section applies must make and keep a record in writing of the transfer showing:

- (a) the date of the transfer; and
- (b) the wine's quantity; and
- (c) the winery from which the wine is transferred; and
- (d) the winery to which the wine is transferred; and
- (e) such of the wine's characteristics as are required by section 39W.

Wine manufacturers to keep records of production of certain grape extract

39N. (1) Where grape extract is produced by a wine manufacturer at a winery of the manufacturer for use in the manufacture of wine at another winery of the manufacturer, this section applies to the extract if the manufacturer:

- (a) where the wine is to be a single wine made on the manufacturer's behalf—intends to sell the wine with a label claim; or
- (b) where the wine is to be a blend made on the manufacturer's behalf—intends to sell the blend with a label claim relating to wine manufactured from the extract; or
- (c) where the wine is to be a single wine made on behalf of another person—knows that that person intends to sell the wine with a label claim; or
- (d) where the wine is to be a blend made on behalf of another person—knows that that person intends to sell the blend with a label claim relating to wine manufactured from the extract.

Australian Wine and Brandy Corporation Act 1980

s. 39P

(2) Where grape extract is produced by a wine manufacturer at a winery of the manufacturer for use in the manufacture of wine at a winery of another person, this section applies to the extract if the manufacturer makes a label claim relating to the extract.

(3) A wine manufacturer who produces grape extract to which this section applies must make and keep a record in writing of its production showing:

- (a) the date of its production; and
- (b) its quantity; and
- (c) such of its characteristics as are required by section 39W.

Wine manufacturers to keep records of sales of certain grape extract

39P. (1) Where grape extract produced by a wine manufacturer at the manufacturer's winery is sold by the manufacturer for use in manufacturing wine, this section applies to the extract if the manufacturer makes a label claim in relation to the extract.

(2) A wine manufacturer who sells grape extract in a sale to which this section relates must make and keep a record in writing of the sale showing:

- (a) the date of the sale; and
- (b) the extract's quantity; and
- (c) such of the extract's characteristics as are required by section 39W; and
- (d) the identity of the purchaser.

Wine manufacturers to keep records of disposal of certain grape extract

39Q. (1) Where a wine manufacturer:

- (a) produces grape extract at the manufacturer's winery on behalf of another person; and
- (b) disposes of the extract in accordance with the instructions of that person;

this section applies to the disposal if the manufacturer makes a label claim in relation to the extract.

(2) A wine manufacturer who disposes of grape extract by a disposal to which this section applies must make and keep a record in writing of the disposal showing:

- (a) the date of the disposal; and
- (b) the extract's quantity; and
- (c) such of the extract's characteristics as are required by section 39W; and

Australian Wine and Brandy Corporation Act 1980

s. 39R

- (d) the identity of that person; and
- (e) where the extract is disposed of by being delivered to yet another person—the identity of the person to whom it is delivered.

Wine manufacturers to keep records of transfers of certain grape extract

39R. (1) Where a wine manufacturer transfers grape extract from a winery of the manufacturer to another winery of the manufacturer for use in manufacturing wine, this section applies to the transfer if the manufacturer:

- (a) where the wine is to be a single wine—intends to sell the wine with a label claim; or
- (b) where the wine is to be a blend—intends to sell the blend with a label claim relating to wine manufactured from the extract.

(2) Where a wine manufacturer transfers grape extract from a winery of the manufacturer to a winery of another person for use in manufacturing wine, this section applies to the transfer if the manufacturer makes a label claim in relation to the extract.

(3) A wine manufacturer who transfers grape extract in a transfer to which this section applies must make and keep a record in writing of:

- (a) the date of the transfer; and
- (b) the extract's quantity; and
- (c) the winery from which the extract is transferred; and
- (d) the winery to which the extract is transferred; and
- (e) such of its characteristics as are required by section 39W.

Making of records

39S. A requirement of this Division to make a record is a requirement to make the record as soon as it is practicable to do so.

Records to relate to a winery

39T. A requirement of this Division (other than sections 39M and 39R) to make a record includes a requirement to make a record that shows the winery to which the record relates.

Keeping of records

39U. A requirement of this Division to keep a record is a requirement to keep the record for 7 years, or a shorter approved period, after the record is made.

Australian Wine and Brandy Corporation Act 1980

s. 39V

Record of person

39V. For the purposes of this Division, a record of the identity of a person is a record of particulars of the person's name and address that are enough to identify the person.

Characteristics to be recorded

39W. Where, under section 39G, 39H, 39J, 39K, 39M, 39N, 39P, 39Q, or 39R, a record relating to wine or grape extract is to show such characteristics of the wine or extract as are required by this section, the requirement is for the record to show:

- (a) where the section requiring the record applies because of a claim about vintage—the vintage of the wine or extract; or
- (b) where that section applies because of a claim about variety—the variety of the wine or extract; or
- (c) where that section applies because of a claim about region of origin—the region of origin of the wine or extract.

Record of variety

39X. (1) For the purposes of this Division, where there is uncertainty about the variety of wine goods, a record showing their variety is a record showing whichever variety the wine manufacturer making the record considers on reasonable grounds most likely to be their variety.

(2) For the purposes of this Division, where a variety of wine goods is known by more than one name, a record showing the variety is a record showing any one of those names.

Record of region of origin

39Y. For the purposes of this Division, a record showing the region of origin of wine goods is a record showing the name or description of any geographical area that is a region of origin of the goods.

Record of blends etc.

39Z. (1) For the purposes of this Division, where:

- (a) a wine manufacturer makes only one label claim about wine; and
- (b) the wine is a blend manufactured by blending wine with the characteristic claimed and other wine;

a record showing the characteristic of the blend required because of the claim is a record showing what proportion of the blend is represented by wine with the characteristic claimed.

Australian Wine and Brandy Corporation Act 1980

s. 39ZAAA

(2) For the purposes of this Division, where:

- (a) a wine manufacturer makes label claims about 2 or more of the characteristics of wine; and
- (b) the wine is a blend manufactured by blending wine with all the characteristics claimed and other wine;

a record showing the characteristics of the blend required because of the claims is a record showing what proportion of the blend is represented by wine with the characteristics claimed.

(3) Subject to subsections (1) and (2), for the purposes of this Division, a record showing the vintage, variety or region of origin of a blend is:

- (a) a record showing what proportions of the blend are represented by each different wine in the blend; and
- (b) a record, in respect of each of those wines, showing its vintage, variety or region of origin, as the case may be.

(4) For the purposes of this Division, a record showing the vintage, variety or region of origin of grape extract derived from grapes of different vintages, varieties or regions of origin is:

- (a) a record showing what proportions of the goods are derived from each kind of grape; and
- (b) a record, in respect of each kind of grape, showing its vintage, variety or region of origin, as the case may be.

Offences in relation to record-keeping

39ZAAA. If a wine manufacturer who is required by this Division to make and keep a record of a matter:

- (a) knowingly or recklessly fails to make or keep the record as required by this Division; or
- (b) knowingly or recklessly makes or keeps a record of the matter that is false, misleading or incomplete in a material particular;

the manufacturer is guilty of an offence.

Penalty: \$15,000.

Corporation may require records

39ZAA. (1) If the Corporation has reason to believe that a wine manufacturer or other person holds or controls a record required by this Division to be made and kept, the Corporation may, by notice in writing served on the person, require the person to produce the record to the Corporation, within the period and in the manner specified in the notice.

Australian Wine and Brandy Corporation Act 1980

s. 39ZAB

(2) The period specified in the notice must not be less than 14 days from the day on which it is served.

(3) The notice must set out the effects of section 39ZAB.

Failure to comply with section 39ZAA notice

39ZAB. (1) A person must not, without reasonable excuse, refuse or fail to comply with a notice under section 39ZAA.

Penalty: \$15,000.

(2) It is a reasonable excuse for a person to refuse or fail to comply with a notice if complying would tend to incriminate the person.

Corporation may retain records

39ZAC. If a record is produced to the Corporation under section 39ZAA:

- (a) the Corporation may keep it for 60 days, or, if a prosecution for a label offence of whose commission the record may be evidence is instituted within that period, until the completion of the proceedings for the offence and of any appeal from the decision in relation to the proceedings; and
- (b) the Corporation may inspect the record and may make and retain copies of all or part of it; and
- (c) while the Corporation has possession of the record, the Corporation must:
 - (i) allow the record to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the Corporation's possession; and
 - (ii) allow such a person to make a copy of the record.

Division 3—Inspection

Appointment of inspectors

39ZA. (1) The principal employee may, on behalf of the Corporation:

- (a) appoint an eligible person to be an inspector; or
- (b) appoint a class of eligible persons to be inspectors.

(2) The appointment of an inspector ceases if he or she ceases to be an eligible person.

(3) For the purposes of this section, the following are eligible persons:

- (a) employees of the Corporation;

Australian Wine and Brandy Corporation Act 1980

s. 39ZB

- (b) officers and employees of the Commonwealth or of authorities of the Commonwealth;
- (c) officers and employees of a State or internal Territory whom a Minister of the Crown of the State, or Minister of the Territory, has agreed may be appointed as inspectors;
- (d) officers and employees of a local government body whom the body has agreed may be appointed as inspectors.

Identity cards

39ZB. (1) The principal employee may cause an identity card to be issued to an inspector.

(2) An identity card must:

- (a) contain a recent photograph of the inspector to whom it is issued; and
- (b) be in an approved form.

(3) An inspector whose appointment ceases must, as soon as practicable, return his or her identity card to the Corporation.

Penalty: \$100.

Monitoring powers of inspectors—exercised with consent

39ZC. For the purpose of finding out whether label laws are being complied with, an inspector may, with the consent of, and after producing the inspector's identity card for inspection by, the occupier of wine premises, enter, and exercise inspection powers on, the premises.

Monitoring warrants

39ZD. (1) An inspector may apply to a magistrate for a warrant under this section in relation to particular wine premises.

