



Department of Agriculture and Water Resources

Collection Agreement

Commonwealth of Australia (**Commonwealth**)
Australian Grape and Wine Authority (**AGWA**)

Agreement Information

Parties

Name The Commonwealth of Australia as represented by the Department of Agriculture and Water Resources [ABN 24 113 085 695]

Short form name **Commonwealth**

Name Australian Grape and Wine Authority [ABN 89 636 749 924]

Short form name **AGWA**

Overview

- A A charge is imposed on Australian produced wine that is exported in accordance with Schedule 13 of the *Primary Industries (Customs) Charges Act 1999* (**Wine Export Charge**).
- B Section 11 of the *Primary Industries Levies Charges and Collections Act 1991* (**Collection Act**) allows the Secretary of the Department of Agriculture and Water Resources, on behalf of the Commonwealth, to enter into an agreement for the collection of certain levies and charges. This includes the collection of the Wine Export Charge.
- C The Secretary of the Department of Agriculture and Water Resources, on behalf of the Commonwealth, and AGWA have agreed to enter into this Agreement for the collection of the Wine Export Charge by AGWA, on behalf of the Commonwealth.

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Agreed Terms

Part 1 – Collection

1. Definitions and interpretation

1.1 Definitions

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

Agreement	this Agreement as amended from time to time.
Agreement Period	the Agreement Period specified in clause 2.1, including any extension to that period in accordance with clause 2.2.
AGWA	the Australian Grape and Wine Authority.
AGWA Contact Officer	the person specified at clause 13(b)(i).
APPs	the Australian Privacy Principles, as defined in the Privacy Act as amended from time to time.
Collection Act	the <i>Primary Industries Levies and Charges Collection Act 1991</i> and includes any regulations, as amended from time to time.
Collection Legislation	the Collection Act and Collection Regulations, as amended from time to time.
Collection Regulations	the <i>Primary Industries Levies and Charges Collection Regulations 1991</i> , as amended from time to time.
Commencement Date	the date on which this Agreement commences, being the date of execution by both parties, or where the parties execute the Agreement on different dates, the later of those dates.
Commonwealth	the Commonwealth of Australia as represented by the Department.
Commonwealth Contact Officer	the person specified at clause 13(b)(ii).
Confidential Information	information that is by its nature confidential and a party knows or ought to know is confidential, but does not include information that is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation.
Department	the Department of Agriculture and Water Resources and includes any department, agency or authority of the Commonwealth which is from time to time responsible for administering this Agreement on behalf of the Commonwealth.

Late Payment Penalty	a penalty payable under section 15 of the Collection Act.
LEADR	the dispute resolution association with that name or any other similar body agreed between the parties from time to time.
Levy Year	has the same meaning as in Schedule 35 of the Collection Regulations.
Licensed Exporter	a person who holds a licence to export grape products from Australia issued under section 5 of the <i>Australian Grape and Wine Authority Regulations 1981</i> and is otherwise liable to pay the Wine Export Charge under the Collection Act.
Personal Information	has the same meaning as in the Privacy Act as amended from time to time.
Personnel	in relation to a party, any natural person who is an employee, officer, agent, or professional advisor of that party, and in the case of AGWA, of any subcontractor.
PGPA Act	means the <i>Public Governance, Performance and Accountability Act 2013</i> and any rules, as amended from time to time.
Privacy Act	means the <i>Privacy Act 1988</i> (Cth) as amended from time to time.
Return	means the quarterly, or where applicable, the annual return a Licensed Exporter is required by the Collection Legislation to lodge.
Wine Export Charge	the charge imposed on exported Australian produced wine in accordance with Schedule 13 of the <i>Primary Industries (Customs) Charges Act 1999</i> .

2. Duration of Agreement

2.1 Agreement Period

This Agreement begins on the Commencement Date and continues for a period of three years.

2.2 Option to extend

The Agreement Period may be extended by the Commonwealth for the following further period(s) specified below on the terms and conditions then in effect by giving written notice to AGWA 90 days or such other period agreed between the parties before the end of the current Agreement Period:

- (a) one three year period; or
- (b) any number of periods up to a maximum of three years.

