

Reprint  
as at 26 November 2016



## Geographical Indications (Wine and Spirits) Registration Act 2006

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Date of assent    21 November 2006  
Commencement    see section 2

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

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**1 Title**

This Act is the Geographical Indications (Wine and Spirits) Registration Act 2006.

**2 Commencement**

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) One or more Orders in Council may be made appointing different dates for the commencement of different provisions.
- (3) Any provision of this Act that is not already in force on 1 July 2018 comes into force on that date.

Section 2(1): section 62 brought into force, on 14 April 2008, by clause 2 of the Geographical Indications Act 1994 Repeal Order 2008 (SR 2008/64).

Section 2(3): inserted, on 26 November 2016, by section 4 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**Part 1  
Preliminary provisions**

**3 Purpose**

The purposes of this Act are to—

- (a) contribute to the development and continual growth of, and innovation in, the wine and spirits industries in New Zealand by providing a suitable legal framework for the registration of geographical indications; and
- (b) provide a sound trading and marketing environment that facilitates, rather than creates barriers to, the trade in wine and spirits; and
- (c) protect the interests of consumers of wine and spirits in New Zealand by providing assurance that a wine or spirit using a registered geographical indication originates in the territory, region, or locality to which the registered geographical indication relates; and
- (d) facilitate the purposes set out in paragraphs (a), (b), and (c) in a manner consistent with New Zealand's rights and obligations under the TRIPS Agreement.

Section 3(c): replaced, on 26 November 2016, by section 5 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 3(d): inserted, on 26 November 2016, by section 5 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**4 Interpretation**

In this Act, unless the context requires otherwise,—

**bottled** means placed or contained in a bottle or other container used for wine or spirits

**committee** means a geographical indications committee established under section 53

**country** includes a member of the World Trade Organization established by Article 1 of the WTO Agreement

**court** means the High Court

**enduring New Zealand geographical indication** has the meaning given to it in section 6A

**foreign geographical indication** has the meaning given to it in section 6(3)

**foreign registered geographical indication** has the meaning given to it in section 7(3)

**geographical indication** has the meaning given to it in section 6(1)

**homonymous geographical indication** has the meaning given to it in section 19(2)

**international agreement** means any bilateral or multilateral treaty, convention, or agreement to which New Zealand is a party, and any arrangement between New Zealand and any other country, concerning the protection of geographical indications

**ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa** means the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa continued under section 7(1) of the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008

**New Zealand geographical indication** has the meaning given to it in section 6(2)

**New Zealand registered geographical indication** has the meaning given to it in section 7(2)

**person** includes the government of a country, a corporation sole, an incorporated or unincorporated body or person, and any association or combination of individual persons or incorporated or unincorporated persons

**prescribed** means prescribed by regulations made under section 57

**register** means the register of registered geographical indications established under section 42

**registered geographical indication** has the meaning given to it in section 7(1)

**registrant**, in relation to a registered geographical indication, means the person upon whose application a geographical indication was registered, renewed, or re-registered (as the case may be)

**Registrar** means the Registrar of Geographical Indications appointed under section 34

**spirit** means a potable alcoholic distillate, including whisky, brandy, rum, gin, and vodka, produced by distillation of fermented liquor derived from food sources, so as to have the taste, aroma, and other characteristics generally attributable to that particular spirit

**Surveyor-General** means the Surveyor-General appointed under section 5 of the Cadastral Survey Act 2002

**trade** means any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods

**TRIPS Agreement** means the Agreement on Trade-Related Aspects of Intellectual Property set out in Annex 1C to the WTO Agreement

**wine** has the same meaning as **grape wine** in section 4(1) of the Wine Act 2003

**working day** means a day of the week other than—

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
- (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (b) the day observed in the appropriate area as the anniversary of the province of which the area forms part; and
- (c) a day in the period beginning with 25 December in any year and,—
  - (i) except in section 49, ending with 2 January in the following year; or
  - (ii) in section 49, ending with 15 January in the following year

**WTO Agreement** means the World Trade Organization Agreement adopted at Marrakesh on 15 April 1994, as revised or amended from time to time.

Section 4 **enduring New Zealand geographical indication**: inserted, on 26 November 2016, by section 6(1) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 4 **homonymous geographical indication**: inserted, on 26 November 2016, by section 6(1) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 4 **New Zealand Geographic Board**: repealed, on 26 November 2016, by section 6(2) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 4 **New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa**: inserted, on 26 November 2016, by section 6(2) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 4 **registrant**: inserted, on 26 November 2016, by section 6(1) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 4 **Registrar**: amended, on 26 November 2016, by section 6(3) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 4 **working day** paragraph (ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

## 5 Act binds the Crown

This Act binds the Crown.

## Part 2 Registered geographical indications

### *Nature of registered geographical indication*

## 6 What is geographical indication?

- (1) A **geographical indication** is 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.
- (2) A **New Zealand geographical indication** means a geographical indication that identifies a wine or spirit as originating in New Zealand.
- (3) A **foreign geographical indication** means a geographical indication that identifies a wine or spirit as originating in a country other than New Zealand.

## 6A What is enduring New Zealand geographical indication?

- (1) An **enduring New Zealand geographical indication**—
  - (a) is one of the following New Zealand geographical indications:
    - (i) New Zealand;
    - (ii) North Island;
    - (iii) South Island; and
  - (b) must be treated as—
    - (i) a registered geographical indication under section 8; and
    - (ii) being registered on and from the date of commencement of this section; and
  - (c) is to be recorded in Part 1 of the register.
- (2) An enduring New Zealand geographical indication is not subject to the following provisions:
  - (a) section 9A (duration of registration);
  - (b) section 45 (removal from register);
  - (c) section 46 (alteration of register).

Section 6A: inserted, on 26 November 2016, by section 7 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).



## **7 What is registered geographical indication?**

- (1) A **registered geographical indication** is a geographical indication that has been registered under section 8.
- (2) A **New Zealand registered geographical indication** is a New Zealand geographical indication that has been registered under section 8.
- (3) A **foreign registered geographical indication** is a foreign geographical indication that has been registered under section 8.

### *Registration*

## **8 Registration**

- (1) The Registrar registers a geographical indication by entering it in the register.
- (2) The Registrar may register a geographical indication except in the cases set out in sections 10 to 17.

Section 8(2): amended, on 26 November 2016, by section 8 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

## **9 Date of registration**

- (1) A registered geographical indication is deemed to be registered on and from the date of the application for registration.
- (2) The Registrar must not register a geographical indication until 6 months after the date of the application for registration.
- (3) The date of the application for registration is the date when the Registrar receives the application.