(2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that the inspector should have access to the premises for the purpose of finding out whether label laws are being complied with.

(3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

Australian Wine and Brandy Corporation Act 1980

s. 39ZE

- (4) The warrant must:
 - (a) authorise an inspector (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the premises; and
 - (ii) to exercise inspection powers on the premises; and
 - (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.

Offence powers of inspectors—exercised with consent

39ZE. (1) Where an inspector has reasonable grounds for suspecting that there is on wine premises a particular thing that may afford evidence of the commission of a label offence, the inspector may, with the consent of, and after producing the inspector's identity card for inspection by, the occupier of the premises, enter, and exercise inspection powers on, the premises.

(2) An inspector who has entered premises under subsection (1) must leave them if requested to do so by their occupier.

Offence related warrants

39ZF. (1) An inspector may apply to a magistrate for a warrant under this section in relation to particular wine premises.

(2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, on the premises a particular thing that may afford evidence of the commission of a label offence.

(3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

- (4) The warrant must:
 - (a) state the name of the inspector; and
 - (b) authorise the inspector, with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the place; and
 - (ii) to exercise inspection powers on the premises; and

Australian Wine and Brandy Corporation Act 1980

s. 39ZG

- (iii) to seize the thing that might afford evidence; and
- (c) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (d) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (e) state the purpose for which the warrant is issued.

Discovery of evidence

39ZG. (1) Where an inspector enters wine premises under a warrant under section 39ZF and finds the thing (in this section called the “evidence”) that may afford evidence of the commission of a label offence and which the inspector entered to find:

- (a) the inspector may seize the evidence; and
- (b) the inspector may keep the evidence for 60 days, or, if a prosecution for a label offence in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceedings for the offence and of any appeal from the decision in relation to the proceedings; and
- (c) if the evidence is a book, record or document—while the inspector has possession of the evidence, the inspector must:
 - (i) allow the evidence to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the inspector’s possession; and
 - (ii) allow such a person to make a copy of the evidence.

(2) If, in the course of searching wine premises entered under section 39ZE or a warrant under section 39ZF, the inspector:

- (a) finds a thing that the inspector believes, on reasonable grounds to be:
 - (i) a thing (other than the evidence) that will afford evidence of the commission of the label offence mentioned in subsection (1); or
 - (ii) a thing that will afford evidence of the commission of another label offence; and
- (b) the inspector believes, on reasonable grounds, that it is necessary to seize the thing to prevent its concealment, loss or destruction;

subsection (1) applies to the thing as if it were the evidence.

Australian Wine and Brandy Corporation Act 1980

s. 39ZH

Power to require persons to answer questions and produce documents

39ZH. An inspector who is on wine premises that the inspector has entered under a warrant issued under section 39ZD or 39ZF may require any person on the premises to:

- (a) answer any questions put by the inspector; and
- (b) produce any examinable documents requested by the inspector.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).

Penalty: \$3,000.

(3) It is a reasonable excuse for a person to refuse or fail to answer a question or produce a document if answering the question, or producing the document would tend to incriminate the person.

Division 4—Use of Records and Results of Inspection

Corporation to assist enforcement of laws on description of wine

39ZJ. (1) For the purpose of achieving the object of this Part, the Corporation may give information obtained under this Part or section 42, and other assistance, to:

- (a) the Trade Practices Commission; or
- (b) a Department of, or an authority or other body established for a public purpose by, the Commonwealth, a State or a Territory with responsibilities relating to the labelling, description or quality of wine; or
- (c) a person prosecuting, or taking other proceedings against, or proposing to prosecute or take other proceedings against, a person in relation to the false description of the vintage, variety or region of origin of any wine.

(2) This section does not limit any powers and duties of the Corporation.

Proceedings not to lie against Corporation etc.

39ZK. No proceedings lie against:

- (a) the Corporation; or
- (b) a member of the Corporation; or
- (c) an employee of the Corporation; or
- (d) an inspector;

in relation to any loss incurred or damage suffered because of information or assistance given under section 39ZH.

Australian Wine and Brandy Corporation Act 1980

s. 39ZL

Corporation may assist in relation to levy

39ZL. (1) For the purpose of assisting, and achieving administrative savings in connection with, the calculation and collection of levy imposed by the *Wine Grapes Levy Act 1979* or the *Grape Research Levy Act 1986*, the Corporation may, with the consent of a wine manufacturer, give to a Department of the Commonwealth with responsibilities relating to the levy information kept by, or held on behalf of, the manufacturer that is obtained by the Corporation under this Part or under section 42.

(2) A wine manufacturer is to be taken to have consented to the giving of information under subsection (1) where the occupier of the wine premises where the information is kept or held gave such consent.

PART VII—MISCELLANEOUS

Remuneration and allowances of members of Corporation etc.

40.² (1) This section applies to a person who is:

- (a) a member; or
- (c) a member of a committee constituted under section 11 other than a member of the Corporation.

(2) Subject to this section, a person to whom this section applies shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, the person shall be paid such remuneration as is prescribed.

(3) Subject to this section, a person to whom this section applies shall be paid such allowances as are prescribed.

(4) Subsections (2) and (3) have effect subject to the *Remuneration Tribunals Act 1973*.

(5) Payments under this section shall be made out of the funds of the Corporation.

(6) If:

- (a) a person to whom this section applies is also a member of, or a candidate for election to, the Parliament of a State; and
- (b) under the law of that State the person would not be eligible to remain, or to be elected as, a member of that Parliament if he or she were entitled to remuneration under this Act;

Australian Wine and Brandy Corporation Act 1980

s. 41

the person shall not be paid remuneration or allowances under this Act but shall be reimbursed such expenses as the person reasonably incurs because of the person's performing the functions of the office under this Act held by the person.

(7) If a person to whom this section applies is also:

- (a) a member of the Parliament of a State (other than a State referred to in subsection (6)); or
- (b) in the service or employment of a State or an authority of a State, or holds or performs the duties of any office or position established by or under a law of a State, on a full-time basis;

it is a condition of the person's holding the office under this Act held by the person that the person pay to the State, within one month of receiving an amount of remuneration under this Act, an amount equal to that first-mentioned amount, and the person:

- (c) shall not be paid allowances under this Act; and
- (d) shall be reimbursed such expenses as the person reasonably incurs because of the person's performing the functions of the office under this Act held by the person.

(8) An amount payable to a State by a person under subsection (7) is a debt due to the State and the State may recover that amount by action against the person in a court of competent jurisdiction.

(9) In this section:

"Parliament", in relation to the Northern Territory, means the Legislative Assembly of the Northern Territory;

"State" includes the Northern Territory.

Indemnity

41. A member is not personally liable for an act or default of the Corporation or of the member acting as such.

Corporation may require information

42. (1) The Corporation may, by notice in writing given, or sent by post, to a person, require the person to furnish, within such time as is specified in the notice not being less than 14 days, such information, in addition to any other information that the person is required to furnish under this Act or any other Act, in relation to the production of prescribed goods or grape products to matters relating to the description of wine, other than matters about which records are required to be kept under Part VIA, or to prescribed goods or grape products owned by the person or under the person's control as is specified in the notice.

Australian Wine and Brandy Corporation Act 1980

s. 43

(2) A person shall not, without reasonable excuse, fail or neglect duly to furnish information that the person is required to furnish by virtue of a notice given, or sent by post, to the person under subsection (1).

(3) A person is not excused from furnishing information that the person is required to furnish by virtue of a notice given, or sent by post, to the person under subsection (1) on the ground that the information might tend to incriminate the person or make the person liable to a penalty, but any information so furnished is not admissible in evidence against the person in proceedings other than proceedings for an offence against subsection (4).

(4) A person shall not furnish to the Corporation information that the person knows is false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—imprisonment for 6 months;
or
- (b) in the case of a body corporate—\$5,000.

Delegation

43. (1) The Corporation may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a person or to a committee established under section 11 any of its powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Corporation.

(3) A delegation under this section does not prevent the exercise of a power by the Corporation.

Offences in relation to export of grape products

44. A person shall not export a grape product from Australia in contravention of the regulations.

Penalty:

- (a) in the case of a natural person—\$6,000; or
- (b) in the case of a body corporate—\$10,000.

Conduct by directors, servants or agents

44A. (1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

Australian Wine and Brandy Corporation Act 1980

s. 44A

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions to avoid the conduct.

(3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a natural person in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a natural person by a servant or agent of the person within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions to avoid the conduct.

(5) Where:

- (a) a natural person is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

Australian Wine and Brandy Corporation Act 1980

s. 45

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(9) A reference in this section to an offence against this Act includes a reference to:

- (a) an offence created by the regulations; and
- (b) an offence created by section 6, 7 or 7A, or subsection 86 (1), of the *Crimes Act 1914*, being an offence that related to the Act or the regulations.

Operation of certain laws not restricted

45. Nothing in this Act or the regulations restricts the operation of the *Customs Act 1901*, the *Commerce (Trade Descriptions) Act 1905* or the *Export Control Act 1982*, or of any regulations made under any one or more of those Acts.

