



New South Wales

Wine Grapes Marketing Board (Reconstitution) Act 2003 No 100

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New South Wales

Wine Grapes Marketing Board (Reconstitution) Act 2003 No 100

Act No 100, 2003

An Act to provide for the reconstitution of the Wine Grapes Marketing Board as an agricultural industry services committee under the *Agricultural Industry Services Act 1998*; to provide for the temporary regulation of the terms and conditions of payment for MIA wine grapes; and for other purposes. [Assented to 10 December 2003]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Wine Grapes Marketing Board (Reconstitution) Act 2003*.

2 Commencement

This Act commences on 1 January 2004.

3 Definitions

In this Act:

Board means the Wine Grapes Marketing Board established by the regulation set out in Schedule 1.

Board's area of operations means the City of Griffith and the local government areas of Carrathool, Leeton and Murrumbidgee.

complying contract means:

- (a) a contract that fixes:
 - (i) the prices to be paid for consignments of MIA wine grapes delivered during the current calendar year only, or the manner in which those prices are to be calculated, and
 - (ii) the date or dates by which those prices, or the various instalments of those prices, will be paid,being a contract entered into before the first Monday in December of the previous calendar year, or
- (b) a contract that fixes:
 - (i) the prices to be paid for consignments of MIA wine grapes delivered during both the current calendar year and one or more future calendar years, or the manner in which those prices are to be calculated, and
 - (ii) the date or dates by which those prices, or the various instalments of those prices, will be paid,being a contract entered into at any time before the first delivery of wine grapes under the contract, or
- (c) a contract the subject of an approval in force under section 13.

consignee means a person to or for whom a consignment of MIA wine grapes is delivered.

consignor means a person by or from whom a consignment of MIA wine grapes is delivered.

Director-General means the Director-General of the Department of Agriculture.

duly contracted delivery means a consignment of MIA wine grapes that is delivered pursuant to a complying contract.

former Board means the Wine Grapes Marketing Board, as constituted under the *Marketing of Primary Products Act 1983* immediately before the commencement of this Act.

MIA wine grapes means any variety of grapes grown in the Board's area of operations for use for processing into wine, must, juice or wine spirit.

price schedule means a schedule issued by a person for the purpose of publicising the prices that the person will pay for MIA wine grapes delivered to the person during the period to which the schedule relates, as varied from time to time under section 4 (4).

Part 2 Wine grapes marketing

Division 1 Establishment of prices, and terms and conditions of payment, for MIA wine grapes

4 Price schedules

- (1) Any person may provide the Board with a price schedule, in a form approved by the Board, for MIA wine grapes to be delivered to the person otherwise than pursuant to a complying contract.
- (2) A price schedule:
 - (a) must set out minimum prices that will be paid for consignments of MIA wine grapes delivered during the period to which the schedule relates, and
 - (b) may set out minimum prices with respect to:
 - (i) different varieties and grades of wine grapes, and
 - (ii) different days and times of delivery.
- (3) A price schedule must also set out:
 - (a) any factor, condition or circumstance that may operate to reduce any price offered for a consignment of MIA wine grapes, and
 - (b) the way in which any such reduction will be calculated.
- (4) A person who has provided the Board with a price schedule may, by notice in writing given to the Board, vary the schedule from time to time so as:
 - (a) to change it in relation to wine grapes to which it already applies, or
 - (b) to extend it to wine grapes to which it does not already apply.
- (5) A reduction in any price arising from the variation of a price schedule does not have effect until:
 - (a) 48 hours after the reduction is notified to the Board, in the case of a reduction notified to the Board before 30 January in the year concerned, or
 - (b) 24 hours after the reduction is notified to the Board, in the case of a reduction notified to the Board on or after 30 January in the year concerned.

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- (6) A person who has provided the Board with a price schedule must ensure that copies of the schedule, and any variation of the schedule, are made available to prospective consignors on request.