### *Duration of registration*

Heading: inserted, on 26 November 2016, by section 9 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

## **9A Duration of registration**

- (1) The registration of a geographical indication is effective for a period of 5 years commencing on the deemed date of registration.
- (2) The registration of a geographical indication may be renewed under section 47A.
- (3) This section does not affect a geographical indication that ceases to be registered before the expiry of the 5-year period referred to in subsection (1).

Compare: 2002 No 49 s 57

Section 9A: inserted, on 26 November 2016, by section 9 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

*Restrictions on registration***10 Geographical indication identical to registered geographical indication**

The Registrar must not register—

- (a) a geographical indication for a wine that is identical to a registered geographical indication for a wine in respect of the same or a similar geographical origin:
- (b) a geographical indication for a spirit that is identical to a registered geographical indication for a spirit in respect of the same or a similar geographical origin.

**11 Geographical indication identical to customary name of grape variety**

The Registrar must not register a geographical indication if it is identical to the customary name of a grape variety existing in New Zealand on 1 January 1995.

**12 Geographical indication identical to common name for wine or spirit**

The Registrar must not register—

- (a) a geographical indication for a wine if it is identical to the term customary in common language as the common name of a wine in New Zealand:
- (b) a geographical indication for a spirit if it is identical to the term customary in common language as the common name of a spirit in New Zealand.

**13 Foreign geographical indication**

The Registrar must not register a foreign geographical indication that is not, or has ceased to be, protected in its country of origin or that has fallen into disuse in that country.

**13A No registration of geographical indication if use or registration likely to be offensive**

The Registrar must not register a geographical indication if its use in relation to wine or spirits or its registration would, in the opinion of the Registrar, be likely to offend a significant section of the community, including Māori.

Compare: 2002 No 49 s 17(1)(c)

Section 13A: inserted, on 26 November 2016, by section 10 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**14 No registration of geographical indication if identical to trade mark for identical goods or services**

- (1) The Registrar must not register a geographical indication if it is identical to a trade mark and the trade mark is registered in New Zealand in respect of identical goods or services.

- (2) The Registrar must not register a geographical indication if—
  - (a) it is identical to a trade mark; and
  - (b) the owner of the trade mark has in good faith applied for the registration in New Zealand of the trade mark in respect of identical goods or services; and
  - (c) the trade mark's deemed date of registration (as defined in section 5 of the Trade Marks Act 2002), if the trade mark were to be registered, is earlier than the date of the application for registration of the geographical indication.
- (3) The Registrar must not register a geographical indication if it is identical to a trade mark and rights to the trade mark have been acquired through use in New Zealand in good faith in respect of identical goods or services.

**15 No registration of geographical indication if identical to trade mark for similar goods or services**

- (1) The Registrar must not register a geographical indication if—
  - (a) it is identical to a trade mark; and
  - (b) the trade mark is registered in New Zealand in respect of similar goods or services; and
  - (c) its use is likely to deceive or confuse.
- (2) The Registrar must not register a geographical indication if—
  - (a) it is identical to a trade mark; and
  - (b) the owner of the trade mark has in good faith applied for the registration in New Zealand of the trade mark in respect of similar goods or services; and
  - (c) the trade mark's deemed date of registration (as defined in section 5 of the Trade Marks Act 2002), if the trade mark were to be registered, is earlier than the date of the application for registration of the geographical indication; and
  - (d) its use is likely to deceive or confuse.
- (3) The Registrar must not register a geographical indication if—
  - (a) it is identical to a trade mark; and
  - (b) rights to the trade mark have been acquired through use in New Zealand in good faith in respect of similar goods or services; and
  - (c) its use is likely to deceive or confuse.

**16 No registration of geographical indication if similar to trade mark for identical goods or services**

- (1) The Registrar must not register a geographical indication if—
  - (a) it is similar to a trade mark; and

- (b) the trade mark is registered in New Zealand in respect of identical goods or services; and
  - (c) its use is likely to deceive or confuse.
- (2) The Registrar must not register a geographical indication if—
- (a) it is similar to a trade mark; and
  - (b) the owner of the trade mark has in good faith applied for the registration in New Zealand of the trade mark in respect of identical goods or services; and
  - (c) the trade mark's deemed date of registration (as defined in section 5 of the Trade Marks Act 2002), if the trade mark were to be registered, is earlier than the date of the application for registration of the geographical indication; and
  - (d) its use is likely to deceive or confuse.
- (3) The Registrar must not register a geographical indication if—
- (a) it is similar to a trade mark; and
  - (b) rights to the trade mark have been acquired through use in New Zealand in good faith in respect of identical goods or services; and
  - (c) its use is likely to deceive or confuse.

**17 No registration of geographical indication if similar to trade mark for similar goods or services**

- (1) The Registrar must not register a geographical indication if—
- (a) it is similar to a trade mark; and
  - (b) the trade mark is registered in New Zealand in respect of similar goods or services; and
  - (c) its use is likely to deceive or confuse.
- (2) The Registrar must not register a geographical indication if—
- (a) it is similar to a trade mark; and
  - (b) the owner of the trade mark has in good faith applied for the registration in New Zealand of the trade mark in respect of similar goods or services; and
  - (c) the trade mark's deemed date of registration (as defined in section 5 of the Trade Marks Act 2002), if the trade mark were to be registered, is earlier than the date of the application for registration of the geographical indication; and
  - (d) its use is likely to deceive or confuse.
- (3) The Registrar must not register a geographical indication if—
- (a) it is similar to a trade mark; and

- (b) rights to the trade mark have been acquired through use in New Zealand in good faith in respect of similar goods or services; and
- (c) its use is likely to deceive or confuse.

**18 When restrictions on registration as geographical indication do not apply in relation to trade mark**

- (1) The restrictions in sections 14 to 17 do not apply, and the Registrar may register a geographical indication that is identical or confusingly similar to a trade mark, if—
  - (a) the owner of the trade mark has consented to its registration as a geographical indication; or
  - (b) the Registrar considers that the geographical indication may co-exist with the trade mark.
- (2) In making a decision under subsection (1)(b), the Registrar must have regard to the following factors:
  - (a) the geographical indication's history of use in good faith in New Zealand;
  - (b) recognition of the geographical indication in New Zealand as a geographical indication;
  - (c) the legitimate interests of the owner of the trade mark and of third parties;
  - (d) any other relevant factors.

