

INQUIRY INTO WINE GRAPE MARKET AND PRICES

Organisation: Wine Grapes Marketing Board

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WINE GRAPES MARKETING BOARD SUBMISSION TO THE NSW LEGISLATIVE COUNCIL STANDING COMMITTEE ON STATE DEVELOPMENT INQUIRY INTO THE WINE GRAPE MARKET AND PRICES

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Introduction

1. The Wine Grapes Marketing Board (Board) currently operates under the *NSW Agricultural Industry Services Act 1997*, the Act and its regulations confers on the Board a specific range of services that it provides to all independent wine grape producers in the City of Griffith and the Local Government Areas of Leeton, Carrathool and Murrumbidgee.
2. The Board has been in operation in the region since 1933, originally setup to countervail the power of wineries in the region. The Board until 2000 had legislation in place through the then *NSW Marketing of Primary Products Act* to vest the regional wine grape crop and negotiate prices with wine grape purchasers. This ability was stripped from the Board following an extensive competition policy review from which the Board retained the countervailing power to set and enforce terms and conditions of payments for wine grapes that were not subject to a complying contract as prescribed in the current Act.
3. The Board is primarily funded by independent growers by placing a charge on all production at a rate of \$3.90 per tonne. This amount is approved by growers each year in accordance with the provisions of the Act.
4. The Board operates in the wine geographical indication called Riverina which produces approximately 16% of Australia's wine grapes and 65% of New South Wales wine grape production. The entire region comprises of approximately 22,000 hectares of bearing vines. 75% of all production is derived from independent vineyards. Total regional production in 2010 was 262,000 tonnes a decrease from previous seasons where production was above 300,000 tonnes.
5. The Board in seeking this inquiry is of the belief that the industry's market is flawed and requires legislative instruments to be introduced to remedy many of the problems that are being faced by wine grape growers that are not typical of a market with current structural supply and demand problems.
6. This submission will address the terms of reference that have been set by the Legislative Council Standing Committee on State Development (*see Appendix 1*) by providing insight into the operations of the industry from the aspect of the growers in this region.
7. The Board would also appreciate the opportunity to address the Standing Committee on the matters raised in this submission.

Price formation, including factors affecting supply and demand

8. The formation of wine grape prices is the domain of wine processors, regardless of the supply and demand factors within the industry. Growers in seasons of undersupply may be able to negotiate a higher return but ultimately they are price takers in the market.
9. Wine grapes are planted based on forecast market requirements and take up to three years to start producing a saleable crop. The bulk of wine grapes planted in the Riverina have been done so at the request and / or suggestion of a winery based on their view of the current market of available supply and forecast demand for wine products. Very little speculative planting has occurred in this region but many of the plantings have been undertaken without a formal contract in place with wineries and growers generally relying on verbal agreements.
10. Prices are paid on a per tonne basis of the fresh harvested weight of the wine grapes. There are many factors which combine to enable the price to be calculated at the time of harvest. In red wine grapes 70% of the regions production is priced based on the analysis of the colour of the fresh grape. White grapes are normally based on maturity which is derived generally as a function of the amount of sugar content within the grapes, measured in Brix and / or Baume.
11. Other factors that may impact on the price is the purity and condition of the wine grape. This can be measured both in the vineyard when factors such as disease or damaged berries can be assessed, or at the weighbridge prior to transfer of the title the grape to the winery. The industry has development a sound model for the assessment of wine grapes in the vineyard and at the winery and this is addressed in detail in the publication "Winegrape Assessment in the Vineyard and at the Winery" (*see Appendix 2*). This publication was funded by the federal research and development levy and has involved input from the Board along with many other interested persons and organisations. The publication was widely disseminated to growers across Australia and all wineries and is now often referenced in contracts.
12. It is understood that wineries base their price offers to growers on current and forecast market conditions for the sale of wine and the amount of available wine on the bulk market. Some regional wineries simply base their prices on what other wineries are paying and therefore have to wait until they obtain that information. In the early 2000's some contracts were written that specified the payment would be the regional district average price.
13. Prices are generally offered to growers in a take it leave it manner by wineries. Many growers have reported being told that if you do not like the prices don't deliver your grapes. Others have been told that if you complain your contract will not be renewed when it expires leaving them absolutely powerless to discuss the matter effectively in a business like manner.
14. Price formation used to be a construct of market analysis and supply factor information that was coordinated by the industry. In the three inland grape producing regions a Tri-State pricing committee (SA, NSW, VIC) was formed that would look at pricing across these regions. This developed into a Supply and Demand Outlook meeting at which various grower groups and winery representatives would discuss seasonal conditions and discuss the plantings required to match growing market requirements. Varieties in demand would be noted and these signals would be fed into the production side of the industry as a signal for planting with the caveat to have a valid contract in place.

15. As the industry grew in size and the transport of fresh wine grapes across state boundaries was made easier by larger transport options the outlook meeting was abandoned. The industry has lost much of its direction since this occurred in 2005.
16. Growers now find it difficult to understand or rationalise a price per tonne when the offer can vary from winery to winery by as much as 200% for the same quality of grape and the wine produced is destined for the same market and approximately the same retail price. Such discrepancies are a major cause for concern by growers within the industry.
17. In the majority of instances in the Riverina wine grape producers do not know the price they will receive for their wine grapes until they deliver. Some growers are not even aware of the price they will receive until much later than delivery as factors such as end wine quality are taken into account. Wine quality is a factor of the grape quality but growers have no control of the winemaking process and it is not fair that they should be financially impacted by matters not in their control.
18. The following supports this issue, (*Figure 1 below*) relates to DeBortoli Wines Pty Ltd grower guide 2007 (it is believed that the same clause has remained in all grower guides issued by this company). Growers are not told the price they can expect to receive but either must wait until they arrive at the winery with their produce or drive to the weighbridge to find out first hand what they may receive prior to taking factors such as purity and condition into consideration.

Figure 1: DeBortoli Wines Growers Guide 2007

12 Pricing.

All De Bortoli Wines prices will be displayed at the weighbridge at time of your delivery. (Subject to current 2007 Wine Grape Board Marketing government review.)

19. There are moves to change these types of arrangements but they progress slowly. In this region Orlando Wines are the only winery that is a signatory to the Australian Wine Industry Code of Conduct (*Appendix 3*). This is currently a voluntary code that specifies the timing of price notification for contracted growers. Indicative prices are released in December prior to harvest, the early release is designed to enable growers to dispute and negotiate variations should they feel that the market warrants it.
20. The code does not prescribe to signatories how they formulate the price but when it is disclosed to the grower base. A major issue affecting price formation is the timing of the price notification and it is extremely difficult for this market to operate when purchasers do not inform the market of their intentions. Growers cannot readily seek other avenues of sale should a price be unacceptable and past experiences of growers is that when they dispute the price offer they are either not likely to be able to take their entire crop to that winery in the current vintage or the relationship is damaged sufficiently by the act that contracts are not renewed.
21. Wine grapes are highly perishable and need to be processed as promptly as possible to prevent spoilage, as grapes may start to ferment or “go off”. If the price is disputed at the weighbridge income loss may occur in the absence of a structured process in which to dispute and negotiate as is currently provided under the Code of Conduct.

22. Growers have reported to the Board of having received a price notification at the weighbridge only to have the price paid lowered later due to “quality¹” reasons. During the rush of vintage harvest the notification of such deductions can cause great angst among growers.
23. The Board has consistently encouraged wineries to release early price notifications via meetings of the Riverina Wine Industry Forum but generally via the media. It also encourages growers to ask their winery for prices to be released earlier each season through discussions at grower group meetings, one on one meetings with grower members and via its newsletter. Unfortunately wineries generally argue that this would impact them unfairly in the market place. There would be no negative impacts if it was legislated that wine grape purchases would be required to advise of prices at an agreed date each season. New or late entrants to the market for purchasing wine grapes would need to meet minimum pricing standards, for example an average of the market price within the region they are looking to purchase wine grapes from.
24. All production costs are incurred by producers in the growing of the crop throughout the season. Growers that are not contracted with a base price or those subject to a simple supply agreement have no indication of the price they will receive until it is too late to reduce input costs and / or mothball² their vines.
25. An example of the pricing concerns raised by growers was DeBortoli Wines (Vintage 2008), the company released indicative prices in mid to late 2007 after growers and the Board via the media called upon all wineries for early price notification. These prices were amended closer to the vintage with the majority of them ending lower than the original indicator. These variations led to a great deal of negative sentiment toward the winery.
26. Over the past years in the Riverina there have been many instances when the price being offered is lower than the cost of the production of the wine grapes. Such pricing power by wineries has steadily eroded the value of farm returns in the region to a position where many vineyard operators are leaving the industry.
27. It is well documented that the Australian Wine Industry is currently in oversupply as export market value is eroding due in part to the fluctuations of the currency coupled with the global financial crisis. As markets decline the intake requirements for wineries follow leaving behind growers with no home for their produce that were mostly planted to meet market expectations.
28. In 1996 the wine industry embarked on an expansive marketing program titled “Strategy 2025” which had the vision statement that by the Year 2025 the Australian wine industry will achieve \$4.5 billion in annual sales by being the world's most influential and profitable supplier of branded wines, pioneering wine as a universal first choice lifestyle beverage. Plantings in Australia at the time were also helped by attractive federal taxation policies of accelerated depreciation on infrastructure costs. Australia met its 25 year planting strategy in under 10 years based on favourable exchange rates for exports, exponential growth in sales and a general willingness in the primary production sector to meet the growing call for plantings that were being stimulated by taxation incentives.

