

**SOUTH AUSTRALIAN PRODUCTIVITY COMMISSION
SUBMISSION –
TOURISM REGULATION REVIEW**



SUBMISSION OF: **SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED**

ADDRESS: First Floor, Industry Offices
National Wine Centre
Botanic Road
ADELAIDE SA 5000

CONTACT PERSON: Henrik Wallgren, Business Services Manager

DATE: 14 May 2021

South Australian Wine Industry Association

The South Australian Wine Industry Association (SAWIA) is an employer and industry association representing the interests of wine grape growers and wine producers throughout the state of South Australia. SAWIA (as it is known today) was established in 1840 as the *Society for the Introduction of Vines*.

SAWIA is a not-for-profit incorporated association, funded by voluntary member subscriptions, grants and fee for service activities, whose mission is to provide leadership to South Australian grape and wine businesses so they achieve great things that they couldn't by themselves.

SAWIA membership represents approximately 96% of the grapes crushed in South Australia and about 36% of the land under viticulture. Each major wine region within South Australia is represented on the board governing our activities.

SAWIA has a strong track record as an industry leader and innovator in many areas. SAWIA pro-actively represents members and the greater wine industry with government and related agencies in all aspects of business in the wine sector.

What SAWIA does for members is covered in four key areas:

- Representation and Leadership;
- Advice and Information;
- Products and Services; and
- Promotion and Opportunities.

SAWIA is a registered association of employers under the South Australian *Fair Work Act 1994* and is also a Recognised State-Registered Association under the *Fair Work (Registered Organisations) Act 2009*.

Background and overview of the South Australian wine industry

SAWIA is pleased to make this submission to the South Australian Productivity Commission's (SAPC) Tourism Regulation Review. SAWIA was consulted on the draft terms of reference for the review and welcomed the opportunity to provide direct feedback to the SAPC to inform the final terms of reference.

The South Australian wine industry has a strong tourism footprint. This is reflected in a number of initiatives by the South Australian government, including the *South Australian International Wine Tourism Strategy*¹ launched in 2018 and the South Australian Tourism Commission's campaign - *2021 Year of South Australian Wine*. The tourism strategy noted that more than a third of all international visitors to South Australia visited wine regions.

In terms of wine production, South Australia is the single largest producing State based on grape crush, representing 47% of the national grape crush.

South Australia has 711² wine producers. At the last Census (2016) around 8,400 people stated that their primary industry of employment was either grape growing or in wine manufacturing in South Australia³.

¹ South Australian Tourism Commission 2018, <https://tourism.sa.gov.au/strategies/strategies/international-wine-tourism-strategy>

² Source: The Australian and New Zealand Wine Industry Directory 2021

³ This excludes casual workers such as grape pickers and other seasonal workers not working in those industries in the week prior to the Census. It also excludes people who worked in the wine and grape production industry as a second job.

Figure 1: Crush by State and region⁴

State/Regions	% of total crush
South Australia	47%
New South Wales	32%
Victoria	17%
Western Australia	2%
Tasmania	1%
Queensland	<1%
TOTAL	100%

The wine industry is both unique and complex in nature. It takes raw produce, wine grapes, and turns them into a value-added product, wine, that is sold throughout the world. Unlike other manufacturing sectors, the wine industry's viticultural foundations require long lead times to produce a crop and based on the vagaries of nature each vintage makes the balance of supply and demand a constant challenge.

The industry is 'vertically integrated', spanning agriculture (wine grapes), manufacturing (winemaking) and sales into a global marketplace. Sales growth is driven by exports through the main channels of off-premise (supermarkets and wine retail) and on premise (restaurants, clubs, pubs) venues, often through company owned distribution channels.

Some businesses in the wine industry are extremely diverse, and employ persons in any number of the following occupations:

- agriculture (grape growing);
- manufacturing (winemaking);
- science (laboratory);
- retail (cellar door sales);
- horticulture (nursery);
- food and beverage (cellar door / café & restaurant);
- administration (clerks);
- barrel manufacturing (coopers);
- warehousing and packaging (store persons);
- transport of grapes & bottled wine (drivers);
- maintenance (mechanics & welders);
- planning & technical production / tasks (engineers); and
- other professionals (accountants, sales, marketing, export professionals)

Regulations and regulators relevant to the wine industry

South Australian wine businesses are subject to a large number of South Australian regulations and have interactions with a number of South Australian Government departments and agencies.

