

# Departmental Disclosure Statement

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Geographical Indications (Wine and Spirits) Registration Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment (MBIE)

MBIE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

2 October 2015

**Contents**

Contents..... 2

Part One: General Policy Statement ..... 3

Part Two: Background Material and Policy Information ..... 5

Part Three: Testing of Legislative Content..... 7

Part Four: Significant Legislative Features ..... 9

## Part One: General Policy Statement

This Bill amends the Geographical Indications (Wine and Spirits) Registration Act 2006 (the **principal Act**). The principal Act was enacted in 2006, but has not yet been brought into force. The principal Act provides a mechanism whereby geographical indications for wines or spirits (**GIs**) can be registered. Section 6(1) of the principal Act defines a geographical indication as an indication that identifies a wine or spirit as originating in the territory of a country, or a region or locality in that territory, where a given quality, or reputation, or other characteristic, of the wine or spirit is essentially attributable to its geographical origin.

In order for a wine or spirit to carry a registered geographical indication on its label, the wine or spirit must meet the requirements set out in sections 21 to 24 of the principal Act.

In December 2014, the Government decided that the principal Act should be brought into force in order to support the trade strategies of the New Zealand wine industry, and to support New Zealand's interests in negotiating a free trade agreement between New Zealand and the European Union.

The Ministry of Business, Innovation, and Employment identified some issues with the principal Act that should be addressed before the principal Act is brought into force.

### **Minor Amendments**

Some of these amendments are minor and technical and are intended to clarify wording, correct inconsistencies, or ensure consistent treatment of trade marks and geographical indications where they are similar.

Other more substantive amendments to the principal Act are being made to ensure the workability and sustainability of the register of geographical indications.

### **Fixed terms for geographical indications**

Once a GI is registered, it remains on the register indefinitely until removed or cancelled. There is no provision that would enable costs of maintenance of the register to be recovered from GI users once a GI has been placed on the register or to encourage the removal of obsolete GIs.

This issue is addressed by amending the principal Act to provide that GIs will lapse after a fixed term of 10 years, unless renewed. Renewal fees will allow the long-term costs of maintaining the register to be met from and has the advantage that GIs that are no longer in use are likely to lapse, which will make GIs available for third party use in a non-GI context, (for example, as trade marks). There is no limit on the number of times a GI registration can be renewed.

### **Origin of wine**

Another issue that has been identified is with the requirement in the principal Act that for a wine to be labelled with a New Zealand registered GI at least 85% of the wine must come from grapes harvested in the region to which the GI relates (the **85% rule**). There is no restriction on where the other 15% of the wine must originate from. As it stands, the other 15% can originate from another country.

A wine labelled with a New Zealand registered GI that contains wine from another country could mislead consumers, and diminish the integrity and reputation of New Zealand wines.

To deal address this, the principal Act will is being amended to provide that where a wine is labelled with a New Zealand registered GI, all the wine must be made from grapes harvested in New Zealand.

#### **Miscellaneous amendments**

Other amendments being made to the principal Act are intended to ensure that the GI registration system operates smoothly and meets the objectives set out in section 3 of the principal Act. Those amendments include—

- providing for restoration of a GI to the register in accordance with prescribed requirements and on fulfilment of any conditions specified by the Registrar;
- providing that the terms “New Zealand”, “North Island”, and “South Island” are enduring New Zealand registered GIs;
- providing that the Registrar may refuse an application for registering a GI whose use or registration would likely be offensive to a significant section of community, including Māori;
- providing that amendments to a registered GI would only be permitted if the amendments did not substantially alter the character of the GI (while allowing amendments to the associated boundaries and conditions of use of the GI); and
- providing the Registrar with the ability to award costs, and require security for costs, in relation to proceedings for opposition to the registration, removal, or alteration of a GI.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
Economic Analysis of Geographical Indications (Wine and Spirits) Registration Act 2006, Covec Ltd 2014, <a href="http://www.mbie.govt.nz/info-services/business/intellectual-property/geographical-indications/resolveuid/3326f31d8114443db46811e6f9573aed">http://www.mbie.govt.nz/info-services/business/intellectual-property/geographical-indications/resolveuid/3326f31d8114443db46811e6f9573aed</a>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<ol style="list-style-type: none"> <li>Geographical Indications (Wine and Spirits) Registration Act 2006), Ministry of Business, Innovation and Employment, December 2014 <i>Note that portions of this RIS have been redacted under the OIA</i></li> <li>Implementation of the Geographical Indications (Wine and Spirits) Registration Act 2006, March 2015, Ministry of Business Innovation and Employment <i>Note that portions of this RIS have been redacted under the OIA</i></li> <li>Amendment of the 85% rule in section 21(a) of the Geographical Indications (Wine and Spirits) Registration Act 2006.</li> </ol> <p>These regulatory impact statements can be found at:  <a href="http://www.mbie.govt.nz/info-services/business/intellectual-property/geographical-indications/implementation-geographical-indications-wines-spirits-registration-act-2006">http://www.mbie.govt.nz/info-services/business/intellectual-property/geographical-indications/implementation-geographical-indications-wines-spirits-registration-act-2006</a> </p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
The Regulatory impact Statements did not meet the threshold for RIA Team Assessment.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The Ministry of Foreign Affairs and Trade was consulted during the development of this Bill.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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The amendments proposed in the Bill deal largely with procedural matters that, with one exception do not affect the criteria for registering GIs or the rights provided by registration.
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One provision of the Bill requires the Registrar of Geographical Indications to refuse to register a geographical indication whose use or registration would likely be offensive to a significant section of society, including Maori.
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Without this provision, it would be possible to register a Maori geographical name where use or registration of that name in association with alcoholic beverages may be offensive to Maori. The provision mirrors a similar provision in the Trade Marks Act 2002.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>
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NO
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### Offences, penalties and court jurisdictions

#### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>
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YES
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New section 42(3)(aa) requires the name and address of the registrant to be recorded in the register. Although not a requirement in the principal Act, this information would be recorded and published even in the absence of a requirement.
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<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>
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NO
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## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
New Zealand Winegrowers, the industry body representing New Zealand grape growers and winemakers, and Spirits New Zealand, the industry body representing New Zealand spirits producers and importers, were consulted during the development of this Bill.	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
The proposals have been assessed and agreed to by the Intellectual Property Office of New Zealand, who will be responsible for administering the GI Act.	



## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
<p>Under the GI Act (as enacted), the costs of administering the Register of Geographical Indications would be wholly funded from fees charged to applicants for registration, and to third parties wishing to oppose, remove or amend registrations.</p> <p>In order to keep the initial application fees low, so as not to discourage use of the registration system, the initial application fee will be less than the actual cost of processing the application.</p> <p>The Bill will establish a system whereby renewal fees must be paid to keep a registration current. Funds collected through renewal fees will be used to subsidise application fees and other fees, as is done with other registered intellectual property rights including patents and trade marks.</p> <p>The Bill will provide for explicit authority for the renewal fees to be used in this way, so that the total fees collected will cover the cost of administering the Register.</p>	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
<p>This Bill provides a decision-making power to the Registrar to restore a geographical indication to the register, award costs, require security for costs, treat proceedings as abandoned if security for costs is not given.</p>	

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
This Bill amends the power to make regulations in relation of recovery of costs as incurred by the Registrar or on a cross-subsidisation basis within the GI regime.	

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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