*Registration of homonymous geographical indication*

**19 Registrar may register homonymous geographical indication**

- (1) The Registrar may register a homonymous geographical indication under section 8.
- (2) A **homonymous geographical indication** is—
  - (a) a geographical indication for a wine that has the same spelling as, or sounds the same as,—
    - (i) a registered geographical indication for a wine having a different geographical origin; or
    - (ii) a geographical indication for a wine having a different geographical origin for which an application for registration under section 36 has been made; or
  - (b) a geographical indication for a spirit that has the same spelling as, or sounds the same as,—
    - (i) a registered geographical indication for a spirit having a different geographical origin; or

- (ii) a geographical indication for a spirit having a different geographical origin for which an application for registration under section 36 has been made.

## **20 Registrar may impose conditions when registering homonymous geographical indication**

- (1) For the purposes of section 19, the Registrar may register the homonymous geographical indication with conditions, or alter the register under sections 46 and 47 to include conditions for the use of the earlier registered geographical indication, or both.
- (2) In deciding what conditions (if any) to impose under subsection (1), the Registrar must take into account—
  - (a) the need for the equitable treatment of the producers of the wines or spirits to which the geographical indications relate; and
  - (b) the need to ensure that consumers are not misled.

### *Restrictions on use of registered geographical indications*

## **21 Restriction on use of New Zealand registered geographical indication for wine**

A person may use a New Zealand registered geographical indication or indications in trade in New Zealand in relation to a wine only if—

- (a) at least 85% of the wine is obtained from grapes harvested in the place or places of geographical origin or origins to which the New Zealand registered geographical indication or indications relate; and
- (ab) all of the constituent remainder of the wine referred to in paragraph (a) (if any) is obtained from grapes harvested in New Zealand; and
- (b) the New Zealand registered geographical indication or indications are used in accordance with their registration in New Zealand.

Section 21(a): amended, on 26 November 2016, by section 11(1) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 21(ab): inserted, on 26 November 2016, by section 11(2) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

## **22 Restriction on use of foreign registered geographical indication for wine**

A person may use a foreign registered geographical indication or indications in trade in New Zealand in relation to a wine only if—

- (a) that wine originated in the place or places of geographical origin or origins to which the foreign registered geographical indication or indications relate; and
- (b) the foreign registered geographical indication or indications are used in accordance with—

- (i) the scope of their protection in their country of origin (including any conditions as to their use imposed by their country of origin); and
- (ii) their registration in New Zealand (including any conditions imposed by the Registrar).

Section 22(a): amended, on 26 November 2016, by section 12(1) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 22(b): replaced, on 26 November 2016, by section 12(2) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

### **23 Restriction on use of New Zealand registered geographical indication for spirit**

A person may use a New Zealand registered geographical indication or indications in trade in New Zealand in relation to a spirit only if—

- (a) that spirit originated in the place of geographical origin to which the registered geographical indication or indications relate; and
- (b) the New Zealand registered geographical indication or indications are used in accordance with their registration in New Zealand.

Section 23(a): amended, on 26 November 2016, by section 13 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

### **24 Restriction on use of foreign registered geographical indication for spirit**

A person may use a foreign registered geographical indication or indications in trade in New Zealand in relation to a spirit only if—

- (a) that spirit originated in the place or places of geographical origin or origins to which the foreign registered geographical indication or indications relate; and
- (b) the foreign registered geographical indication or indications are used in accordance with—
  - (i) the scope of their protection in their country of origin (including any conditions as to their use imposed by their country of origin); and
  - (ii) their registration in New Zealand (including any conditions imposed by the Registrar).

Section 24(a): amended, on 26 November 2016, by section 14(1) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 24(b): replaced, on 26 November 2016, by section 14(2) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

### **25 Additional rules relating to restrictions on use**

The restrictions in sections 21 to 24 on the use of a registered geographical indication apply whether or not—

- (a) the true place of origin of the wine or spirit is indicated; or

- (b) the registered geographical indication is used in translation; or
- (c) the use of the registered geographical indication is accompanied by any of the words “kind”, “type”, “style”, “imitation”, or any similar word or expression.

Section 25(a): amended, on 26 November 2016, by section 15 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

## **26 Use of certain information not use of registered geographical indication**

For the purposes of sections 21 to 25, the use by a person (**A**) of any or all of the following information, in the course of trade and not in such a manner as to mislead the public, does not of itself constitute the use of a registered geographical indication in relation to a wine or spirit:

- (a) A’s name or the name of A’s predecessor in business:
- (b) a statement indicating the address where the wine or spirit was produced or bottled.

*When restrictions on use of registered geographical indication do not apply*

## **27 Wine or spirit never in New Zealand or in transit only**

The restrictions on the use of a registered geographical indication in sections 21 to 24 do not apply in respect of a wine or spirit that is—

- (a) never in New Zealand; or
- (b) in New Zealand only for the purpose of transit from one country to another, neither of which is New Zealand.

## **28 Bottling pre-dating registration of registered geographical indication**

The restrictions on the use of a registered geographical indication in sections 21 to 24 do not apply in respect of a wine or spirit that was bottled or was being bottled before the registered geographical indication relating to the wine or spirit was registered under this Act.

## **29 Continuous use**

- (1) The restrictions in sections 21 to 24 on the use of a registered geographical indication do not apply in respect of the continued and similar use by any New Zealand person or entity of a term that is a registered geographical indication (**a term**), in relation to a wine or spirit in New Zealand, if—
  - (a) that person or entity—
    - (i) is using the term in trade; and
    - (ii) has used the term in trade in a continuous manner at least from 15 April 1984; or
  - (b) that person or entity—
    - (i) is using the term in trade; and



- (ii) has used the term in trade in a continuous manner in good faith since before 15 April 1994.
- (1A) The restrictions in sections 21 to 24 on the use of a registered geographical indication do not apply in respect of the continued and similar use by any New Zealand person or entity of a term, in relation to a wine or spirit in New Zealand, if that person or entity—
- (a) is using the term in trade; and
  - (b) has used the term in trade in a continuous manner since acquiring the right to trade in a wine or spirit to which the exemption in subsection (1) applies.
- (2) In subsections (1) and (1A), **New Zealand person or entity** includes—
- (a) the Government of New Zealand;
  - (b) a New Zealand citizen;
  - (c) in the case of a natural person, a person who is ordinarily resident or domiciled in New Zealand;
  - (d) a body corporate established by or under New Zealand law;
  - (e) an unincorporated association established in New Zealand;
  - (f) an association of any of the persons or entities in paragraphs (a) to (e).