Being a primary production industry, manufacturing industry and tourism and hospitality industry, some regulations affect only one part of the business.

The outline below lists, relevant regulations for the wine industry, either regulating wine businesses or establishing schemes and services of relevance to the industry. Regulations of particular relevance to tourism side of the wine industry are underscored.

⁴ Wine Australia 2020, National Vintage Report 2020

Primary production and environment

Agricultural and Veterinary Chemicals (South Australia) Act 1994
Agricultural and Veterinary Products (Control of Use) Act 2002
Climate Change and Greenhouse Emissions Reduction Act 2007
Environment Protection Act 1993

Food Act 2001

Genetically Modified Crops Management Act 2004
Green Industries SA Act 2004
Groundwater (Border Agreement) Act 1985
Infrastructure SA Act 2018
Irrigation Act 2009
Land Acquisition Act 1969
Landscape South Australia Act 2019
Murray-Darling Basin Act 2008
Native Vegetation Act 1991
Phylloxera and Grape Industry Act 1995
Plant Health Act 2009
Primary Industry Funding Schemes Act 1998
Renmark Irrigation Trust Act 2009
Wine Grapes Industry Act 1991

Planning

Character Preservation (Barossa Valley) Act 2012
Character Preservation (McLaren Vale) Act 2012
Community Titles Act 1996
Planning, Development and Infrastructure Act 2016
Strata Titles Act 1988
Valuation of Land Act 1971
Residential Tenancies Act 1995

Hospitality

Liquor Licensing Act 1997
General Code of Practice under the Liquor Licensing Act 1997

Traffic and transportation

Heavy Vehicle National Law (South Australia) Act 2013
Road Traffic Act 1961

Health and safety

COVID-19 Emergency Response Act 2020
Dangerous Substances Act 1979
Emergency Management Act 2004
Explosives Act 1936
Local Nuisance and Litter Control Act 2016
Surveillance Devices Act 2016
Work Health and Safety Act 2012

Employment

Equal Opportunity Act 1984
Holidays Act 1910
Labour Hire Licensing Act 2017
Long Service Leave Act 1987
Payroll Tax Act 2009
Return to Work Act 2014
Training and Skills Development Act 2008

Other

Fair Trading Act 1987
Geographical Names Act 1991
Land Tax Act 1936
Local Government Act 1999
Stamp Duties Act 1923,
Unclaimed Goods Act 1987
Unclaimed Moneys Act 1891

In relation to some aspects of government regulation, the main concern is lack of responsiveness and timely processing. In other areas it relates to an actual piece of legislation or regulation which may be unclear, outdated or otherwise is placing red-tape and unnecessary compliance costs on businesses.

In relation to State regulators (departments, agencies and statutory bodies), the following are the most significant to the wine industry:

The Department of Primary Industries and Regions (PIRSA)
Consumer and Business Affairs
SafeworkSA,
ReturnToWorkSA,
Department for Innovation and Skills
Training and Skills Commission
Phylloxera and Grape Industry Board of South Australia (Vinehealth Australia)
Local government
Environment Protection Agency
Department for Environment and Water
Department of Infrastructure and Transport
RevenueSA
SAPOL
Department for Trade and Investment
SA Tourism Commission.

SAWIA has well-established and productive relationships with a number of South Australian Government regulators, in relation to tourism this would include CBS, Department for Trade and Investment, SA Tourism Commission and PIRSA.

SAWIA has been consulted by South Australian Government regulators over the years in relation to proposed regulations. Examples in relation to tourism and related development include:

- Liquor Licensing Act 1997 reforms under Liquor Licensing (Liquor Review) Amendment Act 2017 and subsequent amendments and regulations, submissions, discussions and meetings with CBS and Ministerial Office.
- Review of the Character Preservation (Barossa Valley) Act 2012 and Character Preservation (McLaren Vale) Act 2012

However, some regulators are less proactive and appear to be giving less attention to industry engagement. For example, since the restructuring of SafeWorkSA following the evaluation by ICAC in 2018, the links with industry are not as strong as they used to be and the industry is rarely proactively advised of or consulted on activities or projects. There is also room to improve how ReturnToWorkSA engages with stakeholders, including industry associations.

