Wine Australia Amendment (Label Directory) Bill 2019

Dinty Mather
Economic Policy Section
Paula Pyburne
Law and Bills Digest Section

Contents

Purpose of the Bill................................................. 2
Background.......................................................... 2
Australia’s wine export industry ............................. 2
Figure 1: wine imports into Australia and wine exports from Australia 1990–91 to 2017–18 .......... 2
Figure 2: wine import values into Australia and wine export values from Australia 1990–91 to 2017–18................................................................. 3
Establishment of Wine Australia............................ 3
Export control.......................................................... 3
Rationale for the Bill............................................... 4
Figure 3: Australia’s wine export destinations 2000–01 and 2017–18.............................................. 5
Committee consideration......................................... 6
Senate Selection of Bills Committee ....................... 6
Senate Standing Committee for the Scrutiny of Bills ......................................................... 6
Position of major interest groups ......................... 6
Financial implications............................................ 6
Statement of Compatibility with Human Rights ...... 6
Parliamentary Joint Committee on Human Rights .... 6
Key issues and provisions ....................................... 7
Establishing the Label Directory............................ 7
Contents of the Label Directory.............................. 7
Use of the Label Directory...................................... 8
Consequential amendments .................................. 8

Date introduced: 2 December 2019
House: Senate
Portfolio: Agriculture
Commencement: On the earlier of a single day fixed by Proclamation or 12 months after Royal Assent

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at January 2020.
Purpose of the Bill

The purpose of the Wine Australia Amendment (Label Directory) Bill 2019 (the Bill) is to amend the Wine Australia Act 2013 to enable Wine Australia to establish and maintain a publicly available directory of grape product labels intended for export (Label Directory).

Background

Australia’s wine export industry

According to the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), during 2017–18 Australia produced 1.7 million tons of wine grapes, consumed 492 million litres of wine (approximately 19.7 litres per person), exported 866 million litres of wine to the value of $2,828 million and imported 100 million litres of wine to the value of $827 million. The wine export market is becoming increasingly important for Australia. Figures 1 and 2 below show how both wine exports and wine imports have increased. However, exports have increased more rapidly than imports.

Figure 1: wine imports into Australia and wine exports from Australia 1990–91 to 2017–18


---


2. Note that the graph in Figure 1 has been prepared by the Parliamentary Library based on the information in table 22.2 in the wineXLXS dataset which is referred to above.
Figure 2: Wine import values into Australia and wine export values from Australia 1990–91 to 2017–18

Establishment of Wine Australia

The Wine Australia Act establishes Wine Australia as a statutory authority. Its functions include controlling the export of grape products from Australia and anything incidental to, or conducive to, the performance of any of its functions.

Export control

The Wine Australia Regulations 2018 (the Regulations) prescribe controls:

- to ensure the quality of grape products that include Australian wine and are exported
- to implement Australia’s international obligations and
- to ensure Australian wine that is exported complies with importing country requirements.

The export of grape products, including wine, from Australia is subject to three steps:

- first a grape product must be approved for export by an exporter. Wine Australia may approve the grape product if it is satisfied of all of the following:
  - either the grape product complies with the Australia New Zealand Food Standards Code or the nature of the non-compliance will not compromise the reputation of Australian grape products
  - the grape product is sound and merchantable and

---

3. Note that the graph in Figure 2 has been prepared by the Parliamentary Library based on the information in table 22.2 in the wineXLXS dataset which is referred to above.
5. Wine Australia Act, section 4 defines the term grape product as (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 which is declared by regulation to be a grape product for the purposes of the Wine Australia Act. Prescribed goods are fresh or dried grapes and grape juice.
6. Wine Australia Act, paragraphs 7(f) and (i).
8. Wine Australia Regulations, subsection 14(2).
– the description and presentation of the grape product is appropriate having regard to requirements of the Act, other Australian laws and the laws of other countries.  

- **second**, once a grape product is approved, Wine Australia is empowered to grant an export licence to an exporter and 

- **third**, Wine Australia issues an export certificate in respect of the consignment of the grape product. The Wine Australia Act creates offences:

  - under Part VIA where a person fails to comply with the label integrity program and 
  
  - under Part VIB where a person sells, exports or imports wine in trade or commerce and with a false description and presentation.