Compare: TRIPS Agreement art 24(4)

Section 29(1): replaced, on 26 November 2016, by section 16(1) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 29(1A): inserted, on 26 November 2016, by section 16(1) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 29(2): amended, on 26 November 2016, by section 16(2) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 29 compare note: inserted, on 26 November 2016, by section 16(3) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

### **30 Trade mark pre-dating registration of registered geographical indication**

- (1) The restrictions on the use of a registered geographical indication in sections 21 to 24 do not apply in respect of the use of a trade mark if, before the effective date,—
- (a) the trade mark has been registered in New Zealand; or
  - (b) registration of the trade mark in New Zealand has been applied for in good faith; or
  - (c) rights to the trade mark have been acquired by use in New Zealand in good faith.
- (2) In subsection (1), **effective date** means the later of 1 January 1995 and the date on which protection of the geographical indication in its country of origin began.

**31 Use of registered geographical indication in unregistered trade mark after 5 years after adverse use generally known**

- (1) The restrictions on the use of a registered geographical indication in sections 21 to 24 cease to apply to the use not in bad faith of a registered geographical indication in an unregistered trade mark after 5 years after its adverse use became generally known in New Zealand.
- (2) In subsection (1), **adverse use** means use of a registered geographical indication in an unregistered trade mark in contravention of the restrictions contained in sections 21 to 24.

**32 Unregistered geographical indication homonymous with registered geographical indication**

- (1) This section applies when a registered geographical indication and an unregistered geographical indication are homonymous.
- (2) The restrictions on the use of a registered geographical indication in sections 21 to 24 do not apply to the use of an unregistered geographical indication for a wine or spirit that originates in the place of geographical origin to which the unregistered geographical indication relates.

Section 32(2): amended, on 26 November 2016, by section 17 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**32A Use of words “New Zealand” to denote origin**

Despite sections 21 and 23, the use of the words “New Zealand” in relation to wine or spirits is not to be treated as use of the enduring New Zealand geographical indication “New Zealand” if the words are used—

- (a) to comply with other laws or regulations to denote the country of origin; and
- (b) in the course of trade and not in such a manner as to mislead the public.

Section 32A: inserted, on 26 November 2016, by section 18 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

*Effect of breach of restriction***33 Breach of restriction on use of registered geographical indication is breach of Fair Trading Act 1986**

A person who contravenes any of sections 21 to 24 contravenes section 9 of the Fair Trading Act 1986 and the provisions of that Act apply accordingly.

*Registrar***34 Registrar**

- (1) The chief executive of the ministry must, under the State Sector Act 1988, appoint a Registrar of Geographical Indications.

- (2) The Registrar must be an officer or employee of the ministry, and his or her appointment may be held either separately or in conjunction with any other office in the ministry.

Section 34(1): replaced, on 26 November 2016, by section 19 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

### **35 Registrar's seal**

- (1) The Registrar must have and use a seal of office bearing the impression of the New Zealand Coat of Arms and having inscribed in the margin the words "Registrar of Geographical Indications, New Zealand".
- (2) Every document bearing the imprint of the Registrar's seal of office, and purporting to be signed or issued by the Registrar, or by a person employed to assist the Registrar in the exercise of the Registrar's functions under this Act,—
- (a) must be received in evidence; and
  - (b) in the absence of proof to the contrary, must be treated as having been signed or issued by or under the direction of the Registrar.

Section 35(1): amended, on 26 November 2016, by section 20 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

### **35A Power of Registrar to delegate**

- (1) The Registrar may delegate to any person any of the Registrar's functions, duties, and powers, except this power of delegation.
- (2) The delegation—
- (a) must be in writing; and
  - (b) may be made subject to any restrictions and conditions that the Registrar thinks fit; and
  - (c) is revocable, at any time, in writing; and
  - (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar.
- (3) A person to whom any functions, duties, or powers are delegated may perform those functions and duties and exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A person who appears to act under a delegation must, in the absence of evidence to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (5) Any reference to the Registrar in this Act (or in regulations made under this Act) includes a reference to a person to whom the Registrar has delegated his or her power in respect of a thing delegated to that person.

Section 35A: inserted, on 26 November 2016, by section 21 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

*Process of registration***36 Interested person may apply for registration of geographical indication**

An interested person may apply in the prescribed form and on payment of the prescribed fee for the registration of a geographical indication.

**36A Registrar may amend application to substitute applicant**

- (1) The Registrar may, on the application of an interested person (**A**), amend a specified application made by another interested person (**B**) for registration of a geographical indication—
  - (a) by removing B's name and address; and
  - (b) by entering A's name and address as the substitute applicant.
- (2) The Registrar may exercise the powers under subsection (1) only—
  - (a) if—
    - (i) B consents to A being the substitute applicant; or
    - (ii) B has died or ceased to exist; and
  - (b) if the application is made in accordance with regulations made under section 57(1)(ea).

Section 36A: inserted, on 26 November 2016, by section 22 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**36B Registrar must give public notice of accepted application**

- (1) The Registrar must give public notice of an application for registration of a geographical indication that the Registrar has accepted.
- (2) The public notice must be given in the format, manner, and frequency that the Registrar thinks appropriate.

Compare: 2002 No 49 s 46; SR 2003/187 r 161

Section 36B: inserted, on 26 November 2016, by section 22 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**36C Interested person may oppose accepted application**

An interested person may, in accordance with any prescribed requirements, oppose an application for registration of a geographical indication that the Registrar has accepted.

Compare: 2002 No 49 s 47; 2013 No 68 s 92

Section 36C: inserted, on 26 November 2016, by section 22 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**37 Registrar must deal with application according to prescribed procedure**

- (1) The Registrar must deal with the application according to the procedure prescribed by regulations made under section 57.
- (2) Those regulations may include regulations for—

- (a) the acceptance or rejection of the application:
- (b) opposition, and determination of opposition, to an accepted application:
- (c) registration:
- (d) any other steps to be taken in dealing with the application.

### **38 Priority**

- (1) The first application for the registration of a geographical indication received by the Registrar has priority over any subsequent application for registration of an identical geographical indication—
  - (a) in respect of the same good (that is, wine or spirit); and
  - (b) having the same or a similar geographical origin.
- (2) The Registrar must reject any subsequent application received before the Registrar has accepted or rejected the first application.