Submission information requests

- Information request 2.1: Impact of COVID-19 Pandemic Restrictions

2020 has been an extraordinarily challenging year for the wine industry. Vintage conditions were very difficult. On the back of a long, harsh dry period, the year commenced with savage bushfires and some unfavourable weather events. Then COVID-19 struck and the economic impact was immediate, with different rules and reduced capacity forcing cellar doors to close, reduce opening hours and/or sell take away only.

Challenges in servicing domestic and international markets, or to respond to export orders, has contributed to a significant drop in business confidence.

Like most other industry sectors, the pandemic has had a significantly damaging impact on South Australia's wine industry. Most (88%) of South Australian wineries surveyed has indicated that COVID-19 has had a negative impact on their business⁵.

Seventy-one per cent of participants identified their 'ability to service domestic and international markets' to be the most negative impact of COVID-19. Export orders were also negatively impacted, with 64% of participants indicating they have been significantly or substantially reduced by the economic impacts of COVID-19.⁶

Wineries have expressed significant concern in relation to the current, medium and longer term impacts of COVID-19. COVID-19, and the associated compliance requirements, has had an immediate impact on businesses and their ability to sell product both overseas and domestically, to manage cash flow, and to forward plan. In addition, COVID-19 has also led to a lower level of profitability, a significant degree of stress, insecurity, and fatigue among business operators and their staff.

During 2020, a number of wineries temporarily closed their cellar doors and restaurants or reduced their opening hours. Market development events, such as tasting events and festivals were cancelled and private functions at wineries, including weddings and birthdays cancelled or postponed. Whilst COVID-19 public activity restrictions have gradually been relaxed, wineries are still not able to operate at pre-COVID-19 levels and continue to bear costs of increased cleaning, monitoring and supervision of COVID-19 restrictions.

Managing the impact of a global pandemic on South Australia has been unprecedented for the South Australian Government and involved the development, issuing and enforcement of regulations, including Emergency Management (Public Activities) Directions. SAWIA has at all times sought to support the enforcement of these directions, by keeping the industry informed, advising the industry of the intention behind these directions – to minimise the spread of COVID-19 in South Australia.

SAWIA appreciates that the South Australian Government has needed to act with urgency, caution and imperfect information. That has at times caused challenges and confusion for the industry.

A key challenge associated with the COVID-19 emergency directions has been the rapidly changing nature of the directions, often leaving little time for industry to absorb, understand and analyse changes to restrictions before being required to make operational changes to comply.

⁵ Bentleys SA and SAWIA 2020, <https://www.winesa.asn.au/public/86/files/Industry%20%26%20Govt/SA%20Wine%20Industry%202020%20Snapshot.pdf>

⁶ Ibid

SAWIA appreciates the need for urgency, but often found that the directions were made public late at night or during weekends, leaving very little time for analysis and communications. Going forward, providing more notice would go a long way in assisting industry.

In addition, when new directions were released, at times it appeared that little attention had been given to the wine industry when terminology and specific rules had been set, causing unnecessary confusion and uncertainty. Rather, it appears that directions were drafted focusing on hotels and restaurants and not fully considering for example cellar doors, involving sales, wine tastings/wine education.

For example, in May 2020 wineries, including cellar doors, were required to be closed to the public and no tastings were permitted. Whilst on-site consumption of food and alcohol was allowed by restaurants and cafés, it was unclear whether restaurants operated by a winery/located on a winery site was permitted to provide this service. In drafting the directions, it appears that the fact that many wineries have restaurants and events and function venues, was overlooked or in the alternative not given sufficient attention.

It highlights the importance of Government having necessary information about the industries subject to the directions and understanding the differences in operations and terminology.

- *Information request 2.2: Impact of regulation on agritourism and regulatory factors influencing investment and development*

In relation to the wine industry, two main areas – planning and development laws and liquor licensing laws is having the greatest impact on business, including new business opportunities, development and growth.

Wineries rate planning policy and processes as having a negative or very negative impact on business and the ability to grow. For example, expanding a cellar door sales venue, adding a deck to enable outdoor wine tastings or a function venue to enable weddings and other functions on site, commonly is viewed as being very complex, costly and slow.

The feedback from members is that frequently when a winery seeks to provide an enhanced tourism experience on site, whether it is an expanded cellar door or the addition of a restaurant/café or accommodation, the initial response from local council is negative. The perception is the council is not getting onboard, but takes a negative view of a potential development which will attract more tourists and jobs to a regional area.

Whilst SAWIA appreciates that the experience does vary from council to council, the overall feedback is that delays in processing and the costs involved are holding back vital tourism development in regional areas.