Regulations

46. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular:

- (a) making provision with respect to annual general meetings including, in particular, provisions in respect of:
 - (i) the giving of notice of motions to be moved at such meetings;
 - (ii) the moving of motions at such meetings by the Corporation;
 - (iii) the procedure at such meetings;
 - (iv) the appointment by persons entitled to attend such meetings of other persons to be their proxies at such meetings; and
 - (v) the means of determining whether or not motions voted upon at such meetings have been passed;
- (c) prohibiting the export of a grape product from Australia except subject to and in accordance with prescribed conditions, including, in particular:
 - (i) conditions requiring an exporter to be the holder of a licence to export the grape product;
 - (ii) conditions requiring an exporter to obtain the approval of the Corporation for particular exports of the grape product;
 - (iii) conditions requiring the purchaser of the grape product, or the person to whom the grape product is consigned as an agent or representative of the

Australian Wine and Brandy Corporation Act 1980

s. 47

- purchaser or exporter in the country to which the grape product is consigned, to be a person approved by the Corporation; or
- (iv) conditions relating to the price, or form of consignment, of the grape product;
- (d) making provision with respect to:
- (i) the grant, suspension or cancellation by the Corporation, or a person authorized by it, of licences to export a grape product from Australia; and
 - (ii) the issuing or revocation by the Corporation, or by a person authorized by it, in respect of particular exports of a grape product, of certificates as to compliance with the conditions subject to which the grape product may be exported;
- (e) providing for the period for which a licence, or a licence included in a class of licences, granted under the regulations remains in force;
- (f) authorizing the Corporation, or a person authorized by it:
- (i) to determine prices or other matters for the purposes of the regulations; or
 - (ii) to give to the holder of a licence to export a grape product granted under the regulations directions, in writing, with respect to the quantities of the grape product that may be exported by the holder of the licence either generally or otherwise as provided in the regulations;
- (g) requiring persons to furnish returns and information necessary for the purposes of this Act; and
- (h) providing for a penalty of:
- (i) if the person is a natural person, a fine not exceeding \$1,000; or
 - (ii) if the person is a body corporate, a fine not exceeding \$5,000;

for offences against the regulations.

**PART VIII—REPEAL OF CERTAIN ACTS AND CONSEQUENT
TRANSITIONAL PROVISIONS**

Interpretation

47. In this Part, “Board” means the Australian Wine Board established by the *Wine Overseas Marketing Act 1929*.

Australian Wine and Brandy Corporation Act 1980

s. 48

Repeal of certain Acts

48. The Acts specified in the Schedule are repealed.

Rights etc. of Board to vest in Corporation etc.

49. (1) Upon the commencing date:

- (a) any rights, property or assets that, immediately before that date, were vested in the Board are, by force of this subsection, vested in the Corporation; and
- (b) the Corporation becomes, by force of this subsection, liable to pay and discharge any debts, liabilities or obligations of the Board that existed immediately before that date.

(2) An arrangement or contract entered into by or on behalf of the Board as a party and in force immediately before the commencing date continues in force, notwithstanding the repeal of the Acts specified in the Schedule, but that arrangement or contract has effect, on and after the commencing date, as if:

- (a) the Corporation were substituted for the Board as a party to the arrangement or contract; and
- (b) any reference in the arrangement or contract to the Board were (except in relation to matters that occurred before that date) a reference to the Corporation.

(3) Where, immediately before the commencing date, proceedings to which the Board was a party were pending in any court, the Corporation is, by force of this subsection, substituted for the Board as a party to the proceedings and has the same rights in the proceedings as the party for which it is substituted.

Instrument etc. not liable to stamp duty etc.

50. An instrument or document that the Secretary to the Department of Primary Industry or an officer of that Department authorized by him in writing for the purpose of this section certifies to have been made, executed or given by reason of, or for a purpose connected with or arising out of, the operation of this Part is not liable to stamp duty or other tax under a law of the Commonwealth or of a State or Territory.

Application of moneys of Corporation

51. The moneys of the Corporation may be applied in payment or discharge of the debts, liabilities and obligations referred to in paragraph 49 (1) (b).

Australian Wine and Brandy Corporation Act 1980

s. 52

Moneys to be paid to Corporation in respect of levy etc.

52. There shall be paid to the Corporation out of the Consolidated Revenue Fund, which is appropriated accordingly, an amount equal to the aggregate of any amounts received by the Commonwealth, before the commencing date:

- (a) as charge under the *Wine Grapes Charges Act 1929* (including that Act in its application by virtue of subsection 3 (2) of the *Wine Grapes Charges (Repeal) Act 1979*;
- (b) as levy under the *Wine Grapes Levy Act 1979*; or
- (c) as penalties under section 5 of the *Wine Grapes Levy Collection Act 1979*;

that have not been taken into account in making a payment to the Board under subsection 21 (1) of the *Wine Overseas Marketing Act 1929*, less an amount equal to the aggregate of any amounts to be paid by the Commonwealth by way of refund under section 7 of the *Wine Grapes Levy Collection Act 1979* in respect of any amounts so received.

Employees of Board

53. (1) A person who, immediately before the commencing date, was employed by the Board shall, by virtue of this subsection, be deemed to be, on that date, engaged as an employee of the Corporation under section 30.

(2) Terms and conditions of employment applicable to a person referred to in subsection (1) immediately before the commencing date shall, by virtue of this subsection, be deemed to be terms and conditions of employment determined under subsection 30 (2), but those terms and conditions may, at any time after the commencing date, be varied under that subsection.

Report on operations of Board

54. (1) The Corporation shall, not later than 6 months after the commencing date, prepare and submit to the Minister a report on the operation of the *Wine Overseas Marketing Act 1929* during the period that:

- (a) commenced immediately after the expiration of the last period in respect of which a report was submitted by the Board to the Minister in pursuance of section 29 of that Act; and
- (b) ended immediately before the commencing date.

Australian Wine and Brandy Corporation Act 1980

s. 55

(2) The Minister shall cause a copy of the report, together with a statement by the Minister regarding the operation of the *Wine Overseas Marketing Act 1929* during the period to which the report relates, to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Minister.

(3) The persons who, immediately before the commencing date, were members of the Board shall furnish to the Corporation such information as is necessary to enable the Corporation to prepare the report.

Regulations

55. The regulations may make provision for and in relation to the continued effect, for the purposes of the regulations, of licences and certificates in force, immediately before the commencing date, under regulations made for the purposes of the *Wine Overseas Marketing Act 1929*.

SCHEDULE

Section 48

ACTS REPEALED

Wine Overseas Marketing Act 1929
Wine Overseas Marketing Act 1930
Wine Overseas Marketing Act 1936
Wine Overseas Marketing Act 1945
Wine Overseas Marketing Act 1953
Wine Overseas Marketing Act 1954
Wine Overseas Marketing Act 1961
Wine Overseas Marketing Act 1963
Wine Overseas Marketing Act 1973
Wine Overseas Marketing Amendment Act 1979

Australian Wine and Brandy Corporation Act 1980

NOTES

1. The *Australian Wine and Brandy Corporation Act 1980* as shown in this reprint comprises Act No. 161, 1980 amended as indicated in the Tables below.
The *Australian Wine and Brandy Corporation Act 1980* was modified by the A.C.T. Self-Government (Consequential Provisions) Regulations as amended. (See Note 2)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Wine and Brandy Corporation Act 1980</i>	161, 1980	10 Dec 1980	Ss. 1, 2 and 13 (4): Royal Assent Remainder: 1 July 1981 (see <i>Gazette</i> 1981, No. S123)	
<i>Export Control (Miscellaneous Amendments) Act 1982</i>	48, 1982	9 June 1982	1 Jan 1983 (see s. 2 and <i>Gazette</i> 1982, No. G48, p. 2)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1984</i>	72, 1984	25 June 1984	S. 3: 23 July 1984 (a)	S. 5 (1)
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1984</i>	165, 1984	25 Oct 1984	S. 3: Royal Assent (b)	Ss. 2 (32) and 6 (1)
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (c)	—
<i>Australian Wine and Brandy Corporation Amendment Act 1986</i>	60, 1986	24 June 1986	Ss. 1, 2, 3 (1), 5, 14, 19 and 30: Royal Assent Remainder: 1 July 1986	Ss. 29 and 30
<i>Primary Industries (Recovery of Levy Collection Expenses) Act 1988</i>	51, 1988	15 June 1988	S. 3: Royal Assent (d)	—
<i>Australian Wine and Brandy Corporation Amendment Act 1989</i>	144, 1989	23 Nov 1989	1 Jan 1990	Ss. 6 and 10
<i>Primary Industries Levies and Charges Collection (Consequential Provisions) Act 1991</i>	26, 1991	1 Mar 1991	1 July 1991 (see s. 2)	—

Australian Wine and Brandy Corporation Act 1980

NOTES—continued
Table of Acts—continued

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Wine and Brandy Corporation Amendment Act 1992</i>	137, 1992	11 Nov 1992	S. 4: 9 Dec 1992 Remainder: Royal Assent	—

- (a) The *Australian Wine and Brandy Corporation Act 1980* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984*, subsection 2 (1) of which provides as follows:
“(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.”
- (b) The *Australian Wine and Brandy Corporation Act 1980* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2 (7) of which provides as follows:
“(7) The amendment of the *Australian Wine and Brandy Corporation Act 1980* made by this Act shall come into operation the day on which this Act receives the Royal Assent.”
- (c) The *Australian Wine and Brandy Corporation Act 1980* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2 (1) of which provides as follows:
“(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.”
- (d) The *Australian Wine and Brandy Corporation Act 1980* was amended by section 3 only of the *Primary Industries (Recovery of Levy Collection Expenses) Act 1988*, subsection 2 (1) of which provides as follows:
“(1) Subject to subsections (2), (3) and (4), this Act commences on the day on which it receives the Royal Assent.”

