

South Australia

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**NATIONAL WINE CENTRE (RESTRUCTURING AND LEASING
ARRANGEMENTS) ACT 2002**

An Act to make provision for the restructuring of the National Wine Centre, the leasing of Centre land and other dealings with assets and liabilities of the Centre; and for other purposes.

*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **21 August 2003**.*

Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.

**NATIONAL WINE CENTRE (RESTRUCTURING AND LEASING
ARRANGEMENTS) ACT 2002**

being

National Wine Centre (Restructuring and Leasing Arrangements) Act 2002
No. 8 of 2002 [Assented to 1 August 2002]¹

as amended by

National Wine Centre (Restructuring and Leasing Arrangements) (University of Adelaide) Amendment Act 2003 No. 30 of
2003 [Assented to 24 July 2003]²

¹ Came into operation 21 August 2003: *Gaz.* 21 August 2003, p. 3275.

² Came into operation 21 August 2003 immediately after the National Wine Centre (Restructuring and Leasing Arrangements) Act 2002 came into operation: *Gaz.* 21 August 2003, p. 3275.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

Short title

1. This Act may be cited as the *National Wine Centre (Restructuring and Leasing Arrangements) Act 2002*.

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Interpretation

3. (1) In this Act, unless the contrary intention appears—

"asset" means—

- (a) a present, contingent or future legal or equitable estate or interest in real or personal property; or
- (b) a present, contingent or future right, power, privilege or immunity,

(and includes a present or future cause of action in favour of the Centre);

"Centre" means the *National Wine Centre* established under the repealed Act;

"Centre asset" means—

- (a) any asset (including official insignia) vested in the Centre immediately before its dissolution under section 4;
- (b) any other asset of the Minister or of the Crown that is, by determination of the Minister, to be regarded as a Centre asset,

but does not include Centre land;

"Centre land" means the area of land outlined in bold and marked "A" on the plan set out in Schedule 1;

"Centre liability" means—

- (a) any liability of the Centre immediately before its dissolution under section 4;
- (b) any other liability of the Minister or of the Crown that is, by determination of the Minister, to be regarded as a Centre liability;

"contracting party"—see Part 2 Division 3;

"lease" includes—

- (a) a sub-lease or other derivative of a lease;
- (b) hire of personalty;
- (c) a licence;

"lessee"—*see* Part 2 Division 3;

"liability" means a present, contingent or future liability or obligation (including a non-pecuniary obligation and a present or future cause of action against the Centre);

"official insignia" means all official insignia under the repealed Act;

"repealed Act" means the *National Wine Centre Act 1997*.

(2) The Minister may, by instrument in writing, determine that a Centre asset is to be regarded as personalty although annexed to land (and any such determination will have effect according to its terms and despite the provisions of any other law or instrument).

(3) The Minister may, by subsequent instrument in writing, vary or revoke a determination under subsection (2).

Part 2—Control and management of National Wine Centre

Division 1—Minister to replace body corporate

Minister to replace body corporate

4. The body corporate known as the *National Wine Centre* established under the repealed Act is dissolved and all of its assets and liabilities are vested in the Minister.

Division 2—Continuation of dedication of Centre land

Continuation of dedication of Centre land

5. (1) The Centre land continues to be dedicated land under the *Crown Lands Act 1929* and is—

- (a) dedicated for the purposes of a wine centre established—
 - (i) to develop and provide for public enjoyment and education exhibits, working models, tastings, classes and other facilities and activities relating to wine, wine production and wine appreciation; and
 - (ii) to promote the qualities of the Australian wine industry and wine regions and the excellence of Australian wines; and
 - (iii) to encourage people to visit the wine regions of Australia and their vineyards and wineries and generally to promote tourism associated with the wine industry; and
 - (iv) to provide facilities and amenities for public use and enjoyment; and
 - (iva) as a facility for tertiary education programs, and scientific or other research, relating to wine; and
 - (v) to provide other services or facilities determined or approved by the Minister; and
- (b) declared to be under the care, control and management of the Minister.

