



Australian Government

Australian Grape and Wine Authority

7 June 2016

Intellectual Property Arrangements
Productivity Commission
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Canberra City ACT 2601
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BY EMAIL

Dear Sir/Madam

The Australian Grape and Wine Authority (**AGWA**) made an initial submission in relation to the inquiry into Australia's intellectual property arrangements in its submission dated 30 November 2016 (submission 72).

We now wish to provide our comments on the draft report on Intellectual Property Arrangements with respect to Geographical Indications (**GIs**).

1. Response to Information Requests

The Commission's information request 11.2 calls for submissions in relation to the following:

- under what circumstances a wine and spirit geographical indication should be able to be amended or repealed; and
- who should make such decisions.

2. Amendment or omission of GIs

AGWA would support a proposal whereby discretion were vested in the Geographical Indications Committee (**GIC**) established under section 40N of the *Australian Grape and Wine Authority Act 2013 (AGWA Act)*, to omit or amend a GI on the grounds that:

- a) environmental or production changes warrant the expansion or contraction of a GI;
- b) a region becomes known colloquially by a different name to that by which it was determined (and/or there is regional support for its name to be altered); or
- c) the GI ceases to meet the criteria set out in regulation 24 or 25 of the Australian Grape and Wine Authority Regulations 1981



(AGWA Regulations), in particular, it fails to have the requisite degree of homogeneity.

We propose that such modifications could be made via the same process currently employed for the determination of GIs. That is, an application is made to the GIC whom, having regard to criteria set out under the AGWA Regulations, may, subject to review, make determinations in relation to the omission and variation of GIs. This would be consistent with the process in Europe for revising the production conditions for an existing designation of origin or geographical indication.

We note the Commission's comments pertaining to the costly litigation that occurred in the Coonawarra case in defining the boundaries and its comments that there might be a risk of new litigation if the GIC were able to amend or abolish GIs. We acknowledge that if determinations made under the AGWA Act with respect to GIs are to remain subject to review by the Administrative Appeals Tribunal this is a risk. However, we envisage that such powers would only be invoked by the GIC in relation to matters that carried wide and strong support from industry hence reducing the likelihood of costly litigation.

We agree that one viable option would be to vest power with the GIC, but to require a long period before changes are implemented, in order to give enterprises that may be affected more certainty.

On page 351, the Commission notes that one option would be to amend the legislation that governs GIs by making it clear that once a region no longer has the required grape production and number of growers that the GIC could declare it to be no longer valid. We note that sub-division B of division 4A of Part VIB of the AGWA Act, which pertains to omission of GI's for non-use, largely achieves this.

3. The 85 per cent rule

We note that at page 349 the Commission queries whether consumers are aware that:

- a) up to 15 per cent of a wine marked with a GI might be made from grapes outside that GI region; and
- b) the GI only pertains to where the grapes are grown (but not where the wine is necessarily made).



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We do not think consumers are likely to be misled by the fact that up to 15 per cent of a wine marked with a GI might be made from grapes outside that GI region.

The 85 per cent rule is consistent with the rules set out in regulations pertaining to geographical indications throughout the European Union and in other countries with established GI systems. In the USA, it is permissible for 25% of a wine marked with a defined region to be made from grapes outside that defined region. In addition, the Australian Consumer Law provides sanctions in the case that a label is deemed to be misleading or deceptive. Section 40F(7) of the AGWA Act also sets out that the ordinary meaning of misleading is not affected by the provisions in the AGWA Act pertaining to misleading descriptions and presentation. Accordingly, we submit that it is highly unlikely that consumers would be misled by the fact that up to 15 per cent of a wine marked with a GI might be made from grapes outside that GI region.

We submit that the concept that the GI only pertains to where the grapes are grown (but not where the wine is necessarily made) is well-known by wine consumers. This is consistent with the rules pertaining to GIs throughout the new world. Changes to this regulation would result in significant reductions in economy of scale for Australian wine producers. It would decrease efficiencies and jeopardise the viability of industry.

At page 349, the Commission comments that a GI region defined by Wine Australia may be different to that of what consumers expect. For example, the Barossa wine region (the GI), Barossa post code and Barossa local government areas are all different. The Commission noted that the extent and cost of such confusion is unclear, and is a topic on which they are welcoming further information.

Regulation 25 of the AGWA Regulations, which sets out the criteria for determining GIs, requires that the GIC have regard to, among other matters, the local government boundary maps in relation to an area. Accordingly, confusion in relation to local government delineations and GIs are unlikely to occur. However, there may be situations where a winery includes their address on a wine label which, in effect, states a GI from which the grapes used to make that wine did not originate. We think section 40F(5) of the AGWA Act sufficiently mitigates the risk of such practice misleading a consumer as to the country, region or locality in which the wine originated.

4. Reference to membership of GIC



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On page 329, the footnote states 'The Geographical Indications Committee comprises members from the Wine Australia Corporation, the Wine and Grape Growers Association, and the Winemakers Federation of Australia'. This is not entirely correct. Each of the members is appointed by AGWA, but each the Wine and Grape Growers Association, and the Winemakers Federation of Australia, nominate a member. We also note that the Wine Australia Corporation has been superseded by the Australian Grape and Wine Authority. We suggest the footnote be amended to read, 'The Geographical Indications Committee comprises members appointed by the Australian Grape and Wine Authority, including a member nominated by each the Wine and Grape Growers Association, and the Winemakers Federation of Australia'.

AGWA has provided copies of this letter to each of declared winemakers organisations, the Winemaker' Federation of Australia and the Wine Grape Growers of Australia, both of which have indicated that they support the comments and recommendations made within.

AGWA welcomes further engagement with the Productivity Commission in relation to the review of the current GI framework in Australia.

Yours sincerely,

Rachel Triggs

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Mr Tony Battaglione, Acting Chief Executive Officer, Winemaker's Federation of Australia