¹ Quality factors may refer to Matter Other than Grape (MOG) being detected in the load after the title of the grape has been transferred to the winery. This can also cause the wine grapes to be downgraded to a lower price grade.

² Mothballing of vines refers to the act of reducing all input costs and keeping the vines in a living but non-bearing mode.

29. All wineries took to the call for increased production and favourable market conditions by generally seeking more grapes and growers to plant hectares for them. While much of these were planted with contracts the duration of these contracts would not cover the development and production costs of growing over time. When planting a perennial crop such as wine grapes growers expect to be producing from those vines for the entire lifespan of the vines, approximately 25 years.
30. The peak industry body representing Australian wineries, the Winemakers Federation of Australia (WFA) issued a revised strategy in 2000 titled “The Marketing Decade 2000-2010”. It was a document set to focus the increased plantings toward growing the consumer franchise for Australian wine to achieve by 2010 annual sales of \$5 billion, at a higher average margin and with enhanced brand values. This process of seeking better returns for the end product is still a large marketing focus today within the industry.
31. The Australian Wine and Brandy Corporation (AWBC) statistics (*see Appendix 4 wine statistics*) show that the industry has relatively remained stable in terms of wine production since 2000-2001. The last formally recorded season 2008-2009 producing only 10% more wine than the 2000-2001 production year. While these figures show minor change to the production the markets for Australian wine have fluctuated immensely leading to uncomfortable levels of surplus stocks across many varieties and wine quality levels.
32. As a follow on to the early marketing success and the large area of new plantings across Australia that was evident there was the sudden realisation that the industry would be literally awash with wine. The peak industry bodies, WFA, AWBC, Grape and Wine Research and Development Corporation (GWRDC) and Wine Grape Growers Australia (WGGA) came up with a industry restructure proposal titled the “Wine Restructure Action Agenda” (WRAA) (*see Appendix 5*). It was commenced initially by the WFA as a means of reducing excess grape plantings in a bid to control excesses in stock levels at wineries that were driving down winery profitability and therefore grower profitability. The entire process would be based on self realisation of the problem through education and communication of the issues and adjustment of the planted area within Australia without seeking any funding by government.
33. The aim of the WRAA is the targeted removal of vineyards in areas that are not sustainable for the development and ongoing growth of the Australian wine industry. Many industry pundits and the WRAA itself point toward the increased development of wine grape plantings in cool temperate regions that have led to the oversupply being so marked. These wine grapes generally have higher input costs and land values but without markets for the wine the production from these vineyards is being sold at low prices that is impacting on the grape prices of major production regions such as the Riverina and the warm inland regions of the South Australian Riverland and the Victorian and New South Wales Murray Valley.
34. **Other Supply and Demand Factors:** Retailer dominance both in Australia and the United Kingdom has led to a continued downturn in wine grape prices per tonne. Retailers, the gateway to consumers in this country and abroad operate with generally fixed high margin return. If a winery cannot facilitate the margin then they do not supply and lose market share. This margin is being pushed toward the grower as wine processing input costs are largely fixed.
35. Growers can understand the impact of grapes being offered or purchased at low costs on their own returns but when the price varies considerably between wineries it is questionable as to the rationale behind it.

36. With regard to retailer dominance, on 31st March 2010 the CEO of the WFA Mr Stephen Strachan announced in *The Weekly Times* newspaper that the retailers which are predominately business partners in the process have now become competitors, “Our major customers in Australia are also our major competitors, which doesn’t happen in the US because of its three tiered system”. He called for protection urgently from the “devastating” impact of home branded wines.
37. Coles and Woolworths have in recent years been buying grapes direct from growers and making wine for their own company brands. While they are doing nothing illegal or wrong the morality of their actions is questionable. They have taken an opportunistic route to prey on growers without a home for their produce and are offering consumers low priced own brand wine products. This is a derivative of the phenomenon of the clean skin market.
38. **Other Supply and Demand Factors:** The Australian taxation system allows business operating with a wine licence to a rebate of the taxation on wine sales into the domestic market. This also extends to New Zealand operators selling into Australia. The rebate titled the Wine Equalisation Tax (WET) rebate is a form of subsidy that many in industry believe are propping up a high percentage of wineries across Australia. These business are using tax payers dollars to stay financially viable and enable them to bring in a profit while paying below cost to growers for their wine grape crop.
39. Many grape growers are now using the WET rebate to subsidise their own operations. Changes in the liquor licensing within NSW has made it relatively simple for growers to obtain a vigneron's license that allow them to sell bulk wine into the market. Many of these growers use the current taxation rebate legislation to prop up their business operations by having excess wine grapes processed and then sold as bulk wine relatively inexpensively to wineries. The concerns of these activities were highlighted by the NSW Wine Industry Research and Development Advisory Council: “Briefing Note on Proposed Wine Tax Changes” *see Appendix 6*.

Resolutions: price formation in the market

40. Market information is critical to the industry and it should be legislated that wine grape price notification by wineries is required to occur by July the year preceding vintage harvest. Such prices would be submitted to a regulatory state authority or department charged with the responsibility of maintaining and making available the information to the production market.
41. Variations in price due to market fluctuations are only allowed to decline from the notified price by a maximum of 5%. Growers and the market would be forewarned of the price they could expect for their wine grape production and be able to plan their input costs more effectively.
42. Should new buyers enter the market after the statutory date is specified a base price formula would need to be devised for each region based on the pricing information received by the regulatory authority.
43. This solution does not sell grapes but it provides a more reasonable level of market transparency than that which currently exists. Having knowledge about the level of return that a grower could expect would also allow industry exit strategies to be more effective. If the price was low a grower may seek alternative markets or mothball vines for a season until the market improves. As it stands all costs are sunk into the production with no knowledge of likely return or loss. The crop is perishable and cannot readily be processed by individual growers due to the high costs of infrastructure required.

The role the Wine Grapes Marketing Board has played in facilitating the use of voluntary codes of conduct and sales contracts

44. Growers do not offer wineries contracts to buy their fruit even though they are suppliers of goods.
45. The *Agricultural Industry Services Act 1998, Schedule 4, Part 4, Section 14* and the *Wine Grapes Marketing Board (Reconstitution) Act 2003* sets out the agricultural services that the Wine Grapes Marketing Board can provide that relate directly to the formation of codes and contracts, these specifically being:
 - (a) *the development of a code of conduct for contract negotiations between wine grape growers and wineries,*
 - (b) *the development of draft contract provisions with respect to the sale of MIA wine grapes to wineries, including provisions with respect to:*
 - (i) *The prices to be paid by wineries, and*
 - (ii) *The terms and conditions of payment to be observed by wineries, in relation to MIA wine grapes delivered to them by wine grape growers,*
 - (c) *the promotion of private contracts for sales of MIA wine grapes to wineries by wine grape growers.*
46. The role of the Board is extremely limited in a regional sense, the Board can and has educated the growers in relation to the Wine Industry Code of Conduct that has been developed in conjunction with the WFA and WGGA but the introduction of the code has been limited. Regional wineries are slow to adopt the code and many have advised they will never sign on the code. In part they will not be coerced by growers due to growers' inability to negotiate the code's terms into existing supply and contractual arrangements. The only signatory to the Code in the Riverina region (Orlando Wines) purchases approximately 15% of regional production.
47. The Board currently partially funds the management of the Australian Wine Industry Code Administration Committee through its agricultural industry services. These funds are provided to the federal representative body, WGGA via a project agreement and these are paid to the Administration Committee.
48. In promotional role the Board has over the years developed a pro-forma contract for growers to use when negotiating with wineries. This has been used by a small numbers of growers as the basis for negotiation but never adopted by any wineries. The Board has provided to growers a contract check list that has been distributed to growers via its newsletter on several occasions that provides a detailed list of what growers should look for when reviewing a contract. The Board's employees are called upon frequently to discuss individual contracts that growers are being offered.
49. A number of the regions wineries have used the Board office to review draft contracts and seek contract approval. Board staff provide advice to wineries based on the contracts adherence to the principles of the Code of Conduct in an effort to encourage regional wineries to amend existing contracts to comply with the basic provisions of dispute resolution as contained within the Code.
50. The industry in most parts has continued to focus on the introduction of the Code of Conduct however the majority of the Riverina's wineries have declined to sign the code. It is believed that they feel that by providing the ability for growers to negotiate or dispute prices and terms is not required and would not be conducive to the effective operations of the industry in this region. The

Board believes otherwise and growers do require the opportunity through independent third parties (as provided under the Code) to negotiate fairly and equitably.