(1a) Despite subsection (1)(a), the Minister may declare that a part of Centre land is dedicated for purposes appropriate to the functions or purposes of the University of Adelaide.

(2) Subsection (1) does not limit the ability of the Minister to enter into any lease or other arrangement with a person or body to provide for the care, control or management of the whole, or any part, of Centre land.

Division 3—Leasing and transfer arrangements

Minister may lease Centre land

6. (1) The Minister may grant a lease over any part of Centre land.

(2) A lease may be granted to any person or body (a **lessee**) as the Minister thinks fit.

(3) A lease may be granted or renewed for a term not exceeding 40 years.

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- (4) A lease should contain terms under which—
- (a) the lessee is to indemnify the Minister for any liability of the Minister to a third party arising from the lessee's use or possession of Centre land; and
 - (b) the lessee is required to have adequate insurance against risks arising from the use or possession of Centre land; and
 - (c) the lessee is required to ensure compliance with all regulatory requirements applicable to the use or possession of Centre land; and
 - (d) the lessee is not to mortgage, encumber or otherwise use the lease as security without the consent of the Minister; and
 - (e) the Minister is entitled to terminate the lease for any serious breach that remains unremedied after the Minister has given notice of the breach and allowed a reasonable opportunity for it to be remedied.
- (5) A lease may include a provision allowing the lessee to sub-lease any part of Centre land with the consent of the Minister.
- (6) A lease may include other terms that the Minister considers to be appropriate in the circumstances.
- (7) The Minister must, after granting a lease over any part of Centre land, cause a report relating to the lease to be laid before both Houses of Parliament.
- (8) A lease that does not comply with a requirement of this section is not invalid for that reason but, when the report relating to the lease is laid before Parliament, it must identify the non-compliance and state the reasons for it.

Minister may deal with other assets and liabilities

7. (1) The Minister may by agreement with a person or body (a **contracting party**) do one or more of the following:

- (a) transfer to the contracting party a Centre asset or a Centre liability;
 - (b) grant to the contracting party a lease or other right in respect of a Centre asset;
 - (c) enter into any other arrangement in respect of the management of a Centre asset or the handling or disposal of a Centre liability.
- (2) Without limiting subsection (1), an agreement under that subsection may—
- (a) discharge an asset to which the agreement relates from any trust or other interest in favour of the Minister or the Crown;
 - (b) create liabilities in accordance with its terms;
 - (c) impose on the contracting party a liability to indemnify the Minister or the Crown against specified liabilities or liabilities of a specified class;
 - (d) make any other provision that the Minister considers to be appropriate in the circumstances.

(3) An agreement under subsection (1) will have effect according to its terms and despite the provisions of any other law or instrument.

Related provisions

8. (1) No stamp duty is payable in respect of a lease or agreement under this Division.

(2) No obligation arises under the *Stamp Duties Act 1923* to lodge a statement or return, or to include information in a statement or return, relating to a transaction effected by a lease or an agreement under this Division.

(3) Subsections (1) and (2) do not extend to any lease or agreement between a lessee, or a contracting party, and a third party (not being the Minister).

(4) An authority required or authorised by a law of the State—

(a) to register, record or note a lease or other instrument or transaction relating to land; or

(b) to register, record or note transactions affecting assets or liabilities, or any instrument or document relating to such transactions,

must, on application under this subsection, register, record or note, in an appropriate manner, a lease or transaction entered into or effected under this Division.

(5) No fee is payable in respect of an application under subsection (4).

(6) Nothing done under this Division—

(a) constitutes a breach of, or default under, an Act or other law; or

(b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or

(c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom or in any other way); or

(d) constitutes a civil or criminal wrong; or

(e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or

(f) releases a surety or other obligee wholly or in part from an obligation.

