

SOUTH AUSTRALIA

NATIONAL WINE CENTRE ACT 1997

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NATIONAL WINE CENTRE ACT 1997

being

National Wine Centre Act 1997 No. 52 of 1997
[Assented to 31 July 1997]¹

¹ Came into operation 21 August 1997: *Gaz.* 21 August 1997, p. 408.

N.B. The amendments effected to this Act by the *National Wine Centre (Land of Centre) Amendment Act 1998* had not been brought into operation at the date of, and have not been included in, this reprint.

An Act to establish the National Wine Centre; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *National Wine Centre Act 1997*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act—

"**board**" means a board established for the Centre under Division 1 of Part 5;

"**Centre**" means the *National Wine Centre* established under Part 2 or, as the context requires, the land and facilities of the Centre;

"**governing authority**" of the Centre means—

(a) if a board is established for the Centre under Division 1 of Part 5—the board;
or

(b) if there is no board for the Centre—the Minister;

"**land**" of the Centre includes land placed under the care, control and management of the Centre;

"**logo**" means a design (the copyright of which is vested in the Crown in right of the State) declared by the Minister by notice under Part 6 to be a logo;

"**official insignia**" means a logo, an official symbol or an official title;

"**official symbol**" means a combination of a logo and an official title;

"**official title**" means a name or title declared by Part 6 or by the Minister by notice under Part 6 to be an official title;

"**promote**", in relation to an event or activity, includes organise, conduct, market, advertise or act as project manager.

(2) For the purposes of this Act, goods will be taken to be marked with official insignia if the insignia is affixed or annexed to, marked on, or incorporated in or with—

(a) the goods; or

(b) any covering or container in which the goods are wholly or partly enclosed; or

(c) anything placed in or attached to any such covering or container; or

- (d) anything that is attached to the goods or around which the goods are wrapped or wound.

PART 2
INCORPORATION OF NATIONAL WINE CENTRE

Incorporation of Centre

- 4.** (1) The *National Wine Centre* is established.
- (2) The Centre—
- (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and
 - (c) is capable of suing and being sued in its corporate name; and
 - (d) has the functions and powers assigned or conferred by or under this Act.
- (3) The Centre is an instrumentality of the Crown and holds its property on behalf of the Crown.

PART 3
LAND OF THE CENTRE

Land dedicated and placed under care, control and management of Centre

5. The area of land marked "A" on the plan set out in the Schedule is to be taken to be dedicated land under the *Crown Lands Act 1929* that has been—

- (a) dedicated for the purposes of the Centre; and
- (b) declared to be under the care, control and management of the Centre.

Development Act s. 49 to apply

6. (1) Section 49 of the *Development Act 1993* will apply to proposals by the Centre to undertake development of land of the Centre (whether or not in partnership or joint venture with a person or body that is not a State agency).

(2) The following requirements apply (in addition to the requirements of section 49 of the *Development Act 1993*) in relation to any application for approval of the erection of a new building, or the use of an existing building, on the land of the Centre as part of its facilities lodged with the Development Assessment Commission before the prescribed day:

- (a) the Commission must ensure that the application is available for public inspection for 15 business days at the office of the Commission and must, by public advertisement, give notice of the right to inspect the application and invite interested persons to make written submissions to the Commission on the application within that period of 15 days;
- (b) the Commission must allow a person who has made a written submission to it within that period and who, as part of that submission, has indicated an interest in appearing before the Commission, a reasonable opportunity to appear personally or by representative before the Commission to be heard in support of his or her submission;
- (c) the Commission's report to the Minister on the application must contain an assessment of the submissions made on the application by interested persons as referred to in paragraph (a) or (b);
- (d) the Minister must, as soon as practicable after determining the application under section 49, prepare a report on the matter and cause copies of the report to be laid before both Houses of Parliament.

(3) Expressions used in any of the paragraphs of subsection (2) have the same respective meanings as in the *Development Act 1993*.

(4) A regulation prescribing a day for the purposes of subsection (2) cannot come into operation until the time has passed during which the regulation may be disallowed by resolution of either House of Parliament.

PART 4
FUNCTIONS AND POWERS OF THE CENTRE

Functions of Centre

7. (1) The functions of the Centre are—

- (a) 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
- (b) to promote the qualities of the Australian wine industry and wine regions and the excellence of Australian wines; and
- (c) 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
- (d) to act as a headquarters of the Australian wine industry by providing accommodation and administrative support and facilities for wine industry bodies; and
- (e) to establish dining and refreshment facilities for visitors to the Centre; and
- (f) to carry out building, landscaping and other works to establish the facilities and amenities of the Centre; and
- (g) to conduct any other operations prescribed by regulation or approved by the Minister.