51. The Board's current legislation was enacted in 2003 at a time when discussions were commencing at a national level toward the development of a code. The industry services provided to the Board in its legislation have provided it with the means to participate in national activities toward the introduction of the code. Representatives of the Board joined a national committee called the Wine Industry Relations Committee (WIRC) and it had senior representatives of member companies of the WFA and the national growers body called at the time, Wine Grape Council of Australia – whose membership was predominately based in the three inland production areas of the South Australian Riverland, Victorian and New South Wales Murray Valley and the Board.
52. This committee developed and published the "Winegrape Assessment – in the Vineyard and at the Winery" document (*as shown in Appendix 2*) but it was the 2005 federal government Senate Inquiry and Summit into the wine grape industry that led to the WFA on behalf of wineries agreeing to discuss the development of a code of conduct for the industry in earnest. Prior to this inquiry they were not interested and were only keen to introduce guides for industry. With the Senate recommending a national mandatory code being placed on the industry by government the winemakers agreed to a voluntary industry code. The development of the Wine Industry Code of Conduct (*Appendix 3*) took three years to formalise and introduce and may take even longer to mandate if pressure is not suitably applied on wineries to adopt the voluntary code.
53. The Board addressed the terms of reference of the Senate Inquiry in a detailed submission in August 2005. A summary of the Board's submission is below in Figure 2 and copy of the complete submission made by the Board is attached, *see Appendix 7*.

Figure 2: Summary of Board submission to 2005 Senate Inquiry

<div>Wine Grapes Marketing Board Submission into the Wine Industry - August 2005</div> <div>Page 1 of 14</div>
<div>Summary</div> <ul style="list-style-type: none">• The wine grape industry lacks appropriate and accountable market signals that have lead to a wine grape over supply in certain key varieties.• The over supply has lead to downward pressure on growers return for all varieties, regardless of their supply situation.• A national register of vineyards is required and would work to address some of the fundamental supply problems within the industry.• A code of conduct in the purchasing relationship would assist the industry to develop more structured linkages through the supply chain.• The quality frameworks for wine grape assessment should be regulated via Government intervention or through the adoption of a standard code.• Growers do not possess the ability to negotiate effectively with wine grape processors on, contracts, prices and quality aspects of wine grapes.• A national growers' body is required to help develop the growers within the industry to position them to be able to work more effectively with wine grape processors.• The national growers' body should be compulsorily funded with the assistance of federal legislation to ensure compliance by defined independent wine grape growers.

54. **Things that can be learned from the Senate Inquiry:** There were a number of recommendations coming from the inquiry held in 2005 that have only been partially addressed by the industry that has led to the industry continuing to be faced with ongoing market problems. Three that relate to this current inquiry are listed below.
55. **Senate Recommendation 1 (paragraph 2.89 of the final report):** The committee recommends that the Department of Agriculture, Fisheries and Forestry should consult with state authorities and peak bodies with a view to establishing a national register of vines.
56. Some minor steps by states and territories have been made toward this with the NSW Government department Industry and Investment NSW including the question on grape plantings on current Livestock, Health and Pest Authority landholder rate notice and survey material. While vineyard information is provided it does not specify the variety and area of plantings.
57. The NSW solution looks to address landholder information for plant pest and disease factors but does not sufficiently extend to address the level and scale of plantings sufficiently to provide the industry with meaningful data that can be analysed and assessed to address the state of the industry.
58. The basis of the Senate recommendation was to enable the industry a reasonable and reliable level of assurance when it came to area of plantings in Australia. At present the industry uses Australian Bureau of Statistics (ABS) data which is unreliable in terms of the area of plantings within Australia. The data is not appropriately checked against actual plantings and this type of market information is critical to the industry. Furthermore the ABS reports do not readily capture new entrants to the industry. These being a major contributor to the supply issues that are plaguing the industry.
59. **Senate Recommendation 2 (paragraph 4.13 of the final report):** The committee recommends that the Government should give priority to amending the Trade Practices Act 1974 to add “unilateral variation” clauses in contracts to the list of matters which a court may have regard to in deciding whether conduct is unconscionable.
60. The amendment to the Trade Practices Act has not lead to a strengthening of the power of growers in relation to contracts. Wineries still vary contracts and growers have little to no recourse in the matter. In the Riverina for example DeBortoli Wines uses the annual publication of a Growers Guide to alter the terms of supply. The unilateral variation clause exists in their supply contract and the ACCC will not act on this as the grower has agreed to allow this to occur via the signing of the contract. Figure 3 (below) is an excerpt from a current supply agreement “contract” that DeBortoli Wines has with an existing grape producer in the Riverina.

Figure 3 DeBortoli Wines Supply Agreement Clause 11

11.	<u>Grower's Guide</u> The Grower agrees that the Grower's Guide issued by the Winemaker as updated from time to time will form part of this Agreement and is binding on the Grower.
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61. There is no doubt that the DeBortoli Wines contract clause 11 and the Grower’s Guide that it refers to is binding. The guide stipulates the amount of yield of each variety that the winery will purchase from the grower, even though the supply agreement is for the whole of the farm.
62. The front page of the DeBortoli Wines Grower’s Guide further indicates that the grower is to adopt the changes to their vineyard in terms of yield they are allow to supply and the conditions of grape purity and conditions that they must comply with, see Figure 4 (following page) an excerpt from the front page of the Grower’s Guide.

Figure 4 DeBortoli Wines 2008 Growers Guide Cover Page

“ This document forms part of the conditions for the growing, harvesting and delivery of wine grapes to DeBortoli Wines Pty Ltd, Where a grower is contracted these conditions form part of that contract”

63. DeBortoli Wines are not the only company that alters their supply agreements to suit annual intake requirements. Casella Wines, the regions largest purchaser of Riverina wine grapes has a mix of long term and short term contracts with their growers. These contracts stipulate the amount of production per hectare that the winery will purchase each year for each variety. These contracts also contain a minimum price providing growers with a base level of security.
64. For the past two seasons Casella Wines has written to growers prior to vintage altering the amount of fruit they are prepared to purchase in the forthcoming vintage. They are advised in this correspondence that the company will only accept these lesser amounts of tonnes regardless of previous written agreements signed by the company in good faith. Growers are powerless to take legal action under standard contract law and the Australian Competition and Consumer Commission (ACCC) has verbally stated that it will not act on these matters as they are contract related.
65. The contracts were entered into in good faith by the grower, many have used these as a basis for capital raising and are now forced to accept a lesser amount of tonnes that can be delivered. Growers have reported to the Board that they have been advised if you do not like it and want to deliver all your grapes you will receive at best the minimum price offered in the contract. Growers have reported having their yields allowances cut by 50% in these years, leaving them to try and sell the excess winegrape production in the open market or let the wine grape rot on the vines.
66. **Senate Recommendation 3 (paragraph 4.67 of the final report):** The committee recommends that the Government, in consultation with representative organisations for winegrape growers and winemakers, should make a mandatory code of conduct under the Trade Practices Act to regulate sale of winegrapes.
67. To date it has taken the industry 3 years to arrive at a voluntary code that has 6 signatories to it within the Australian wine industry. It was introduced just prior to the 2008 vintage and now after 2 seasons has been extensively reviewed by an independent expert. As it currently stands the Code is a valuable tool for the industry but its uptake is being limited due to winery reluctance to participate and operate in a fair and equitable manner.
68. Some wineries have reported that they do not wish to be subjected to regulation when dealing in the market for the sale of wine grapes. McWilliams Wines of Griffith for example have taken the extraordinary step of having a clause within their contract that limits growers recourse in relation to low grape prices.
69. It has also been reported to the Board on many occasions that wineries when making payments directly to growers will deliberately delay these payments to benefit their own cash flows. Such matters have been confirmed by the Board over the past 10 years and in instances where proved the winery has been required to pay interest in accordance with the Board regulations.
70. In the event of the sale not being subject to the Board’s regulation payment could be deferred indefinitely. The Board is currently dealing to two such cases, one a winery still owes approximately \$500,000 to regional producers from the 2009 vintage, another owing \$26,000 from the 2008 vintage. The latter matter being referred to the Board in recent weeks.

Figure 5: McWilliams Wines current contract clause 5.3.3

5	DETERMINATION OF PURCHASE PRICE
5.1	The price payable for each variety by McWilliam's Wines for the Confirmed Tonnages is the Purchase Price, subject to any adjustments under Clauses 6 and 15 hereof.
5.2	The Purchase Price for each variety is the price agreed by 30 January each year which will be not less than \$200 per tonne at the minimum standard Baume.
5.3	If the price is not agreed to for any variety then :
5.3.1	the district average price as determined by the Wine Grapes Marketing Board (WGMB) (or equivalent authority) will be the price for that variety only for the current year;
5.3.2	if a district average price cannot be determined, then the price will be the price paid for that variety in the prior vintage; and
5.3.3	McWilliam's Wines will have the option to vary or terminate the contract from the 30th June of that year.

