



Decision not to make a final determination of Wilyabrup as a Geographical Indication for wine

Statement of reasons

30 July 2020

This statement sets out the reasons for which the Geographical Indications Committee (GIC) has decided **not** to make a final determination of the geographical indication (GI), Wilyabrup.

Legislative background

1. The GIC is established by section 40N of the *Wine Australia Act 2013* (Act).
2. In accordance with section 40P(1) of the Act, the functions of the GIC are:
 - 2.1. to deal with applications for the determination of geographical indications for wine in relation to regions and localities in Australia (Australian GIs) in accordance with the Act; and
 - 2.2. to make determinations of Australian GIs in accordance with the Act (including determining any conditions of use applicable to such GIs); and
 - 2.3. to make determinations for the omission of Australian GIs in accordance with the Act; and
 - 2.4. any other functions conferred on the Committee under the Act or under the *Wine Australia Regulations 2018* (Regulations).
3. The administrative arrangements pertaining to the GIC are set out in the Schedule to the Act.
4. In accordance with section 40P(2) of the Act, the GIC also has the power to do all things that are necessary or convenient to be done by, or in connection with, the performance of its functions.
5. In accordance with section 40R of the Act, any of the following may apply in writing to the GIC for the determination of a geographical indication in relation to a region or locality in Australia:
 - 5.1. a declared winemakers organisation
 - 5.2. a declared wine grape growers organisation
 - 5.3. an organisation representing winemakers in a State or Territory
 - 5.4. an organisation representing growers of wine grapes in a State or Territory
 - 5.5. a winemaker, or
 - 5.6. a grower of wine grapes.



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6. In accordance with section 40RA of the Act, if an application is made under section 40R of the Act for the determination of a GI, the Presiding Member of the GIC must cause a notice to be published setting out the proposed GI and inviting persons to make written objections to the Registrar of Trademarks in relation to the proposed GI.
7. If no objections are received by the Registrar of Trademarks, the GIC may proceed to consider whether to make a determination.
8. In accordance with section 40S of the Act, in determining a GI, the GIC:
 - 8.1. must consult any declared winemakers organisation and any declared wine grape growers organisation (Australia Grape and Wine Incorporated (AGW) being both the declared winemakers organisation and the declared wine grape growers organisation), and
 - 8.2. may consult any other organisations or persons it thinks appropriate.
9. Following such consultation, in accordance with each sections 40T and 40U of the Act, the GIC may decide whether to make an interim determination having regard to the criteria set out in section 57 of the Regulations.
10. In accordance with section 40V of the Act, if the GIC makes an interim determination of a GI, the Presiding Member of the GIC must cause a notice to be published stating that the interim determination has been made and setting out the terms of the determination. The notice must invite persons to make written submissions to the GIC within a period of not less than one month.
11. In accordance with section 40W, after considering any submissions made to it, the GIC may make a final determination, again having regard to the criteria set out in section 57 of the Regulations.

Factual background

12. On 8 November 2017 an application was submitted to the GIC for the determination of the area of Wilyabrup as a prescribed GI for wine in accordance with section 40R of the Act.
13. The applicants were Ms Vanya Cullen (Cullen Wines), Mr Nigel Gallop (Fraser Gallop), Mr Edward Tomlinson (Lenton Brae Wines), Ms Clare and Mr Keith Mugford (Moss Wood), and Messrs Stuart and Andrew Watson (Woodlands) (collectively, 'the Applicants').
14. In accordance with section 40RA(2) of Act, the Presiding Member caused a notice to be published inviting persons to make written objections to the Registrar of Trade Marks in relation to the proposed GI on the grounds set out in section 40RB of the Act.
15. The notice was published via:
 - 15.1. the Weekend Australian on 16 December 2017 and 23 December 2017
 - 15.2. Wine Australia's website on 11 December 2017
 - 15.3. Wine Australia News (electronic newsletter) on 14 December 2017