Table of Amendments

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

Provision affected	How affected
S. 4	am. No. 60, 1986; No. 26, 1991
S. 5	rep. No. 60, 1986
S. 5A	ad. No. 60, 1986
Ss. 7, 8	am. No. 60, 1986
S. 9	am. No. 60, 1986; No. 144, 1989
S. 11	am. No. 60, 1986
S. 13	rs. No. 60, 1986
S. 14	am. Nos. 72 and 165, 1984 rs. No. 60, 1986
Ss. 15-17	rs. No. 60, 1986
Ss. 18, 19	rep. No. 60, 1986
S. 20	am. No. 60, 1986
S. 21	rs. No. 60, 1986
S. 22	am. No. 60, 1986
Part IV (ss. 23-29)	rep. No. 60, 1986

Australian Wine and Brandy Corporation Act 1980

NOTES—continued
Table of Amendments—continued

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

Provision affected	How affected
Ss. 23-29	rep. No. 60, 1986
Part IVA (ss. 29A-29T)	ad. No. 60, 1986
Ss. 29A-29T	ad. No. 60, 1986
Part IVB (ss. 29U-29Z, 29ZA)	ad. No. 60, 1986
Ss. 29U-29Y	ad. No. 60, 1986
S. 29Z	ad. No. 60, 1986 am. No. 144, 1989
S. 29ZA	ad. No. 60, 1986
S. 30	am. No. 60, 1986
Part VA (ss. 31, 31A-31K)	ad. No. 60, 1986
S. 31	rep. No. 65, 1985 ad. No. 60, 1986
Ss. 31A-31K	ad. No. 60, 1986
Ss. 32, 33	rs. No. 60, 1986 am. No. 144, 1989; No. 26, 1991
S. 34	rs. No. 60, 1986
Ss. 34A, 34B	ad. No. 60, 1986
S. 35	am. No. 60, 1986; No. 51, 1988
S. 37	rep. No. 60, 1986
S. 38	am. No. 60, 1986
S. 38A	ad. No. 60, 1986
Part VIA (ss. 39A-39Z, 39ZA-39ZL)	ad. No. 144, 1989
Ss. 39A-39E	ad. No. 144, 1989
Ss. 39F-39K	ad. No. 144, 1989 am. No. 137, 1992
S. 39L	ad. No. 144, 1989
Ss. 39M-39R	ad. No. 144, 1989 am. No. 137, 1992
Ss. 39S-39Z	ad. No. 144, 1989
Ss. 39ZAAA, 39ZAA-39ZAC	ad. No. 137, 1992
Ss. 39ZA-39ZE	ad. No. 144, 1989
Ss. 39ZF, 39ZG	ad. No. 144, 1989 am. No. 137, 1992
Ss. 39ZH-39ZL	ad. No. 144, 1989
Ss. 40, 41	am. No. 60, 1986
S. 42	am. No. 60, 1986; No. 144, 1989; No. 137, 1992

Australian Wine and Brandy Corporation Act 1980

NOTES—continued
Table of Amendments—continued

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

Provision affected	How affected
S. 43	am. No. 60, 1986
S. 44	am. No. 60, 1986; No. 144, 1989
S. 44A	ad. No. 144, 1989
S. 45	rs. No. 48, 1982
S. 46	am. No. 60, 1986; No. 144, 1989

2. Section 40—The *Australian Wine and Brandy Corporation Act 1980* was modified by regulation 2 and Schedule 1 of the A.C.T. Self-Government (Consequential Provisions) Regulations as amended. The provisions of Schedule 1 applicable to the abovementioned Act quoted below are not incorporated in this reprint.

"Subsection 40 (9):

Omit the subsection, substitute:

'(9) In this section:

"Parliament" means:

(a) in relation to the Australian Capital Territory—the Legislative Assembly for the Territory;
and

(b) in relation to the Northern Territory—the Legislative Assembly of the Territory;

"State" includes the Australian Capital Territory and the Northern Territory.'."



Australian Wine and Brandy Corporation Amendment Act 1993

No. 93 of 1993

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title etc.
2. Commencement
3. Objects
4. Interpretation
5. Insertion of new section:
 - 4A. Extension to external Territories
6. Insertion of new sections:
 - 5B. Declared wine grape growers organisation
 - 5C. Meaning of “description and presentation”
 - 5D. Where wine originates
7. Powers of Corporation
8. Deputy Chairperson
9. Insertion of new section:
 - 29AA. Interpretation
10. Heading
11. Directions to Corporation and Geographical Indications Committee
12. Application of money of Corporation
13. Application of Division 2 of Part XI of the Audit Act
14. Interpretation
15. Insertion of new section:
 - 39EA. Time for bringing prosecutions
16. Repeal of section and substitution of new section:
 - 39S. Making of records
17. Insertion of new Part:

TABLE OF PROVISIONS—*continued*

Section

PART VIB—PROTECTION OF CERTAIN NAMES AND EXPRESSIONS

Division 1—Preliminary

- 40. Interpretation
- 40A. Object of Part
- 40B. Additional operation of Part

Division 2—Provisions relating to sale, export or import of wine

- 40C. Sale, export or import of wine with a false description and presentation
- 40D. Meaning of "false description and presentation"
- 40E. Sale, export or import of wine with a misleading description and presentation
- 40F. Meaning of "misleading description and presentation"
- 40G. Sale, export or import of wine in contravention of certain registered conditions
- 40H. Blending requirements, oenological practices and processes and compositional or other requirements
- 40J. Exception for certain wines
- 40K. Prosecution of offences
- 40L. Injunctions
- 40M. Application of national food standards to wines imported from agreement countries

Division 3—Establishment, function and powers of Geographical Indications Committee

- 40N. Establishment of Committee
- 40P. Function and powers of Committee

Division 4—Australian geographical indications

- 40Q. Power of Committee to determine geographical indications
- 40R. Applications for determinations
- 40S. Consultation by the Committee
- 40T. Making of determinations
- 40U. Interim determination
- 40V. Publication of notice of interim determination
- 40W. Final determination
- 40X. Publication of notice of final determination
- 40Y. Review of final determination
- 40Z. Date of effect of final determination

Division 5—Register of Protected Names

- 40ZA. Registrar
- 40ZB. Functions of Registrar
- 40ZC. Register of Protected Names
- 40ZD. Contents of Register
- 40ZE. Inspection of Register
- 18. Remuneration and allowances of members of Corporation etc.
- 19. Repeal of section 48
- 20. Additional amendments
- 21. Repeal of Schedule and substitution of new Schedule:

iii

TABLE OF PROVISIONS—*continued*

Section

SCHEDULE

SCHEDULE TO BE INSERTED IN PRINCIPAL ACT

ADMINISTRATIVE PROVISIONS RELATING TO THE GEOGRAPHICAL
INDICATIONS COMMITTEE



Australian Wine and Brandy Corporation Amendment Act 1993

No. 93 of 1993

***An Act to amend the Australian Wine and Brandy
Corporation Act 1980, and for related purposes***

[Assented to 16 December 1993]

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Australian Wine and Brandy Corporation Amendment Act 1993*.

5 (2) In this Act, “Principal Act” means the *Australian Wine and Brandy Corporation Act 1980*¹.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Objects

10 3. Section 3 of the Principal Act is amended:
 (a) by adding “and” at the end of each of paragraphs (1)(a), (b) and (d);

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

- (b) by inserting after paragraph (1)(d) the following paragraphs:
- “(e) to enable Australia to fulfil its obligations under prescribed wine-trading agreements; and
- (f) for the purpose of achieving any of the objects set out in the preceding paragraphs: 5
- (i) to determine the boundaries of the various regions and localities in Australia in which wine is produced; and
- (ii) to give identifying names to those regions and localities; and
- (iii) to determine the varieties of grapes that may be used in the manufacture of wine in Australia;” 10

Interpretation

4. Section 4 of the Principal Act is amended:
- (a) by omitting from subsection (1) the definitions of “Committee” and “Presiding Member”; 15
- (b) by omitting from the definition of “prescribed goods” in subsection (1) “being grapes or grape juice produced in Australia;”;
- (c) by inserting in subsection (1) the following definitions:
- “ ‘agreement country’ means:
- (a) if an agreement relating to trade in wine is in force between the European Economic Community and Australia—an EC country; and 20
- (b) if an agreement relating to trade in wine is in force between a foreign country (other than an EC country) and Australia and is declared by the regulations to be a prescribed wine-trading agreement—that foreign country; 25
- ‘Australia’ includes all the external Territories;
- ‘blending requirements’ means requirements relating to the blending of wines of different varieties, geographical indications or vintages, or any combination of the above; 30
- ‘corporation’, in Part VIB, means a body corporate that:
- (a) is a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; or
- (b) is a trading corporation within the meaning of that paragraph that is formed within the limits of Australia; or 35
- (c) is incorporated in a Territory;
- ‘declared wine grape growers organisation’ means an organisation in relation to which a declaration is in force under section 5B;

Australian Wine and Brandy Corporation
Amendment No. 93, 1993

'description', in relation to wine, has a meaning affected by section 5C;

'EC country' means a country that is a member of the European Economic Community;

5 **'export'** means export from Australia;

'geographical indication', in relation to wine, means:

(a) a word or expression used in the description and presentation of the wine to indicate the country, region or locality in which the wine originated; or

10 (b) a word or expression used in the description and presentation of the wine to suggest that a particular quality, reputation or characteristic of the wine is attributable to the wine having originated in the country, region or locality indicated by the word or expression;

15 **'modify'**, in relation to oenological practices and processes, or compositional or other requirements, includes:

(a) add one or more practices or processes, or compositional or other requirements; and

20 (b) vary any one or more of the practices or processes, or of the compositional or other requirements; and

(c) omit any one or more of the practices or processes, or of the compositional or other requirements;

'national food standard' means a national standard within the meaning of the *Imported Food Control Act 1992*;

25 **'organisation'** means any body of persons, whether a body corporate or an unincorporated body;

'originate', in relation to wine, has the meaning given by section 5D;

'presentation', in relation to wine, has a meaning affected by section 5C;

30 **'prescribed wine-trading agreement'** means:

(a) an agreement relating to trade in wine that is in force between the European Economic Community and Australia; or

35 (b) an agreement relating to trade in wine that is in force between a foreign country (other than an EC country) and Australia and is declared by the regulations to be a prescribed wine-trading agreement;

'Register' means the Register of Protected Names kept under section 40ZC;

'registered' means included in the Register;

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

'registered ancillary protected expression' means a word or expression, other than a geographical indication or traditional expression, that is included in the Register in relation to a particular country;

'registered condition', in relation to: 5

- (a) a geographical indication, a traditional expression, or any other word or expression, relating to wine; or
- (b) a variety of grapes for use in the manufacture of wine in Australia;

means a condition included in the Register that is applicable to the geographical indication, traditional expression or other word or expression, or is applicable to the description and presentation of wine manufactured from, or from grapes that include, that variety of grapes, as the case may be; 10

'registered geographical indication' means a geographical indication that is included in the Register in relation to a particular country; 15

'registered traditional expression' means a traditional expression that is included in the Register in relation to a particular country;

'registered variety of grapes' means a variety of grapes that is included in the Register; 20

'Registrar' means the Registrar of Protected Names;

'Selection Committee' means the Australian Wine and Brandy Corporation Selection Committee;

'sell' includes offer, expose or advertise for sale; 25

'traditional expression', in relation to wine, means a word or expression used in the description and presentation of the wine to refer to the method of production, or to the quality, colour or type, of the wine;

'wine' means an alcoholic beverage produced by the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes, or both; 30

(d) by adding at the end the following subsection:

"(3) If a prescribed wine-trading agreement is in force between the European Economic Community and Australia, each EC country is taken, for the purposes of this Act, to be a party to the agreement." 35

Insertion of new section

5. After section 4 of the Principal Act the following section is inserted:

Extension to external Territories

"4A. This Act extends to all the external Territories." 40

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

Insertion of new sections.