5 Board may make order as to terms and conditions of payment

- (1) The Board may at any time, by order published in the Gazette:
- (a) establish terms and conditions of payment for MIA wine grapes delivered during that year otherwise than pursuant to a complying contract, and
 - (b) establish a formula for calculating the amounts payable to the Board, towards any rates levied under the *Agricultural Industry Services Act 1998*, in relation to deliveries of MIA wine grapes, and
 - (c) establish a timetable in accordance with which:
 - (i) consignees are to make payments to the Board under sections 10 (1) (a) and 14 (1), and
 - (ii) the Board is to make payments to consignors under section 10 (1) (b).
- (2) The terms and conditions of payment referred to in subsection (1) (a) are to be established by the Board having regard to any submissions made by wineries and wine grape growers within the meaning of the regulation set out in Schedule 1.
- (3) Without limiting subsection (1) (a), the terms and conditions set by an order under this section may fix the rate at which interest is to accrue on the late payment of the price of MIA wine grapes so delivered, or on the late payment of any instalment of that price.
- (4) The rate at which interest is to accrue must not exceed the rate prescribed under section 95 (1) of the *Supreme Court Act 1970* for payment of interest on a judgment debt, plus 5 per cent.
- (5) Copies of each order under this section are to be published in at least one daily newspaper circulating throughout New South Wales.
- (6) A failure to comply with the requirements of subsection (5) with respect to an order under this section does not affect the validity of the order.
- (7) An order that is made under this section after 20 January in any year does not have effect until the following year.

- (8) The making of an order under this section is specifically authorised for the purposes of section 51 of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

Division 2 Regulation of deliveries and payments for MIA wine grapes

6 Application of Division

This Division applies to any delivery of MIA wine grapes, other than a duly contracted delivery.

7 Deliveries of MIA wine grapes not to be accepted unless price schedule notified to Board

- (1) A person must not accept delivery of a consignment of MIA wine grapes unless a price schedule applicable to that consignment has been provided to the Board on or before 30 January in that year.

Maximum penalty: 20 penalty units (in the case of a corporation) and 10 penalty units (in any other case).

- (2) A person's contravention of subsection (1) does not affect the person's other obligations under this Division.

8 Persons accepting delivery of MIA wine grapes to furnish certain documentation

On accepting delivery of a consignment of MIA wine grapes, the consignee must give to the consignor, by handing to the person by whom the consignment is actually delivered, documentation that sets out:

- (a) the date of the delivery, and
- (b) the quantity and variety of the wine grapes in the consignment, and
- (c) the relevant provisions of the price schedule applicable to the consignment, and
- (d) any factor, condition or circumstance that operates to reduce the price payable for the consignment and the amount of any such reduction.

Maximum penalty: 20 penalty units (in the case of a corporation) and 10 penalty units (in any other case).

9 Minimum price to be paid for MIA wine grapes

- (1) The price to be paid for a consignment of MIA wine grapes delivered on any day is taken to be:
 - (a) if the consignee has provided a price schedule to the Board:
 - (i) the price offered for the consignment, reduced in accordance with any applicable factor, condition or circumstance set out in the price schedule applicable to the consignment, or
 - (ii) the minimum price payable for the wine grapes in accordance with the price schedule applicable to the consignment,whichever is the greater, or
 - (b) if the consignee has failed to provide a price schedule to the Board:
 - (i) the price offered for the consignment, or
 - (ii) a price equivalent to the average price for wine grapes of the same variety and grade delivered on the same day,whichever is the greater.
- (2) For the purposes of subsection (1) (b) (ii), the average price for wine grapes of a particular variety and grade delivered on a particular day is the arithmetic mean of the prices for wine grapes of that variety and grade, delivered on that day, set out in the price schedules provided to the Board.