### **39 Registrar may obtain advice and consult**

If the Registrar thinks it necessary, the Registrar may obtain advice on, and may consult about, any matter relating to—

- (a) an application for the registration of a geographical indication, including opposition to an accepted application; or
- (b) the registrability of a geographical indication; or
- (c) alterations to a registered geographical indication; or
- (d) the removal of a registered geographical indication from the register.

### **39A Function of advisory committee appointed under Trade Marks Act 2002**

It is a function of an advisory committee appointed under section 177(1) of the Trade Marks Act 2002 to advise the Registrar whether the use of a geographical indication in relation to wine or spirits, or the registration of the geographical indication, is, or is likely to be, offensive to Māori.

Compare: 2002 No 49 s 178

Section 39A: inserted, on 26 November 2016, by section 23 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

### **40 Hearing before exercise of Registrar's discretion**

- (1) The Registrar must not, without giving an interested person an opportunity of being heard, adversely exercise any discretionary or other power under this Act or regulations made under this Act in relation to—
  - (a) a registered geographical indication; or
  - (b) a geographical indication that is the subject of an application for registration under section 8.
- (2) Regulations made under section 57 may prescribe the procedure for the opportunity to be heard.

**41 Conditions of use**

The Registrar may register a geographical indication with conditions as the Registrar thinks fit, including conditions on the use of the geographical indication.

*Register of registered geographical indications***42 Register**

- (1) The Registrar must establish and maintain a register of registered geographical indications.
- (2) The register must contain 3 parts, as follows:
  - (a) Part 1, for enduring New Zealand geographical indications:
  - (b) Part 2, for all registered geographical indications except those to which paragraphs (a) and (c) refer:
  - (c) Part 3, for geographical indications that have been registered in accordance with regulations made under section 57(1)(j).
- (3) The register must specify, in respect of each registered geographical indication,—
  - (a) whether it relates to a wine or a spirit or to both; and
  - (b) its boundaries, unless it is a foreign registered geographical indication (including a foreign registered geographical indication in Part 3 of the register); and
  - (c) any conditions that relate to it; and
  - (ca) the name and address of the registrant; and
  - (d) the date of registration (except in the case of an enduring New Zealand geographical indication).
- (4) The register may be kept in any manner that the Registrar thinks fit, including, either wholly or partly, by means of a device or facility—
  - (a) that records or stores information electronically or by other means; and
  - (b) that permits the information so recorded or stored to be readily inspected or reproduced in usable form.
- (5) The register is prima facie evidence of any matters required or authorised by or under this Act to be entered in it.

Section 42(2): replaced, on 26 November 2016, by section 24(1) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 42(3)(b): amended, on 26 November 2016, by section 24(2) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 42(3)(ca): inserted, on 26 November 2016, by section 24(3) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 42(3)(d): replaced, on 26 November 2016, by section 24(4) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**43 Public access to register**

- (1) The Registrar must allow access to the register during each working day, at the times determined by the Registrar for inspection, by any person who pays the prescribed fee (if any).
- (2) The Registrar must provide a copy, or a certified copy, of any particulars on the register to any person who applies for it and pays the prescribed fee (if any).
- (3) A certified copy of particulars on the register signed by the Registrar and sealed with the Registrar's seal is conclusive evidence for all purposes that the particulars on the certified copy have been duly registered.

Section 43(1): amended, on 26 November 2016, by section 25 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**44 Registrar may correct obvious errors or omissions**

If satisfied that there is an obvious error in, or omission from, the register, the Registrar may correct it.

**45 Removal from register**

- (1) The Registrar may remove a registered geographical indication from the register if satisfied that any of the following grounds exist:
  - (a) in the case of a foreign geographical indication, it is not, or has ceased to be, protected in its country of origin:
  - (b) it has fallen into disuse in its country of origin:
  - (c) it should not have been registered because it did not meet the requirements of the definition of a geographical indication in section 6(1):
  - (d) it should not have been registered because it fell under 1 or more of the restrictions in sections 10 to 17:
  - (e) it has become a term customary in common language as the common name for a wine or spirit in New Zealand.
- (2) The Registrar may remove a registered geographical indication under subsection (1) on his or her own initiative, or on the application of any interested person.
- (3) The Registrar may refuse an application for removal that in the Registrar's opinion is vexatious or frivolous.
- (4) The Registrar must remove a registered geographical indication from the register on its expiry.

Section 45(1)(d): amended, on 26 November 2016, by section 26(1) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 45(4): inserted, on 26 November 2016, by section 26(2) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**45A Notice of proposed removal**

- (1) If the Registrar proposes on his or her own initiative to remove a registered geographical indication from the register, the Registrar must—
  - (a) notify the registrant of the grounds of the proposed removal; and
  - (b) give public notice of the proposed removal.
- (2) If the Registrar receives an application to remove a registered geographical indication from the register, the Registrar must,—
  - (a) if the applicant is not the registrant, send a copy of the application to the registrant; and
  - (b) give public notice of the proposed removal.
- (3) The public notice must be given in the format, manner, and frequency that the Registrar thinks appropriate.

Section 45A: inserted, on 26 November 2016, by section 27 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**45B Interested person may oppose proposed removal**

If the Registrar gives notice of the proposed removal of a registered geographical indication under section 45A, an interested person may, in accordance with any prescribed requirements, oppose the proposed removal.

Section 45B: inserted, on 26 November 2016, by section 27 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**46 Alteration of register**

- (1) The Registrar may, on his or her own initiative or on the application of an interested person, alter a registered geographical indication, or the conditions or boundaries relating to a registered geographical indication, if the Registrar is satisfied that—
  - (a) the alteration is necessary; and
  - (b) the alteration will not substantially alter the character of the geographical indication; and
  - (c) the alteration is not likely to mislead the public.
- (1A) The Registrar may, on the application of a registrant, alter the registrant's name or address on the register in relation to a specified registered geographical indication.
- (1B) The Registrar may, on the application of an interested person (other than the registrant), alter the register in relation to a specified registered geographical indication—
  - (a) by removing the registrant's name and address; and
  - (b) by entering the applicant's name and address as the substitute registrant.
- (1C) The Registrar may exercise the powers under subsection (1B) only—



- (a) if—
    - (i) the registrant consents to the interested person being the substitute registrant; or
    - (ii) the registrant has died or ceased to exist; and
  - (b) if the application is made in accordance with regulations made under section 57(1)(ea).
- (2) The Registrar may refuse an application for alteration that in the Registrar's opinion is vexatious or frivolous.

