

Article Information

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Australian European Community Agreement on trade in wine

Australian wine producers are set to benefit from improved access to Australia's largest wine export market, Europe, with the Australian Wine and Brandy Corporation Amendment Act 2010 having commenced full operation on 1 September 2010.

The primary purpose of the *Australian Wine and Brandy Corporation Amendment Act 2010* (Cth) (Amendment Act) was to bring into force the Australian European Community Agreement on Trade in Wine, which was signed on 1 December 2008 in Brussels, by Australia and the European Community. The Community Agreement replaced an earlier agreement signed in 1994, and represented the finalisation of negotiations on outstanding issues, particularly in relation to:

- Geographical Indications (GIs), which are signs used on wines that have a specific geographical origin and possess qualities or a reputation due to that place, and
- Technical Expressions (TEs), which are expressions used in the description and presentation of wine to refer to the method of production, quality, colour or type of the wine.
- The Amendment Act implements changes to both the *Australian Wine and Brandy Corporation Act 1980* (Cth) (AWBC Act) and the *Trade Marks Act 1995* (Cth). These changes will deliver many significant benefits to Australian wine producers, including:
 - European recognition of 16 Australian winemaking techniques, in addition to the 28 techniques approved in the 1994 Agreement, including the use of oak chips, spinning cone technology and reverse osmosis
 - simpler arrangements for approving winemaking techniques that may be developed in the future, namely an automatic provisional approval mechanism, which is subject to a six month objection period
 - simplified labelling requirements for Australian wine sold in European markets. Australian wine labels will be able to include optional information, such as the number of standard drinks
 - protection within Europe for Australia's 112 registered GIs, including Barossa Valley, Bendigo and Margaret River, and
 - defined use of a number of TEs, including restrictions on registration of a business name containing a TE.

The Amendment Act also affords protection to more than 2,500 registered European GIs and 12 sensitive European GIs that have previously been used to describe Australian wines, including Burgundy, Champagne, Port, Sherry and White Burgundy. This protection came into force upon the commencement of the Amendment Act, with the exception of the sensitive GIs, which will be protected one year after commencement. Moreover, the use of the term "Tokay" to describe Australian fortified wines must be phased out within ten years. Wholesalers in Australia have five years to sell stock labelled with a European GI and retailers are entitled to sell all their stock.

Australian producers will also be prevented from using a range of European TEs, one year after the commencement of the Amendment Act. However, the prohibition does not extend to translations of such expressions.

Amendments to the *Trade Marks Act 1995* (Cth) were also necessary to implement the Agreement and to ensure that its application is consistent with that of the AWBC Act. Whilst restrictions on the registration of trade marks containing GIs already exist, the amendments clarify that trade marks that include a common English word that coincides with a GI can be registered.

The Amendment Act also introduces more severe penalties for offences relating to inadequate record keeping, that are in line with those for more serious offences. This is intended to remove the incentive for a person to falsify, destroy or create inadequate records so as to avoid being prosecuted for offences carrying higher penalties, such as the sale, export or import of wine with a false or misleading description and presentation.

The Australian Wine and Brandy Corporation will continue to be the statutory body that is responsible for investigating and prosecuting breaches of the AWBC Act, whilst supporting Australian wine producers in promoting the export of, and maintaining the integrity of, their wine goods.