6. The following sections are inserted in Part I of the Principal Act after section 5A:

Declared wine grape growers organisation

- 5 “5B. If the Minister considers that an organisation is a national organisation that is representative of growers of wine grapes, the Minister may, by notice published in the *Gazette*, declare the organisation to be a declared wine grape growers organisation.

Meaning of “description and presentation”

- 10 “5C. In this Act, a reference to the description and presentation with which wine is sold, exported or imported is a reference to all names (including business names) or other descriptions, references (including addresses), signs, designs and trade marks used to distinguish the wine and appearing:
- 15 (a) on the container (including on the device used to seal the container or on a label affixed to the container), on any tag attached to the container or, if the container is a bottle, on the sheathing covering the neck of the bottle; or
- 20 (b) on protective wrappings (such as papers and straw envelopes of all kinds), cartons and cases used in the packaging of the wine or the transport of the wine; or
- (c) in documents relating to the transport of the wine or in other commercial documents (for example, invoices or delivery notes) relating to the sale or transport of the wine; or
- 25 (d) in advertisements relating to the wine.

Where wine originates

- “5D. For the purposes of this Act:
- 30 (a) a wine is taken to have originated in a foreign country or Australia only if the wine is made within the territory of that country or of Australia, as the case may be; and
- (b) a wine is taken to have originated in a particular region or locality of a foreign country or of Australia only if the wine is made from grapes grown in that region or locality.”

Powers of Corporation

- 35 7. Section 8 of the Principal Act is amended:
- (a) by inserting before paragraph (2)(a) the following paragraphs:
- “(aa) to determine any conditions that are to be applicable to registered geographical indications in relation to wines manufactured in Australia or an agreement country; and

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

- (ab) to determine any conditions that are to be applicable to registered traditional expressions in relation to wines manufactured in Australia or an agreement country; and
- (ac) to determine any conditions that are to be applicable to registered ancillary protected expressions in relation to wines manufactured in Australia or an agreement country; and 5
- (ad) to determine any geographical indications or traditional expressions that are to be registered in relation to a foreign country that is not an agreement country and to determine any conditions that are to be applicable to those indications or expressions; and 10
- (ae) to determine the varieties of grapes from which wine may be manufactured in Australia and to determine any conditions that are to be applicable to the description and presentation of wine manufactured from grapes of those varieties; and"; 15
- (b) by adding "and" at the end of paragraphs (2)(a), (b), (c), (d), (e) and (f);
- (c) by inserting after subsection (2) the following subsections:
 - "(2A) A determination under paragraph (2)(aa), (ab), (ac), (ad) or (ae) is to be in writing under the Corporation's common seal. 20
 - "(2B) When the Corporation makes a determination referred to in subsection (2A), the Chairperson must cause a notice stating that the determination has been made and setting out the terms of the determination to be published in any manner that the Corporation thinks appropriate. 25
 - "(2C) The notice must include a statement to the effect that:
 - (a) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made, by or on behalf of any person whose interests are affected by the determination, to the Administrative Appeals Tribunal for review of the determination; and 30
 - (b) unless subsection 28(4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of the person for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the determination. 35
 - "(2D) Any failure to comply with subsection (2C) in relation to a determination does not affect the validity of the determination.
 - "(2E) Application may be made to the Administrative Appeals Tribunal for review of a determination. 40

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

“(2F) Section 29 of the *Administrative Appeals Tribunal Act 1975* has effect in relation to an application for review of a determination as if the following subsections were inserted after subsection (1):

5 : “(1A) Despite paragraph (1)(d) and subsection (2), an application to the Tribunal for review of a determination made under paragraph 8(2)(aa), (ab), (ac), (ad) or (ae) of the *Australian Wine and Brandy Corporation Act 1980* must be made within 28 days after notice of the determination is published in accordance with subsection 8(2B) of that Act.

10 “(1B) Despite subsection (8), an application under subsection (7) in respect of a determination under paragraph 8(2)(aa), (ab), (ac), (ad) or (ae) of the *Australian Wine and Brandy Corporation Act 1980* must be made before the time fixed by subsection (1A) ends.”

15 “(2G) The Chairperson must give a copy of the determination to the Registrar so that particulars of the determination can be included in the Register:

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

 (b) otherwise—as soon as practicable after the 28th day after notice of the determination is published in accordance with subsection (2B).

25 “(2H) The determination takes effect on the day on which particulars of the determination are included in the Register.”

Deputy Chairperson

8. Section 15 of the Principal Act is amended by inserting in subsection (2) “of the Selection Committee” after “Presiding Member”.

30 **Insertion of new section**

9. The following section is inserted in Part IVA of the Principal Act before section 29A:

Interpretation

“29AA. In this Part:

35 ‘Committee’ means the Australian Wine and Brandy Corporation Selection Committee;

 ‘Presiding Member’ means the Presiding Member of the Committee.”

Heading

40 10. The heading to section 29P of the Principal Act is amended by omitting “Determination” and substituting “Termination”.

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

Directions to Corporation and Geographical Indications Committee

11. Section 31K of the Principal Act is amended by adding at the end the following subsections:

“(6) This section applies in relation to the Geographical Indications Committee in the same way as it applies in relation to the Corporation. 5

“(7) For the purposes of this section as it so applies in relation to the Geographical Indications Committee:

- (a) references (other than the reference in paragraph (5)(c)) to the Corporation are taken to be references to that Committee; and
- (b) the reference in subsection (3) to the Chairperson is taken to be a reference to the Presiding Member of that Committee.”. 10

Application of money of Corporation

12. Section 35 of the Principal Act is amended:

- (a) by inserting in paragraph (aa) “Selection” before “Committee” (wherever occurring); 15
- (b) by inserting in paragraph (aa) “of the Selection Committee” after “Presiding Member”.

Application of Division 2 of Part XI of the Audit Act

13. Section 38 of the Principal Act is amended by adding at the end the following subsection: 20

“(4) The report prepared by the Corporation of its operations during a year must include a report of the operations of the Geographical Indications Committee during the year and must set out all final determinations of geographical indications made by the Committee during the year.”.

Interpretation 25

14. Section 39C of the Principal Act is amended by omitting the definition of “region of origin”

Insertion of new section

15.(1) After section 39E of the Principal Act the following section is inserted in Division 1 of Part VIA: 30

Time for bringing prosecutions

“39EA. Despite section 15B of the *Crimes Act 1914*, a prosecution for an offence against section 39ZAAA may be brought at any time within 7 years after the requirement to make the relevant record arose.”.

(2) Section 39EA of the Principal Act as amended by this Act applies 35 only in relation to requirements to make records that arise after the commencement of this section.

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

Repeal of section and substitution of new section

16. Section 39S of the Principal Act is repealed and the following section is substituted:

Making of records

- 5 “39S.(1) A requirement of this Division to make a record is a requirement to make the record not later than 3 months after the happening of the event, circumstance or state of affairs required to be recorded.
- “(2) A reference in this Part to the time when a requirement to make a record arose is a reference to the end of the period of 3 months that, under
- 10 subsection (1), is applicable to the requirement.”.

Insertion of new Part

17. The following Part is inserted in the Principal Act after Part VIA:

**“PART VIB—PROTECTION OF CERTAIN NAMES AND
EXPRESSIONS**

15 *“Division 1—Preliminary*

Interpretation

“40. In this Part:

‘Committee’ means the Geographical Indications Committee.

Object of Part

- 20 “40A. The object of this Part is to regulate the sale, export and import of wine:
- (a) for the purpose of enabling Australia to fulfil its obligations under prescribed wine-trading agreements; and
- (b) for certain other purposes for which the Parliament has power to
- 25 make laws;
- and this Part is to be interpreted and administered accordingly.

Additional operation of Part

- “40B.(1) Without prejudice to its effect apart from this subsection, this Part also has the effect that it would have if any reference to a person were
- 30 a reference to a corporation.
- “(2) Without prejudice to its effect apart from this subsection, this Part also has the effect that it would have if any reference to trade or commerce were, by express provision, confined to trade or commerce:
- (a) between Australia and places outside Australia; or
- 35 (b) among the States; or

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

- (c) within a Territory; or
- (d) between a State and a Territory; or
- (e) between 2 Territories.

“Division 2—Provisions relating to sale, export or import of wine

Sale, export or import of wine with a false description and presentation 5

“40C.(1) A person must not, in trade or commerce, knowingly sell wine with a false description and presentation.