Section 46(1): replaced, on 26 November 2016, by section 28(1) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 46(1A): inserted, on 26 November 2016, by section 28(2) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 46(1B): inserted, on 26 November 2016, by section 28(2) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 46(1C): inserted, on 26 November 2016, by section 28(2) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

#### **46A Notice of proposed alteration**

- (1) If the Registrar proposes on his or her own initiative to alter a registered geographical indication, or the conditions or boundaries relating to a registered geographical indication, the Registrar must—
- (a) notify the registrant of the grounds of the proposed alteration; and
  - (b) give public notice of the proposed alteration.
- (2) If the Registrar receives an application to alter a registered geographical indication, or the conditions or boundaries relating to a registered geographical indication, the Registrar must,—
- (a) if the applicant is not the registrant, send a copy of the application to the registrant; and
  - (b) give public notice of the proposed alteration.
- (3) The public notice must be given in the format, manner, and frequency that the Registrar thinks appropriate.

Section 46A: inserted, on 26 November 2016, by section 29 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

#### **46B Interested person may oppose proposed alteration**

If the Registrar gives notice of the proposed alteration of a registered geographical indication or the conditions or boundaries relating to a registered geographical indication under section 46A, an interested person may, in accordance with any prescribed requirements, oppose the proposed alteration.

Compare: 2013 No 68 s 87

Section 46B: inserted, on 26 November 2016, by section 29 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**46C Alteration of register concerning certain inconsistent information**

- (1) This section applies if information in the register relating to a person is inconsistent with the primary business data of that person in the New Zealand Business Number Register.
- (2) If this section applies, the Registrar may, in the prescribed manner (if any), alter the information in the register so that it is consistent with the primary business data in the New Zealand Business Number Register.
- (3) In this section, **primary business data** has the same meaning as in section 20(2) of the New Zealand Business Number Act 2016.

Compare: 2002 No 49 s 78A

Section 46C: inserted, on 26 November 2016, by section 29 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**47 Procedure for removal or alteration**

- (1) Before removing a registered geographical indication from the register or altering the register, the Registrar must follow the procedure prescribed by regulations made under section 57.
- (2) Those regulations may include regulations for—
  - (a) *[Repealed]*
  - (b) opposition, and determination of opposition, to the removal or alteration:
  - (c) any other steps to be taken in effecting the removal or alteration.
- (3) This section does not affect the power of the Registrar to remove a registered geographical indication from the register in accordance with section 45(4).

Section 47(2)(a): repealed, on 26 November 2016, by section 30(1) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 47(3): inserted, on 26 November 2016, by section 30(2) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

*Renewal of registration*

Heading: inserted, on 26 November 2016, by section 31 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**47A Renewal of registration**

- (1) The Registrar must renew the registration of a geographical indication on an application by an interested person that is made in accordance with any prescribed requirements.
- (2) The registration of a geographical indication may be renewed for a further period of 10 years.

Compare: 2002 No 49 s 58

Section 47A: inserted, on 26 November 2016, by section 31 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**47B Notice of pending expiration of registration of geographical indication**

- (1) If no interested person has made an application under section 47A within a prescribed period before the registration of a geographical indication expires, the Registrar must—
  - (a) give notice in writing of the pending expiration of the geographical indication—
    - (i) to the registrant; and
    - (ii) to other persons and organisations that the Registrar considers are representative of the producers of the wine or spirits to which the geographical indication relates; and
  - (b) give public notice of the pending expiration of the geographical indication.
- (2) A notice under subsection (1) must—
  - (a) be in the prescribed form (if any); and
  - (b) at a minimum, state—
    - (i) the date on which the registration of the geographical indication will expire; and
    - (ii) any conditions as to the payment of fees on which a renewal of registration may be obtained; and
    - (iii) that, if the conditions referred to in subparagraph (ii) have not been complied with, the geographical indication will be removed from the register.

Compare: 2002 No 49 s 59

Section 47B: inserted, on 26 November 2016, by section 31 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**47C Status of geographical indication or trade mark removed from respective register for non-payment of renewal fee**

- (1) A geographical indication or trade mark that has been removed from its respective register for non-payment of the renewal fee must be taken into account for a period of 1 year after the date of expiry of the registered geographical indication or registered trade mark when determining the registrability of a later geographical indication application.
- (2) Subsection (1) does not apply if the Registrar is satisfied that,—
  - (a) in the case of a trade mark that has been removed from its register,—
    - (i) there has been no genuine use of the trade mark during the 2 years immediately before its removal; or
    - (ii) no deception or confusion would be likely to arise from the use of the geographical indication that is the subject of the application by reason of any previous use of the trade mark:

- (b) in the case of a geographical indication that has been removed from its register,—
- (i) in the case of a foreign geographical indication, it is not, or has ceased to be, protected in its country of origin; or
  - (ii) the geographical indication has fallen into disuse in its country of origin.

Compare: 2002 No 49 s 60

Section 47C: inserted, on 26 November 2016, by section 31 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

### *Restoration to register*

Heading: inserted, on 26 November 2016, by section 31 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

#### **47D Registrar may restore expired geographical indication to register**

- (1) This section applies if a geographical indication has expired and been removed from the register in accordance with section 45(4) within the previous 12 months.
- (2) The Registrar may restore an expired geographical indication to the register in accordance with any prescribed requirements.
- (3) A geographical indication that is restored to the register is taken to have continued in existence as if it had not been removed from the register.

Section 47D: inserted, on 26 November 2016, by section 31 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

### *Appeals*

#### **48 Appeals in relation to Registrar's decisions**

A person who is aggrieved by a decision of the Registrar under this Act may appeal to the court.

#### **49 Notice of appeal**

Notice of an appeal under section 48 must be filed in the court and served on the Registrar within 20 working days after the date on which the decision appealed against was given.

#### **50 Hearing of appeal**

- (1) On an appeal, the court must hear the Registrar and the parties.
- (2) An appeal must be heard only on the materials stated by the Registrar unless a party, either in the manner prescribed or by leave of the court, brings forward further material for the consideration of the court.
- (3) In the case of an appeal against the acceptance of an application for registration of a geographical indication, or the registration of a geographical indication,—

- (a) no further grounds are permitted by the person opposing the application or registration, other than those stated by the person opposing, except with the permission of the court; and
- (b) if further grounds of objection are permitted, the applicant for registration may, on giving notice as prescribed in regulations made under section 57, withdraw the application without paying the costs of the person opposing.

**51 Determination of appeal**

In determining an appeal, the court may—

- (a) confirm, modify, or reverse the Registrar’s decision or any part of it;
- (b) exercise any of the powers that could have been exercised by the Registrar in relation to the matter to which the appeal relates.