3. Collection of Wine Export Charge

3.1 Commencement of collection

Unless otherwise agreed in writing between the parties, AGWA will collect the Wine Export Charge for the duration of the Agreement Period, commencing from the next date quarterly Returns are required to be lodged following the Commencement Date.

3.2 Returns and applications for exemption from lodging quarterly returns

Returns

- (a) AGWA must ensure that:
 - (i) all Returns required to be lodged by a Licensed Exporter in accordance with the Collection Regulations can be lodged with AGWA;
 - (ii) any process for lodging a Return with AGWA will allow a Licensed Exporter to meet their obligations set out in the Collection Legislation; and
 - (iii) all Licensed Exporters are made aware of the process by which a Return must be lodged with AGWA.
- (b) Where AGWA is satisfied that a Licensed Exporter has failed to lodge a Return in accordance with the requirements of the Collection Legislation, AGWA must notify the Commonwealth as soon as reasonably practicable and by submitting an email to the following address: levies.management@agriculture.gov.au (or such other email address as notified by the Commonwealth from time to time).
- (c) For the purposes of clause 3.2(b), AGWA must ensure that any notice to the Commonwealth includes:
 - (i) the Licensed Exporter's full name and ABN or ACN, as relevant;
 - (ii) the number of the Licensed Exporter's export licence;
 - (iii) a copy of the written statement AGWA has provided to the Licensed Exporter for the relevant quarter in accordance with regulation 5 of Schedule 35 of the Collection Regulations; and
 - (iv) any other information notified by the Commonwealth.

Applications for Exemption

- (d) AGWA must not consider any applications for exemption from lodging quarterly returns from a Licensed Exporter.
- (e) AGWA must advise any Licensed Exporter that wishes to make an application for exemption from lodging quarterly returns, that any such application:
 - (i) may be made if the licensed exporter has reasonable grounds for believing that the amount of charge payable by the licensed exporter for the Levy Year is, or is likely to be, less than \$200;
 - (ii) is to be sent to the Secretary's postal address as prescribed in the Collection Regulations, but that the Secretary will still accept and consider an application received at the following email address levies.management@agriculture.gov.au (or such other email address as notified by the Commonwealth from time to time); and
 - (iii) include the following information:
 - (A) the exporter's full name;

- (B) the exporter's business or residential address (not the address of a post office box or post office bag);
 - (C) the exporter's ABN, if any;
 - (D) if the exporter is a company and does not have an ABN – its ACN;
 - (E) a statement to the effect that the exporter believes that the exporter has incurred, or is likely to incur, a liability to pay charge for the levy year to which the application relates; and
 - (F) a statement to the effect that the exporter believes that the amount of the liability is, or is likely to be, less than \$200.
- (f) Where a Licensed Exporter has questions or concerns about the specific process for making an application for exempting from lodging quarterly returns, AGWA should direct that Licensed Exporter to the following Departmental contact point, unless otherwise notified by the Commonwealth:
- Department of Agriculture and Water Resources – Levies Adelaide office
Telephone: 1800 814 961
Email: levies.management@agriculture.gov.au (or such other email address as notified by the Commonwealth from time to time)
- (g) Where the Secretary has granted a Licensed Exporter an exemption from lodging quarterly returns, the Department will notify AGWA.

3.3 Collection obligations

AGWA must collect the Wine Export Charge:

- (a) from Licensed Exporters;
- (b) in all states and territories;
- (c) in accordance with all applicable laws, including but not limited to the Collection Act, the Collection Regulations and the PGPA Act;
- (d) in accordance with Commonwealth policies and specific requirements as notified by the Commonwealth from time to time;
- (e) in accordance with any directions in relation to the collection given by the Commonwealth from time to time;
- (f) so as to keep accurate and auditable records relating to the collection; and
- (g) otherwise in accordance with the provisions of this Agreement.

