



Wine Export Charge Collection Agreement 2021

Department of Agriculture, Water and the
Environment

Collection Agreement

Commonwealth of Australia, as represented by the
Department of Agriculture, Water and the Environment
(**Commonwealth**)

Wine Australia (**Wine Australia**)

Agreement Information

Parties

Name The Commonwealth of Australia as represented by the Department of Agriculture, Water and the Environment ABN 34 190 894 983

Short form name **Commonwealth**

Name Wine Australia ABN 89 636 749 924

Short form name **Wine Australia**

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, Water and the Environment, 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, Water and the Environment on behalf of the Commonwealth, and Wine Australia have agreed to enter into this Agreement for the collection of the Wine Export Charge by Wine Australia, on behalf of the Commonwealth.
- D Wine Australia has continued to collect the Wine Export Charge, on behalf of the Commonwealth as represented by the Department of Agriculture, Water and the Environment since the previous agreement.
- E This collection arrangement has enabled Licensed Wine Exporters to streamline the management of their export operations and obligations through Wine Australia.
- F This Agreement provides necessary updates to the terms and conditions to account for the new legislative framework (*Wine Australia Act 2013* and *Wine Australia Regulations 2018*) regarding the collection of the Wine Export Charge by Wine Australia.

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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.
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 of Agriculture, Water and the Environment.
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, Water and the Environment 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.
Levy Year	has the same meaning as in Schedule 35 of the Collection Regulations.

Licensed Exporter	a person who has been granted a licence to export grape products from Australia issued in accordance with regulation 9 of the <i>Wine Australia Regulations 2018</i> and is otherwise liable to pay the Wine Export Charge.
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 Wine Australia, 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.
Resolution Institute	the dispute resolution association with that name and the Australian Business Number 69 008 651 232 or any other similar body agreed between the parties 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 Australia Contact	the person specified at clause 13(b)(i).
Wine Export Charge	the charge imposed on wine produced in Australia that is exported 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 remains in force indefinitely unless terminated in accordance with clause 9.

2.2 Periodic Review of Agreement

The parties agree that a periodic review of this Agreement will be undertaken at least once every 10 years.

3. Collection of Wine Export Charge

3.1 Commencement of collection

Unless otherwise agreed in writing between the parties, Wine Australia 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) Wine Australia must ensure that:
- (i) all Returns required to be lodged by a Licensed Exporter in accordance with the Collection Regulations can be lodged with Wine Australia;
 - (ii) any process for lodging a Return with Wine Australia 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 Wine Australia.
- (b) Where Wine Australia is satisfied that a Licensed Exporter has failed to lodge a Return in accordance with the requirements of the Collection Legislation, Wine Australia must notify the Commonwealth as soon as reasonably practicable and by submitting an email to the following address: levies.management@awe.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), Wine Australia 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 Wine Australia 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) Wine Australia must not consider any applications for exemption from lodging quarterly Returns from a Licensed Exporter. Applications for exemptions from lodging quarterly Returns from a Licensed Exporter will continue to be administered by the Commonwealth.
- (e) Wine Australia 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 \$1,000;
 - (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@awe.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 \$1,000.
- (f) Where a Licensed Exporter has questions or concerns about the specific process for making an application for exemption from lodging quarterly Returns, Wine Australia should direct that Licensed Exporter to the following Departmental contact point, unless otherwise notified by the Commonwealth:
- Department of Agriculture, Water and the Environment – Levies
Telephone: 1800 020 619
Email: levies.management@awe.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 Wine Australia.

3.3 Collection obligations

Wine Australia 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 Department 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), Wine Australia must do everything necessary to recover outstanding Wine Export Charge amounts.
- (b) Where Wine Australia is of the opinion that the recovery of outstanding Wine Export Charge amounts may result in or require Commonwealth involvement, Wine Australia must take all reasonable steps to notify the Departmental contact point specified at clause 3.2(f) as soon as reasonably practicable.
- (c) Where Wine Australia is of the opinion that legal action is the only remaining option to recover outstanding Wine Export Charge amounts, Wine Australia 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 Wine Australia 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 Wine Australia 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) Wine Australia are not permitted to, and otherwise must not, collect or remit Late Payment Penalties.
- (b) Where Wine Australia considers that Late Payment Penalties may apply, Wine Australia 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 Wine Australia 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

Wine Australia 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) Wine Australia 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) Wine Australia is fully responsible for the collection of the Wine Export Charge, even if Wine Australia subcontracts any aspect of the collection.

