



*Riverina*  
WINE GRAPES  
MARKETING BOARD

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Wine Grapes Marketing Board**

**Submission to the  
Review of the NSW *Liquor Act 2007***

**August 2013**

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## **Introduction**

The Wine Grapes Marketing Board “Board” is a New South Wales Statutory Authority representing 375 independent wine grape growers based in the Riverina region and encompassing the City of Griffith and the Local Government Areas of Leeton, Carrathool and Murrumbidgee.

The Board is constituted in accordance with the *NSW Agricultural Industry Services (Regulation) 2009* and it provides industry services as prescribed within the regulation. The Board derives the majority of its income from a service fee levied on its constituents at a 2013 rate of \$3.90 per tonne.

The Board is the single largest regional representative body in NSW of independent grape producers and the region that it represents is the largest winegrape producing region within the State. It is also a regional member of the NSW Wine Industry Association.

## **Purpose of this submission**

The purpose of this submission is to bring to the review committee’s attention a number of inconsistencies within the current licensing provisions that relate to the Producer/Wholesaler Licence for wine and wine products.

These inconsistencies have led to a large increase in non-industry related persons obtaining licences to avail themselves of the federal Wine Equalisation Tax (WET) rebate provided for by the Australian Taxation Office (ATO).

The Board in 2012 raised its members concerns with the NSW Small Business Commissioner (SBC) that non-industry persons (those that do not own or lease a vineyard or winegrape processing facility) had obtained Producer/Wholesaler licenses and were in the market principally for the purposes of obtaining a tax incentive/rebate of 29% of the sale price of bulk wine. The WET Rebate is payable up to \$500,000 on a gross sale price of approximately \$1,724,000. This rebate is available to all licensed persons/business within Australia that sell bulk and finished wine on the domestic market. Industry commentary suggests that the amount of rebate being provided to the industry is as high as \$288 million per annum.

This federal taxation incentive has led to a proliferation of persons legitimately applying for licenses within NSW. The rebate has the potential to keep bulk and finished wine prices depressed which in turn impacts on the farm gate value to winegrape producers. Such market

forces are thought by many within the industry to be preventing the industry from restructuring by sustaining business that would otherwise be unviable.

The Board acknowledges that the Office of Liquor, Gaming and Racing (OLGR) recently undertook compliance audits within the Riverina along with other parts of the State. These actions are believed to have been promoted as a result of the concerns taken to the SBC by the Board (on behalf of its members). OLGR Compliance officers verbally advised staff at the Board that the majority of licensees in the Riverina were in breach of the conditions of their licenses but that this review of the legislation would assist the industry in rectifying the matter by working to align the legislation to existing business models.

Following on from these discussions with the OLGR Compliance officers the Board were advised by representatives of Riverina regional winemakers that contrary to the advice received the OLGR Compliance officers had recanted their original position in terms of the breaches and had in writing advised wineries that they had “misinterpreted” the legislation and that their current practices were in accordance with the legislation.

This submission aims to highlight the sections within the current legislation and its concerns.

#### ***LIQUOR ACT 2007 - SECT 32 Wholesale suppliers of liquor***

*A producer/wholesaler licence authorises the licensee, if the licensee carries on business as a wholesale supplier of liquor:*

- (a) to sell liquor by wholesale, at any time on the licensed premises, to persons authorised to sell liquor (whether by wholesale or by retail), and*
- (b) to sell or supply liquor, at any time on the licensed premises:
  - (i) to the employees of the licensee or of a related corporation of the licensee, and*
  - (ii) to customers and intending customers for consumption while on the licensed premises, but only for the purposes of tasting.**

#### **Wine Grapes Marketing Board Concerns**

The underlined text above “at any time on the licensed premises” to the Board’s knowledge only occurs in the event that they have a functioning cellar door facility, wine is now regularly traded in bulk from premises other than the licensed premises. This is particularly the norm in the case where the wine has been manufactured by a third party “contract processed”. This type of behaviour is believed to be common where a winegrape producer does not own processing or manufacturing facilities and has the wine made on their behalf and then sold in bulk to another winery, wholesaler or retailer.

### **LIQUOR ACT 2007 - SECT 33 Producers of wine and similar products**

- (3) For the purposes of this section, a product is the "licensee's product" if:
- (a) it has been produced on the licensed premises (or a vineyard related to the licensed premises) from fruit grown or honey produced on the licensed premises or vineyard, or
  - (b) in the case only of wine-it is uniquely the licensee's (or a related corporation of the licensee's) own product, but only if that product contains not less than a percentage of wine, as prescribed by the regulations, that has been produced:
    - (i) by or under the direction of the licensee (or a related corporation of the licensee) on the licensed premises or a vineyard related to the licensed premises, or
    - (ii) on the licensee's behalf from fruit grown on the licensed premises or a vineyard related to the licensed premises, or

### **Wine Grapes Marketing Board Concerns**

In the event that the licensee does not own a vineyard or a "premises" on which to manufacture wine they are required to use other premises (commonly known as contract processing). Current licensees therefore, without being an actual industry participant (own or lease a vineyard or winegrape processing facility) can purchase winegrapes and have these delivered to a winery for manufacture under their direction. It is far from being produced on the "licensed premises".

The Board is concerned that the OLGR does not check the validity of those persons applying for and receiving a Producer/Wholesale licences. The OLGR needs to monitor and confirm that a person or business obtaining a Producer/Wholesalers licence owns and/or leases an operational business that either produces grapes or manufactures wine.

The application does not stipulate that the person or person applying for the licence must be associated with the industry in terms of ownership. Nor does it specify any constraints to application which is allowing for individuals not associated with the wine and grape industry to apply for said licence, whereas the regulations discuss percentage ownership of the wine and property.

## **LIQUOR REGULATION 2008 - REG 25 Wine producers-prescribed percentage of wine that is licensee's own product**

For the purposes of paragraph (b) of the definition of "licensee's product" in section 33 (3) of the Act, the prescribed percentage is:

- (a) 50%-in the case of wine that has been produced by or under the direction of the licensee (or a related corporation of the licensee) on the licensed premises or a vineyard related to the licensed premises, or
- (b) 85%-in the case of wine that has been produced on the licensee's behalf, or under the direction of the licensee or a related corporation of the licensee, from fruit grown on the licensed premises or a vineyard related to the licensed premises.

### **Wine Grapes Marketing Board Concerns**

As briefly referred to in the previous section the above regulation prescribes the amount in percentage terms of wine product that must be produced or under direction by the licensee. In its purest reading wineries that do not own a vineyard but produce wine for sale are "technically" in breach of the regulation.

This technical understanding of the regulation was also the initial understanding of the OLGR Compliance Officers, whose view the Board understands altered upon the provision of information from the NSW Wine Industry Association pertaining to the intent of the legislation.

### **Conclusion**

The Wine Grapes Marketing Board supports the provision of clear and concise legislation and associated regulations that enable industry to develop and progress.

The Board is concerned that the existing legislation provides for persons that are not related to the industry in terms of assets (planted vines, processing infrastructure or financial lease arrangements) to participate at the potential expense of existing industry operators.

Written by

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