71. The introduction of a dispute clause in the current McWilliam's Wines contract has not assisted growers. Clause 5.3.3 of the contract *shown above in Figure 5* provides the company the option to vary or terminate the contract should growers dispute or not agree the price offered. The Board's legal advice was that this was harsh and unconscionable and that the average grower was highly unlikely to undertake such litigation.
72. McWilliams Wines directors that have been spoken to are of the view that they want growers that work with the company and not against it and that is the reason behind the clause being included in the contract.
73. Another example of poor and misleading conduct occurred in 2010 by Nugan Quality Foods a company that was purchasing excess wine grapes for conversion into non-alcoholic grape juice for export markets. They undertook to contract a volume of wine grape growers at a price of \$150 per tonne (approximately 50% of the costs of production). A copy of the contract is shown *Appendix 8*.
74. During the initial stages of harvest the processor contacted growers that had signed the contract to advise that they could not afford to pay the \$150 per tonne price that they has signed these growers up for. They cited market problems in processing the wine grapes into juice and the abundance of excess grape in the market as being key drivers of the change that was required. Many growers advised them of their concern in relation to an amendment and they were advised that if the growers accepted the amendment this season the company would look to purchase their excess wine grapes in the forthcoming 2011 season.
75. Many growers reported that the price per tonne had changed without any agreement being made. A number reported being told that if they did not accept the price variation the company would not purchase any of the contracted wine grapes during the 2010 season for which they had made formal and legally binding agreements on. In one instance the grower reported not even being contacted and noticed the price variation on the delivery dockets. This grower has since reported that the variation to contract (*see attached Appendix 9*) still has not been signed even though the price has been lowered.
76. These growers with excess to market requirement wine grapes, i.e. surplus wine grapes have been treated like second class citizens. They signed in good faith an agreement to supply which has been pulled out from under them and to counter this they would be required to enter a long drawn out legal process should they have not been coerced into signing an amendment to contract.

Resolutions: the role the Wine Grapes Marketing Board has played in facilitating the use of voluntary codes of conduct and sale contracts.

77. The Board partially funds the activities of the Australian Wine Industry Code of Conduct Administration Committee through its existing fees and charges derived from wine grape production in the Riverina. The provision of these funds via its agricultural industry services is crucial in the ongoing development and introduction of the code for the benefit of the entire Australian wine industry.
78. The Board Chief Executive Officer represents the interests of Riverina winegrape producers at national meetings to discuss the Code and is a representative member of the WIRC and the Code of Conduct Management Committee.
79. The Board must retain funded linkages via its service provision with the code to ensure that its development and ongoing rollout best suits the interests and needs of Riverina wine grape producers.
80. The real examples discussed in this submission are an ongoing problem within the industry that needs legislative strengthening in terms of the rights of growers that limit the present danger of the retribution of wineries.
81. Growers will not take individual action in relation to these matters for fear of retribution. The Board is well placed to take on collective action on behalf of the industry when wineries act inappropriately. A register of such actions should be kept by the Board with sufficient evidentiary material available so that this information will be available for growers to review when making decisions about options whom to sell their wine grapes to.

The potential for collective bargaining and / or codes of conduct to contribute to an efficient market

82. Collective bargaining that is approved in accordance with the *Trade Practices Act* is only as strong as the weakest link in terms of the growers remaining united. Collective bargaining does not enforce that the winery must negotiate with the collective and when working with a perishable crop time becomes a critical factor.
83. Traditionally growers do not form tight business bonds in this region in terms of working together for a common purpose other than family units with relatives, this is partially why the Board was formed in 1933 to act on behalf of wine grape producers of the region.
84. Collective bargaining for homogenous products can readily work but with wine grapes there are multiple varieties and quality levels within these variety types to contend with that limit the effectiveness of a collective. There are many factors and variations in relation to the marketability of the product and retail price that needs to be taken into account.
85. An industry wide mandated Code of Conduct would be the best outcome for the Australian wine industry. The code however should be extended and the provisions of the current voluntary Code of Conduct should include mandated terms and conditions of payment. In the Riverina alone there are various structures of payment being employed by wineries operating in accordance with the Board's current legislation.

86. Terms of Payment should be managed by a regulatory body such as the Board to ensure that all growers receive payment for their wine grapes as and when these fall due. Presently the Board is able to set and enforce terms and conditions of payment for wine grapes that are not subject to a complying contract³. However increasingly wineries are getting growers to sign annual contracts that nominate a minimum unsustainable price just so they can alter the payment terms, i.e. when the instalments for wine grape deliveries are paid to the grower.
87. Casella Wines for example has long used a 4 payment structure, at times paying in 3 instalments. Some other wineries are paying in 8 or 12 instalments. Traditionally these were legislated to a maximum of 3 equal instalments and all payments were to be made through the Board to allow the statutory fees and charges to be deducted prior to the instalment(s) being paid to the grower(s). This allowed the Board to know if the payments were made in accordance with the terms or not.
88. In South Australia terms and conditions of payment are legislated by the State Government allowing the Minister to set indicative prices and terms and conditions of payment. A copy of the legislation is attached (*Appendix 10*). Such measures have been removed by the NSW Government in the Riverina following the Competition Policy Review of the Board in 2003. In Victoria the ability for the industry to legislate the price was removed in 2001 following a review in that state. South Australia remains the only wine grape production region that enables legislative pricing and terms to exist for all production. These are managed by the government in that state and are set by the Minister and enforceable by individual producers.
89. The Wine Industry Code of Conduct would formalise the business operations across Australia. It has been designed by industry to provide an effective mechanism that would assist the industry in preventing bad business practices from prevailing as the norm. The framework of the Code would allow individual producers equal rights when dealing with several individual wineries as opposed to the current situation where growers are treated dramatically different.

Resolutions: the potential for collective bargaining and / or codes of conduct to contribute to an efficient market

90. In recent years the Board has being forced to seek legal recourse against wineries that have not paid their growers. The Board office is often contacted by growers that complain that their winery has not made a payment but that they do not wish the Board to act for them for fear that they will not have a home for their grapes in the following season.
91. Wine grape growers require a regulated market and payments structure due to the volatility of the market in which they operate. A small grower can readily be replaced by a winery if they make a complaint about poor or unconscionable conduct or lack of payment by a winery. The power will always reside with the winery in that if a winery has a problem with a grower they dismiss them. If a grower has a problem with a winery they are not able to speak out for real fear of retribution and there are countless actual examples of this behaviour that have occurred in this region.
92. The terms and conditions of payment regulation that the Board had prior to the 2003 review of its legislation allowed growers to conduct the business of growing the grapes and left the Board to deal

³ Complying Contract: one that fixes the date on which payments will be made and contains a mechanism that enables the grower to know the minimum price that they will receive.

with any matters relating to grape payments. Wineries paid for their grapes through the Board and these payments were forwarded to the growers.

93. Some wineries with a sound record for payment were approved to make payments direct to producers provided they reported the details of these transactions to the Board. The environment operated in a more effective manner for ensuring payment than having individuals dealing with wineries.
94. If the state of New South Wales were to support the mandatory introduction of statutory terms and conditions of payment it would create a level playing field within wineries. As previously described wineries often have different payment terms which would allow them to have a competitive advantage in the market place when it comes to cash flow issues. It is the Board contention that the wine industry should look toward product branding and / or differentiation and marketing to realise a competitive advantage. Having one winery that pays for all of its wine grape harvest by the middle of October competing with another that does not finalise its commitment to growers until December is not equitable.
95. With regards to collective bargaining, the current Trade Practices legislation has made the application process of forming a collective bargaining group a more fair and reasonable price and more accessible to industries. However growers are still mindful that it is not just for one season that they require a home for their wine grapes and members of a collective may easily be split by a winery during any negotiations. The current legislation does not force the winery to the table but just approves the process of negotiation.
96. The restoration of the Board's ability to set and enforce statutory terms and condition of payment for all wine grape purchases in the Riverina is required for stability in the region.

Whether there are any measures which could improve market signals which would be consistent with competition principles and law

97. Early price notification is needed in the market to address instability. If growers are aware early enough of the true minimum price that they will receive they can reduce input costs to minimize further losses in terms of the production costs. As noted earlier in this submission price disclosure at its earliest will benefit wine grape producers. They will be able to plan their business operations more effectively.
98. In the 3 years following the introduction of the *Wine Grapes Marketing Board (Reconstitution) Act 2003*, legislation was in place that required wineries to publish a price with the Board prior to the purchase of wine grapes in the region. The wording of the *Act* allowed for the system to be readily manipulated by wineries for their own purposes resulting in the regulation interfering with market signals. Wineries used the *Act* to publish absolute minimum prices that in many instances were not indicative of the actual minimum price that they would be paying for wine grapes but allowed them to operate in accordance with the legislation. For example a winery would put a minimum of \$50 per tonne on a price list to ensure compliance even though they had no intention to pay this low amount.
99. Under this previous legislation in the event that a winery purchased grapes without providing a valid wine grape price list to the Board the Board could impose a minimum price based on the average of all wine grapes of that same variety purchased on that day. This information was impracticable to

collate due to the false pricing schedules being provided, therefore if the Board was required in accordance with the Act to stipulate to a winery that the wine grape they had purchased would have to be paid at the greater of either the price offered or the average of all the submitted price lists the problem was accentuated as the minimum prices published by wineries were not at all reflective of the market price they were seeking to pay growers.