**52 Provisions pending determination of appeal**

The decision to which an appeal under this Act relates remains in full force pending the determination of the appeal unless the court orders otherwise.

*Geographical indications committees*

**53 When Registrar may establish geographical indications committee**

- (1) The Registrar may, if the Registrar thinks fit, establish a geographical indications committee in relation to an application for 1 or more of the following:
  - (a) registration of a geographical indication;
  - (b) alteration of a registered geographical indication;
  - (c) removal of a registered geographical indication from the register.
- (2) In deciding whether or not to establish a geographical indications committee under subsection (1) in relation to an application for registration of a geographical indication, the Registrar must have regard to the following factors:
  - (a) whether any person opposes or, in the opinion of the Registrar, is likely to oppose the application for registration;
  - (b) whether the application is supported by the relevant national and regional organisations representing the wine or spirits industry, as the case may be;
  - (c) whether there are any existing trade mark rights that may need to be taken into account in considering the application;
  - (d) whether there are any existing homonymous geographical indications;
  - (e) whether, if the application is successful, the geographical indication might be registered subject to conditions;
  - (f) the history and the current use of the geographical indication in New Zealand and the country of origin;

- (g) any other factors that the Registrar considers relevant.
- (3) The function of the committee is to advise the Registrar on issues relating to the matters specified in subsection (1), including—
  - (a) the boundaries of a geographical indication; and
  - (b) the use of a place name as a geographical indication.

Section 53(3): replaced, on 26 November 2016, by section 32 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

#### **54 Membership of committee**

- (1) The Registrar may at any time appoint a member of the committee.
- (2) Each committee must include the following members:
  - (a) the Surveyor-General (or the Surveyor-General's representative) acting in his or her capacity as Surveyor-General;
  - (b) a member of the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa, who is not the Surveyor-General, acting in his or her capacity as a member of that board;
  - (c) 1 or more persons who, in the Registrar's opinion, have appropriate knowledge of the wine or spirits industry, as the case may be.
- (3) Subsection (2)(a) or (b) does not apply if the matter on which the Registrar requires advice does not relate to boundaries or place names respectively.
- (4) In appointing a person under subsection (2)(c), the Registrar must first consult the relevant national and regional organisations representing the wine or spirits industry, as the case may be.
- (5) The Registrar may appoint as members of the committee any other persons who, in the opinion of the Registrar, have appropriate knowledge or expertise in relation to the matter to be considered by the committee.
- (6) A member of the committee may resign office by notice in writing to the Registrar.

Section 54(2)(b): amended, on 26 November 2016, by section 33 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

#### **55 Discharge of committee or removal of member**

- (1) The Registrar may at any time discharge the committee.
- (2) The Registrar may at any time remove a member of the committee, except the Surveyor-General, and appoint another person in his or her place.

#### **56 Proceedings of committee**

- (1) Meetings of a committee must be held at the times and places as the committee or the chairperson from time to time decides.
- (2) The quorum for a meeting of a committee is 3 members.

- (3) Every question before a committee must be determined by a majority of the votes of the members present at the meeting concerned.
- (4) The chairperson of a committee has a deliberative vote and, in the case of an equality of votes, a casting vote.
- (5) Except as provided in this section and in any regulations made under this Act, and subject to any direction given by the Registrar, the committee may regulate its own procedure.

*Miscellaneous*

**57 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
  - (a) prescribing the form of, and the requirements relating to, applications under this Act:
  - (b) prescribing the procedure for dealing with an application for registration of a geographical indication:
  - (c) prescribing any transitional arrangements for making or dealing with an application for registration of a geographical indication:
  - (d) prescribing the procedure relating to the removal of a registered geographical indication from the register:
  - (e) prescribing the procedure relating to the alteration of a geographical indication on the register:
  - (ea) prescribing the procedure relating to the alteration of the name and address of an applicant or a registrant (including the substitution of information relating to an applicant or a registrant):
  - (eb) prescribing the manner in which the Registrar may alter the register under section 46C, including prescribing procedures, requirements, and other matters in respect of an alteration:
  - (f) prescribing the procedure for any hearing under this Act:
  - (g) prescribing time and extensions of time in respect of any matters under this Act:
  - (h) specifying conditions relating to 1 or more registered geographical indications:
  - (i) prescribing the matters in respect of which fees are payable under this Act, the amounts of the fees or the methods by which they are to be assessed, and the person to whom the fees are to be paid:
  - (j) giving effect, for the purposes of this Act, to the terms of any international agreement:

- (k) providing for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.
- (2) The Governor-General may prescribe any renewal fees under subsection (1)(i) that—
  - (a) recover some or all of the costs incurred by the Registrar in performing his or her functions under this Act;
  - (b) recover those costs at a level that provides an incentive to allow registrations of geographical indications to expire if persons interested in the registration no longer find registration beneficial.

Compare: 2013 No 68 s 243(2)(b)

Section 57(1)(ea): inserted, on 26 November 2016, by section 34(1) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 57(1)(eb): inserted, on 26 November 2016, by section 34(1) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 57(2): inserted, on 26 November 2016, by section 34(2) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

Section 57 compare note: inserted, on 26 November 2016, by section 34(2) of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

#### **57A Recognition of agents**

- (1) Anything that must be done by or to a person under this Act in relation to a geographical indication may be done by or to the person's expressly authorised agent.
- (2) Subsection (1) applies only if the agent is not a person whom the Registrar refused to recognise as an agent in accordance with section 57B.

Compare: 2002 No 49 s 190

Section 57A: inserted, on 26 November 2016, by section 35 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

#### **57B Registrar may refuse to recognise person as agent**

- (1) The Registrar may refuse to recognise a person as an agent if that person—
  - (a) is suspended from practice before the Intellectual Property Office of New Zealand; or
  - (b) has his or her registration as a patent attorney suspended or cancelled; or
  - (c) has been removed from or struck off the roll of barristers and solicitors under the provisions of the Lawyers and Conveyancers Act 2006, and has not been restored to the roll; or
  - (d) is suspended from practice as a barrister or solicitor; or
  - (e) has been convicted in New Zealand of an offence specified in Part 10 (except section 298A) of the Crimes Act 1961 or has been convicted of an equivalent offence in another country.



- (2) If the Registrar refuses to recognise a person as an agent, the Registrar must, as soon as practicable, notify that person and the person's principal in writing.