(2) The Centre is to perform its functions in accordance with best commercial practices and, so far as practicable, in co-ordination with wine industry and tourism industry programs and initiatives.

Powers of Centre

8. (1) The Centre has all the powers of a natural person together with powers conferred on it under this or any other Act.

(2) The Centre may exercise its powers within and outside the State.

**PART 5
MANAGEMENT OF THE CENTRE**

DIVISION 1—BOARD

Establishment of board

- 9.** (1) The Governor may establish a board as the governing authority of the Centre.
- (2) Decisions made by a board established for the Centre are decisions of the Centre.
- (3) The Governor may, at any time, dissolve a board established under this section.
- (4) The establishment or dissolution of a board under this section must be notified in the *Gazette*.

Composition of board

- 10.** (1) A board established for the Centre is to consist of not less than 7 nor more than 13 members appointed by the Governor.
- (2) The members are to be persons nominated by the Minister after consultation with—
- (a) a prescribed association representative of the national wine industry; and
- (b) prescribed associations for each of the States of South Australia, New South Wales, Victoria and Western Australia representative of the respective wine industries of those States.
- (3) At least 2 of the members of the board must be women and at least 2 must be men.
- (4) One member, nominated by the Minister on the recommendation of the prescribed association representative of the national wine industry, will be appointed by the Governor to chair meetings of the board.
- (5) The Governor may appoint a person to be the deputy of a member, and a person so appointed may act as a member of the board in the absence of that member.

Terms and conditions of appointment of members

- 11.** (1) A member of the board will be appointed for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.
- (2) The Governor may remove a member from office on any grounds that the Governor considers sufficient.
- (3) The office of a member becomes vacant if the member—
- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or

- (d) is convicted of an indictable offence; or
- (e) is removed from office under subsection (2).

Vacancies or defects in appointment of members

12. An act or proceeding of the board is not invalid by reason only of a vacancy in its membership and, despite the subsequent discovery of a defect in the appointment of a member, an act or proceeding of the board will be as valid and effectual as if the member had been duly appointed.

Remuneration

13. A member of the board is entitled to such remuneration, allowances and expenses as may be determined by the Governor.

Proceedings

14. (1) A quorum of the board consists of one half the total number of its members (ignoring any fraction resulting from the division) plus one.

(2) If the member appointed to chair meetings of the board is absent from a meeting of the board, the following provisions apply:

- (a) if another member has been appointed as that member's deputy and is present at the meeting—the deputy will preside at the meeting;
- (b) in any other case—a member chosen by the members present at the meeting will preside at the meeting.

(3) A decision carried by a majority of the votes cast by members at a meeting is a decision of the board.

(4) Each member present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(5) A conference by telephone or other electronic means between members will, for the purposes of this section, be taken to be a meeting of the board at which the participating members are present if—

- (a) notice of the conference is given to all members in the manner determined by the board for the purpose; and
- (b) each participating member is capable of communicating with every other participating member during the conference.

(6) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—

- (a) notice of the proposed resolution is given to all members in accordance with procedures determined by the board; and

(b) a majority of the members expresses concurrence in the proposed resolution by letter or by facsimile transmission or other electronically transmitted written communication setting out the terms of the resolution.

(7) The board must have accurate minutes kept of its proceedings.

(8) Subject to this Act, the board may determine its own procedures.

Disclosure of interest

15. (1) A member of the board who has a direct or indirect pecuniary or personal interest in a matter under consideration by the board—

(a) must disclose the nature of the interest to the board; and

(b) must not take part in any deliberations or decision of the board in relation to that matter.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(2) A member of the board will not be taken to have a direct or indirect interest in a matter for the purposes of this section by reason only of the fact that the member has an interest in the matter that is shared in common with the public, the wine industry generally or a substantial section of the public or the industry.

(3) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(4) A disclosure under this section must be recorded in the minutes of the board and reported to the Minister.

(5) If, in the Minister's opinion, a particular interest or office of a member is of such significance as to be inconsistent with the proper discharge of the duties of a member of the board, the Minister may require that the member either cease to have or hold the interest or office or resign from the board (and non-compliance with the requirement constitutes misconduct and hence a ground for removal of the member from the board).

(6) If a member discloses an interest in a proposed contract under this section and takes no part in any deliberations or decision of the board on the contract—

(a) the contract is not liable to be avoided by the Centre; and

(b) the member is not liable to account for profits derived from the contract.

Members' duties of honesty, care and diligence

16. (1) A member of the board must at all times act honestly in the performance of official functions.