100. The Code of Conduct that has been adopted by the wine industry but does not cover a majority of wine grapes in the Riverina specifically states that code signatories are required to provide indications of the price prior to harvest and then firmer offer prices at harvest time. This is designed to allow time for any formal disputes on pricing to occur if required. However unless all wineries are compelled to issue a price schedule at the same time and be required to pay no less than the price issued it can be ineffective.
101. Misinformation is common practice in the wine industry and market signals are often corrupted by rumour and media statements of impending problems within the industry. Winery staff members have in the past been known to talk the price down for forthcoming seasons prior to any formal announcement being made by the winery. Such actions are extremely disappointing. An example of this is shown in Figure 6 (below).

Figure 6 - DeBortoli Wines Grower's Consultative Group Meeting Minutes 15th October 2008

The outlook for grapes next season is at this point in time speculative with articles from Fosters quoting the price for Chardonnay at \$180.00 per tonne. The United States is buying bulk Chardonnay out of Australia also at very low prices. At the moment we are forecasting an over supply in Chardonnay next season and also possibly Semillon and Colombard.

102. The above excerpt from the minutes of the DeBortoli Wines Grower's Consultative Group Meeting held 15th October 2008. In this example hearsay not fact is introduced into a closed meeting from which the minutes are disseminated to all growers at the end of 2008. This allows the winery to start pricing offers at a low position using the hearsay that another winery is paying similarly low prices to justify this.
103. In relation to the item in the minutes shown in Figure 6 (above) the Board CEO contacted a senior representative of Fosters Wine Estate – now known as Treasury Wine Estates, Mr Richard Withey (Grower Contracts Manager) to confirm if there had been any articles published by the company. Mr Withey advised the Board [via email] that at no stage had Fosters discussed or made public the price offers for the forthcoming vintage and that the company would *"not endorse anyone using or associating Fosters name and those prices for 2009 grapes. I would be happy for you to use this email to refute any suggestion that Foster's is paying \$180/t for 2009 Chardonnay grapes if it comes up in any pricing discussions."*

Resolutions: measures which could improve market signals which would be consistent with competition principles and law

104. As previously stated early release of wine grape prices would provide a more transparent operating market for all operators to exist in. Early release would provide significant insight for growers unsure about managing their input costs on a variety by variety basis. It could allow growers with specific varieties that are in demand by the winery to negotiate separately for higher returns for less desirable varieties on an annual basis.
105. A form of price watch regulatory authority would need to be set up and funded by industry participants. As it relates specifically to market information it could be funded via the industry federal research and development levy that is charged on all production in Australia. It would not necessarily specify a price to be paid but growers would be able to use the real time data to manage their business more effectively.

Any other related matter

106. Regulation is required in this industry to ensure that the market operates in a stable manner. The nature of this industry is vastly different to other horticultural produce markets in that the fruit is harvested and altered dramatically during the processing stages.
107. The Riverina is uniquely different by its own history of having development from small soldier settler blocks. NSW legislation initially prohibited the size of land holdings that could be held by individuals. Until the 1990's under the *Murrumbidgee Irrigation Act 1910* the Water Conservation and Irrigation Commission could only allocate farms in the Murrumbidgee Irrigation Area to individuals. The basis of this was the fear that companies could gain control of the area to the detriment of individual farmers.
108. Amid such land tenure measures the Wine Grapes Marketing Board was empowered by the New South Wales Government with the ability to vest the grape crop. The Board could set a minimum price for the sale of all winegrapes in the region after consultation with the wineries. Once this was negotiated and agreed to the crop would be generally divested back to the growers and wineries would be required to pay at minimum the price set and bonuses for sugar level would be paid after all minimum payments were met.
109. The industry was heavily regulated for many years by instrument of the NSW Government and as such it will take the assistance of Government to manage the operations of industries such as wine grapes in relation to terms and conditions of payment.
110. Now the industry has wide variations in prices paid to growers within wineries and between wineries. Many of these wineries are competing in the same market for wine at similar price points and growers are concerned when half of a vineyard receives a major variation in price than the other half.
111. Price variation causes grower resentment of wineries and these have increased in the years following the cessation of regulated vesting of the wine grape crop. Without vesting wineries have been able to take advantage of the market and purchase excess to requirement wine grapes at low prices. This provides market signals that the fruit is still required as it is being purchased. This fruit however has the potential to impact the entire industry by causing both stocks build up within

wineries or a dilution of the value of Australia wine by it being sold into markets at extremely low prices per litre.

112. According to reports provided to the Board by wineries purchasing wine grapes in the region (in accordance with legislation) price variation from wineries is a common problem within the industry. Take the last five years as an example (2006 – 2010) across the major varieties produced in the region. The table below (Table 1 Riverina 2006-10 High/Low Prices Paid) shows dramatic variation in the prices paid per tonne to wine grape producers over a five year period.

Table 1 Riverina 2006-10 High/Low Prices paid

Variety	2006	2007	2008	2009	2010
Cabernet Sauvignon	\$216-\$500	\$250-\$711	\$500-\$770	\$238-\$496	\$50-\$422
Chardonnay	\$150-\$538	\$164-\$697	\$415-\$700	\$170-\$370	\$50-\$600
Merlot	\$260-\$500	\$300-\$604	\$472-\$644	\$242-\$450	\$150-\$538
Semillon	\$268-\$440	\$294-\$428	\$350-\$495	\$150-\$600	\$50-\$398
Shiraz	\$183-\$591	\$250-\$631	\$500-\$720	\$256-\$554	\$50-\$400

113. Growers find it extremely difficult to operate in this environment not knowing from year to year what they could achieve in terms of base level returns from their vineyards. Price instability is the major cause of angst among growers and wineries as wineries are reluctant to provide detailed information to growers about their business model and the basis behind the prices. Many growers believe that the prices do not reflect the end product price.

Conclusion

114. The Board has welcomed this inquiry as a means of advising the NSW Government of the problems that exist within the Riverina wine industry. It is hoped that the NSW Government will be able to find some measures to assist the regions growers.
115. Board members and the Chief Executive Officer would appreciate the opportunity to give any further evidence in relation to this submission at any hearings held by the Standing Committee.

Authorisation

116. This submission has been written by Mr Brian Simpson Chief Executive Officer of the Wine Grapes Marketing Board.
117. This submission has been authorised by the Wine Grapes Marketing Board.



Bruno Brombal – Chair, Wine Grapes Marketing Board
21 September 2010

Appendix 1

Terms of Reference into the wine grape market and prices



Inquiry into the wine grape market and prices

TERMS OF REFERENCE

That the Standing Committee on State Development inquire into and report on the factors affecting the wine grape market and prices, and in particular:

- a. Price formation, including factors affecting supply and demand
- b. The role of the Wine Grapes Marketing Board has played in facilitating the use of voluntary codes of conduct and sale contracts
- c. The potential for collective bargaining and/ or codes of conduct to contribute to an efficient market
- d. Whether there are any measures which could improve market signals which would be consistent with competition principles and law
- e. Any other related matter

COMMITTEE MEMBERS

The Hon Tony Catanzariti MLC (<i>Chair</i>)	Australian Labor Party
The Hon Rick Colless (<i>Deputy Chair</i>)	The Nationals
The Hon Matthew Mason Cox MLC	Liberal Party
The Revd the Hon Fred Nile MLC	Christian Democratic Party
The Hon Christine Robertson MLC	Australian Labor Party
The Hon Mick Veitch MLC	Australian Labor Party

Appendix 2

Winegrape Assessment in the Vineyard and at the Winery

Winegrape Assessment

in the Vineyard and
at the Winery

Compiled by Wendy Allan

Prepared for and endorsed by the Winegrape Growers' Council of Australia (WGCA)
and the Winemakers' Federation of Australia (WFA) Liaison Committee.

Review Committee: Russell Johnstone, Orlando Wyndham; Richard Withey, Southcorp Wines; Chris Byrne,
Riverland Winegrape Growers Association Inc; Wendy Allan, Viticulturist; and Stephen Strachan, WFA.



Winegrape Growers'
Council of Australia



Winemakers' Federation of Australia

For the Industry by the Industry



Appendix 2 - Page 2

Grape and Wine
Research and
Development Corporation



Winegrape Assessment

in the Vineyard and at the Winery

1. Introduction

THIS PUBLICATION is a description and endorsement of current best practice in winegrape assessment. It describes and discusses those quality specifications that can be readily measured or ascribed a value. It has been developed by and for participants in the wine industry involved in the activities of buying and selling winegrapes, and is based on wide industry consultation. It should be seen as a tool to develop and improve relationships between buyers and sellers of winegrapes. The publication describes current best practice and therefore, by definition, will evolve over time.

