Grape and Wine Legislation Amendment (Australian Grape and Wine Authority) Bill 2013 [and] Primary Industries (Customs) Charges Amendment (Australian Grape and Wine Authority) Bill 2013 [and] Primary Industries (Excise) Levies Amendment (Australian Grape and Wine Authority) Bill 2013

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This is a revised version of Bills Digest No. 5 2013-14, prepared for earlier versions of these Bills introduced into the 43rd Parliament.

Contents

Commencement ........................................................................................................ 2
History of the Bills ........................................................................................................ 2
Purpose of the Bills ........................................................................................................ 2
Structure of the Bills ....................................................................................................... 2
Committee Consideration ............................................................................................... 3
  Senate Selection of Bills Committee ........................................................................... 3
Background .................................................................................................................. 3
Position of major interest groups ................................................................................ 4
Financial implications .................................................................................................... 4
Statement of Compatibility with Human Rights ......................................................... 4
Key issues and provisions .............................................................................................. 4
  The principal Bill ......................................................................................................... 4
  Schedule 1 .................................................................................................................. 4
  Schedule 2 ................................................................................................................ 7
The Primary Industries (Customs) Charges Bill ......................................................... 7
The Primary Industries (Excise) Levies Bill ................................................................. 7

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House: House of Representatives
Portfolio: Agriculture
Commencement: See page two of this Bills Digest.

Links: The links to the Bills, their Explanatory Memoranda and second reading speeches can be found on the Bills’ home pages for the Grape and Wine Legislation Amendment (Australian Grape and Wine Authority) Bill 2013, the Primary Industries (Customs) Charges Amendment (Australian Grape and Wine Authority) Bill 2013 and the Primary Industries (Excise) Levies Amendment (Australian Grape and Wine Authority) Bill 2013, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

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Commencement

Sections 1–3 of the Grape and Wine Legislation Amendment (Australian Grape and Wine Authority) Bill 2013 (the principal Bill) commence on Royal Assent. Schedule 1, Part 1 and Schedule 2 of the principal Bill commence the day after Royal Assent. Schedule 1, Part 2 commences on 1 July 2014. The substantive provisions of the Primary Industries (Excise) Levies Amendment (Australian Grape and Wine Authority) Bill 2013 (the Primary Industries (Excise) Bill) and the Primary Industries (Customs) Charges Amendment (Australian Grape and Wine Authority) Bill 2013 (the Primary Industries (Customs) Bill) commence on 1 July 2014.

History of the Bills

Versions of these Bills were first introduced into the 43rd Parliament on 24 June 2013.¹ The Bills had passed the House of Representatives, but had not passed the Senate when the Parliament was prorogued on 5 August 2013. As a result, the previous Bills lapsed. They were reintroduced into the 44th Parliament with only minor changes. This Digest reflects these changes.²

Purpose of the Bills

The purpose of the Bills is to create a single authority to support Australian wine grape growers and winemakers. The Bills seek to establish the new Australian Grape and Wine Authority (the Authority), by merging the existing Wine Australia Corporation (WAC) and Grape and Wine Research and Development Corporation (GWRDC).³

These Bills broadly follow the previous Government’s Rural Research and Development Policy Statement (the Rural R&D Policy Statement).⁴ A package of Bills to reform Rural R&D was introduced into the previous Parliament, but lapsed when Parliament was prorogued.⁵ Among other things, those Bills would have removed the existing requirement that statutory R&D corporations cannot undertake marketing activities.⁶

Structure of the Bills

The principal Bill has two Schedules:

- **Schedule 1:**
  - Part 1 deals with amendments to the *Wine Australia Corporation Act 1980* commencing on the day after Royal Assent and

- **Schedule 2** of the principal Bill contains provisions governing the merging of the two corporations. It also establishes the Authority.

The Primary Industries (Customs) Bill has one Schedule, which amends the *Primary Industries (Customs) Charges Act 1999*.⁷

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5. The package consisted of: the *Rural Research and Development Legislation Amendment Bill 2013*, the *Primary Industries (Customs) Charges Amendment Bill 2013*, and the *Primary Industries (Excise) Levies Amendment Bill 2013*. The Government has indicated that versions of these Bills will be reintroduced into the current Parliament – see Department of Prime Minister and Cabinet, *Legislation proposed for introduction in the 2013 Spring Sittings*, 8 November 2013, accessed 19 November 2013.