SAWIA is aware of a winery which was exploring the potential for providing small scale on-site accommodation for functions and events, including weddings. However, the winery did not pursue this further as they sensed that the local council would never approve such a development. The member mentioned that another winery in the same part of the State provides this type of accommodation, but is only able to do so because they are located in a different council which takes a more supportive view on tourism development.

SAWIA notes the reforms of the planning system which commenced in stages under the *Planning, Development and Infrastructure Act 2016*. It is yet too early to determine whether the reforms will be more beneficial or will have any practical impact on enabling better outcomes for tourism-related development at wineries in regional South Australia.

It is important to point out that SAWIA supports the *Character Preservation (Barossa Valley) Act 2012* and *Character Preservation (McLaren Vale) Act 2012* to protect the special character of the Barossa Valley and McLaren Vale, in particular vital food and agricultural land and containing the threat of urban encroachment. Other regions wish they could have the same protection.

Liquor licensing is another key area for wineries. Overall, since the reforms to the liquor licensing laws under the *Liquor Licensing (Liquor Review) Amendment Act 2017*, are viewed as being easier to navigate and the processes for applications simplified. For example, the launch of the online portal for managing liquor licensing issues, including applications makes the process much easier.

During the COVID-19 pandemic, Consumer and Business Services (CBS) has been accommodating and responsive. For example, CBS has been willing to grant short-term licences in order to temporarily expand a licensing area by including an outdoor area or different building to enable the industry to manage the impact of capacity limitations, social distancing requirements and other restrictions.

Members have indicated that CBS has had a quick turnaround time, but that some local councils at times have been very slow to respond to indicate their consent to an application. One member indicated that it took the council two weeks to respond for consent, but CBS only three days to grant the application.

One of the objectives of the liquor licensing reforms was to simplify processes, clearly that has been achieved by CBS. Councils now need to get onboard to develop consistent processes to streamline their involvement.

- *Information request 3.2: Characterisation of key regulatory issues and improvement of regulations to support agritourism projects.*

SAWIA considers the key regulatory issues identified in the issues paper to be accurate.

In relation to adding additional activities such as holding an event at a cellar door, sometimes such events can be accommodated within the existing licensed area, capacity limit and trading hours on their liquor licence.

If that cannot be accommodated, if the event is of a once-off or sporadic nature, then a short-term licence may be appropriate. As set out above, industry feedback is that the process to apply for a short-term licence is not complicated.

If on the other hand, a permanent extension of the liquor licence is required, then council involvement is required and additional documentation is required which adds to the process.

If a winery is looking at commencing food service either as a stand-alone restaurant or provide for a food offering as part of the cellar door experience, then notification to the local council under the *Food Act 2001* is required.

- *Information request 3.3: Current process for licences, permits and approvals be improved, highest priorities.*

The process for obtaining approval by councils or Department of Planning, Transport and Infrastructure for roadside signage, including business signage and tourism-related signage (brown background) to indicate the location of a winery has been cited as difficult or very difficult by SAWIA members. SAWIA is conscious that there may be differences depending on local council.

- *Information request 3.4: Views, evidence and advice on regulatory barriers in attracting and retaining staff.*

The regulation of employment primarily is the remit of the Federal Government legislation including *Fair Work Act 2009*, Modern Awards, *Migration Act 1958* and associated regulations and instruments.

However, there are some State regulations still pertaining to employment. The law regulating the provision of vocational education and training in South Australia, including the process for engaging apprentices and trainees has been substantially amended via the passage of the *Training and Skills Development (Miscellaneous) Amendment Bill 2020*. The changes are yet to commence, but SAWIA is hopeful that they will simplify the process for engaging and managing apprentices and trainees.

The *Long Service Leave Act 1987* is not difficult to comply with, but is very brief, contains outdated terminology and is at times ambiguous.

The *Holidays Act 1910* prescribes public holidays in South Australia. Under Schedule 2 of the *Holidays Act 1910*, all Sundays are designated as public holidays in South Australia. Although in practice under employment law, including Modern Awards and Enterprise Agreements they are not treated as such.

However, the designation of all Sundays as public holidays has a flow on effect when the real day of celebration falls on a weekend. If the real public holiday falls on a Saturday a substitute public holiday is observed on the following Monday. In addition, given that all Sundays technically are public holidays under the *Holidays Act 1910*, where the real public holiday falls on a Sunday, then the public holiday is observed on the following Monday.

