Law Council
OF AUSTRALIA

Business Law Section

**30 September 2026**

Department of Agriculture, Fisheries and Forestry
GPO Box 858
CANBERRA ACT 2601

By email: winepolicy@aff.gov.au

Dear Sir/Madam,

**Implementation of A-EU Free Trade Agreement—options for protecting wine geographical indications**

## *Question 1*

"Of the options put in this consultation paper, which is your preferred option to implement the Wine Agreement and A-EUFTA? Please explain why."

1. The Committee unanimously prefers **Option A** (a single system for all geographical indications, or **GI**s), but only subject to significant caveats. The key reasons for favouring a single system are as follows.

   - **Risk of divergent decisions:** Two separate systems create the possibility of inconsistent judgments or decisions on the same terminology under two different Acts.
   - **Divergence and overlap:** Two systems would tend to diverge in processes and standards over time, causing confusion as to whether "wine-adjacent" products fall within one system or the other.
   - **Consumer confusion:** Two systems would likely cause consumer confusion.
   - **Product-specific rules still possible:** A single system can still accommodate product-specific regulation (for example, for wine or rice) without a separate legislative framework.

2. However, the Committee was emphatic that **it does not endorse Option A as described in the Document**. Its principal concerns are as follows.

   - The Document suggests the new system could "take advantage of existing architecture within the trade marks framework". The Committee considers this a dangerous approach. GIs are fundamentally different from trade marks: they are not indicators of source, they are not owned, and they operate on entirely different principles.
   - The Committee is strongly concerned that embedding the GI system within the trade marks framework would allow the Trade Marks Office, trade mark examiners and trade mark concepts to dominate and undermine a GI system that differs from a trade mark system in many respects.

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- The suggestion that GIs would need to be **renewed every 10 years** is also inappropriate. GIs are normally registered indefinitely until removed for non-use, and a renewal requirement is a trade mark concept being improperly imported.

3. **In summary:** the Committee prefers a single system but does not endorse Option A as framed. The system must not sit within the Trade Marks Act or be administered through the trade marks framework, and must instead be a standalone, sui generis GI system. This is essential to deliver the certainty and predictability that GI holders and the broader industry require.

### *Question 2*

"If Option A is preferred, what features of the current wine GI system should be contained within the Option A 'single system'?"

4. The Committee found this question difficult and did not reach a fully settled position, agreeing to revisit it at a future meeting. However, the following points are made:

- **Section 40DA(3) of the *Wine Act 2013* allows the use of an address where the grapes were not produced**. This section provides that the "description and presentation of wine is not false merely because it includes the address of the winery at which the wine was manufactured". This allows grapes from anywhere to be brought into a reputed wine-producing area that has a GI, made into wine in that GI area, and labelled with the winery's address bearing that GI. This can readily mislead or deceive consumers.
- **Section 40DB(2)(c) of the Wine Act now imports the doctrine of unfair competition into Australian law**, providing that the inclusion of a term in the description and presentation of wine (in the circumstances described in that provision) is not false if its use does not constitute unfair competition within the meaning of Article 10*bis* of the Paris Convention for the Protection of Industrial Property of 20 March 1883. Australia does not otherwise apply the law of unfair competition, so this provision should be repealed or significantly amended.
- **Right to damages:** The current Wine Act provides only for injunctions and criminal offences, not civil damages. The Committee considers that the new system should give GI holders the right to obtain **damages as well as injunctions**.
- **Private enforcement mechanism:** The current private prosecution route under the Wine Act is, in practice, essentially unworkable. The Committee considers that the new system should include specific provisions enabling a private individual or GI rights holder to take enforcement action through to completion.
- The 5 × 5 × 500 rule should not be carried over (discussed more fully under Question 5).

### *Question 3*

"If there were a single system for GIs, should wine GIs have a specific advisory committee to consider applications for the registration of wine GIs?"

5. The Committee's view is that **there should not simply be a wine-specific advisory committee**, **but rather advisory committees for each type of product**. The Committee's reasoning and recommendations include the following.

    - **The GI authority** (not the Trade Marks Office) **should have the power to appoint** permanent or temporary expert committees for each product type (e.g. wine, dairy, smallgoods).
    - **Expert composition is essential:** Committee members must have genuine expertise in the relevant product. Without this, decision makers with no relevant knowledge risk assessing whether a region has the reputational or qualitative characteristics necessary for GI recognition.
    - **Producer involvement:** Producers should be involved in the advisory process, as they understand the connection between a product and its geographical origin better than anyone else.
    - **Legal expertise required:** At least one legally trained member should sit on each committee to ensure compliance with natural justice and administrative law principles. The Committee cited the Coonawarra case[1] as an example of what goes wrong when no one on the decision-making body understands these requirements.
    - **Independence of committee members:** Members should generally be disinterested parties with no personal connection to the GI application, with an exception where the industry or region is so small that disinterested experts are unavailable.

### *Question 4*

"If there were a single system for GIs, are wine specific criteria (necessary for wine GIs?)"

6. The Committee considers **that there should be product-specific criteria for each type of GI product, but these criteria should not be set out in the primary legislation**. The key points include the following.

