

Australian Government

#### **Consultation on a Possible New Geographical Indications Right**

General operation of a possible GI system 20 October 2020

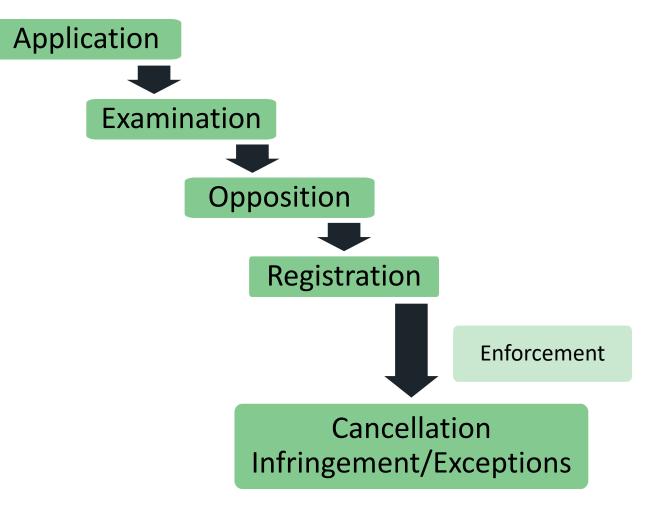
## Introduction

We are seeking your views on process considerations for a possible new GI right.



**Please Note:** Nothing in this consultation means the Australian Government has agreed, or will agree, to make any changes to its existing GI regulatory framework or policy.

### **Process overview**



# Application

Who can apply

- A person with legal personality
- Has a connection with and is properly representative of the goods and the region

#### **Requirements for filing**

- A description of:
  - the goods
  - the region
  - the quality, reputation or other characteristic of the relevant good and how it is essentially attributable to the geographical origin
  - What it means to originate in the region (% production or raw materials)
  - Any conditions of use (e.g. production methods)
- Foreign applications also need evidence that the GI is protected in the country of origin

### Examination

- Could be modelled on the trade mark examination process
- Grounds for rejection
  - does not meet the definition of a GI
  - prior trade mark or GI rights
  - common name of the good, plant variety or animal breed
  - Other?
- Relationship between rights
  - Conditions for co-existence of a GI and trade mark
  - Homonymous GIs domestic and international

# Opposition

- Process
  - Evidence
  - Hearing (if required)
  - Decision (appellable)
- Grounds
  - Same as examination as well as GI specific opposition grounds

# Registration, amendments, assignment

- Renewal
- Permissible amendments after registration?
- Ability to change the rights holder

#### Enforcement

#### Who could enforce a possible GI right?

- Generally, holders of an IP right are responsible for enforcing the right
- As users of a GI also have an interest in maintaining the integrity of the GI they may also be interested in enforcing the right
- Other possible enforcement mechanisms administrative, border, criminal? **Exceptions to Infringement**

### Cancellation

- Cancellation, revocation and removal provisions could be modelled on the existing trade mark provisions, modified as necessary
- Could someone else take on the GI if the right holder wants to cancel
- For foreign GIs there may be a nexus with protection in the country of origin

# **Discussion questions**

- 1. Who should be able to apply for a GI?
- 2. What evidence should be required to file an application?
- 3. Under what circumstances should a prior trade mark prevent registration of a GI?
- 4. Should amendments to a GI be allowed after registration? If so, what amendments?
- 5. Where the right holder requests cancellation, should there be an opportunity for interested parties to object to the cancellation and assume responsibility for the GI?

# Conclusion

• Consultation will be open until 30 November



 Details are available on our consultation hub: <u>https://consultation.ipaustralia.gov.au/policy/geographical-indications/</u>