10 How payments to be dealt with

- (1) Unless the Board directs otherwise, either generally or in relation to a particular consignee or class of consignees:
 - (a) the price to be paid for MIA wine grapes delivered on any day is to be paid by the consignee to the Board in accordance with the Board's terms and conditions referred to in section 5 (1) (a), and
 - (b) the money received by the Board in relation to the delivery, less any amount calculated in accordance with section 5 (1) (b), must be paid by the Board to the consignor,within the period allowed by the Board's timetable for payment under section 5 (1) (c).

- (2) Such a direction may be given on the Board's own motion or on the application of one or more consignees.

Division 3 General

11 Application of Division

This Division applies to any delivery of MIA wine grapes, including a duly contracted delivery.

12 Consignees to furnish Board with certain information

- (1) On or before 1 May in each year, each consignee must furnish a report to the Board with respect to MIA wine grapes that have been delivered to the consignee during the period beginning 1 July in the previous year and ending on 14 April in that year.
- (2) On or before 30 June in each year, each consignee who has received MIA wine grapes since 14 April in that year must furnish a supplementary report to the Board with respect to MIA wine grapes that have been delivered to the consignee since that date.
- (3) The reports must include the following details in relation to each delivery:
 - (a) the identity of the consignor of the delivery,
 - (b) the quantity and variety of the wine grapes in the delivery,
 - (c) except in the case of a duly contracted delivery, the price of the wine grapes in the delivery.
- (4) A consignee must not fail or refuse to comply with the requirements of this section.

Maximum penalty: 20 penalty units (in the case of a corporation) and 10 penalty units (in any other case).

13 Board may approve certain contracts

- (1) The Board may approve a contract entered into on or after the first Monday in December of the previous year, being a contract that fixes:
 - (a) the prices to be paid for consignments of MIA wine grapes delivered during the current calendar year, or the manner in which those prices are to be calculated, and
 - (b) the date or dates by which those prices, or the various instalments of those prices, will be paid.

- (2) An application for the Board's approval to a contract may be made, in a form approved by the Board, by any party to the contract.
- (3) The Board's approval to a contract is taken to have been given if, at the expiry of 14 days after such an application has been made, the Board's decision on the application has not been given to the applicant.
- (4) An applicant may apply to the Administrative Decisions Tribunal for a review of its decision to refuse to give an approval under this section.

14 Consignees of duly contracted deliveries to deduct sums for payment to Board

- (1) If a consignee accepts a duly contracted delivery of MIA wine grapes, the amount calculated in relation to that delivery in accordance with section 5 (1) (b) is to be paid to the Board by the consignee within the period allowed by the Board's timetable for payment under section 5 (1) (c).
- (2) The amount may be deducted from any money payable by the consignee to the consignor with respect to that delivery.
- (3) This section does not apply to a duly contracted delivery of MIA wine grapes in respect of which an amount has been paid to the Board under this section in relation to a previous delivery of those wine grapes.

15 Minister may grant exemptions from Part

The Minister may, by order, exempt any specified person or class of persons, either conditionally or unconditionally, from the operation of this Part or any specified provision of this Part.

16 No contracting out

A contract or agreement is void to the extent to which it purports to exclude, modify or restrict the operation of this Part or has the effect of excluding, modifying or restricting the operation of this Part.

Part 3 Miscellaneous

17 Departmental inspectors

- (1) In making a decision with respect to the appointment of a person to exercise the functions of a Departmental inspector under the *Agricultural Industry Services Act 1998* in relation to matters arising under this Act, the Director-General must have regard to any submissions or nominations made by the Board.
- (2) Despite subsection (1), a person may not be appointed to exercise any such function if the person is a member of the Board or a member of the Board's staff.
- (3) The powers exercisable by a Departmental inspector under section 33 of the *Agricultural Industry Services Act 1998* include the power to require a person to furnish the inspector with:
 - (a) information of the kind required to be included in a report under section 12 of this Act, or
 - (b) information of the kind necessary to establish whether or not a particular document is or is not a complying contract.
- (4) The powers exercisable by a Departmental inspector under section 34 of the *Agricultural Industry Services Act 1998* include the power to enter premises, and to inspect and take copies of documents, for the purpose of obtaining:
 - (a) information of the kind required to be included in a report under section 12 of this Act, or
 - (b) information of the kind necessary to establish whether or not a particular document is or is not a complying contract.
- (5) A Departmental inspector may exercise functions under the *Agricultural Industry Services Act 1998* in relation to MIA wine grapes within or beyond the Board's area of operations.
- (6) The Board must pay to the Director-General such amounts as the Director-General may from time to time determine to defray the costs and expenses of Departmental inspectors in the exercise of such of their functions under the *Agricultural Industry Services Act 1998* as arise under this section.