3.4 Late payments

- (a) Subject to paragraph 3.4(c), AGWA must do everything necessary to recover outstanding Wine Export Charge amounts.
- (b) Where AGWA is of the opinion that the recovery of outstanding Wine Export Charge amounts may result in or require Commonwealth involvement, AGWA must take all reasonable steps to notify the Departmental contact point specified at clause 3.2(f) as soon as reasonably practicable.
- (c) Where AGWA is of the opinion that legal action is the only remaining option to recover outstanding Wine Export Charge amounts, AGWA must:

- (i) notify the Departmental contact point specified at clause 3.2(f) that legal action is the only remaining option to recover outstanding amounts, including a list of all action taken by AGWA to date to recover the outstanding Wine Export Charge;
 - (ii) provide all information relevant to the claim to the Commonwealth;
 - (iii) provide all reasonable assistance required by the Commonwealth to lodge and defend the claim; and
 - (iv) follow all reasonable directions of the Commonwealth in relation to the claim.
- (d) If, after AGWA provides notice in accordance with clause 3.4(c) and any other information required by that clause, the Commonwealth considers that legal action is the only remaining option to recover outstanding Wine Export Charge amounts, the Commonwealth will be responsible for the handling and conduct of any claim.

3.5 Late Payment Penalties

- (a) AGWA are not permitted to, and otherwise must not, collect or remit Late Payment Penalties.
- (b) Where AGWA considers that Late Payment Penalties may apply, AGWA must provide to the Commonwealth:
 - (i) details of the amount of Wine Export Charge payable;
 - (ii) sufficient information to allow the Commonwealth to calculate and collect the Late Payment Penalty, including but not limited to, the name and contact details of the relevant person and the basis on which AGWA considers that a Late Payment Penalty may apply;
 - (iii) the relevant Return(s) to which the late payment relates; and
 - (iv) any other information requested by the Commonwealth.

3.6 General obligations

AGWA must, in relation to the collection of the Wine Export Charge:

- (a) fully cooperate with the Commonwealth's Personnel (including Personnel from other Commonwealth agencies), including contractors; and
- (b) use its best efforts to coordinate its activities so as to support and facilitate the timely and efficient completion of the collection of the Wine Export Charge.

3.7 Subcontracting

- (a) AGWA must not subcontract any aspect of the collection of the Wine Export Charge without the prior written approval of the Commonwealth, which will not be unreasonably withheld.
- (b) AGWA is fully responsible for the collection of the Wine Export Charge, even if AGWA subcontracts any aspect of the collection.

4. Payment

4.1 Obligation to pay Wine Export Charge to Commonwealth

AGWA must, within 30 days of the end of each quarter in which AGWA is required to collect the Wine Export Charge, pay to the Commonwealth the full amount of all Wine Export Charge(s) it has collected in that quarter, without deduction.

4.2 Remittance advice

- (a) AGWA must submit a remittance advice to the Commonwealth in accordance with the requirements of this clause 4.2 each time AGWA makes the payment referred to in clause 4.1 and on the same day on which any such payment is made.
- (b) The remittance advice which AGWA is required by clause 4.2(a) to submit must:
 - (i) be submitted by email to the following address: levies.finance@agriculture.gov.au (or such other email address as notified by the Commonwealth from time to time);
 - (ii) detail the total amount of the Wine Export Charge(s) AGWA has collected and paid to the Commonwealth; and
 - (iii) include any other information requested by the Commonwealth.

5. Confidentiality and privacy

5.1 Prohibition on disclosure

AGWA must not, without the prior written consent of the Commonwealth, disclose any Confidential Information to a third party.

5.2 Application of the Privacy Act

AGWA must not do any act or engage in any practice that would breach the Privacy Act, including the APPs, which if done or engaged in by the Commonwealth would be a breach of that Act or an APP.

5.3 Indemnity

AGWA agrees to indemnify the Commonwealth in respect of any loss or liability suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of AGWA under this clause 5.

6. Books and records

6.1 AGWA to keep books and records

AGWA must keep adequate books and records detailing its provision of the services which are the subject of this Agreement, which includes:

- (a) keeping and requiring any of its subcontractors to keep adequate books and records in sufficient detail to enable the amount and person from whom the Wine Export Charge is payable, to be determined and clearly identified in any particular case; and
- (b) retaining and requiring its subcontractors to retain for a period of seven years after the expiry or termination of this Agreement all books and records relating to the collection of the Wine Export Charge.