The Primary Industries (Excise) Bill has one Schedule, which amends the Primary Industries (Excise) Levies Act 1999.\(^8\)

**Committee Consideration**

**Senate Selection of Bills Committee**

On 13 November 2013, the Senate Standing Committee for the Selection of Bills deferred consideration of whether the Bills would be referred for inquiry and report.\(^9\)

**Background**

Grape growers and winemakers of Australia are represented by two statutory authorities: the GWRDC and the WAC (formerly known as the Australian Wine and Brandy Corporation until 2011), as well as two peak national bodies, the Winemakers’ Federation of Australia (WFA – which represents Australian winemakers) and the Wine Grape Growers of Australia (WGGA – which represents Australian wine grape growers).\(^10\)

The GWRDC, established under the Primary Industries and Energy Research and Development Act 1989, is the statutory Research and Development (R&D) corporation of the wine grape industry.\(^11\) The WAC is the wine industry’s statutory marketing corporation which works to increase and sustain demand for Australian wine, via five core responsibilities:

- market development
- knowledge development
- compliance
- trade and
- geographical indications.\(^12\)

While the GWRDC is the wine grape industry R&D body, it does not conduct research itself. Instead it invests in Research, Development and Extension (RD&E) from providers, such as the Commonwealth Scientific and Industrial Research Organisation, universities and the Australian Wine Research Institute.\(^13\)

As outlined above, statutory R&D corporations cannot undertake marketing activities. Due to this restriction two statutory corporations were required for the wine and wine grape industry to undertake both marketing and R&D activities. The Rural R&D Policy Statement proposed that industry R&D corporations be able to undertake marketing activities, if requested by the industry.

Even before the release of the Rural R&D Policy Statement, the Boards of the WFA and the WGGA had begun discussing merging the two statutory industry corporations. They had, however, originally been unable to obtain sufficient industry support due to distrust of the outcome of the merging of other industry service bodies and unwillingness to expend the money necessary to achieve the merger.\(^14\)

Over a period of almost three years the WFA and WGGA consulted extensively to convince the industry that, of the options available, a single statutory corporation would best deliver the services the industry needed. In particular, one corporation could align R&D and marketing strategies to maximise efficiency and make the best use of scarce resources, and take advantage of economies of scale through common management and financial

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\(^{11}\) See footnote 5. The previous version of the Rural Research and Development Legislation Amendment Bill 2013 would have changed the name of the Primary Industries and Energy Research and Development Act 1989 to the Primary Industries Research and Development Act 1989. It is not clear if the reintroduced Bill will contain this change to the legislation’s title. Primary Industries and Energy Research and Development Act 1989, accessed 18 November 2013. See also WFA and WGGA, Proposed merger of GWWDC and WAC, op. cit., p. 3.

\(^{12}\) WFA and WGGA, Proposed merger of GWWDC and WAC, op. cit., p. 3.

\(^{13}\) Grape and Wine Research and Development Corporation (GWRDC), ‘What we do’, GWRDC website, accessed 15 July 2013.

\(^{14}\) Winemakers’ Federation of Australia (WFA) and Wine Grape Growers Australia (WGGA), Proposal to merge Wine Australia Corporation (WAC) and the Grape and Wine Research and Development Corporation (GWRDC), August 2012, pp. 10–11, accessed 15 July 2012.
reporting, as well as corporate support and systems and procedures.\(^15\) By December 2011 the WFA and WGGA boards were able to endorse the merger of the WAC and the GWRDC.\(^16\)

In February 2012, the then Minister for Agriculture, Fisheries and Forestry met with representatives from the WFA and WGGA and agreed to the WFA and WGGA undertaking further investigation into merging the GWRDC and WAC into a single statutory corporation.\(^17\)

In April 2012 the WFA and WGGA released a discussion paper containing proposals to reform the wine grape industry R&D and wine marketing activities by merging the GWRDC and WAC.\(^18\) In August 2012, after a period of consultation, the merger proposal was presented to the then Minister for Agriculture, Fisheries and Forestry by the WFA and WGGA.\(^19\)

**Position of major interest groups**

The two major interest groups, the WFA and the WGGA, began the process to merge the GWRDC and WAC. They conducted the consultation and presented the proposal to the Minister.

**Financial implications**

The Explanatory Memorandum indicates that the Bills will have no financial impacts on the Commonwealth Government. Any costs that may arise in the setting up of the new Authority will be paid by the Department of Agriculture, and refunded by the Authority at a later date.\(^20\)

**Statement of Compatibility with Human Rights**

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bills’ compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act.\(^21\) The Government considers that the Bills are compatible as they do not raise any human rights issues.

**Key issues and provisions**

**The principal Bill**

Throughout the principal Bill, the reference to ‘Corporation’ is omitted, and changed to ‘Authority’. Some references are kept, however, as the Corporation will continue operating until 30 June 2014.

**Schedule 1**

Part 1, Schedule 1, of the principal Bill makes amendments to the Wine Australia Corporation Act 1980.\(^22\) It commences on Royal Assent and its main purpose is to establish the Authority Selection Committee in new Part IV (item 10).