Maximum penalty: \$20 000 or imprisonment for 4 years.

(2) A member of the board must at all times exercise a reasonable degree of care and diligence in the performance of official functions.

(3) If a member of the board is culpably negligent in the performance of official functions, the member is guilty of an offence.

Maximum penalty: \$20 000.

(4) A member is not culpably negligent for the purposes of subsection (3) unless the court is satisfied the member's conduct fell sufficiently short of the standard required of the member to warrant the imposition of a criminal sanction.

(5) A member or former member of the board must not make improper use of information acquired through his or her official position to gain directly or indirectly a personal advantage for himself, herself or another, or to cause detriment to the Centre or the State.

Maximum penalty: \$20 000 or imprisonment for 4 years.

(6) A member of the board must not make improper use of his or her official position to gain directly or indirectly a personal advantage for himself, herself or another or to cause detriment to the Centre or the State.

Maximum penalty: \$20 000 or imprisonment for 4 years.

(7) This section—

(a) operates both inside and outside the State; and

(b) is in addition to, and does not derogate from, other laws.

Immunity of members

17. (1) A member of the board incurs no civil liability for an honest act or omission in the performance or purported performance of functions or duties under this Act.

(2) The immunity conferred by subsection (1) does not extend to culpable negligence.

(3) A civil liability that would, but for this section, attach to a member of the board attaches instead to the Crown.

DIVISION 2—MINISTER

Board subject to control and direction of Minister

18. A board established for the Centre is subject to the control and direction of the Minister.

Minister to be governing authority if no board

19. (1) The Minister is the governing authority of the Centre if there is no board for the Centre.

(2) Decisions of the Minister as the governing authority of the Centre are decisions of the Centre.

DIVISION 3—GENERAL

Common seal and execution of documents

20. (1) The common seal of the Centre must not be affixed to a document except in pursuance of a decision of the governing authority and the affixing of the seal must be attested by—

- (a) if a board is the governing authority—the signatures of two members of the board;
- (b) if the Minister is the governing authority—the signature of the Minister.

(2) The governing authority may, by instrument under the common seal of the Centre, authorise a person or persons (whether nominated by name or by office or title) to execute documents on behalf of the Centre subject to conditions and limitations (if any) specified in the instrument of authority.

(3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the Centre.

(4) A document is duly executed by the Centre if—

- (a) the common seal of the Centre is affixed to the document in accordance with this section; or
- (b) the document is signed on behalf of the Centre by a person or persons in accordance with authority conferred under this section.

Delegation

21. (1) The governing authority may, by instrument in writing, delegate functions or powers under this Act.

(2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

- (a) may be made—
 - (i) to a particular person, committee or body; or
 - (ii) to the person for time being occupying a particular office or position; and
- (b) may be made subject to conditions and limitations specified in the instrument of delegation; and
- (c) is revocable at will and does not derogate from the power of the delegator to act in any matter.

(4) A delegate must not act pursuant to the delegation in any matter in which the delegate has a direct or indirect pecuniary or personal interest.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(5) It is a defence to a charge of an offence against subsection (4) to prove that the defendant was, at the time of the alleged offence, unaware of his or her interest in the matter.

Chief executive and staff

22. (1) A chief executive of the Centre may be appointed by the Centre on terms and conditions determined by the Centre.

(2) A person holding or acting in the office of chief executive is, subject to the control and direction of the governing authority, responsible for—

- (a) managing the staff and resources of the Centre; and
- (b) giving effect to the policies and decisions of the governing authority.

(3) The Centre may employ staff on terms and conditions determined by the Centre or make use of the services of staff employed in the public or private sector.

Accounts and audit

23. (1) The Centre must cause proper accounting records to be kept in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.

(2) The Auditor-General may at any time audit the accounts of the Centre and must audit the annual statements of account.

Annual report

24. (1) A report must be prepared on or before 30 September in every year on the Centre's operations for the preceding financial year.

(2) The report must contain the audited statements of account of the Centre for the preceding financial year.

(3) The Minister must, within 12 sitting days after 30 September in every year, have copies of the report for the preceding financial year laid before both Houses of Parliament.

**PART 6
MISCELLANEOUS**

Sale of liquor

25. (1) The Centre is to be taken to have been granted a general facility licence under the *Liquor Licensing Act 1985* authorising the sale of liquor from the licensed premises at any time on any day subject to any conditions prescribed by regulation (which may include conditions restricting the times at which liquor may be sold under the licence).

(2) The licensed premises will be comprised of all the land of the Centre.

(3) The Liquor Licensing Commissioner must issue the Centre with a licence in the terms required by this section.