**Rationale for the Bill**

Despite these legislative controls on the export of wine, on 17 November 2017, it was reported that 'Police in Shanghai have seized 14,000 bottles of fake Penfolds wine being sold by counterfeiters':

The three-month investigation followed a complaint to Alibaba by Australian wine company Treasury Wine Estates that suspicious retailers were charging “extraordinarily low prices” for Penfolds wine in its fastest-growing market …

A Shanghai-based marketing consultant … said fakes were “an absolutely critical issue” for Australian brands because they risked brand integrity …

Brands that are high in value and demand, such as Penfolds, are more likely to be a target.

The Bill empowers Wine Australia to establish and maintain a directory of labels that are attached to grape products such as wine intended for export from Australia (the Label Directory), as a part of Wine Australia’s export controls.

According to the Explanatory Memorandum to the Bill:

The purpose of the Label Directory is to deter exports of copycat wine … from Australia. Copycat grape product exports are products that are exported from Australia with labels that seek to mimic elements of Australian brands for commercial gain and unfairly benefit from the reputation of those brands. These labels may contain trademarked intellectual property (IP) elements, infringing on the private IP rights of Australian brands.

The introduction of this legislation is timely in the light of the expansion of the number of countries to which Australia exports wine. For instance, in 2000–01, Australia’s major wine export destinations were the United Kingdom (UK) and the United States of America (USA). However, by

---

12. Wine Australia Act, sections 39J, 39K and 39ZAB.  
13. For example, Wine Australia Act, section 40C. Section 5C of the Act provides that description and presentation is a reference to all names (including business names) or other descriptions, references (including addresses), indications, signs, designs and trade marks that are used to distinguish a wine. The ways of describing and presenting wine are taken to include information appearing on the container, protective wrappings, and in documents and advertisements relating to the wine.  
15. Ibid.  
2017–18 the composition of Australian wine export markets shifted to China and south-east Asia. This is illustrated in Figure 3 below.

**Figure 3: Australia’s wine export destinations 2000–01 and 2017–18**

![Bar chart showing wine export destinations]


17. Note that the graph in Figure 3 has been prepared by the Parliamentary Library based on the information in table 22.3 in the wineXLXS dataset which is referred to above.
Committee consideration

**Senate Selection of Bills Committee**

At its meeting of 4 December 2019, the Senate Selection of Bills Committee recommended that the Bill not be referred to Committee for inquiry and report.\(^1\)

**Senate Standing Committee for the Scrutiny of Bills**

At the time of writing this Bills Digest, the Senate Standing Committee for the Scrutiny of Bills had not commented on the Bill.

Position of major interest groups

Public consultation was undertaken by the Department of Agriculture on the proposal to develop the Label Directory from 21 September 2018 to 19 October 2018.\(^2\) The results of the consultation have not been made publicly available; however, according to the Explanatory Memorandum:

> ... the majority of submissions from the wine industry broadly supported the need and proposed model for the Label Directory. Following this consultation, the Department [of Agriculture] further refined the proposal with Wine Australia and AGW [Australia Grape and Wine]. The Department of the Prime Minister and Cabinet, and IP Australia were also consulted.\(^3\)

Financial implications

The Explanatory Memorandum states that the Bill will have no financial impact on the Australian Government Budget.\(^4\)

However, the development of the Label Directory will be funded to the amount of $417,000 from the [Export and Regional Wine Support Package].\(^5\) This package is not supported by levies, it is a budget item under the Ten Year Enterprise Tax Plan – wine equalisation tax rebate integrity and wine tourism funding, where in the 2016–17 Budget the Government provided:

> ... $50.0 million over four years to the Australian Grape and Wine Authority to promote wine tourism within Australia and Australian wine overseas to benefit regional wine producing communities.\(^6\)

Statement of Compatibility with Human Rights

As required under Part 3 of the [Human Rights (Parliamentary Scrutiny) Act 2011](http://www.legislation.gov.au/FRMPP/Details/F19960066), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.\(^7\)

**Parliamentary Joint Committee on Human Rights**

At the time of writing this Bills Digest, the Parliamentary Joint Committee on Human Rights had not commented on the Bill.