18 Funding of Board's operations

Any amounts payable by the Board under this Act, and any costs or expenses incurred by the Board in the exercise of its functions under this Act, may be paid for out of the Board's general fund under Part 3 of the *Agricultural Industry Services Act 1998*.

19 Recovery of unpaid money

Any money due to the Board or the Director-General under this Act (including any money that becomes payable as a consequence of the revocation of a direction under section 10) may be recovered as a debt.

20 Proceedings may be taken in name of Board

- (1) Proceedings for an offence against this Act may be taken in the name of the Board by any officer of the Board who is authorised by the Board in that regard.
- (2) Proceedings taken in the name of the Board are, in the absence of evidence to the contrary, taken to have been commenced in accordance with an authority under this section.
- (3) This section does not prevent proceedings for an offence against this Act from being commenced by any person otherwise than in accordance with an authority under this section.

21 Directors and managers liable for offences committed by corporations

- (1) If a corporation contravenes a provision of this Act, each person who:
 - (a) is a director of the corporation, or
 - (b) is concerned in the management of the corporation,is to be treated as having contravened that provision if the person knowingly authorised or permitted the contravention.
- (2) A person may, under this section, be proceeded against and convicted for a contravention of such a provision whether or not the corporation has been proceeded against or convicted for a contravention of that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act.

Section 22 Wine Grapes Marketing Board (Reconstitution) Act 2003 No 100

Part 3 Miscellaneous

22 Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003

Schedule 1 is taken to be, and has effect as, a regulation made under the *Agricultural Industry Services Act 1998* for the purposes of section 5 of that Act.

23 Abolition of former Board

The former Board is abolished.

24 Amendment of Agricultural Industry Services Act 1998 No 45

The *Agricultural Industry Services Act 1998* is amended as set out in Schedule 2.

25 Amendment of Marketing of Primary Products Act 1983 No 176

The *Marketing of Primary Products Act 1983* is amended by omitting section 67A and Schedule 5.

26 Expiry of Act

This Act expires on 31 December 2007.

Schedule 1 Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003 (Section 22)

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003*.

2 Definitions

In this Regulation:

area of operations, in relation to the Board, means the area of operations for which the Board is constituted, as set out in clause 5.

Board means the agricultural industry services committee established by this Regulation.

former Board means the Wine Grapes Marketing Board, as constituted under the *Marketing of Primary Products Act 1983* immediately before the commencement of this Regulation.

MIA wine grapes means any variety of grapes grown within the Board's area of operations for use for processing into wine, must, juice or wine spirit.

the Act means the *Agricultural Industry Services Act 1998*.

wine grape grower means a grower that belongs to the class of primary producers referred to in clause 4.

winery means a processor that processes MIA wine grapes within the Board's area of operations.

Part 2 Establishment and functions of Board

3 Establishment of Board

- (1) There is established by this Regulation an agricultural industry services committee with the corporate name of the Wine Grapes Marketing Board.
- (2) The Board is a continuation of the former Board.

4 Class of primary producers for which Board is constituted

For any calendar year, the class of primary producers for which the Board is constituted includes all growers within the Board's area of operations who, during the previous calendar year, harvested more than 20 tonnes of MIA wine grapes, but does not include:

- (a) in the case of a corporation:
 - (i) a grower that is also a winery, or
 - (ii) a grower in which a winery has a controlling interest, or
- (b) in the case of an individual:
 - (i) a grower who is also a winery, or
 - (ii) a grower who is a director of a corporation that is a winery and who (as a grower) supplies the winery with all of the MIA wine grapes that he or she harvests.

