

Rural and Regional Affairs and Transport Committee
ANSWERS TO QUESTIONS ON NOTICE
Budget Estimates May 2013
Agriculture, Fisheries and Forestry

Question: 78

Division/Agency: Agricultural Productivity Division/Wine Australia

Topic: Export Licensing Fees

Proof Hansard page: Written

Senator EDWARDS asked:

1. As per Regulation 5(3) the financial standing of the applicant is taken into consideration when the application for licensing is required. Can Wine Australia explain what alterations are made in light of an applicant's financial standing?
2. Can Wine Australia provide the changes to the licensing fees over the past 5 years? How much in dollar value and in percentage terms have they changed each year?
3. For years when the licensing fees increased please provide the primary reason for the fee increase.
4. Given the changes that occurred in the past 12-18 months around the new, simplified auditing process, how have the fees changed?
5. Can Wine Australia quantify the number of businesses/wineries it has provided services to for each of the last 10 years?

Answer:

1. Regulation 5(1) of the Wine Australia Corporation Regulations 1981 provides that Wine Australia may, on the application of a person and after taking into consideration the prescribed matters in relation to the person, grant a licence to export grape products from Australia.

Regulation 5(3) provides a list of prescribed matters including the financial standing of the applicant. If Wine Australia becomes aware that a company is in an insolvency event, Wine Australia will liaise with the appointed receivers or managers regarding future use of the export licence.

Wine Australia also monitors whether licence holders are up to date with their licence payments to Wine Australia. Where licence holders are in arrears they may be blocked from the online wine export approval system pending payment of dues in arrears.

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2. Export licence fees remained unchanged for eight years from April 2004 to September 2012 and were then further increased in March 2013, as indicated in Table 1.

Table 1 – Licence fees (2004–13)

	2004	September 2012		March 2013	
		\$	% change	\$	% change
Licence Application – Levy-payer*	271	500	84.5	700	40
Licence Application - Non-Levy-payer*	1084	1084	n/a	1084	n/a
Licence Renewal	242	500	106.6	700	40

*A Levy-payer is a winemaker who is liable to pay the levy pursuant to Schedule 26 to the *Primary Industries (Excise) Levies Act 1999*.

3. Wine Australia increased the licence fee to fund the auditing and regulatory advice services which now account for a significant proportion of the costs of the regulatory function. At the same time all of the other charges have decreased. Table 2 below outlines the current and historical fees for each service.

Table 2 – Changes in a selection of key Wine Australia fees since 2011

Service	Pre 1 Jan 2011	Current fee	Change
	\$	\$	%
Licence Renewal Fee	242	700	182
Packaged product registration	58	28	- 52
Bulk Product Registration	125	62	-50
Permit (Non-electronic)	55	48	- 13
Permit (Electronic)	40	35	- 13
VII Certificate	19	12	- 37
Export certificates (Electronic)	28	25	- 11
Export certificates (Hard copy)	30	30	-

Following a 2011 review of the Wine Australia export controls, Wine Australia, in consultation with the Winemakers' Federation of Australia and Wine Grape Growers Australia, agreed that Wine Australia's regulatory activities should focus on an enhanced auditing and analysis program, and the provision of regulatory advice.

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These services account for a significant proportion of the costs of the regulatory function, and Wine Australia decided, in consultation with WFA, that these costs should be recovered as part of the export licence fee.

In addition to the licence fee, Wine Australia charges fees to meet the costs associated with administering product registrations and issuing export permits and import certificates.

4. See table 2 for details of service fee changes. While licence fees have increased, the reduction in other fees resulting in significant cost savings for medium to large exporters.
5. Wine Australia provides services to many businesses and wineries, including issuing export licences. The number of licences issued in the past 10 years is indicated in the following table.

Table 3 – number of export licences issued

30 June	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Export Licence	1249	1419	1577	1730	1729	1879	2036	2110	2172	2201

In addition, Wine Australia provides collaborative marketing opportunities to businesses on a user-pays basis, and provides an information service to all levy-payers free of charge.

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Question: 79

Division/Agency: Agricultural Productivity Division/Wine Australia

Topic: Wine Labelling

Proof Hansard page: Written

Senator RHIANNON asked:

1. With regard to amendments to the AWBC Act in 2010 – Sect. 40DA[2]: In consulting the wine industry why did DAFF choose to consult with the Wine Federation of Australia instead of inviting communication directly with all the wine grape levy payers on its database?
 - a) Does the WFA constitute a larger reach for consultation purposes?
2. What guarantee existed that all wine grape levy payers would be consulted over changes to the wine law that governed Geographical Indicators?
3. Who sat in on the AWBC’s Legislative Review Committee at the time of the consultation?
 - a. Which business did each individual represent?
 - b. What was the selection process?
 - c. What expertise did each member bring?
4. Concerning the Consolidated EC Declaration: at the end of the Agreement, in the third paragraph it states that the EC acknowledges common English words such as “doctor”, “mountain”, and “sun”, etc could be used for the description and presentation of Australian wines”.
 - a. Does this also refer to Australian wines imported into the EC that use “common English words”, which also happen to be words that describe EC Geographical Indicators such as “Doctor”, “Mountain”, and “Sun”?
 - b. If so, could it be understood the Declaration provides no reciprocal legal justification for Sect. 40DA[2]?
5. Does the creation of Section 40DA[2] enable the Trademark of a word that is also on the Register of Protected Names and protected under the Agreement?
 - a. How is such a possibility not a breach of our treaty obligations?
6. Can Wine Australia provide some examples from the last 3 years when it has advised in its publications the common English words exemption as per Section 40DA[2]?
 - a. What industry-wide explanation of the section been provided to wine levy payers around Australia?
7. The “Feet First” Decision [2004] by the Trade Marks Registrar’s Delegate overturned the “Queen Adelaide Regency” Case of 2000. What were the reasons for DAFF/AWBC to not appeal to quash the Delegate’s ruling?
 - a. Is there any consideration available by DAFF/AWBC of this case?
 - b. Did the ruling undermine the protection of Geographical Indicators in the EC and Australian?
8. Within Section 40DA[2] what is the meaning of subsection (2) (d) where according to Article 13 Subsection 3[a] of the “Agreement”: “protection is provided even when the true origin of the wine is indicated”?
 - a. How does subsection [2][e] differentiate the good faith defence from reckless behaviour by those describing and presenting a wine?