“(2) A person must not, in trade or commerce, knowingly export wine with a false description and presentation. 10

“(3) A person must not, in trade or commerce, knowingly import wine with a false description and presentation.

“(4) It is not a defence to a prosecution for an offence against subsection (1), (2) or (3) that the description and presentation indicated the country, region or locality, as the case may be, in which the wine originated. 15

Penalty: Imprisonment for 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If, as is the case for an offence against section 40C, the maximum term of imprisonment is 2 years, the maximum fine that may be imposed is 120 penalty units. The current value of a penalty unit is fixed by section 4AA of that Act. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence. 20

Meaning of “false description and presentation”

“40D.(1) This section has effect for the purposes of section 40C. 25

“(2) Subject to this section, the description and presentation of wine is false if:

- (a) it includes the name of a country, or any other indication that the wine originated in a particular country, and the wine did not originate in that country; or 30
- (b) it includes a registered geographical indication and the wine did not originate in a country, region or locality in relation to which the geographical indication is registered; or
- (c) it includes a registered traditional expression and the wine did not originate in a country, region or locality in relation to which the expression is registered; or 35
- (d) it includes a registered ancillary protected expression and the wine did not originate in a country, region or locality in relation to which the expression is registered.

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

“(3) Subsection (2) does not limit what, apart from that subsection, is a false description and presentation of wine.

5 “(4) For the purposes of subsection (2), a registered geographical indication, a registered traditional expression or a registered ancillary protected expression is taken to be included in the description and presentation of wine even if the indication or expression is accompanied by another word or expression such as ‘kind’, ‘type’, ‘style’, ‘imitation’ or ‘method’, or any similar word or expression.

 “(5) If:

- 10 (a) the description and presentation of wine includes a word or expression that is a registered geographical indication, a registered traditional expression, or a registered ancillary protected expression, in relation to a country, region or locality; and
- (b) the wine originated in that country, region or locality; and
- 15 (c) the description and presentation indicates that the wine originated in that country, region or locality;

the description and presentation is not false merely because the word or expression included in the description and presentation is also a registered geographical indication, a registered traditional expression, or a registered ancillary protected expression, in relation to another country, region or locality.

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 “(6) The description and presentation of wine is not false merely because it includes:

- 25 (a) the name of an individual who manufactured, sold, exported or imported the wine; or
- (b) if an individual who manufactured, sold, exported or imported the wine lawfully carries on business under the name of another individual who previously carried on the business—the name of that other individual; or
- 30 (c) the address of the winery at which the wine was manufactured.

Sale, export or import of wine with a misleading description and presentation

 “40E.(1) A person must not, in trade or commerce, knowingly sell wine with a misleading description and presentation.

35 “(2) A person must not, in trade or commerce, knowingly export wine with a misleading description and presentation.

 “(3) A person must not, in trade or commerce, knowingly import wine with a misleading description and presentation.

Penalty: Imprisonment for 2 years.

Australian Wine and Brandy Corporation
Amendment No. 93, 1993

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If, as is the case for an offence against section 40E, the maximum term of imprisonment is 2 years, the maximum fine that may be imposed is 120 penalty units. The current value of a penalty unit is fixed by section 4AA of that Act. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence. 5

Meaning of "misleading description and presentation"

"40F.(1) This section has effect for the purposes of section 40E.

"(2) Subject to subsection (7), the description and presentation of wine is misleading if: 10

- (a) it includes a registered geographical indication, a registered traditional expression or a registered ancillary protected expression; and
- (b) the indication or expression is used in such a way in the description and presentation as to be likely to mislead as to the country, region or locality in which the wine originated. 15

"(3) Subject to subsection (7), the description and presentation of wine is misleading if:

- (a) it includes a translation of a registered geographical indication, of a registered traditional expression or of a registered ancillary protected expression; and 20
- (b) the inclusion of the translation is likely to mislead as to the country, region or locality in which the wine originated.

"(4) Subject to subsection (7), the description and presentation of wine is misleading if: 25

- (a) it includes a word or expression that so resembles a registered geographical indication, a registered traditional expression or a registered ancillary protected expression as to be likely to be mistaken for the registered geographical indication, the registered traditional expression or the registered ancillary protected expression, as the case may be; and 30
- (b) the wine did not originate in the country, region or locality in relation to which the indication or expression is registered.

"(5) The description and presentation of wine is misleading if: 35

- (a) it includes:
 - (i) the name of an individual who manufactured, sold, exported or imported the wine; or
 - (ii) if an individual who manufactured, sold, exported or imported the wine lawfully carried on business under the name of another individual who previously carried on the business—the name of that other individual; or 40

Australian Wine and Brandy Corporation
Amendment No. 93, 1993

- (iii) the name or address of the winery at which the wine was manufactured; and
- (b) the name or address, as the case may be, is used in such a way in the description and presentation as to be likely to mislead as to the country, region or locality in which the wine originated.

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

“(7) If:

- (a) the description and presentation of wine includes a word or expression that:
- (i) is a registered geographical indication, a registered traditional expression, or a registered ancillary protected expression, in relation to a country, region or locality; or
- (ii) is a translation of an indication or expression referred to in subparagraph (i); or
- (iii) resembles an indication or expression referred to in subparagraph (i); and
- (b) the wine originated in that country, region or locality; and
- (c) the description and presentation indicates that the wine originated in that country, region or locality;

the description and presentation is not misleading merely because the indication or expression referred to in subparagraph (a)(i) is also registered in relation to another country, region or locality.

Sale, export or import of wine in contravention of certain registered conditions

“40G.(1) If any registered conditions are applicable to a registered geographical indication, a registered traditional expression or a registered ancillary protected expression, a person must not, in trade or commerce, sell, export or import wine with a description and presentation that includes that geographical indication, traditional expression or ancillary protected expression and does not comply with those conditions if the person knows:

- (a) that the wine is sold, exported or imported with that description and presentation; and
- (b) that the description and presentation does not comply with those conditions.

“(2) If a variety or varieties of grapes are included in the Register, a person must not, in trade or commerce, sell or export wine manufactured in Australia if the person knows that the wine is not manufactured exclusively from grapes of that variety or one or more of those varieties.

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

“(3) If:

- (a) a variety of grapes is included in the Register; and
- (b) any registered conditions are applicable to the description and presentation of wine manufactured from, or from grapes that include, that variety of grapes;

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a person must not, in trade or commerce, sell or export wine that is manufactured in Australia from, or from grapes that include, that variety of grapes and the description and presentation of which does not comply with those conditions if the person knows:

- (c) that the wine is manufactured in Australia from, or from grapes that include, that variety of grapes; and
- (d) that the wine is sold or exported with that description and presentation; and
- (e) that the description and presentation does not comply with those conditions.

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“(4) For the purposes of establishing a contravention of subsection (1), (2) or (3), if, having regard to:

- (a) a person's abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged contravention of that subsection;

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the person ought reasonably to have known a particular matter referred to in that subsection, the person is taken to have known that matter.

Penalty: Imprisonment for 1 year.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If, as is the case for an offence against section 40G, the maximum term of imprisonment is 1 year, the maximum fine that may be imposed is 60 penalty units. The current value of a penalty unit is fixed by section 4AA of that Act. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

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Blending requirements, oenological practices and processes and compositional or other requirements

“40H.(1) If the regulations make provision for or in relation to blending requirements applicable to the manufacture of wine, a person must not, in trade or commerce, sell, export or import wine to which those blending requirements are applicable if the person knows that the wine was not manufactured in accordance with those requirements.

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“(2) If the regulations make provision for or in relation to oenological practices or processes, or compositional or other requirements, applicable to the manufacture of wine in Australia, a person must not, in trade or

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Australian Wine and Brandy Corporation
Amendment No. 93, 1993

commerce, knowingly export wine to which those practices or processes, or those compositional or other requirements, are applicable if the person knows that the wine was not manufactured in accordance with those practices or processes, or those compositional or other requirements, as the case may be.

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“(3) For the purposes of establishing a contravention of subsection (1) or (2), if, having regard to:

(a) a person’s abilities, experience, qualifications and other attributes; and

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(b) all the circumstances surrounding the alleged contravention of that subsection;

the person ought reasonably to have known a particular matter referred to in that subsection, the person is taken to have known that matter.

Penalty: Imprisonment for 2 years.

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Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If, as is the case for an offence against section 40H, the maximum term of imprisonment is 2 years, the maximum fine that may be imposed is 120 penalty units. The current value of a penalty unit is fixed by section 4AA of that Act. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

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Exception for certain wines

“40J.(1) In this section:

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‘small quantities’, in relation to wines, means quantities declared by the regulations to be small quantities of wines for the purposes of this section;

‘the offence provisions’ means subsections 40C(1), (2) and (3), section 40E and subsections 40G(1), (2) and (3) and 40H(1) and (2).

“(2) The offence provisions do not apply in relation to wines manufactured before the commencement of this Part.

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“(3) The offence provisions do not apply in relation to wines that are in transit through Australia.

“(4) The offence provisions do not apply in relation to wines that:

(a) originate in Australia or an agreement country; and

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(b) are consigned in small quantities between Australia and an agreement country under the conditions, and in accordance with the procedures, prescribed by the regulations.

“(5) The regulations may exempt wines referred to in the regulations from the operation of any one or more of the offence provisions, either generally or for such periods, in such circumstances, and subject to such conditions, as are set out in the regulations.

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*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

Prosecution of offences

“40K.(1) To avoid doubt, it is declared that any of the following may institute a proceeding for an offence against section 40C, 40E, 40G or 40H:

- (a) the Corporation;
- (b) a person engaged in the manufacture of wine or the growing of wine grapes in Australia or in an agreement country; 5
- (c) an organisation established under the law of Australia or of an agreement country whose objects or purposes include any of the following:
 - (i) the promotion of the manufacture of wine, the growing of wine grapes or the marketing of wine; 10
 - (ii) the promotion or protection of the interests of persons engaged in the manufacture of wine, the growing of wine grapes or the marketing of wine;
 - (iii) the promotion or protection of the interests of consumers of wine. 15

“(2) This section does not limit the operation of section 13 of the *Crimes Act 1914*.