(4) The *Liquor Licensing Act 1985* will apply in relation to the licence once issued by the Commissioner under this section.

Centre may conduct operations under other name

26. (1) The Centre may, if it so determines, conduct its operations or any part of its operations not under the name *National Wine Centre* but under some other name declared by the Minister by notice in the *Gazette* (not being a name that is registered or otherwise protected under some other Act).

(2) *National Wine Centre* and any other name declared under subsection (1) are official titles.

Declaration of logos and official titles

27. (1) The Minister may, by notice in the *Gazette*, declare a logo to be a logo in respect of the Centre or a particular event or activity promoted by the Centre.

(2) The Minister may, by notice in the *Gazette*, declare a name or a title of an event or activity promoted by the Centre (not being a name or title registered or otherwise protected under some other Act) to be an official title.

(3) The Minister may, by notice in the *Gazette*, vary or revoke a notice under this section.

Protection of proprietary interests of Centre

28. (1) The Centre has a proprietary interest in all official insignia.

(2) A person must not, without the consent of the Centre, in the course of a trade or business—

(a) use a name in which the Centre has a proprietary interest under this section for the purpose of promoting the sale of services or the provision of any benefits; or

(b) sell goods marked with official insignia; or

(c) use official insignia for the purpose of promoting the sale of goods or services.

Maximum penalty: \$20 000.

(3) A person must not, without the consent of the Centre, assume a name or description that consist of, or includes, official insignia.

Maximum penalty: \$20 000.

(4) A consent under this section—

- (a) may be given with or without conditions (including conditions requiring payment to the Centre); and
- (b) may be given generally by notice in the *Gazette* or by notice in writing addressed to an applicant for the consent; and
- (c) may be revoked by the Centre for breach of a condition by notice in writing given personally or by post to a person who has the benefit of the consent.

(5) The Supreme Court may, on the application of the Centre, grant an injunction to restrain a breach of this section.

(6) The court by which a person is convicted of an offence against this section may, on the application of the Centre, order the convicted person to pay compensation of an amount fixed by the court to the Centre.

(7) Subsections (5) and (6) do not derogate from any civil remedy that may be available to the Centre apart from those subsections.

Seizure and forfeiture of goods

29. (1) If—

- (a) goods apparently intended for a commercial purpose are marked with official insignia; and
- (b) a member of the police force suspects on reasonable grounds that the use of the insignia has not been authorised by the Centre,

the member may seize those goods.

(2) If goods have been seized under this section and—

- (a) proceedings are not instituted for an offence against section 28(2) in relation to the goods within 3 months of their seizure; or
- (b) after proceedings have been instituted and completed, the defendant is not convicted,

the person from whom they were seized is entitled to recover—

- (c) the goods or, if they have been destroyed, compensation equal to the market value of the goods at the time of their seizure; and
- (d) compensation for any loss suffered by reason of the seizure of the goods.

(3) An action for the payment of compensation under subsection (2) may be brought against the Centre in any court of competent jurisdiction.

(4) The court by which a person is convicted of an offence against this Act may order that goods to which the offence relates be forfeited to the Crown.

(5) Any goods forfeited to the Crown must be disposed of in such manner as the Minister may direct and, if sold, the proceeds of the sale paid into the Consolidated Account.

Regulations

30. (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) provide for the admission (including the fixing of opening and closing times), exclusion or expulsion of members of the public to or from the Centre, or any part of it; and
- (b) regulate the consumption of alcohol in the Centre; and
- (c) prohibit disorderly or offensive behaviour or the making of undue noise in the Centre; and
- (d) regulate, restrict or prohibit, or provide that the Centre may regulate, restrict or prohibit, the driving or parking of motor vehicles in the Centre; and
- (e) provide for the payment and recovery of fees determined by the Centre in respect of the driving, parking or standing of vehicles in the Centre; and
- (f) provide that the owner and driver of a vehicle driven, parked or left standing in contravention of the regulations are each guilty of an offence and provide or exclude defences in relation to any such offences; and
- (g) provide for any matter in respect of procedure in relation to alleged offences against the provisions of the regulations dealing with the driving, parking or standing of vehicles; and
- (h) regulate, restrict or prohibit activities in the Centre or the bringing of things into the Centre; and
- (i) provide for any matter in respect of evidence or burden of proof in proceedings for offences against the provisions of the regulations; and
- (j) confer powers on the Centre to approve (on payment of a fee, if any, determined by the Centre) any act, or activity, that would be otherwise prohibited under the regulations; and
- (k) fix fines not exceeding \$1 250 for contravention of a regulation.

SCHEDULE
Plan of Land