Compare: SR 2003/187 rr 23, 24

Section 57B: inserted, on 26 November 2016, by section 35 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

### **57C Registrar may award costs**

- (1) The Registrar may, in any proceedings before him or her under this Act,—
- (a) by order, award to a party costs of an amount that the Registrar thinks appropriate (which, without limitation, may be on an indemnity basis); and
  - (b) direct how and by what parties the costs are to be paid.
- (2) The order may be entered as a judgment of the court and may be enforced accordingly.

Compare: 2013 No 68 s 212

Section 57C: inserted, on 26 November 2016, by section 35 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

### **57D Registrar may require security for costs**

- (1) The Registrar may require a party to proceedings to give security for the costs of the proceedings if the Registrar is satisfied that—
- (a) the party does not reside, and does not carry on business, in New Zealand; or
  - (b) there is reason to believe that the party will be unable to pay the costs of the other party if unsuccessful in the proceedings.
- (2) If the party does not give the security required, the Registrar may treat the proceedings as having been abandoned by that party and determine the matter accordingly.

Compare: 2013 No 68 s 213

Section 57D: inserted, on 26 November 2016, by section 35 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

### **57E Meaning of proceedings for purposes of sections 57C and 57D**

For the purposes of sections 57C and 57D, **proceedings** means any procedure prescribed by regulations made under section 57—

- (a) for opposition, and determination of opposition, to an accepted application for registration of a geographical indication as referred to in section 37(2)(b):
- (b) for opposition, and determination of opposition, to the removal or alteration of a registered geographical indication as referred to in section 47(2)(b).

Section 57E: inserted, on 26 November 2016, by section 35 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

**58 Act does not affect unregistered geographical indication**

Nothing in this Act affects a geographical indication that is not a registered geographical indication.

**59 Act does not affect Wine Act 2003**

Nothing in this Act affects the operation of the Wine Act 2003.

**60 Act does not affect joint food standards**

Nothing in this Act affects the operation of any joint food standard adopted under the Food Act 2014.

Section 60 heading: amended, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 60: amended, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

**61 Act does not limit Fair Trading Act 1986**

Nothing in this Act limits the operation of the Fair Trading Act 1986.

**62 Geographical Indications Act 1994 repealed**

The Geographical Indications Act 1994 is repealed.

**63 Consequential amendments to Trade Marks Act 2002**

Amend the Trade Marks Act 2002 as set out in the Schedule.

**64 Other consequential amendments**

(1) Section 8 of the New Zealand Geographic Board Act 1946 is amended by inserting the following subsection after subsection (1):

(1A) The Board also has the functions given to it by the Geographical Indications (Wine and Spirits) Registration Act 2006.

(2) Part 2 of Schedule 1 of the Ombudsmen Act 1975 is amended by inserting the following item in its appropriate alphabetical order:

Geographical indications committees established under the Geographical Indications (Wine and Spirits) Registration Act 2006

(3) Schedule 1 of the Trans-Tasman Mutual Recognition Act 1997 is amended by omitting the item “Geographical Indications Act 1994” and substituting the item “Geographical Indications (Wine and Spirits) Registration Act 2006”.

## **Schedule**

### **Consequential amendments to Trade Marks Act 2002**

s 63

Schedule: inserted, on 26 November 2016, by section 37 of the Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91).

#### **Section 5**

In section 5(1), repeal the definitions of **geographical indication**, **protected geographical indication**, and **specified goods**.

In section 5(1), insert in its appropriate alphabetical order:

**registered geographical indication** has the same meaning as in section 7(1) of the Geographical Indications (Wine and Spirits) Registration Act 2006

#### **Section 11**

After section 11(a), insert:

(ab) are subject to any lawful use of a registered geographical indication; and

#### **Section 20**

Replace section 20 with:

#### **20 Trade mark that contains geographical indication must not be registered in certain circumstances**

- (1) The Commissioner must not register a trade mark if—
- (a) a registered geographical indication for a wine or spirit exists under the Geographical Indications (Wine and Spirits) Registration Act 2006 and—
    - (i) the trade mark contains the registered geographical indication for a wine or spirit; and
    - (ii) the trade mark relates to a wine or spirit that does not originate in the place of geographical origin to which the registered geographical indication relates; and
    - (iii) the use of the trade mark is likely to deceive or confuse; or
  - (b) an application for registration of a geographical indication for a wine or spirit has been made in good faith under the Geographical Indications (Wine and Spirits) Registration Act 2006 and—
    - (i) the trade mark contains the geographical indication that is the subject of the application for registration; and
    - (ii) the trade mark relates to a wine or spirit that does not originate in the place of geographical origin to which the geographical indication relates; and
    - (iii) the use of the trade mark is likely to deceive or confuse; and

**Section 20**—*continued*

- (iv) if registered, the deemed date of registration of the geographical indication is earlier than the deemed date of registration of the trade mark (if registered).
- (2) This section does not apply if the Commissioner or the court, as the case may be, considers that a case of honest concurrent use exists that, in the opinion of the Commissioner or the court, makes it proper for the trade mark to be registered, subject to any conditions that the Commissioner or the court may impose.
- Compare: 2006 No 60 ss 14–17

**New section 60A**

After section 60, insert:

**60A Status of geographical indication removed from register for non-payment of renewal fee**

- (1) A geographical indication that has been removed from the register for non-payment of the renewal fee must be taken into account for a period of 1 year after the date of expiry of the registered geographical indication when determining the registrability of a later trade mark application.
- (2) Subsection (1) does not apply if the Commissioner is satisfied that, in the case of a foreign geographical indication,—
- (a) the geographical indication is not, or has ceased to be, protected in its country of origin; or
- (b) the geographical indication has fallen into disuse in its country of origin.
- Compare: 2006 No 60 s 47C

**Section 88**

In section 88(c), replace “Geographical Indications Act 1994” with “Geographical Indications (Wine and Spirits) Registration Act 2006”.

**New section 98A**

After section 98, insert:

**98A No infringement through use of registered geographical indication**

A registered trade mark is not infringed by the lawful use of a registered geographical indication registered under the Geographical Indications (Wine and Spirits) Registration Act 2006.

## **Reprints notes**

### **1    *General***

This is a reprint of the Geographical Indications (Wine and Spirits) Registration Act 2006 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2    *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3    *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4    *Amendments incorporated in this reprint***

Geographical Indications (Wine and Spirits) Registration Amendment Act 2016 (2016 No 91)

Food Act 2014 (2014 No 32): section 447

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Geographical Indications Act 1994 Repeal Order 2008 (SR 2008/64): clause 2