Injunctions

“40L.(1) If a person has engaged, is engaging or proposes to engage in any conduct in contravention of this Division, the Federal Court of Australia may grant an injunction: 20

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

“(2) An application for an injunction may be made by, or on behalf of, an interested person.

“(3) The following are interested persons for the purposes of subsection (2):

- (a) the Corporation; 30
- (b) a declared wine makers organisation;
- (c) a declared wine grape growers organisation;
- (d) a person who is a manufacturer of wine, or a grower of wine grapes, in Australia or an agreement country;
- (e) an organisation established under the law of Australia or of an agreement country whose objects or purposes include any of the following: 35
 - (i) the promotion of the manufacture of wine, the growing of wine grapes or the marketing of wine;

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

- (ii) the promotion or protection of the interests of persons engaged in the manufacture of wine, the growing of wine grapes or the marketing of wine;
- (iii) the promotion or protection of the interests of consumers of wine.

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“(4) The Court may grant an interim injunction pending a determination of an application for an injunction.

“(5) The Court may discharge or vary an injunction granted under this section.

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“(6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind.

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“(7) The powers conferred on the Federal Court of Australia by this section are in addition to, and not in derogation of, any other powers of the Court.

Application of national food standards to wines imported from agreement countries

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“40M.(1) A national food standard applying to wine has effect in relation to wine that originated in an agreement country as if any requirement in the standard to comply with particular oenological practices or processes, or compositional or other requirements, in relation to wine were replaced by a requirement to comply with:

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- (a) subject to paragraph (b), the oenological practices and processes, and the compositional and other requirements, set out in the prescribed wine-trading agreement to which Australia and that country are parties; or

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- (b) if that agreement has been amended so as to modify any of those practices or processes or compositional or other requirements—those practices or processes, or compositional or other requirements, as so modified from time to time.

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“(2) The Minister may suspend the operation of this section in relation to wine of a particular kind or description if the Minister is satisfied that there are reasonable grounds for believing that continued compliance with an oenological practice or process, or a compositional or other requirement, that was used in the manufacture of the wine would endanger human health.

“(3) A suspension under subsection (2):

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

- (a) must be by written notice signed by the Minister and published in the *Gazette*; and
- (b) takes effect on a day stated in the notice that is not earlier than the day following the date of publication; and
- (c) remains in force, unless sooner revoked, for one year. 5

“Division 3—Establishment, function and powers of Geographical Indications Committee

Establishment of Committee

“40N. A committee to be known as the Geographical Indications Committee is established. 10

Function and powers of Committee

“40P.(1) The function of the Committee is to make determinations of geographical indications for wine in relation to regions and localities in Australia.

“(2) The Committee has power to do all things that are necessary or convenient to be done by, or in connection with, the performance of its function. 15

“Division 4—Australian geographical indications

Power of Committee to determine geographical indications

“40Q.(1) The Committee may, either on its own initiative or on an application made to it in accordance with section 40R, determine a geographical indication in relation to a region or locality in Australia. 20

“(2) A determination by the Committee is to be in writing signed by the Presiding Member of the Committee.

Applications for determinations 25

“40R. Any of the following may apply in writing to the Committee for the determination of a geographical indication in relation to a region or locality in Australia:

- (a) a declared winemakers organisation;
- (b) a declared wine grape growers organisation; 30
- (c) an organisation representing winemakers in a State or Territory;
- (d) an organisation representing growers of wine grapes in a State or Territory;
- (e) a winemaker;
- (f) a grower of wine grapes. 35

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

Consultation by the Committee

"40S. In determining a geographical indication, the Committee:

- (a) must consult any declared winemakers organisation and any declared wine grape growers organisation; and
- 5 (b) may consult any other organisations or persons it thinks appropriate.

Making of determinations

"40T.(1) In determining a geographical indication, the Committee must:

- (a) identify in the determination the boundaries of the area or areas in the region or locality to which the determination relates; and
- 10 (b) determine the word or expression to be used to indicate that area or those areas.

"(2) If the regulations prescribe criteria for use by the Committee in determining a geographical indication, the Committee is to have regard to those criteria.

- 15 "(3) When making a determination as a result of an application, the Committee may do either or both of the following:

- (a) determine an area or areas having boundaries different from those stated in the application;
- (b) determine a word or expression to be used to indicate the area or areas
- 20 constituting the geographical indication that is different from a word or expression proposed in the application.

Interim determination

"40U.(1) A determination by the Committee is to be an interim determination in the first instance.

- 25 "(2) An interim determination does not have effect as a determination of a geographical indication.

Publication of notice of interim determination

- 30 "40V.(1) The Presiding Member of the Committee must cause a notice stating that the interim determination has been made and setting out the terms of the determination to be published in any manner that the Committee thinks appropriate.

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

35 **Final determination**

"40W. After considering any submissions made to it, the Committee may make a final determination.

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

Publication of notice of final determination

“40X.(1) The Presiding Member must cause a notice stating that a final determination has been made and setting out the terms of the determination to be published in any manner that the Committee thinks appropriate.

“(2) The notice must include a statement to the effect that: 5

- (a) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made, by or on behalf of any person whose interests are affected by the determination, to the Administrative Appeals Tribunal for review of the determination; and
- (b) unless subsection 28(4) of that Act applies, application may be made 10
in accordance with section 28 of that Act by or on behalf of that person for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the determination. 15

“(3) Any failure to comply with subsection (2) in relation to a determination does not affect the validity of the determination.

Review of final determination

“40Y.(1) Application may be made to the Administrative Appeals Tribunal for review of a final determination. 20

“(2) Section 29 of the *Administrative Appeals Tribunal Act 1975* has effect in relation to an application for review of a final determination as if the following subsections were inserted after subsection (1):

‘(1A) Despite paragraph (1)(d) and subsection (2), an application to the Tribunal for review of a final determination under Part VIB of the *Australian Wine and Brandy Corporation Act 1980* must be made within 28 days after notice of the determination is published in accordance with section 40X of that Act. 25

‘(1B) Despite subsection (8), an application under subsection (7) in respect of a final determination under Part VIB of the *Australian Wine and Brandy Corporation Act 1980* must be made before the time fixed by subsection (1A) ends.’. 30

Date of effect of final determination

“40Z.(1) The Presiding Member must give a copy of the final determination to the Registrar so that particulars of the determination can be included in the Register: 35

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

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

(b) otherwise—as soon as practicable after the 28th day after notice of the determination is published in accordance with section 40X.

5 “(2) When the Presiding Member gives a copy of a final determination to the Registrar, the Presiding Member must also give a copy to the Chairperson of the Corporation.

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

“Division 5—Register of Protected Names

Registrar

10 “40ZA.(1) There is to be a Registrar of Protected Names.

“(2) The Registrar is to be an employee of the Corporation.

15 “(3) The Corporation must ensure that, at all times when the person appointed as Registrar is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the Registrar, another employee is appointed to act as Registrar.

Functions of Registrar

“40ZB. The Registrar has the following functions:

- (a) to keep the Register of Protected Names;
- (b) to enter particulars in the Register in accordance with section 40ZD;
- 20 (c) to provide administrative assistance to the Committee;
- (d) in accordance with the directions of the Committee, to prepare and cause to be published maps or other documents showing the boundaries of regions and localities in relation to which geographical indications have been determined by the Committee;
- 25 (e) in accordance with the directions of the Committee, to notify authorities and organisations in foreign countries of the geographical indications and traditional expressions included in the Register in relation to wines manufactured in Australia.

Register of Protected Names

30 “40ZC.(1) The Registrar is to keep a register to be known as the Register of Protected Names.

“(2) The Register may be kept wholly or partly by means of a computer.

Contents of Register.

35 “40ZD.(1) The Register is to be divided into the following parts:
(a) a part containing geographical indications in relation to wines manufactured in Australia and the conditions (if any) applicable to those indications;

Australian Wine and Brandy Corporation
Amendment No. 93, 1993

- (b) a part containing traditional expressions in relation to wines manufactured in Australia and the conditions (if any) applicable to those expressions;
 - (c) a part containing geographical indications in relation to wines manufactured in an agreement country and the conditions (if any) applicable to those indications; 5
 - (d) a part containing traditional expressions in relation to wines manufactured in an agreement country and the conditions (if any) applicable to those expressions;
 - (e) a part containing words or expressions, other than geographical indications or traditional expressions, in relation to wines manufactured in an agreement country and the conditions (if any) applicable to those words or expressions; 10
 - (f) a part containing the names of varieties of grapes for use in the manufacture of wines in Australia and the conditions (if any) applicable to the description and presentation of wines manufactured in Australia from grapes of those varieties; 15
 - (g) a part containing geographical indications in relation to wines manufactured in foreign countries that are not agreement countries and the conditions (if any) applicable to those indications; 20
 - (h) a part containing traditional expressions in relation to wines manufactured in foreign countries that are not agreement countries and the conditions (if any) applicable to those traditional expressions.
- “(2) The Registrar is to enter in the appropriate part of the Register, in accordance with the directions of the Corporation, the following particulars: 25
- (a) in relation to Australia—the following geographical indications:
 - (i) Australia;
 - (ii) Australian;
 - (iii) the name of each State and internal Territory;
 - (iv) each geographical indication determined by the Committee under Division 4; 30
 and the conditions (if any) applicable to those indications;
 - (b) in relation to Australia—each word or expression that, under a prescribed wine-trading agreement, is a traditional expression in relation to wines manufactured in Australia and the conditions (if any) applicable to those traditional expressions; 35
 - (c) in relation to an agreement country—each geographical indication that, under a prescribed wine-trading agreement to which that country is a party, is a geographical indication in relation to wines manufactured in that country and the conditions (if any) applicable to those indications; 40

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

- 5 (d) in relation to an agreement country—each word or expression that, under a prescribed wine-trading agreement to which that country is a party, is a traditional expression in relation to wines manufactured in that country and the conditions (if any) applicable to those traditional expressions;
- 10 (e) in relation to an agreement country—each word or expression (other than a word or expression to which paragraph (c) or (d) applies) that, under a prescribed wine-trading agreement to which that country is a party, is required to be protected in relation to wines manufactured in that country and the conditions (if any) applicable to those words or expressions;
- 15 (f) particulars of varieties of grapes that may be used in the manufacture of wine in Australia and the conditions (if any) applicable to the description and presentation of wines manufactured in Australia from grapes of those varieties;
- (g) in relation to a foreign country that is not an agreement country—geographical indications in relation to wines manufactured in that country and the conditions (if any) applicable to those indications;
- 20 (h) in relation to a foreign country that is not an agreement country—traditional expressions in relation to wines manufactured in that country and the conditions (if any) applicable to those expressions.