5 Area of operations of Board

The area of operations for which the Board is constituted consists of the City of Griffith and the local government areas of Carrathool, Leeton and Murrumbidgee.

6 Commodity for which Board is constituted

The commodity for which the Board is constituted is MIA wine grapes.

7 Agricultural industry services of Board

The agricultural industry services for which the Board is constituted are as follows:

- (a) the development of a code of conduct for contract negotiations between wine grape growers and wineries,
- (b) the development of draft contract provisions with respect to the sale of MIA wine grapes to wineries, including provisions with respect to:
 - (i) the prices to be paid by wineries, and
 - (ii) the terms and conditions of payment to be observed by wineries,in relation to MIA wine grapes delivered to them by wine grape growers,
- (c) the promotion of private contracts for the sale of MIA wine grapes to wineries by wine grape growers,

- (d) the collection and dissemination of market and industry information, including the production and publication of indicator prices for MIA wine grapes grown in the Board's area of operations,
- (e) the conduct of research and development into plant health in relation to wine grapes,
- (f) the provision of education and training in relation to wine grape production and marketing,
- (g) the promotion (in association with organisations representing wineries) of wine made from MIA wine grapes,
- (h) the promotion of regional industry, including regional wine-making, within the Board's area of operations,
- (i) the representation of the wine grape industry in relation to the matters referred to in paragraphs (a)–(h).

Part 3 Other provisions relating to Board

8 Membership of Board

- (1) The Board is to consist of 7 members, of whom:
 - (a) five are to be elected by the Board's constituents, and
 - (b) two are to be appointed by the elected members.
- (2) If there are insufficient eligible nominees for election under subclause (1) (a), additional members are to be appointed by the elected members to make up the insufficiency.

9 Quorum for meeting of Board

The quorum for a meeting of the Board is 4 of its members.

10 Voting entitlements of constituents

The voting entitlements for the Board's constituents for both polls and elections is one vote per constituent.

11 Quorum for meeting of constituents

The quorum for a meeting of the Board's constituents is 30 constituents.

Wine Grapes Marketing Board (Reconstitution) Act 2003 No 100

Schedule 1 Agricultural Industry Services (Wine Grapes Marketing Board) Regulation
2003

12 Financial year

The financial year of the Board is the year ending on 31 December.

Schedule 2 Amendment of Agricultural Industry Services Act 1998

(Section 24)

[1] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Wine Grapes Marketing Board (Reconstitution) Act 2003

[2] Schedule 4

Insert at the end of the Schedule, with appropriate Part and clause numbers:

Part Provisions consequent on enactment of Wine Grapes Marketing Board (Reconstitution) Act 2003

Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003

- (1) The *Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003* set out in Schedule 1 to the *Wine Grapes Marketing Board (Reconstitution) Act 2003* (**the new Regulation**) may be amended and repealed as if it had been made under this Act, and does not cease to have effect when that Act expires.
- (2) Sections 4 and 5 do not apply to the new Regulation.
- (3) Section 7 applies to the new Regulation as if it had been made under section 5.
- (4) For the purposes of section 7 (2) (b), the term for which each member of the existing body referred to in that paragraph is taken to have been elected or appointed is taken to expire on 2 February 2007.
- (5) Part 2 of the *Subordinate Legislation Act 1989* does not apply to the new Regulation.
- (6) For the purposes of section 10 of the *Subordinate Legislation Act 1989*, the new Regulation is taken to have been published on 1 January 2004.

Wine Grapes Marketing Board (Reconstitution) Act 2003 No 100

Schedule 2 Amendment of Agricultural Industry Services Act 1998

- (7) Sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to the new Regulation.

[Second reading speech made in—
Legislative Council on 20 November 2003
Legislative Assembly on 3 December 2003]

BY AUTHORITY