The aims of this publication are to bring more clarity, transparency, commonality and certainty to the sometimes contentious process of winegrape specification, Quality Control and winegrape quality attribution in winegrape transactions.

It is the first publication endorsed and released by the Liaison Committee of the Winegrape Growers' Council of Australia (WGCA) and the Winemakers' Federation of Australia (WFA). The Liaison Committee was formed in 2001 to address best practice arrangements regarding grape specifications and winery/grower relationships. The Liaison Committee has identified three areas that require attention.

Those three areas are:

- Winegrape Assessment;
- Grape Purchasing Agreements; and
- Protocols and Supporting Behaviours.

Funded by the Grape and Wine Research and Development Corporation (GWRDC), this publication addresses the first of these three, and the Liaison Committee continues to work on the remaining areas.

The Liaison Committee recognises that its endorsement of best practice arrangements will be meaningless unless individual growers and wineries also adopt the recommended standards. In their dealings with each other, it is imperative that growers and wineries observe standards of ethical and fair behaviour. For this reason, the Liaison Committee regards the development of 'behaviour' protocols as a priority, and is targeting the 2004 vintage as the deadline for their completion.

2. Grape purchasing agreements and expectations

Grape purchasing agreements should provide security and reliability of supply and sale of winegrapes. At the same time supply arrangements should foster positive relationships between winemakers and growers to their mutual advantage.

Grape purchasing agreements should incorporate the Quality Control requirements and specifications of the purchaser. Winegrape maturity, purity and condition specifications and tolerances are commonly written into grape purchasing agreements so that both parties understand what is expected of each other and to have a commitment to ensure product tolerances are met.

A basic responsibility of growers of fresh produce, which includes winegrapes, is to abide by the code of Food Standards Australia New Zealand (FSANZ) and deliver grapes in a ripe, clean and cool condition. In addition, a grape purchasing agreement can specify tolerances concerning maturity, flavour, colour and purity. Purity and condition includes fungi, dust, matter other than grapes, or residue from agrochemicals.

Each winery will have its own tolerance levels with regard to specifications detailed in the agreement. It is important, then, for growers to be made fully aware of consequences of failing to meet tolerances. In some cases there may be a price penalty in proportion with the degree to which the grapes fail to meet tolerances. In other situations there may be downgrading to another category or even rejection.

Agreements should specify where risk and title transfers from grower to the winery.

Just as the winery is responsible for wine production, vineyard owners carry the responsibility and risks associated with grape production, harvest and delivery, including general effects of the season, frost damage and specific pests and diseases.

A summary of winery and grower expectations that relate to winegrape maturity, purity and condition specifications and tolerances follows.

Winery expectations:

- Growers will seek to understand the quality differentiation of the winery's products and the relationship of grape quality to those products;
- In general growers will strive to produce grapes of appropriate maturity, purity and condition as per the grape purchasing agreement;
- Growers will manage cropping levels to meet winery grape purchasing agreement tolerances;
- Growers will take reasonable steps to produce timely and accurate crop estimates;
- Grapes will be harvested at a targeted Baume set by the purchasing winery. Where the target Baume cannot be met, the minimum Baume must be met;
- The delay between the commencement of harvest and delivery to the winery should be minimised unless other instructions have been given by the winery;
- For machine harvesting, grapes will be harvested in the cooler part of the night to minimise spoilage, especially with white grapes;
- Growers will manage their vineyard with due care to the environment;
- Growers will manage their vineyard in accordance with quality assurance programs where required;
- Growers will comply with mandatory reporting requirements, such as reporting of agrochemical use in the form of a spray diary and submitting crop estimates when required;

- Growers are obliged to inform winery representatives of any information or change that could affect the expected grape quality or yield; and
- Growers will comply with winery grape sampling requirements.

Grower expectations:

- Wineries will reward growers appropriately and sustainably for a reliable supply of consistent quality grapes that meet the winery specifications and the designated wine style expected within a region;
- Wineries will work with their growers to make the quality linkage between grapes and end products clear and understandable;
- To receive quality, timely support from winery grower services and viticultural staff to assist with seasonal vineyard management;
- Winegrape specifications and tolerances will be written, clear, measurable and consistently applied, especially when downgrading occurs and pricing is affected;
- Winegrape specifications and tolerances will not be changed by the winery prior to harvest without reasonable notice and not so soon before harvest that the grower cannot take appropriate action;
- Assessment staff will be technically trained and competent in vineyard and/or load assessment and all blocks will be assessed prior to harvest. If a problem arises the grower is to be consulted to discuss and agree on an outcome;
- Where vineyard assessment results in disease detection, a formal assessment of the block is to be made as early as possible and growers are to be given the option to be involved in the formal assessment;
- Notification for possible downgrading, penalties or rejection will be as early as possible to allow the grower time to seek alternative arrangements and/or to prevent further loss; and
- Wineries will provide growers with constructive feedback (preferably prior to pruning) on the vineyard assessments and the resultant wine quality of their grapes along with any recommendations to assist with improvement.

3. Winegrape quality

Wines, and the grapes they are made from, are highly differentiated products. They are influenced by a myriad of factors including colour, variety, growing region, vineyard characteristics, vineyard management practices, seasonal vintage and winemaking influences. No other consumable product has such a degree of differentiation or identification with those factors. For this reason certain varieties, regions, vineyards, vintages, winerie, and wines can command significantly different prices.

For the sake of efficiency and harmony within an industry encompassing such highly differentiated products, clarity, common understanding and agreement on important characteristics is highly desirable. While seeking clarity and common understanding it must also be acknowledged that some characteristics of grapes and wine are not readily quantifiable, and it is often these less quantifiable characteristics, such as flavour, that make grapes and wines highly sought after by consumers.

A useful model with which to consider grape quality is the Quality Triangle which, for the purposes of grape transactions, groups all the factors that can influence grape quality into three 'legs' of a triangle.



The Winegrape Quality Triangle

Maturity, purity and condition

Maturity, purity and condition refers to those criteria that can be readily quantified or ascribed a value. They are commonly specified in grape purchasing agreements between growers and winemakers so that both parties understand what is expected and have a commitment to ensure product specifications are met. They are covered in detail further on in this publication.

Flavour and character

Flavour and character requirements, such as tannin structure, are determined by wineries according to their product requirements and their winemaking styles. These are often difficult to quantify, both as a specification and as an assignment. Nonetheless these characteristics are vitally important and, in situations where grape pricing will be influenced by flavour and character, wineries need to take particular measures to ensure growers can have faith in the process of assessment and assignment of these parameters. This process of assessment and assignment may continue well after the receipt point, as is the case of 'end-use' bonuses used by some wineries according to the ultimate end-use of grapes in the product portfolio of the winery.

The special measures wineries take could include:

- Ensuring growers appreciate product portfolios, possibly through structured tastings;
- Giving growers clear and realistic wine end-use expectations with reference to variety, region and vineyard;
- Having assessment and assignment protocols that are specified and adhered to with internal consistency; and
- Communication to growers of end-use outcomes.

Protocols and supporting behaviours

'Quality' is not only defined by criteria that are quantifiable and measurable. There are process and procedural elements that can be defined, but not easily measured. These elements would include:

- Communication;
- Notification;
- Timeliness; and
- Assessment.

For example, vineyard assessments by wineries are undertaken according to certain internal protocols. These protocols might cover the frequency of visits, procedures for communicating with the grower/owner, and decision procedures for downgrading or rejecting grapes. Other areas might include protocols for disease detection and response; a protocol defining minimum training and experience for personnel undertaking vineyard or load assessments; or dispute resolution mechanisms and facilities in respect of pricing or rejection.

These protocols and supporting behaviours provide direction on how the other aspects of the quality triangle should be implemented and communicated. These protocols and supporting behaviours would go even further towards limiting uncertainty among growers in particular with respect to the



outcomes of their grape purchasing arrangements with wineries. While protocols exist, there are no industry endorsed protocols and supporting behaviours. There is therefore scope to develop these through the Liaison Committee. So while there are many factors that constitute quality, only those readily assessable are dealt with in the remainder of this document.

4. Specification, criteria, tolerances and assessment

The above terms are widely used in this document and therefore require definition.

Specification: means the notation of the characteristics that distinguish one load of grapes from another. While that obviously includes characteristics such as the variety and vineyard block from which the grapes are sourced and when the grapes are anticipated at the winery, it also includes all the characteristics listed in Tables 1 and 2. For example, load temperature is one specification for a load of grapes.

NB: Krstic et al. 2003, '*Growing Quality Grapes to Winery Specifications*' refers to 'quality parameters' a term that is synonymous with the term 'characteristic' above.

Criterion: means the measure or rule by which a judgment or estimate is made. Using the above example, the criterion for load temperature is degrees Celsius as measured by a calibrated thermometer.

Tolerance: means the permitted variation. Again using the above example, the tolerance for load temperature at a particular winery may be that grapes need to be delivered at less than 30°C and that grapes delivered in excess of 30°C may be liable for penalty.