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- 15.4. Wine Australia's Exporter News (electronic newsletter) on 31 January 2018, and
- 15.5. Winemakers' Federation of Australia website on 31 January 2018.
16. On 21 February 2018, the Registrar of Geographical Indications and Other Terms (Registrar) received confirmation from IP Australia that no objections were received by the Registrar of Trade Marks during the objection period.
17. At a meeting of 21 March 2018, the GIC reviewed the application for the determination of Wilyabrup as a GI. The GIC considered the material submitted against the requirements of the Act and the *Australian Grape and Wine Authority Regulations 1981* which have since been replaced by the Regulations.
18. The GIC decided that it did not have sufficient information to make a decision whether to determine Wilyabrup as a GI and requested further particulars from the Applicants.
19. The GIC provided letters to the Margaret River Wine Association (MRWA), the Winemakers' Federation of Australia (then the declared winemakers organisation) and Australian Vignerons (then the declared grapegrowers organisation) updating them on the application process.
20. On 15 May 2018, Wine Australia published a media release advising that it would be holding a consultation session in Margaret River on 23 May 2018 to provide information on the process of having a new GI determined, and the regulatory effect of having a new GI determined.
21. On 23 May 2018, the GIC and the Registrar attended a consultation session in Margaret River. The Registrar gave a presentation explaining the process for determining a GI, and the effect of an area being declared as a GI.
22. On 30 July 2019, the GIC received supplementary information from the Applicants including:
 - 22.1. a report and overall summary by Dr John Gladstones
 - 22.2. the Curriculum Vitae of Dr Jatin Kala, Senior lecturer in Atmospheric science and ARC DECRA fellow
 - 22.3. a Climatic data report from Dr Jatin Kala
 - 22.4. a Map showing proposed Wilyabrup boundary, and
 - 22.5. a textual description of the Wilyabrup GI.
23. On 19 September 2019, the GIC received a letter from the MRWA advising of implementation of the 'Margaret River Region Project' – a project intended to map the GI of Margaret River and to identify discrete viticultural areas within that GI that might meet the criteria for determination as GIs. The GIC did not receive any detailed particulars regarding the scope, duration and intended completion date of the Margaret River Region Project.
24. In accordance with requirements of section 40S of the Act, on 30 October 2019, the Presiding Member wrote to the following parties, seeking their comments with respect to the application for determination:



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24.1. The Chair of the MRWA (Mr Greg Wall)

24.2. The CEO of AGW (Mr Tony Battaglène).

25. On 8 November 2019, the Presiding Member received a letter from the Chair of MRWA in response to the GIC's correspondence of 30 October. The letter suggested that that a decision whether to make an interim determination ought to be delayed until completion of the Margaret River Region Project.

26. On 13 November 2019 the Presiding Member received a letter from the CEO of AGW in response to the letter of 30 October. In the same vein of the letter received from MRWA of 8 November 2019, the letter suggested that a decision whether to make an interim determination ought to be delayed until completion of the Margaret River Region Project.

Interim determination

27. On 4 December 2019, having regard to a brief presented to it which captured the information available to the GIC as of that date, the GIC resolved to make an interim determination of the grape growing area of Wilyabrup as a GI in accordance with section 40T of the Act – the boundaries being identified by the textual description and map produced at that meeting.

28. On 5 December 2019, the Presiding Member advised the following parties of its decision:

28.1. the applicants

28.2. the CEO of AGW, Mr Tony Battaglène

28.3. the CEO of Wine Australia, Mr Andreas Clark, and

28.4. the Chair of the MRWA, Mr Greg Wall.

29. On 6 December 2019, Wine Australia issued a media release at the request of the GIC publicising the interim determination of Wilyabrup. The media release was publicised via:

29.1. Wine Australia's website on 6 December 2019

29.2. Wine Australia's Exporter News (electronic newsletter) on 12 December 2019.

30. In accordance with section 40V of the Act, notice of the interim determination was published in:

30.1. the Weekend Australian newspaper over the weekends of 14/15 and 21/22 December 2019, and

30.2. the Western Australia newspaper over the weekend of 14/15 December 2019.

31. The notice invited persons to make written submissions to the GIC in relation to the determination within a period of three months, being on or before 13 March 2020.



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Extension of time for making submissions

32. On 18 February 2020, the Presiding Member received a request from AGW requesting that the period within which submissions could be made in response to the interim determination be extended to 13 June 2020. This followed the receipt of correspondence by AGW from the Margaret River Wine Association (MRWA) seeking support in this regard.
33. On 20 February 2020, the GIC met via teleconference to consider whether to extend the period within which submissions could be made. The GIC decided to grant an extension until 13 June 2020.
34. The GIC communicated its decision to extend this submission to 13 June 2020 to the interested parties on 21 February 2020.
35. The GIC received seven submissions following its making of the interim determination. Significant additional information was provided as part of this process. Of the submissions:
 - 35.1. One submission proposed an amendment to the northern boundary.
 - 35.2. Six submissions opposed the making of a final determination – all on the grounds that a decision would be premature prior to the finalisation of the Margaret River Region Project.
 - 35.3. A submission was received from the MRWA. That submission annexed 40 letters from parties with interests in Margaret River supporting the submission of MRWA. Eight of the letters received were from parties within the proposed boundary of Wilyabrup. A submission was received from Wines of Western Australia. The MRWA submission proffered the view that:
 - the Margaret River Region Project should be completed and presented to the GIC prior to it making a final determination
 - the application does not satisfactorily address a significant number of the criteria set out in section 57 of the Regulations
 - the evidence presented to date does not indicate that Wilyabrup is sufficiently different from neighbouring areas to warrant a final determination of a GI
 - the proposed GI lacks the requisite uniformity, and
 - there is evidence of significant uncertainty about appropriate boundaries of any GI in or around the Wilyabrup area.