Inspection of Register

- 25 “40ZE.(1) The Registrar must ensure that the Register is available for inspection at the office of the Registrar by any person during ordinary hours of business of that office.

- 30 “(2) To the extent that the Register is kept by use of a computer, subsection (1) is complied with by giving members of the public access to a computer terminal that they can use to inspect the particulars constituting the Register, either on a screen or in the form of a computer print-out.

“(3) The Registrar may supply a copy of the Register or part of the Register to a person on payment of the prescribed fee.”.

Remuneration and allowances of members of Corporation etc.

- 35 18.(1) Section 40 of the Principal Act is renumbered as section 41A.

(2) Section 40 of the Principal Act as renumbered by subsection (1) is amended by inserting after paragraph (1)(a) the following paragraph:

- “(b) a member of the Geographical Indications Committee established by section 40N; or”.

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

Repeal of section 48

19. Section 48 of the Principal Act is repealed.

Additional amendments

20. The Principal Act is amended as set out in the following table:

ADDITIONAL AMENDMENTS

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Provision amended	Amendment
Section 39A, section 39C (definitions of "different wines", "examinable document" and "label claim"), paragraphs 39F(c) and 39W(c), section 39Y and the heading to that section, subsections 39Z(3) and (4) and paragraph 39ZJ(1)(c)	Omit "region of origin" (wherever occurring), substitute "geographical indication".

Repeal of Schedule and substitution of new Schedule

21. The Schedule to the Principal Act is repealed and the Schedule set out in the Schedule to this Act is substituted.

*Australian Wine and Brandy Corporation
Amendment No. , 1993*

SCHEDULE

Section 21

SCHEDULE TO BE INSERTED IN PRINCIPAL ACT

“SCHEDULE

**ADMINISTRATIVE PROVISIONS RELATING TO THE
GEOGRAPHICAL INDICATIONS COMMITTEE**

Interpretation

“1. In this Schedule:

‘**Committee**’ means the Geographical Indications Committee;

‘**member**’ means the Presiding Member or a nominated member of the Committee;

‘**nominated member**’ means a member of the Committee referred to in paragraph 2(1)(b) or (c);

‘**Presiding Member**’ means the Presiding Member of the Committee.

Membership of Committee

“2.(1) The Committee is to consist of 3 members as follows:

- (a) a Presiding Member appointed by the Chairperson of the Corporation in accordance with a resolution of the Corporation;
- (b) one member appointed by the Chairperson of the Corporation on the nomination of a declared winemakers organisation;
- (c) one member appointed by the Chairperson of the Corporation on the nomination of a declared wine grape growers organisation.

“(2) The members of the Committee are to be appointed on a part-time basis.

“(3) The appointment of a member of the Committee is not ineffective only because of a defect or irregularity in, or in connection with, the member’s nomination or appointment.

“(4) The exercise of a power, or the performance of a function, by the Committee is not ineffective only because there is one vacancy in the membership of the Committee.

Acting Presiding Member

“3.(1) The Chairperson of the Corporation may appoint a person to act as the Presiding Member:

- (a) during a vacancy in the office of Presiding Member (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Presiding Member is absent from Australia or is, for any other reason, unable to perform the functions of the Presiding Member.

Australian Wine and Brandy Corporation
Amendment No. 93, 1993

SCHEDULE—continued

“(2) Nothing done by or in relation to a person purporting to act under this section is ineffective on any one or more of the following grounds:

- (a) the occasion for the person’s appointment to act had not arisen;
- (b) there is a technical defect or irregularity in connection with the person’s appointment;
- (c) the person’s appointment had ceased to have effect;
- (d) the occasion for the person to act had not arisen or had ceased.

Alternate members of the Committee

“4.(1) The Chairperson of the Corporation may appoint a person who is not a member of the Committee to be the alternate of a particular nominated member.

“(2) If a nominated member is absent from a meeting of the Committee, the member’s alternate (if any) is entitled to attend the meeting and, when so attending, is taken to be a member of the Committee.

“(3) If a person ceases to hold office as a nominated member:

- (a) the person (if any) who was the person’s alternate immediately before he or she ceased to hold office is entitled to attend meetings of the Committee while the office is vacant and, when so attending, is taken to be a member of the Committee; and
- (b) the person is taken to be the alternate of a person appointed to the vacant office until a new appointment of an alternate is made.

“(4) A person may only be appointed as a nominated member’s alternate if the person has been nominated in writing by the organisation by which the member was nominated for appointment.

“(5) A person appointed as a member’s alternate remains the member’s alternate until the organisation that nominated the person gives the Chairperson of the Corporation a written nomination of a different person for appointment as the member’s alternate.

“(6) A person may resign an appointment as alternate of a member of a Committee by giving a signed notice of resignation to the Chairperson of the Corporation.

Term of office

“5.(1) The Presiding Member holds office for such period of not more than 3 years as is stated in the document of appointment.

“(2) A member appointed on the nomination of an organisation holds office until the organisation gives the Chairperson of the Corporation a written nomination of another person to be appointed in place of the member.

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

SCHEDULE—continued

Resignation

“6. A member may resign his or her appointment by giving a signed notice of resignation to the Chairperson of the Corporation.

Termination of appointment

“7.(1) The Corporation may terminate the appointment of a member of the Committee because of misbehaviour or physical or mental incapacity.

“(2) If a member of the Committee:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (b) fails without reasonable excuse to comply with clause 9; or
- (c) is absent, without leave of absence under clause 8, from 3 consecutive meetings of the Committee;

the Corporation must terminate the appointment of the member.

Leave of absence

“8.(1) The Chairperson of the Corporation may grant the Presiding Member leave of absence from a meeting of a Committee.

“(2) The Presiding Member may grant leave of absence to another member of a Committee from a meeting of a Committee.

Disclosure of interests by Committee members

“9.(1) A member of the Committee who has a direct or indirect financial interest in a matter being considered or about to be considered by the Committee must, as soon as possible after the member has become aware of the relevant facts, disclose the nature of that interest at a meeting of the Committee.

“(2) A disclosure under subsection (1) must be recorded in the minutes of a meeting of the Committee and the member must not, unless the Corporation or the Committee otherwise determines:

- (a) be present during any deliberation of the Committee regarding that matter; or
- (b) take part in any decision of the Committee regarding that matter.

“(3) For the purposes of the making of a determination by the Committee under subsection (2) in relation to a member who has made a disclosure under subsection (1), the member must not:

- (a) be present during any deliberation of the Committee for the purpose of making a determination; or

*Australian Wine and Brandy Corporation
Amendment No. 93, 1993*

SCHEDULE—continued

(b) take part in the making of the determination.

“(4) A member of the Committee who is a winemaker or a grower of wine grapes is not taken to have a financial interest in a matter being considered, or about to be considered, by the Committee solely because the member is a winemaker or grower of wine grapes, as the case may be.

Meetings

“(10.(1) Meetings of the Committee are to be held at such times and places as the Committee determines.

“(2) A meeting of the Committee may be convened by the Presiding Member.

“(3) Two members constitute a quorum at the meeting of the Committee.

“(4) The presiding Member is to preside at all meetings of the Committee at which he or she is present.

“(5) If the Presiding Member is not present at a meeting of the Committee, the members of the Committee who are present must elect one of them to preside at the meeting.

“(6) Subject to subsection (7), a question arising at a meeting of the Committee is to be decided by a majority of the votes of the members of the Committee.

“(7) If only 2 members are present at a meeting of the Committee and those members are unable to agree on a question, the question is to be deferred until a meeting at which 3 members are present.

“(8) The Committee must keep minutes of its proceedings.

“(9) The minutes must record each decision made by the Committee and the reasons for the decision.

Staff and consultants

“(11.(1) The Corporation must make staff available to provide administrative assistance for the Committee.

“(2) The Presiding Member may, on behalf of the Corporation, engage persons with suitable qualifications and experience as consultants to the Committee.

“(3) The terms and conditions of engagement of consultants are to be those determined by the Committee with the approval of the Corporation.

Australian Wine and Brandy Corporation
Amendment No. 93, 1993

SCHEDULE—continued

Information for inclusion in Corporation's annual report

"12. As soon as practicable after the end of each financial year, the Committee must give to the Corporation any information relating to the Committee's operations during that year that the Corporation reasonably requires for the purpose of preparing a report in relation to that year under section 63H of the *Audit Act 1901*."

NOTE

1. No. 161, 1980, as amended. For previous amendments, see No. 48, 1982; Nos. 72 and 165, 1984; No. 65, 1985; No. 60, 1986; No. 51, 1988; No. 144, 1989; No. 26, 1991; and No. 137, 1992.

[*Minister's second reading speech made in—*
House of Representatives on 29 September 1993
Senate on 28 October 1993]