Assessment

Although vineyard and load assessment procedures in one form or another have been in use in the wine industry for many years, there has not been industry endorsement of methods and procedures which can be used universally in grape purchasing agreements. Furthermore, improved knowledge and innovation is providing growers and winemakers with new alternatives to assist them in ensuring that grapes more closely match winery requirements.

This publication identifies the important specifications commonly used by wineries in assessing maturity, purity and condition of grapes in vineyards and at the receival point. While it is a set of specifications used by wineries in grape purchasing agreements, it is not a set of standards, or a standardised approach towards defining assessment procedures.

Because most problems identified at the receival point can also be identified in the vineyard, emphasis is placed on assessment criteria in the vineyard, as well as at the receival point. An objective of growers and wineries should be to identify problems as early as possible, preferably in the vineyard, so that effective action can be taken to avoid grapes being downgraded or rejected. Grapes that are downgraded or rejected represent a missed opportunity for both the grower and the winemaker.

Ownership of the grapes passes from the grower to the winery at the receival point. It is at this point that final assessment to specification should take place.

5. Assessment in the vineyard

Vineyard assessment is a form of quality assurance in the vineyard and has become a critical step in the winemaking process. It enables the winemaking potential of the grapes to be identified prior to receival at the winery and more importantly, it prevents the delivery of unsound grapes to the winery.

Inspections during the growing season and especially during

ripening, allow the winemaker, or winemaker's representative, to follow progress and determine the time of harvesting that will result in the best combination and expression of flavours and other attributes. Although the focus is on berry development, the vineyard and vine characteristics may also be assessed.

In addition, vineyard and berry assessment enables wineries to batch similar parcels of grapes, optimise wine quality and optimise winery efficiency.

Assessment in the vineyard should be carried out by winery staff within 1-2 weeks of harvest to:

- Make an assessment as close to harvest as possible; and
- Give growers sufficient notice of harvest and notifications of concerns against specifications.

Formal processes of vineyard assessment involve measurements wherever possible and can help explain differences in quality between blocks. Some characteristics such as flavour, cannot be easily or quickly measured using a tool or laboratory test and require subjective assessment following specific guidelines.

Other vineyard characteristics that do not yet have criteria are indicated as various canopy and berry characteristics. These characteristics are assessed utilising some form of a score card and it is to be expected that the assessment will remain subjective for some time, for example, leaf condition, bunch exposure, berry size, berry shrivel, sugar/acid balance, skin chewiness/thickness and tannin intensity. These are assessed to help with batching and determining a potential product in the vineyard.

The vineyard assessment specifications for the vineyard are summarised in Table 1 (see page 14).

6. Assessment at the winery

The weighbridge or load assessment station is usually the winery's final and critical checkpoint against specification for grapes and is referred to as the receival point.

Load assessment verifies how well the grapes comply with specifications. The majority of the specifications assessed give results within 15 minutes to prevent delays in the production process. Growers need to feel confident that the methodology being applied during assessment of the loads is consistent and reliable, and that measurements are accurate.

Currently it is not easy to quantify an overall quality rating at the load assessment stage. For higher grades of wine, quality can sometimes only be finally determined after fermentation, particularly as post crushing processes can influence the expression of some quality factors in wine.

The specifications assessed at the receival are summarised in Table 2 (see page 15).

7. Maturity, Purity and Condition Criteria

The specifications used to assess grapes in the vineyard and at the winery can be split into three broad categories: maturity; purity; and condition.

7.1 MATURITY

To the winemaker, maturity is determined not only by 'sugar ripeness' but also by 'flavour ripeness' of the berries. A range of components may be considered.

7.1.1 Total Soluble Solids, pH and Titratable Acidity

The sugar in grapes is often used as an indicator of maturity and is sometimes used as a basis for pricing of grapes. The majority of wineries measure sugar as total soluble solids (TSS) in degrees Brix and converted to Baume units. One unit of Baume is equivalent to 1.8 degrees Brix. Baume gives a convenient

indication of potential alcohol content of the wine to be produced from the grapes. Grapes of 13 Baume, if fermented completely, produce a wine of about 13% alcohol by volume.

Titrateable Acidity (TA) and pH are commonly measured as well as with TSS to give an overview of grape maturity at harvest and are used for harvest scheduling. TA and pH are not commonly used as an element for pricing grapes. As TSS increases in the berries, the juice pH rises and the TA declines. TA indicates the total amount of organic acids in solution and the pH relates to the free hydrogen ions in solution indicating the alkaline/acidity balance.

As TSS, TA and pH can be measured, they are commonly used as specifications, but there are other influences on quality. These are discussed later.

Loss or risk potential

Not meeting the minimum tolerance can also affect the resultant wine quality as Baume is closely linked with other quality characteristics such as colour, flavour and alcohol. It is important for each parcel of grapes to reach a targeted maturity to maximise the quality potential at harvest. If the Baume is below the minimum tolerance set by the winery for a given variety, then penalties may occur resulting in a loss of income to the grower.

TA and pH are closely associated with Baume and can affect the resultant wine quality if out of balance. Acidity is important for flavour balance and a low pH leads to more stable colour and inhibits microbial spoilage.

Winemakers take into consideration the TA and pH values and their balance with the Baume level in deciding when to harvest. Bonuses or penalties are uncommon for these two specifications.

Predisposing elements (causes for loss)

Seasonal conditions greatly affect the maturity of grapes. Cooler regions tend to experience a slower increase in Baume and TA often remains high. In some years when temperatures remain cooler than average, the cool regions may struggle to achieve the targeted Baume. Warm to hot regions tend to show a faster increase in Baume and TA tends to drop away requiring adjustment in the winery.

It is commonly found that higher quality wines from a particular variety within a designated region are made from grapes that reach their targeted maturity earlier. Those that do not either are out of balance, younger vines, or are badly managed via inadequate management practices such as over cropping, over irrigating, inadequate pruning and poor canopy management.

High vineyard variability within a block of vines causes great concern as this can affect the maturity results if not taken into consideration when sampling the block.

Achieving a Baume below the minimum tolerance may result in poorer quality wines. Delivering grapes over and above the targeted Baume, on the other hand, can result in high alcohol wines that may not be allowable for export and which are not to style. Costs can be high to remove excess alcohol from a wine.

If TA is lower than required, then acid adjustment is required resulting in increased costs in the winemaking process.

Evaluation process

Measurement

Using juice samples (for both vineyard and load assessment), TSS, TA and pH are all measured with instrumentation that is calibrated to a standard solution.

TSS is usually measured by refractometry, giving a value expressed in degrees Brix. The Brix value is then converted to Baume.

TA is measured as free and bound hydrogen ions by titration with NaOH, expressed in g/L.

pH is measured using a calibrated pH meter and values are expressed in pH units.

Assessment and sampling for maturity in the vineyard

Sampling commences in the vineyard at around 8 Baume onwards for most varieties (once berries have reached full veraison). It is best practice to sample twice weekly if resources allow, or once weekly as a minimum.

Variability is taken into account by taking samples that are representative of the block unit to be harvested. Samples should be taken at the same time of day for each sample time and preferably in the cool of the morning.

There are many methods of vineyard sampling. The industry recommendation refers to the publication: Krstic et al. 2003 *Growing Quality Grapes to Winery Specifications* (CRCV project 1.1.2 Compendium of Winegrape Specifications and Measurement).

Assessment and sampling for maturity at the receival point

Sampling devices used range from mechanical core samplers to smaller manual devices. Whatever tool is used, the aim is to obtain a core sample that is representative of the load. Training is therefore essential to ensure consistency of operation.

For loads delivered in grape bins it is recommended best practice to sample every bin twice and average the result. A minimum would be to sample at least 50% of the bins once. If there is discrepancy between the bins, then there is a need to sample further until variability is minimised.

For loads delivered in tipping trucks and/or trailers it is recommended best practice to sample each unit in three different sections and average the result.

Results are recorded and acted upon as per winery procedures.

Winery tolerances and timing of notification

- **Best practice**—Deliver grapes to a targeted Baume (set by the winemaker) for each variety as required for the designated wine style.
- **Minimum tolerance**—Applies in many grape purchasing agreements and should be observed to avoid penalties or possible rejection.
- **Notification of results**—If results fall below the minimum tolerance, growers must be notified immediately (within 2 hours is acceptable), to discuss the outcome. The appropriate winery staff should also be contacted immediately as processing may be delayed.

7.1.2 Colour (red grapes)

In recent seasons, growers have been encouraged to undertake practices that will improve the intensity of colour of winegrapes, especially the varieties Cabernet Sauvignon, Merlot and Shiraz, and some wineries have given incentives through their grape pricing. The main goal, however, has been to raise regional colour performance (particularly in the inland irrigated regions) and to provide further scope for batching.

The means of measurement of colour and the correlation of colour with other quality attributes continue to be investigated. Like other specifications, colour is therefore best not to be used in isolation but in combination with other factors that make up the overall quality of the wine.



Growers need to be aware that wineries make commercial decisions about their products and may have varying colour tolerances for different varieties.