    - Criteria will be needed to determine what qualifies for GI protection for each product type (including wine), but the legislation should not prescribe these.
    - The criteria should be established through regulations made for each product type by the GI authority, not by the Act itself.
    - The regulations should not be overly prescriptive, so that advisory committees retain flexibility to take relevant considerations into account on a case-by-case basis.
    - The Committee discussed the tension between certainty and flexibility: legislative criteria expressed broadly provide certainty, while a case-by-case approach provides flexibility. The new system should strike this balance carefully, so that industry retains the predictability it needs while allowing appropriate scope for case-specific judgment.

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[1] *Beringer Blass Wine Estates Ltd v Geographical Indications Committee* (2002) 125 FCR 155.

- It is important to establish clear "connection requirements"—that is, how a product is connected to a location—which might include requirements about core ingredients being sourced from the area, or the product being made in the area.

### *Question 5*

"If there were a single system for GIs, should wine GIs continue to have a minimum size (5 vineyards each of 5 hectares collectively producing 500 tonnes)?"

7. The Committee unanimously agrees that **the 5 × 5 × 500 rule should be abolished**, for the following reasons.

    - **Impractical and arbitrary:** If one of the original five producers sells to another, the number of producers drops to four, yet there is no legal mechanism for revoking the GI as a result. If the rule is not enforced on an ongoing basis, its purpose as an entry threshold is undermined.
    - **Unnecessarily restrictive:** It prevents a single producer with a unique product and terroir from obtaining GI protection, even where the product has genuine geographical distinctiveness.
    - **Inconsistent with non-wine products:** If GIs are to be extended to other products (beef, cheese, berries, wool), applying analogous minimum-size requirements would quickly become absurd.
    - **Historical origins are outdated:** The rule was introduced as the Australian wine sector, which was consulted in the early 1990s when Australia was negotiating the Agreement on Trade in Wine with the EC, disliked the concept of "monopoles" (one vigneron owning an entire GI, like La Tâche or Clos de Tart or Chateau Grillet) was not something that they wanted Australia to adopt. The committee considered this rationale to be irrelevant to modern circumstances.
    - **Climate change and sustainability:** Conditions such as minimum tonnage may become impossible to meet due to changing weather patterns, and it would be unjust for a region to lose its GI status on that basis.
    - The Committee also considers that **criteria should not descend to this level of prescriptive detail**. While there should be product-specific criteria, they should be set at a higher and more flexible level.

### *Question 6*

"If there were a single system for GIs, should it be maintained as under the current system, that wine GIs cannot be amended?"

8. The Committee unanimously agreed that GIs must be capable of amendment, and that the current position (or at least the widespread belief that wine GIs cannot be amended under Australian law) is incorrect and should not be maintained. Key points included the following.

    - **Climate change:** Regional boundaries, growing conditions and production characteristics change over time. The French have been working on amending the boundaries of Champagne for over 20 years. The legislation must expressly permit amendment of GI boundaries and associated criteria.

- **Statutory interpretation argument:** Neil Young QC (as he then was) noted in the Coonawarra case that a statutory power to create a region implicitly includes the power to vary or amend it. Regardless of whether that view is correct as a matter of interpretation, the Committee considers the legislation should expressly provide for amendment to avoid any doubt.
- **Criteria must also be amendable:** It is not only boundaries that may need to change—the criteria and regulations for each GI must also be capable of amendment as products and conditions evolve.
- **Consistency across all GI types:** Any right to amend a GI should apply equally to wine and non-wine GIs.

### *Question 7*

"The new GI system will have the capacity to protect non-wine domestic GIs. Wine GIs are not intended to have a right of veto over the names of new non-wine domestic GIs but are there issues that need to be considered about the relationship between new domestic non-wine GIs and wine GIs?"

9. The Committee considers this **the most difficult of all the questions** and did not reach a definitive position, agreeing it requires further careful consideration. The main issues discussed are:

    - **Boundary conflicts:** Where a geographical name (e.g. "Barossa Valley") is used for both wine and non-wine products, the boundaries of the GI region may differ for each product type. This creates complexity—for example, if a wool producer's paddocks fall outside the wine GI boundary but within the commonly understood "Barossa Valley", disputes over entitlement to use the name could arise.
    - **Consumer confusion:** Differing boundaries for the same geographical name across different and unrelated products could potentially confuse consumers, although several Committee members question whether consumers would actually be troubled by this.
    - **Related products from the same source:** The example given was beef and cheese from the same herd of cattle in the same region. In that scenario, coexistence of GIs for different products from the same geographical area seems natural and unproblematic.
    - **European approach:** In Europe, only one product per geographical name is generally permitted. This avoids these issues but is more restrictive.
    - **Producer concerns vs consumer perspective:** Boundary disputes are more likely to be contentious between producers than problematic for consumers, who simply want assurance that a product labelled with a GI genuinely comes from that region.
    - **No rush to resolution:** The Committee agrees this issue requires very careful consideration and should not be resolved hastily. It certainly should not be left to the GI Office (if one is created), let alone the Trade Marks Office, to determine.
    - **Allowing existing wine GIs with a reputation** to be used for new (non-wine) products would give a springboard advantage to products with no reputation of their own. The Committee considers this undesirable and recommends that the new system guard against it.

10. The Committee would be pleased to discuss any aspect of the submission. Please contact the member of the Intellectual Property Committee, Stephen Stern [redacted], if you would like to do so.

Yours sincerely



**Adrian Varrasso**
**Chair, Business Law Section**