6.2 Costs

AGWA must bear its own costs of complying with this clause 6.

6.3 Survival

This clause 6 applies for the Agreement Period and for a period of seven years from the expiry or termination of this Agreement.

7. Audit and access

7.1 AGWA audit

AGWA must:

- (a) ensure that its collection of the Wine Export Charge is audited annually by the Commonwealth Auditor General; and
- (b) provide a copy of any report prepared by the Commonwealth Auditor General and provided to AGWA for the purpose outlined at clause 7.1(a) within 7 business days of receiving any such report.

7.2 Right to conduct audits

The Commonwealth or a representative may conduct audits relevant to the performance of AGWA's obligations under this Agreement. Audits may be conducted of:

- (a) AGWA's operational practices and procedures as they relate to this Agreement;
- (b) the accuracy of AGWA's payments and reports in relation to the collection and payment to the Commonwealth of the Wine Export Charge;
- (c) AGWA's compliance with its confidentiality and privacy obligations under this Agreement;
- (d) material (including books and records) in the possession of AGWA relevant to the collection of the Wine Export Charge or this Agreement; and
- (e) any other matters determined by the Commonwealth to be relevant to the collection of the Wine Export Charge or this Agreement.

7.3 Access by the Commonwealth

- (a) The Commonwealth may, at all reasonable times and on giving reasonable notice to AGWA:
 - (i) access the premises of AGWA to the extent relevant to the performance of this Agreement;
 - (ii) require the provision by AGWA, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the Commonwealth by use of the Commonwealth's existing computer hardware and software;
 - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of AGWA, its employees, agents or subcontractors; and
 - (iv) require assistance in respect of any inquiry into or concerning the collection of the Wine Export Charge or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) AGWA must provide access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this clause 7, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.

7.4 Survival

This clause 7 applies for the Agreement Period and for a period of seven years from the expiry or termination of this Agreement.

8. Dispute resolution

8.1 No arbitration or court proceedings

If a dispute arises in relation to the conduct of this Agreement (**Dispute**), a party must comply with this clause 8 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 8.

8.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

8.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 8.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of CEOs (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

8.4 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 8.3, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

8.5 Role of mediator and obligations of parties

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 8.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

8.6 Confidentiality

Any information or documents disclosed by a party under this clause 8:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

8.7 Costs

Each party to a Dispute must pay its own costs of complying with this clause 8. The parties to the Dispute must equally pay the costs of any mediator.

8.8 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 8.1 to 8.5. Clauses 8.6 and 8.7 survive termination of the dispute resolution process.

8.9 Breach of this clause

If a party to a Dispute breaches clauses 8.1 to 8.8, the other party does not have to comply with those clauses in relation to the Dispute.

9. Termination

9.1 Termination for default

Without limiting any other rights the Commonwealth may have under this Agreement or at law, the Commonwealth may immediately terminate this Agreement in whole or in part, and by giving notice to AGWA, if any of the following events or matters raise:

- (a) AGWA fails to fulfil, or is in breach of, any of its obligations under this Agreement that are not capable of being rectified (as determined by the Commonwealth);
- (b) AGWA is in breach of any of its obligations under this Agreement that are capable of being rectified, and does not rectify the omission or breach within 20 business days or such other period (which is to be in excess of 20 business days) specified by the Commonwealth, of receiving notice from the Commonwealth to do so; or
- (c) the Commonwealth is satisfied that AGWA has become insolvent or otherwise unable to pay all of its debts as and when they become due and payable.

9.2 Termination or reduction in scope

Without limiting any other rights the Commonwealth may have under this Agreement or at law, the Commonwealth may at any time, by notice, terminate this Agreement in whole or in part, or reduce the scope of any part of this Agreement, including to reflect a machinery of government change or change in Commonwealth policy.