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Answer:

1. *The Australia-European Community Agreement on Trade in Wine* (the Wine Agreement) was implemented by the *Australian Wine and Brandy Corporation Amendment Act 2010* (the Amendment Act). Section 40DA(2) was introduced in the Amendment Act. The government consulted with industry through the Winemakers' Federation of Australia (WFA) during the negotiation of the Agreement and drafting of the Amendment Act.

It is common practice for DAFF to consult with industry representative organisations in developing legislation amendments. The Winemakers' Federation of Australia (WFA) is a declared winemakers organisation, under the *Wine Australia Corporation Act 1981*, and is therefore considered to be an appropriate body for industry consultation.

1. a. WFA represents the interests of small, medium and large winemakers.
2. In negotiating the Wine Agreement and in developing the Amendment Act, the government consulted widely with industry through WFA, Wine Grape Growers Australia and the Wine Australia Corporation (Wine Australia), including the Wine Australia Legislation Review Committee which is referred to in more detail in response to question 3.

Each of these organisations supported the Agreement and the Amendment Act. In supporting the amendments, WFA stated "The Australian Wine and Brandy Corporation Amendment Bill 2009 has the full support of WFA. The Wine Agreement will significantly improve market access to one of our key export markets and the Australian wine industry is keen to see the entry into force of the Agreement."

3. The Legislation Review Committee is a Committee of the Wine Australia Corporation established to advise the board of the corporation to assist it to ensure that the *Wine Australia Corporation Act 1980* and Regulations provide an effective framework for regulating the Australian wine sector. In 2009-10 when the relevant amendments were being discussed members of the LRC were:
Kate Thompson (Chair and Wine Australia board member)
Tony Battaglione (Winemakers' Federation of Australia)
Owen Malone (Treasury Wine Estates)
James Omond (Omond and Co.)
John Power (Department of Agriculture, Fisheries and Forestry)
Will Taylor (Finalyson's)
John Whelan (Constellation Wines)
Flora Sarris (Australian Vintage Ltd).
3. a. Members of the LRC were selected on the basis of their legal expertise and knowledge of the wine industry; and not on the basis of their employer.

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- b. The Wine Australia Corporation board considered the available expertise in the wine sector and invited people it considered appropriate.
 - c. Wine Australia selected members on the basis of expertise on wine law matters.
4. a. The Consolidated EC Declaration applies to all Australian made wines sold in Australia and exported to the European Union.
4. b. The European Commission did not request that Australia make a declaration similar to the Consolidated EC Declaration.
5. Yes. If a term can legitimately be used in the market place it can be part of a trade mark. Section 40DA(2) sets out the conditions in which use of a common English word would not be contrary to law. It reflects the Consolidated EC Declaration in the Wine Agreement. However, 40DA(2) does not create a possibility that a protected term would be granted registration as a trade mark. By its very nature, the common English word exception allows for descriptive or nominal use of a term which can be included in, but not be the sole subject of a trade mark right.
- a. Section 40DA(2) is not in breach of Australia's treaty obligations because it reflects the Consolidated EC Declaration.
6. The Wine Australia Corporation is unable to provide examples of communications on the common English word provisions.
- a. The focus of Wine Australia communications was on the words that could no longer be used on wine labels following implementation of the Australia-European Community Agreement on Trade in Wine.

Wine Australia designed its communications to minimise the risk of exporters breaching aspects of the law of which they may be unaware.

The common English word provisions introduced flexibility, rather than imposing new constraints on labelling.

- 7 and 7 a. DAFF did not consider appealing against the "Feet First" decision. Government agencies, including DAFF and IP Australia considered that the "Feet First" decision reflected the policy intent of all government's since 1994 in finding a balance between preventing use of terms which would mislead or confuse about the origin of the wine and allowing use which does not.

Any interested party could have sought cancellation of the trade mark through the Court. However, the European Commission has not raised concern about the decision. On the contrary, in subsequent negotiations they made a Consolidated Declaration to clarify that

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such use was not prohibited. This led to the inclusion of s 40DA(2) into the WAC Act, to put the intent beyond doubt.

7. No.

8. Section 40DA(2)(d) is not to be read in isolation. Together with the other paragraphs of section 40DA, it provides a circumstance in which it is not false to include a common English word that is a geographical indication.

Section 40DA implements the Consolidated EC Declaration and is therefore consistent with the wine agreement.

a. It is up to a court to determine if use is in good faith.