Items 2 and 3 of Schedule 1 introduce definitions of the Authority Selection Committee and the Corporation Selection Committee. These two separate definitions are needed to differentiate between the selection of board directors for the WAC, which is proposed to continue operation until 30 June 2014, and the selection of board directors when the Authority commences operation on 1 July 2014.

Item 10 inserts new Part IV which sets out the functions and powers of the Authority Selection Committee. It selects persons to be nominated for appointment as directors of the Authority and nominates these persons to the Minister (new section 27C). Membership appointment terms and conditions of the Authority Selection Committee are provided for in new sections 27J, 27K and Division 4 of new Part IV.

\(^{15}\) Ibid., p. 10.

\(^{16}\) Ibid., pp. 10–11.

\(^{17}\) Ibid., p. 12.

\(^{18}\) WFA and WGGA, Proposed merger of GWRDC and WAC, op. cit.

\(^{19}\) WFA and WGGA, Proposal to merge GWRDC and WAC, op. cit., p. 12.


\(^{21}\) Statements of Compatibility with Human Rights can be found at pages 5 to 7 of the Explanatory Memorandum, ibid.

The requirement for the WAC selection committee to produce an annual report for the 2013–14 financial year is removed by item 11. Instead item 12 requires the committee to produce a final report for the period from 1 July 2013 to 30 April 2014.

Part 2, Schedule 1 – amendments commencing 1 July 2014.


The Grape Wine Research and Development Corporation Regulations 1991, which established the GWRDC, are repealed by item 15.23

The remainder of Part 2 makes amendments to the Wine Australia Corporation Act 1980.

Item 18 replaces the Objects section with a new section that includes reference to R&D activities and better reflects the activities that the new Authority will perform.

Items 19 to 42 update definitions in section 4 of the Wine Australia Corporation Act 1980.

Item 47 repeals sections 6 and 7 of the Act and substitutes new sections 6, 7 and 7A. The new section 7 outlines the Authority’s functions. These functions include investigating and evaluating R&D requirements for the grape or wine industry, and then coordinating or funding such activities. The Authority’s functions also include the dissemination, adoption and commercialisation of R&D outcomes; controlling grape product exports from Australia; and promoting the consumption and sale of grape products, in Australia and overseas. These functions are largely the same as those of the WAC and the GWRDC.

Proposed section 7A sets out the constitutional underpinning of the Authority, such as the reliance on the trade and commerce power and the corporation powers in Section 51 of the Constitution.

Item 56 introduces powers relating to the R&D function. These new proposed powers are the same as the combined powers of the WAC and the GWRDC.

Item 66 inserts new sections 10A, 10B, 10C and 10D which relate to agreements being entered into by the Authority. These provisions replicate provisions in the Primary Industries and Energy Research and Development Act 1989.24

Item 71 repeals current Part III (sections 12 to 22) of the Act and substitutes a new Division 2 of Part II of the Act, comprising sections 12 – 26D.25 These provisions set out how the Authority is constituted and its membership, method of appointment and other employment terms and conditions. They are standard provisions and consistent with the provisions applying to the WAC and GWRDC.

Item 74 expands the reference to the industry to include both the grape and the wine industry.

Items 75–77 remove reference to the redundant definitions of ‘old Charge Act’ and ‘old Levy Act’. The old Charge Act refers to the Wine Export Charge Act 1997, which was repealed in 1999.26 The old Levy Act refers to the Wine Grapes Levy Act 1979 which was repealed in 2000.27 The current charge and levy associated with the wine grape industry and wine export industry are the wine grapes levy and the wine export charge.28 There is also an additional levy, the Grape Research Levy, which is a levy associated with the GWRDC.29

Item 112 inserts new sections 32A and 32B which relate to the limit on the Commonwealth’s matching payment. Under the amended sections 32A and 32B the Authority will receive Commonwealth matching

25. Division 1 of Part II is created by item 47 of Schedule 1 of the principal Bill.
28. The Wine Grapes Levy partly funds the GWRDC and WAC and also partly funds the plant health programs administered by Plant Health Australia (PHA). Department of Agriculture, Why is there a levy on wine grapes? Levy fact sheet, Department of Agriculture, October 2013, accessed 18 November 2013. See also Department of Agriculture, Information on wine export charge, Levy fact sheet, Department of Agriculture, July 2013, accessed 18 November 2013.
29. The Grape Research Levy partly funds the GWRDC and like the Wine Grapes Levy also partly funds the plant health programs administered by PHA. Department of Agriculture, Wine/Grapes, Information sheet, Department of Agriculture website, November 2013, accessed 18 November 2013.
payments. The Authority gets two types of R&D funding, the Commonwealth matching payments, which are limited by a retention limit (described below) and the funds collected by the wine grapes levy and the grapes research levy, which will be paid to the Authority under amended section 32 (item 111).