9.3 On receipt of a notice of termination

- (a) On receipt of a notice of termination AGWA must:
 - (i) cease collecting the Wine Export Charge as specified in the notice;
 - (ii) take all available steps to minimise loss resulting from that termination; and
 - (iii) take any other action specified in the notice of termination.
- (b) AGWA is not entitled to compensation as a result of termination of this Agreement by the Commonwealth.

9.4 After termination

On termination of this Agreement AGWA must:

- (i) deal with any amounts of the Wine Export Charge collected, as directed by the Commonwealth;
- (j) provide any information to the Commonwealth which it requests regarding the collection of the Wine Export Charge; and
- (k) provide such other assistance as requested by the Commonwealth.

10. Survival

The following clauses survive the expiry or termination of this Agreement:

- (a) Clause 5 (Confidentiality and privacy);
- (b) Clause 6 (Books and records); and
- (c) Clause 7 (Audit and access).

11. Miscellaneous

11.1 Ownership of Agreement

All copyright and other intellectual property rights contained in this Agreement remain the property of the Commonwealth.

11.2 Variation

No agreement or understanding varying or extending this Agreement is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties.

11.3 Assignment and novation

AGWA may not assign its rights or novate its rights and obligations under this Agreement.

11.4 Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

11.5 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

11.6 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

11.7 Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

11.8 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

11.9 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

11.10 Waiver

Waiver of any provision or right under this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

11.11 Relationship

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Agreement does not create a relationship of employment, agency or partnership between the parties.

11.12 Governing law and jurisdiction

This Agreement is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

12. Transition Out

- (a) Where this Agreement expires, or is otherwise terminated early, AGWA will provide sufficient assistance and cooperation to the Commonwealth to enable the smooth transition of the collection of the Wine Export Charge from AGWA to the Commonwealth or such other party as is notified by the Commonwealth.
- (b) The sufficient assistance and cooperation AGWA must provide under clause 12(a) may include the provision of a report by AGWA to the Commonwealth which includes:
 - (i) details of all Licensed Exporters to whom AGWA has collected the Wine Export Charge in the previous twelve months, including the relevant Licensed Exporters full name and ABN or ACN, and the number of the Licensed Exporters licence number; and
 - (ii) details of any outstanding Wine Export Charge amounts as at the expiry date or early termination date; and
 - (iii) any other information which AGWA considers may be relevant to enable the Commonwealth or any other party to collect the Wine Export Charge.

13. Parties representatives

- (a) Unless otherwise specified in this Agreement, the parties representatives listed in this clause 13 are the respective contact officers for all matters arising in relation to this Agreement.
- (b) Unless otherwise notified in writing by either party:

- (i) AGWA's Contact Officer is Mr Steven Weinert and can be contacted as follows:

General Manager, Corporate Services

Australian Grape and Wine Authority

PO Box 2733

Kent Town Business Centre

Kent Town SA 5071

(08) 8228 2000

steven.weinert@agwa.net.au

- (ii) The Commonwealth's Contact Officer is Mr Matthew Ryan and can be contacted as follows:

Assistant Secretary

Industry Support Branch, Finance and Business Support Division, Department of Agriculture and Water Resources

GPO Box 858

Canberra ACT 2601

(02) 6272 4598

Matthew.Ryan@agriculture.gov.au

Signing page

EXECUTED as an agreement.

Signed for and on behalf of the Commonwealth of Australia as represented by the Department of Agriculture and Water Resources [ABN 24 113 085 695] by its duly authorised delegate in the presence of

NICOLE WILLIAMS

Signature of witness



DARYL QUINLIVAN

Signature of delegate



NICOLE WILLIAMS

Name of witness (print)

DARYL QUINLIVAN

Name of delegate (print)

Secretary

Position of delegate (print)

Date executed by the Commonwealth

24 / 09 / 2015

Signed by the Australian Grape and Wine Authority [ABN 89 636 749 924] in the presence of

STEVEN WEINERT

Signature of witness



ANDREAS CLARK (CEO of AGWA)

Signature of AGWA



STEVEN WEINERT

Name of witness (print)

Date executed by AGWA

28 / 09 / 2015