Comments of the GIC

36. The LIP (Label Integrity Program) has the objective of ensuring the truth and the reputation for truthfulness of Australian wine labels and, fundamental to that, is the registration of recognised grapegrowing areas within Australia as GIs.



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37. Accordingly, the GIC is supportive of the determination of recognised and established grapegrowing areas as GIs under the Act. It considers that a boundary could be settled delineating a grapegrowing area to prevent mischief in labelling through the application of the blending rules set out in the Regulations, hence enlivening the offence provisions under sections 40C and 40E of the Act.
38. Notwithstanding that it is not essential for all the criteria set out in section 57 of the Regulations to be addressed for a GI to be determined under the Act, in deciding whether to determine an area that is part of a larger area for which a GI has previously been determined, or that includes a smaller area for which a GI has previously been determined, the GIC is to have regard to the degree of uniformity of the smaller area of the two areas compared to the larger, and the distinct attributes of the smaller area.
39. Significant additional material was provided to the GIC following its making of an interim determination and, in accordance with the Act, a notice inviting submissions being published in accordance with section 40V of the Act. Accordingly, the information upon which the GIC relied to make the interim determination differed greatly from that available to it in deciding whether to make a final determination.
40. Whilst the GIC maintains that the information available to it when it made an interim determination of Wilyabrup supported the making of that interim determination, it does not consider that the information available to it to date supports the making of a final determination. Of particular relevance is the information now before the GIC indicating that:
 - 40.1. There is no consensus position in Wilyabrup or Margaret River more broadly as to where the boundary of Wilyabrup ought to be.
 - 40.2. There is a collective effort underway in the region by way of the Margaret River Region Project that ought to be considered prior to a final determination being made as it is likely that the report will be relevant in considering the criteria set out under section 57 of the Regulations.
 - 40.3. There is inconsistent information available to the GIC with regard to the degree of uniformity of the area with respect to the attributes set out in section 57 of the Regulations.
41. The GIC does not consider relevant the submissions proffering the position that having another GI determined within the Margaret River GI would have a detrimental impact on the collective marketing efforts of Margaret River nor that it would adversely impact the reputation of the region.
42. Affording procedural fairness and natural justice to all the interested parties is of paramount importance, particularly in circumstances where the legislative framework does not allow for boundaries of GIs to be amended, but rather requires unanimous agreement to omit and redetermine a GI.
43. Applications for the determination of Australian GIs ought to present a consensus position of interested parties as to the proposed boundary and the attributes mentioned in section 57 of the Regulations.



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Decision re final determination

44. Having regard to the brief of documents presenting all the information available to the GIC to date, at its meeting of 30 July 2020, the GIC decided not to make a final determination of Wilyabrup as a GI for the following reasons:
- 44.1. There is no consensus position of interested parties as to the attributes mentioned in section 57 of the Regulations.
 - 44.2. There is a collective effort underway in the region by way of the Margaret River Region Project that ought to be considered prior to a final determination being made as it is likely that the report will be relevant in considering the degree of uniformity of the area with respect to the attributes mentioned in section 57 of the Regulations..
 - 44.3. There is no consensus amongst interested parties as to the boundary of Wilyabrup and hence, in circumstances where the current legislative framework does not allow for boundaries of GIs to be amended, but rather requires unanimous agreement to omit and redetermine a GI, it would be premature for a final determination to be made.
 - 44.4. There is nothing prohibiting the use of an unprescribed GI and the promotion of the wines within that GI in the absence of a determination being made. Accordingly, any proprietary objectives are unlikely to be impacted by a decision not to make a final determination.
45. Accordingly, the GIC has resolved not to make a final determination of Wilyabrup in accordance with section 40W of the Act.