The retention limit for the Commonwealth’s matching payment is also set by item 112. The amount is worked out having regard to the determination by the Minister, by 31 October the next financial year, of the amount of gross value of the production in Australia in the relevant financial year. The retention limit during a particular financial year must be the lesser of either 0.5 per cent of the amount of the gross value of the goods of the wine and grape industry in Australia in the financial year, determined by the Minister, or 50 per cent of the amount spent by the company in the financial year on activities that qualify under the funding contract as R&D activities. Any amount in excess of the limit is to be repaid to the Commonwealth.

Item 118 introduces new subsections 33(5) and (6) which require the Authority to pay the Commonwealth back if it receives an overpayment relating to the research component of the wine grapes levy or the grapes research levy. This ensures that funds are available for the Commonwealth to repay any levy payer who overpays the levy.

Item 128 provides that funding activities be specified in the Authority’s annual operation plan. It also allows the Authority to repay the Commonwealth money to cover the cost of collecting associated levies and amounts owing due to retention limits (see item 112 above)

Item 131 inserts proposed subsection 35(1A) which restricts the use to which money derived from the wine grapes levy and the grapes research levy may be applied. These monies (which will be paid to the Authority under proposed paragraphs 32(ae) and (ag)) may only be used to fund grape or wine R&D activities, to pay debts or liabilities incurred exercising powers relating to grape or wine R&D or performing functions relating to R&D, and paying amounts due to the Commonwealth under new subsections 32B(2), 33(5) or (6) or new section 36 (inserted by item 134). This ensures that the money collected under the wine grapes levy and the grapes research levy is not spent on activities such as marketing.

Item 134 inserts new section 36 which requires the Authority to cover the Commonwealth’s costs of collecting and distributing associated levies.

The Authority annual report requirements are established in item 138. These requirements are the same as those in section 28 of the Primary Industries and Energy Research and Development Act 1989 adapted for the Authority which will conduct R&D and marketing.30 Currently section 28 of the Primary Industries and Energy Research and Development Act 1989 only pertains to R&D and related activities, not marketing.

Item 139 inserts new section 38A which requires the Authority to provide a copy of the annual report to all representative organisations after it has been provided to the Minister. The Authority also must make arrangements for the representative organisations to attend either the Authority’s annual conference, or a meeting with the organisation’s executive. The reasoning behind this consultation requirement is set out at new subsection 38A(2), and reflects the purpose for such meetings set out at section 29 of the Primary Industries and Energy Research and Development Act 1989.31

Item 167 replaces the words ‘Corporation et cetera’ with ‘Geographical Indications Committee et cetera’ and item 168 repeals paragraph 41A(1)(a), which results in the remuneration and allowances outlined in this section only applying to members of the Geographical Indications Committee, or a Committee appointed by the Authority under section 11, but not to directors of the Authority. The functions of the Geographical Indications Committee are to deal with applications to adjust or alter geographical indications. Geographical indications are indications that identify wine as originating from a region or locality where a given quality, reputation or other characteristic of the wine is essentially attributable to the geographical origin.32

Item 185 amends clause 12 of the Schedule to the Act, which sets out the administrative arrangements applying to the Geographical Indications Committee, so that the Committee is required to give the Authority information that is required to be included in the Authority’s annual report by the Commonwealth Authorities and

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31. Ibid.
Companies Act 1997. This will ensure that the provision refers to the currently relevant legislation. It currently refers to the Audit Act 1901, which was repealed in 1998.

Schedule 2

Schedule 2 facilitates the establishment of the Authority. It allows for the appointment of consultants, for example (Part 2, item 2), makes arrangements in regards to R&D agreements (Part 4, item 22) and outlines final reporting requirements for the WAC and GWRDC (Part 5).

Part 3 of Schedule 2 provides for the transfer of assets and liabilities from the WAC and GWRDC to the Authority.

The Primary Industries (Customs) Charges Bill

Sections 1–3 of Primary Industries (Customs) Charges Bill deal with preliminary matters, including when the Act commences.

Schedule 1 of the Primary Industries (Customs) Charges Bill makes minor amendments to the Primary Industries (Customs) Charges Act 1999. These changes reflect the creation of the Authority by the principal Bill and also align the process for changing wine industry levies with the process that applies to other industry levies.

The Primary Industries (Excise) Levies Bill

Sections 1–3 of Primary Industries (Excise) Levies Bill deal with preliminary matters, including when the Act commences.

Schedule 1 of the Primary Industries (Excise) Levies Bill makes minor amendments to the Primary Industries (Excise) Levies Act 1999.

Items 1 and 3 change the definition of ‘representative organisation’ and ‘declared winemakers’ organisation’, respectively, to link these terms to definitions in the Australian Grape and Wine Authority Act 2013.