Division 4—Staff

Staff

9. (1) The Minister may make arrangements with respect to the staff of the Centre.

(2) The Minister may, by instrument in writing, transfer a person who was, immediately before the dissolution of the Centre under section 4, a member of the staff of the Centre to a position in the employment of another person or body.

(3) An instrument under subsection (2)—

(a) takes effect from the date of the instrument or a later date specified in the instrument; and

(b) may be varied or revoked by the Minister by further instrument in writing before the instrument takes effect; and

(c) has effect by force of this Act and despite the provisions of any other law or instrument.

(4) A transfer under this section does not—

(a) affect the staff member's remuneration; or

(b) interrupt continuity of service; or

(c) constitute a retrenchment or a redundancy.

(5) Except with the staff member's consent, a transfer under this section must not involve—

(a) any reduction in a staff member's status; or

(b) any change in employment duties that would be unreasonable having regard to the staff member's skills, ability and experience.

(6) However, a staff member's status is not reduced by—

(a) a reduction of the scope of the business operations for which the staff member is responsible; or

(b) a reduction in the number of persons under the staff member's supervision or management,

if the staff member's functions in their general nature remain the same as, or similar to, the staff member's functions before the transfer.

(7) A staff member's terms and conditions of employment are subject to variation after the transfer in the same way as before the transfer.

(8) A person whose employment is transferred from the Centre to another person or body (the **new employer**) under this section is taken to have accrued as an employee of the new employer an entitlement to annual leave, sick leave and long service leave that is equivalent to the entitlements that the person had accrued, immediately before the transfer took effect, as an employee of the Centre.

(9) A transfer under this section does not give rise to any remedy or entitlement arising from the cessation or change of employment.

(10) For the purposes of construing a contract applicable to a person whose employment is transferred under this section, a reference to the Centre is to be construed as a reference to the new employer.

(11) The Minister may, by instrument in writing, make any ancillary provision that may be necessary or expedient in view of the transfer of a person under this section.

Division 5—Issue of liquor licence

Sale and supply of liquor

10. (1) The Minister may, by instrument in writing, require that a licence of a particular class under the *Liquor Licensing Act 1997* authorising the sale and supply of liquor from the Centre land be issued by the Liquor and Gambling Commissioner to a specified lessee or contracting party, subject to such terms and conditions as may be determined by the Minister after consultation with the Commissioner.

(2) The licensed premises under the licence may comprise all, or a part, of the Centre land according to the determination of the Minister.

(3) The *Liquor Licensing Act 1997* will apply in relation to the licence issued under this section once it has been issued by the Liquor and Gambling Commissioner.

Schedule 2—Transitional provisions

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Transitional provision—Centre land

2. (1) In this clause—

"prescribed land" means land—

- (a) that, prior to the commencement of clause 1, was land to which section 5 of the repealed Act applied; and
- (b) that is not land to which section 5 of this Act applies.

(2) On the commencement of clause 1, the prescribed land is to be taken, for the purposes of the *Crown Lands Act 1929*, to have been—

- (a) dedicated for the purposes of the Botanic Gardens and State Herbarium; and
- (b) declared to be under the care, control and management of the Board of the Botanic Gardens and State Herbarium.

APPENDIX

LEGISLATIVE HISTORY

Repeals

The *National Wine Centre (Restructuring and Leasing Arrangements) Act 2002* repealed the following:

National Wine Centre Act 1997

Legislative History

Long title:	amended under <i>Legislation Revision and Publication Act 2002</i> 21.8.03
Section 2:	omitted under <i>Legislation Revision and Publication Act 2002</i> 21.8.03
Section 5(1):	amended by 30, 2003, s. 4(1)
Section 5(1a):	inserted by 30, 2003, s. 4(2)
Section 6(3):	amended by 30, 2003, s. 5
Schedule 2	
Clause 1:	omitted under <i>Legislation Revision and Publication Act 2002</i> 21.8.03