4. Payment

4.1 Obligation to pay Wine Export Charge to Commonwealth

Wine Australia must, within 30 days of the end of each quarter in which Wine Australia 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) Wine Australia must submit a remittance advice to the Commonwealth in accordance with the requirements of this clause 4.2 each time Wine Australia 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 Wine Australia is required by clause 4.2(a) to submit must:
 - (i) be submitted by email to the following address: levies.management@awe.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) Wine Australia 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

Wine Australia 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

Wine Australia 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

Wine Australia 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 Wine Australia under this clause 5.

6. Books and records

6.1 Wine Australia to keep books and records

Wine Australia 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 termination of this Agreement all books and records relating to the collection of the Wine Export Charge.

6.2 Costs

Wine Australia 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 termination of this Agreement.

7. Audit and access

7.1 Wine Australia audit

Wine Australia 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 Wine Australia 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 Wine Australia's obligations under this Agreement. Audits may be conducted of:

- (a) Wine Australia's operational practices and procedures as they relate to this Agreement;
- (b) the accuracy of Wine Australia's payments and reports in relation to the collection and payment to the Commonwealth of the Wine Export Charge;
- (c) Wine Australia's compliance with its confidentiality and privacy obligations under this Agreement;
- (d) material (including books and records) in the possession of Wine Australia 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 Wine Australia:
 - (i) access the premises of Wine Australia to the extent relevant to the performance of this Agreement;
 - (ii) require the provision by Wine Australia, 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 Wine Australia, 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) Wine Australia 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 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 Resolution Institute 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 Wine Australia, if any of the following events or matters raise:

- (a) Wine Australia 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) Wine Australia 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 Wine Australia has become insolvent or otherwise unable to pay all of its debts as and when they become due and payable.

9.2 Mutual Termination

This Agreement may be terminated at any time by mutual consent of both parties, provided that this consent to terminate the Agreement is in writing and is signed by both parties.

9.3 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.

9.4 On receipt of a notice of termination

- (a) On receipt of a notice of termination Wine Australia 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) Wine Australia is not entitled to compensation as a result of termination of this Agreement by the Commonwealth.

9.5 After termination

On termination of this Agreement Wine Australia 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 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 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

Wine Australia 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, Wine Australia will provide sufficient assistance and cooperation to the Commonwealth to enable the smooth transition of the collection of the Wine Export Charge from Wine Australia to the Commonwealth or such other party as is notified by the Commonwealth.
- (b) The sufficient assistance and cooperation Wine Australia must provide under clause 12(a) may include the provision of a report by Wine Australia to the Commonwealth which includes:
 - (i) details of all Licensed Exporters to whom Wine Australia 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 early termination date; and
 - (iii) any other information which Wine Australia 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) Wine Australia's Contact Officer is:

Mr Steven Weinert
General Manager, Corporate Services
Wine Australia
PO Box 2733
Kent Town Business Centre
Kent Town SA 5071
0420 304 071
Steven.weinert@wineaustralia.com

- (ii) The Commonwealth's Contact Officer is:

Ms Rachel Short
A/g Assistant Secretary
Funding and Revenue Branch, Finance Division, Department of Agriculture,
Water and the Environment
GPO Box 858
Canberra ACT 2601
(02) 6272 4598
Rachel.short@awe.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, Water and the Environment
ABN 34 190 894 983** by its duly authorised
delegate in the presence of

Signature of witness



Signature of delegate



Name of witness (print)

Name of delegate (print)

Position of delegate (print)

Date executed by the Commonwealth

/ / 2021

**Signed by the Wine Australia
ABN 89 636 749 924** in the presence of

Signature of witness



Signature of Wine Australia



Name of witness (print)

Date executed by Wine Australia

/ / 2021