Australian Wine and Brandy Corporation Amendment Bill 1989

Date Introduced: 25 October 1989
House: House of Representatives
Portfolio: Primary Industries and Energy

Digest of Bill

Purpose
To require commercial wine manufacturers who receive wine, grapes or grape extract for processing to keep certain records of receipt, and require wine manufactures who make certain claims about a wine or grape extract on a wine label, in a commercial document, or in an advertisement, to keep records to support those claims.

Background
Production of grapes for wine making totalled 554.6 thousand tonnes in 1989, an increase of 20.5% over the previous year. Domestic wine sales in 1988–89 were 307.9 million litres, a decrease of 6.9% on 1987–88 sales. In the 1988–89 Annual Report of the Australian Wine and Brandy Corporation (the Corporation) it is reported that table wines packed in containers of greater than one litre and bulk sparkling wines showed the greatest sales decline. Growth categories were white and red table wines in bottles of one litre and under. Australia exported 40.4 million litres of wine in 1988–89, an increase of 3.6% on the 1987–88 total. This generated export earnings of $113.3 million, the highest ever achieved and 15% above 1987–88 earnings. The average price for wine grapes is forecast to increase by 4% to around $384 per tonne (t) in 1990 after rising by approximately 30% in 1988 and 20% in 1989. Price rises for premium grape varieties such as chardonnay, sauvignon blanc and pinot noir are expected to exceed the average wine grape price increase in 1990, reflecting continued growth in demand for premium wines.

The Australian Wine and Brandy Corporation (AWBC) was established by the Australian Wine and Brandy Corporation Act 1980 (the Principal Act). The AWBC's functions include to promote and control the export of grape products (i.e. wine, brandy and grape spirit manufactured in Australia), to encourage and promote the consumption and sale of grape products in Australia and overseas, and to improve the production of grape products in Australia. The AWBC's principal source of income is from a levy on fresh and dried grapes and grape juice used in the manufacture of wines. The levy consists of a marketing amount to fund promotional and regulatory activities of the AWBC and a research amount to provide industry funds for wine research. The levy is payable by wine manufacturers. The levy rate in 1988–89 was $3.00/t subject to a maximum payment...
of $10,000 by any one producer. AWBC’s income from the levy fell from $507,049 in 1987–88 to $469,094 in 1988–89.³

At the first and second Annual General Meetings of the AWBC, the wine industry gave permission to the AWBC to recommend to the Minister to enact legislation to increase and restructure the levy, introduce an industry wide system of record keeping to substantiate label claims in respect of vintage, variety and region of origin (the Label Integrity Program), and provide for records to be kept by all wineries of intake of grape varieties, sales, and stocks. The proposed levy arrangements will introduce a sliding scale of rates ranging from $4.40 per tonne for the first 5000 tonnes to 40 cents per tonne for those tonnes in excess of 40,000. The proposed sliding scale system is intended to eliminate the present ceiling on levy payments and provide for the levy to be paid on all tonnages converted. Wineries which crush less than 10 tonnes will be exempt from the levy.⁴ The recommendations in relation to the Label Integrity Scheme and record keeping of winery intake of grape varieties, sales and stocks, stem from concern within the industry over recent scandals in NSW involving wine additives and the potential effect further scandals could have on wine exports. In February 1989, the NSW Dept of Health prosecuted Tyrrell’s Vineyards for manufacturing adulterated wines. The Dept had found excessive amounts of the non-approved additive sorbitol in certain Tyrrell’s wines. Sorbitol is used in a range of products such as low-calorie ice creams, chewing gum, jams, and other confectionery goods. Sorbitol’s most widespread use is in the manufacture of enemas. Where it is used in food products as a carbohydrate substitute, the manufacturer is required to declare on the label that excessive consumption could have a laxative effect.

Main Provisions
The Bill will operate from 1 January 1990.

A new Part VIA (proposed sections 39A–39ZL), which will be inserted into the Principal Act by clause 7, deals with requirements for wine manufacturers to keep certain records in relation to the receipt of wine goods and label claims, and standard administrative provisions to monitor compliance with the requirements of the Principal Act. The object of proposed Part VIA is to ensure the truth, and reputation for truthfulness, of label claims (proposed section 39A). Proposed section 39B deals with the operation of proposed Part VIA. This is defined by reference to the Commonwealth’s Constitutional powers over corporations. This aims to satisfy the Constitutional limits of the Commonwealth’s power in this area.

‘Label claim’ is defined in proposed section 39C as a claim about the vintage, variety or region of origin of wine goods made on a wine label, in a commercial document, or in an advertisement.

‘Wine goods’ is defined in proposed section 39C as wine (defined as a grape product declared by the regulations to be wine), grapes or grape extract.
Proposed Section 39D provides that wine is to be taken to have been sold with a label claim if a label claim is made when or before the wine is sold. Where a wine manufactured by blending different wines (a blend) is sold with a label claim, the label claim will be taken to relate to each wine in the blend unless the claim is that the blend, or wine used in the blend, has a particular characteristic and that particular characteristic relates to a particular wine used in the blend.

Where a provision of proposed Part VIA provides for a maximum penalty of a $15,000 fine, proposed section 39E provides that the maximum penalty for a breach of that provision by an individual will be a $3,000.

Proposed Section 39F provides that a wine manufacturer who receives wine goods for processing is to keep a record showing the date of their receipt, their quantity, vintage, variety, region of origin, and the name of the supplier. The maximum penalty for a breach of this provision will be a $15,000 fine.

Proposed Sections 39G – 39R deal with record keeping requirements where label claims have been made. Basically, where wine manufacturers make label claims they will have to keep certain records, including the date of manufacture; quantity of wine or grape extract produced or extracted; certain characteristics of the wine or grape extract; the identity of a wine purchaser; and where wine or grape extract is transferred to another manufacturer, the identity of the winery to which the wine or extract is transferred. The proposed record keeping requirements will apply in relation to various transactions, including blending of wines, sale of wine to other wineries, transfer of wine between manufacturers, wine manufacturing under contract, and direct sales. Proposed sections 39J and 39K require a wine manufacturer who sells wine, or who manufactures or disposes of wine under a contract, with a label claim to keep certain records, including of the identity of the purchaser. However, a record of the identity of the purchaser will not be required where the wine is packaged for sale to consumers in a package which identifies the manufacturer or where the wine is sold direct from the manufacturer to the consumer. The maximum penalty for a breach of proposed sections 39G – 39R will be a fine of $15,000.

Proposed Section 39W provides that where there is a requirement to keep a record showing the characteristics of a wine or grape extract, the record is to contain certain details relating to the nature of the claimed characteristic, for example, the vintage, variety, or region of origin of the wine or grape extract.

Proposed Sections 39ZA – 39ZH provide standard administrative provisions, including powers of inspectors in relation to the entry and searching of premises and penalties for obstructing an inspector or failing to answer certain questions.
References
4. Ibid., pp. 6 and 18.

For further information, if required, contact the Economics and Commerce Group.

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