---

19. Department of Agriculture (DoA), ‘Have your say: wine export label directory’, DoA website.
21. Ibid., p. 2.
24. The Statement of Compatibility with Human Rights can be found at page 9 of the Explanatory Memorandum to the Bill.
Key issues and provisions

Establishing the Label Directory

Item 6 of the Bill inserts proposed section 45A into the Wine Australia Act to authorise the establishment of a Label Directory. The provision allows the Regulations (made under section 46 of the Wine Australia Act) to provide for the establishment, maintenance and public availability of the Label Directory.\(^{25}\)

The Label Directory authorised by the Regulations will not be a legislative instrument.\(^{26}\)

Contents of the Label Directory

The Bill provides that the Regulations may include a requirement that the Directory include digital colour images of grape product labels and other information about grape products or relating to exporters of grape products.\(^{27}\)

According to the Explanatory Memorandum to the Bill:

In practice this information would be information for the purposes of identifying the images of the labels in the Label Directory, and to enable brand owners to identify who they would need to make an IP claim against if it was considered that a label infringed the brand owner’s IP rights.

The kinds of information that is intended to be sought under a regulation made for this purpose includes:

- the brand and grape product name and
- the exporter name, business address and business identifier (e.g. Australian Business Number, Australian Company Number or Australian Registered Body Number) of the grape product exporter.\(^{28}\)

In addition, the Bill allows the Regulations to provide for the inclusion of personal information on the Label Directory—provided that the personal information:

- is included in a digital colour image of grape product labels or
- relates to grape products or exporters of grape products.\(^{30}\)

The Explanatory Memorandum states:

This information is also required to be included on the label affixed to grape products itself under the Australia New Zealand Food Standards Code, so would be the kind of information that is already available to purchasers of grape products within Australia and within the intended export markets.\(^{31}\)

The Bill also requires that the Regulations include a provision for corrections to the contents of the Directory.\(^{32}\)

\(^{25}\) Wine Australia Act, proposed subsection 45A(1).
\(^{26}\) Wine Australia Act, proposed subsection 45A(9). This means that the Label Directory will not be subject to disallowance by the Parliament.
\(^{27}\) Wine Australia Act, proposed subsection 45A(2).
\(^{29}\) Item 4 of the Bill amends subsection 4(1) of the Wine Australia Act to insert the definition of personal information which has the same meaning as in the Privacy Act 1988.
\(^{30}\) Wine Australia Act, proposed subsection 45A(3).
Use of the Label Directory

Wine Australia is authorised to use the contents of the Label Directory:

- in order to decide whether there has been a contravention of the label integrity program (in Part VIA of the Wine Australia Act) or
- to perform its functions, or exercise its powers, under the Wine Australia Act or the Wine Australia Regulations. 33

Consequential amendments

Consistent with the amendments in proposed section 45A, item 2 of the Bill inserts a new definition of the term grape product label, being a label attached to, or writing or other sign appearing on, a bottle or other package of a grape product. In addition, item 3 of the Bill repeals and replaces the definition of package in subsection 4(1) of the Wine Australia Act so that the package, in relation to a grape product, is a container in which the grape product is sold or transferred for sale.

According to the Explanatory Memorandum to the Bill:

With establishment of the Label Directory, it is intended that exporters of grape products would be subject to additional requirements as a condition of the export controls administered by Wine Australia under Part 3 of the current regulations. The addition of [the new definition of grape product label] would assist exporters of grape products to understand the information they will be required to provide when asked to submit digital colour images of grape product labels under the current regulations. Further, this definition will assist Wine Australia in enforcement of the Label Directory. 34

32. Wine Australia Act, proposed subsection 45A(5).
33. Wine Australia Act, proposed subsection 45A(7).
34. Explanatory Memorandum, Wine Australia Amendment (Label Directory) Bill 2019, p. 5.