The designation of all Sundays as public holidays, including the concept of additional public holidays causes confusion and uncertainty amongst employers and employees. It is a historical relic which should be addressed. The Government undertook a review of the *Holidays Act 1910* in 2011 and invited public submissions. Unfortunately, this review never resulted in any changes.

The enactment of the *Return to Work Act 2014* brought much needed reforms to the South Australian workers compensation system which for a long time had been the one of the worst performing schemes in the country on a number of measures.

The average premium rate has been reduced to 1.70%, down from 2.75% prior to the enactment of the *Return to Work Act 2014*. This has brought some financial relief to the South Australian wine industry.

Employees in the private sector accrue their entitlement to annual leave in accordance with the provisions of the *Fair Work Act 2009*. Under section 130(1) of the *Fair Work Act 2009*, an employee is not entitled to take or accrue annual leave while being absent from work due to an accepted workers compensation claim. However, section 130(2) provides that this exclusion does not apply where a State or Territory compensation law allows for accrual or annual leave during periods of workers compensation.

Therefore, in order to determine whether annual leave accrues or can be taken in these circumstances, employers need to refer to the applicable State or Territory workers compensation legislation.

In South Australia, section 50(2) and 50(3) of the *Return to Work Act 2014* states the following in relation to accrual of annual leave:

“If a worker is absent from employment in consequence of a work injury, the period of absence must for the purposes of computing the worker’s entitlement to annual leave or sick leave under any Act, award or industrial agreement, be counted as a period of service in the worker’s employment.

If a worker has received weekly payments in respect of total incapacity for work over a period of 52 weeks or more, the liability of the employer to grant annual leave to the worker in respect of a year of employment that coincides with, or ends during the course of, that period will be taken to have been satisfied.”

An employee in South Australia therefore will continue to accrue annual leave up until a period of 52 weeks of total incapacity. Where the employee has received weekly payments for total incapacity for a period of 52 or more weeks, annual leave will no longer continue to be accrued.

This provision therefore overrides the exclusion in the *Fair Work Act 2009* of leave accrual during periods of workers compensation. However, unless an employer reads the *Return to Work Act 2014* they would not be aware of this requirement.

The Federal Government in 2011-2012 undertook a review of the *Fair Work Act 2009*, with the report of the Review Panel handing down its report “Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation” in 2012. The report made the following observation on annual leave during periods of workers compensation:

“Advice from the FWO is that only the Commonwealth’s and Queensland’s workers’ compensation laws unequivocally allow the accrual of annual, personal and long service leave, and that Queensland is the only jurisdiction that allows workers to take all of these leave types while on workers’ compensation. Tasmania is the only other state that unequivocally allows workers to take leave (annual and long service) while on workers’ compensation.

The situation for the remaining jurisdictions is that the accrual or taking of leave is either equivocal or not permitted. [...] This is confusing for affected parties and may involve costs— for example, in obtaining legal advice.”⁷ [Emphasis added]

The Review Panel recommended that section 130(2) be removed from the *Fair Work Act 2009* to ensure that annual leave cannot be accrued or taken while being absent from work due to an accepted workers compensation claim. In effect this would remove the ability of State legislation to regulate the issue of annual leave accrual during periods of workers compensation.

Federal Government has sought to legislate for this change since 2013, but has been unable to get support in the Senate for this change.

To address this issue, SAWIA submits that the State Government should amend the *Return to Work Act 2014* by making clear that an employee is not entitled to take or accrue any leave or absence (whether paid or unpaid) during a period when the employee is absent from work because of a personal illness, or a personal injury, for which the employee is receiving compensation.

This would remove this confusion and uncertainty in South Australia, reduce costs and ensure that accrual and workers compensation would be consistent with the *Fair Work Act 2009*.

⁷ Fair Work Review Panel 2012, *Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation.*, p. 88

Conclusion

In SAWIA's view, planning laws, liquor licensing laws and the involvement of local government councils is having the greatest impact on the wine industry in the tourism context. The performance of local councils appears patchy and inconsistent and the responsiveness dependent on the council area in which a winery is located. The South Australian Government should take a more active role in measuring the performance of local councils and drive process improvements and greater consistency.

Overall, SAWIA has productive relationships with a number of State Government departments and agencies. However, there is scope for improving how some regulatory agencies engage with industry.

E N D