

## GUIDANCE SUMMARY

### Legal Definitions of Brandy, Rum, Whisky

**In Australia it is law that whisky, brandy and rum must be stored in wood for no less than 2 years.**

It is also law that place of product claims and advertising claims must not be misleading or deceptive.

Applicable laws are found in the Excise Act, the Customs Act, the Food Standards Codes, and the Australian Consumer Law. Further details are set out below.

This Guidance Summary is for general information only and does not constitute legal advice and you must seek your own legal advice. The ADA accepts no liability for any party relying on this Guidance Summary.

#### Excise Act 1901

For Australian manufactured goods, the *Excise Act 1901* as amended by “*The Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006*” stipulates:

*“Section 77FI - Delivery from CEO’s control of brandy, whisky or rum*

*(1) Brandy, whisky or rum manufactured in Australia must not be delivered from the CEO’s control unless it has been matured by storage in wood for at least 2 years.*

*(2) In this section:*

***brandy*** means a spirit distilled from grape wine in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to brandy.

***grape wine*** has the same meaning as in Subdivision 31-A of the *A New Tax System (Wine Equalisation Tax) Act 1999*.

***rum*** means a spirit obtained by the distillation of a fermented liquor derived from the products of sugar cane, being distillation carried out in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to rum.

***whisky*** means a spirit obtained by the distillation of a fermented liquor of a mash of cereal grain in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to whisky.”

Please note that the term “from the CEO’s control” means in plain English “taken out of your distilleries’ bond store”.

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# Customs Act 1901

For imported products, Section 105A outlines the requirements of:

- (1) *Brandy, whisky or rum imported into Australia must not be delivered from the control of the Customs unless a Collector is satisfied that it has been matured by storage in wood for at least 2 years.*
- (2) *In this section:*

***"brandy"** means a spirit distilled from grape wine in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to brandy.*

***"rum"** means a spirit obtained by the distillation of a fermented liquor derived from the products of sugar cane, being distillation carried out in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to rum. ion carried out in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to rum.*

***"whisky"** means a spirit obtained by the distillation of a fermented liquor of a mash of cereal grain in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to whisky.*

## Australia New Zealand Food Standards Code

In Australia, there are certain provisions under the *Australia New Zealand Food Standards Code* which govern such products where these are manufactured or imported into Australia such as Standard 2.7.5:

***"spirit"** means a potable alcoholic distillate, including whisky, brandy, rum, gin, vodka and tequila, which, unless otherwise required by this Standard, contains at least 37% alcohol by volume, 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."*

## Food Legislation

Food legislation in Australian States and Territories include provisions relating to representations about food which are relevant to alcoholic beverages in general. These apply in the advertising, packaging/labelling and advertorial. These include:

*"A person must not, for the purpose of effecting or promoting the sale of any food in the course of carrying on a food business, cause the food to be advertised, packaged or labelled in a way that falsely describes the food.*

*A person must not, in the course of carrying on a food business, sell food that is packaged or labelled in a way that falsely describes the food.*

*A person must not, in the course of carrying on a food business, supply food by way of sale if the food is not of the nature or substance demanded by the purchaser.*

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Food that is falsely described includes food to which any one or more of the following paragraphs applies:

- (a) *The food is represented as being of a particular nature or substance for which there is a prescribed standard under the Food Standards Code and the food does not comply with that prescribed standard.*
- (b) *The food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance in a quantity or proportion that significantly diminishes its food value or nutritive properties as compared with food of the represented nature or substance.*
- (c) *The food is represented as being of a particular nature or substance and it contains, or is mixed or diluted with, any substance of lower commercial value than food of the represented nature or substance.*
- (d) *The food is represented as being of a particular nature or substance and a constituent of the food has been wholly or partly removed so that its properties are diminished as compared with food of the represented nature or substance.*
- (e) *Any word, statement, device or design used in the packaging or labelling of the food, or in an advertisement for the food, would create a false impression as to the nature or substance of the food, or the commercial value of the food, in the mind of a reasonable person.*
- (f) *The food is not of the nature or substance represented by the manner in which it is packaged, labelled or offered for sale.*

## Australian Consumer Law

The *Australian Consumer Law* (2011) is also relevant to the way products are marketed and sold. Australian Consumer Law (contained in Section 18 of the *Competition and Consumer Act 2010 (Cth)*) contains a general prohibition on misleading and deceptive conduct as set out below, as well as other more specific prohibitions around such conduct:

*“(1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.”*

Further information and examples of false and misleading claims can be found at the ACCC website here:

<https://www.accc.gov.au/consumers/misleading-claims-advertising/false-or-misleading-claims>

Place of product claims are also tightly regulated. Generally speaking, if a region or place is named in a product, then the product needs to be made there. Further details can be found at the ACCC website:

<https://www.accc.gov.au/publications/country-of-origin-food-labelling-0/country-of-origin-claims-and-the-australian-consumer-law/labelling-issues/place-of-origin-claims>

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