

Wine Grapes Marketing Board (Reconstitution) Act 2003 No 100

[2003-100]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **See also**
[Miscellaneous Acts Amendment \(Directors' Liability\) Bill 2011](#)
- **Proposed repeal**
This Act is to be repealed at the beginning of 1.1.2012 — see sec 26.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Wine Grapes Marketing Board (Reconstitution) Act 2003 No 100



New South Wales

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.

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 regulations under the *Agricultural Industry Services Act 1998*.

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.

Department means the Department of Industry and Investment.

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

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

exercise a function includes perform a duty.

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.

function includes a power, authority or duty.

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.

Part 2 Wine grapes marketing

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

4 (Repealed)

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 (but not price) 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 regulations under the *Agricultural Industry Services Act 1998* by which the Board is established.
- (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 prescribed rate of interest under section 101 of the *Civil Procedure Act 2005* with respect to the 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 (Repealed)

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) (Repealed)
- (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 (Repealed)

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 Inspectors

- (1) In making a decision with respect to the appointment of a person to exercise the functions of an 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 an 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 an 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) An 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 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.

21A Delegation

The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) to any member of staff of the Department.

22 (Repealed)

23 Abolition of former Board

The former Board is abolished.

24 Savings, transitional and other provisions

Schedule 1 has effect.

25 (Repealed)

26 Repeal of Act

This Act is repealed at the beginning of 1 January 2012.

Schedule 1 Savings, transitional and other provisions

(Section 24)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Wine Grapes Marketing Board (Reconstitution) Amendment Act 2007

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than

the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of [Wine Grapes Marketing Board \(Reconstitution\) Amendment Act 2007](#)

2 Definition

In this Part, **the 2007 amending Act** means the [Wine Grapes Marketing Board \(Reconstitution\) Amendment Act 2007](#).

3 Saving of [Agricultural Industry Services \(Wine Grapes Marketing Board\) Regulation 2003](#)

The repeal of section 22, and the substitution of this Schedule, by the 2007 amending Act do not affect the validity or operation of the [Agricultural Industry Services \(Wine Grapes Marketing Board\) Regulation 2003](#).

4 Continued operation of section 9

Section 9, as in force immediately before the date of assent to the 2007 amending Act, continues to have effect in relation to consignments of MIA wine grapes delivered before that date.

Schedule 2 (Repealed)