Loss or risk potential

For those wineries that have set tolerances, if the colour result falls below the minimum tolerance for a given variety, then penalties may occur resulting in a loss of income to the grower or possible rejection.

Not meeting the minimum tolerance could also mean a loss for the winemaker who might have planned for a certain level of colour for a particular product.

Predisposing elements (causes for loss)

Seasonal conditions and management practices influence colour development. The colour compounds, known as anthocyanins, have an optimum temperature range of 17 to 26 degrees Celsius (*Growing Quality Grapes to Winery Specifications*, CRCV project 1.1.2 Compendium of Winegrape Specifications and Measurement) for their formation. This means that intense colour tends to be more difficult to achieve in extremely hot and extremely cold regions. It also means that a warm region normally will have better colour intensity in a cooler than average season.

Excessive exposure as well as too much shading may also affect the rate and uniformity of colour development. Vines described as being in good balance and which have not been invigorated, are best equipped to produce grapes with good colour.

Excessive irrigation, excess nitrogen, calcium deficiency and botrytis are some factors that have been associated with poor colour.

Evaluation process

Colour measured in the vineyard will ideally be verified at the receival point, with sampling methods taking account of variability.

Measurement

Colour compounds (anthocyanins) form part of the phenolic make-up of wines and are predominantly found in the skins.

In the vineyard, visual assessment of colour can be made using a colour chart alongside a macerated sample of grapes. Although quick and inexpensive, this method is subjective.

Colour may be measured by the following techniques:

- a) Near Infra-Red Spectroscopy (NIRS)
- b) Spectrophotometry

Colour measurements are usually expressed as milligrams of anthocyanins per gram berry weight.

NIRS is a correlative technique that enables rapid analytical results. Assuming an NIRS calibration is available, routine testing is simple and can be performed in less than a minute. Representative sampling is crucial for accuracy of results and it has become evident that NIRS calibrations need to be specific to a grape variety within its region, considering vintage variations. Currently a laboratory colour reference is essential for calibration backup. The NIRS equipment is available as a bench-top tool, but remains expensive.

Wineries that specify colour by measuring milligrams of anthocyanin per gram of berry may have varying tolerances for each red winegrape variety. Tolerances may also vary between regions.



Assessment and sampling for colour in the vineyard

Refer to the publication *Growing Quality Grapes to Winery Specifications* (CRCV project 1.1.2 Compendium of Winegrape Specifications and Measurement).

As for any sampling, it is crucial to understand vineyard variability prior to sampling and it has been shown that sampling for colour shows a greater variability than sampling for maturity.

Assessment and sampling for colour at the receival point

Refer to the publication *Growing Quality Grapes to Winery Specifications* (CRCV project 1.1.2 Compendium of Winegrape Specifications and Measurement).

Obtaining a representative sample of whole berries from loads for a colour test can be difficult. Mechanical core samplers are used by some wineries to take a core of grapes and juice from a load and whole berries are sorted from that core sample.

Winery tolerances and timing of notification

- **Best practice**—Deliver grapes to a targeted colour level for each variety as required for the designated wine style.
- **Minimum tolerance**—Grapes should be delivered at the minimum tolerance where a winery has indicated, and especially where this may affect pricing.
- **Notification of results**—If results fall below the minimum tolerance, growers need to be notified as soon as results become available, to discuss the outcome.

7.1.3 Cropping level

The primary needs of wineries are supplies of grapes that have the potential to produce their intended wine styles.

Within the same region there can be a range of yields from different growers that will all meet specifications. There are, however, what appear to be the optimum yield ranges for achieving an individual winery's requirements. For this reason,

many grape purchasing agreements have upper tolerances to yields.

Often the relationship between winemakers and growers will enable a negotiation on optimal cropping levels and expected yields.

Loss or risk potential

If growers exceed yield tolerance, there is a risk the surplus may not be accepted by the winery. If quality expectations are achieved however, negotiation may allow the grapes to be accepted. Another potential risk of loss is that of regional integrity where a region is marketed and known as a premium producer of wines.

Vines that are continually over-cropped tend to use more resources such as water and nutrients, which may be costly and not sustainable.

Predisposing elements (causes for loss)

An over-cropped vine can be defined as one that: has a large crop and insufficient healthy, active leaves; cannot produce enough sugar to maintain all bunches and adequately ripen them; fails to produce grapes with the flavour profiles required; and has reduced reserves for the following spring.

Management practices such as over-irrigating and soil management techniques that promote high cropping and high vigour can greatly influence the vine balance and yield. In

addition, pruning to a high bud number that does not match vine capacity may result in over-cropping. Excessive leaf loss due to environmental stress, pests or diseases is another possible negative effect on the balance of the vine.

Over supply of nutrients, in particular nitrogen, will affect the cropping level and possibly decrease quality.

Poor combinations of variety and rootstock can result in a vigorous, dense canopy and overcropped vines. Placing a poor combination in an environment that does not suit can worsen the outcome.

Evaluation process

It has become increasingly important to estimate yield accurately in the vineyard prior to harvest to assist winery planning.

Accurate estimation will enable the grower to make informed decisions about their yield management.

Measurement

Visual assessments, using scorecards at critical phenological stages, including 10cm shoot growth, post set and veraison, can rate vine balance and give a general indication of cropping level. At the same time an inspection can be made for any vine health problems.

For more accurate yield estimation, a Yield Estimation Model should be applied. Industry recommendation refers to: Winegrape Crop Forecasting Module (Dunn, Martin and Dunston, DPI Victoria).

The future holds much promise for more accurate yield estimation using precision viticulture techniques such as yield mapping with a GPS system at harvest. Optical remote sensing is another tool undergoing research for assisting in yield estimation.



Assessment of cropping level in the vineyard

Accurate yield estimations can only be obtained when vineyard variation is taken into account and the sampling is representative of this variation. A Yield Estimation Model gives an appropriate estimation of final yield. The model is usually applied at six weeks after budburst, at veraison and again just prior to harvest.

Winery tolerances and timing of notification

- **Best practice**—Deliver grapes to a targeted wine style for each variety as required, by maintaining good vine balance.
- **Maximum tolerance**—Deliver grapes within the tolerance where a winery has written the specification and especially where it may affect pricing.
- **Notification of results**—If yield falls outside tolerance, growers need to be notified as soon as results become available to discuss the outcome. In the same instance, growers must notify wineries as soon as they become aware of any change in their estimated yield.

7.2 PURITY

Fungal diseases, agrochemical residue and any Matter Other than Grapes (MOG) are detrimental in a load of winegrapes and while 100% purity can be difficult to achieve it must be the aim of every grower.

Grapes are classified as food and therefore have to be able to

comply with Food Standards Australia New Zealand (FSANZ).

7.2.1 Diseases—powdery mildew, downy mildew, botrytis and other moulds and rots

Diseases are detrimental to wine quality if they affect colour and flavour. They also can impart unpleasant taints. The percentage of disease that is acceptable can vary from winery to winery.

Monitoring of pests and diseases in the vineyard and assessment of damage or infection can minimise problems and enable notice to be given before arriving at the load assessment station.

Powdery mildew needs to be controlled as early as possible (preferably by veraison). Botrytis and other moulds and rots may only be evident close to harvest where moisture has affected grapes. Downy mildew is not an issue every year in most regions throughout Australia.

Although it can seriously affect grapes, loss of leaf function near harvest can have a major effect on quality by affecting the ripening process.

Loss or risk potential

Diseases can be detrimental to wine quality causing contamination and taints.

Botrytis (*Botrytis cinerea*) can cause severe problems in winemaking making it difficult to process the juice and wine. The presence of botrytis in wines can result in a loss of colour, flavour, off taints and reduced shelf life. In the vineyard crop loss can occur and secondary infections are common from yeast, other moulds and rots, bacteria and vinegar flies.

Powdery Mildew (*Uncinula necator*) can cause off taints in wine that are detrimental to wine quality resulting in reduced shelf life. Consequently processing time and costs are increased and taints can sometimes be impossible to remove. Losses in the

vineyard can occur due to restrictions of yield, maturity and uneven ripening. Splitting may occur resulting in secondary infections from other moulds and rots.

Downy Mildew (*Plasmopara viticola*) can cause severe crop loss and, more often, leaf loss resulting in sunburn and uneven ripening or failure to ripen the grapes.

Moulds and other rots can cause severe faults in wine that are not only detrimental to wine quality but may be unacceptable for export due to health concerns, for example, grapes affected with the toxin ochratoxin A (OA). The predominant species producing OA are *Aspergillus ochraceus* resulting from *Aspergillus carbonarius*.

There are a number of other bunch rots and moulds that can have undesirable effects on wine quality. For example, *Rhizopus*, *Aspergillus* and *Penicillium* in combination can result in sour rot. Sour rot is commonly found in Europe, the USA and in some parts of Australia and is caused by a variety of micro-organisms, including yeast and acetic acid bacteria.

Predisposing elements (causes for loss)

Unfavourable conditions during the growing season and near harvest present the primary cause for the onset of disease, resulting in crop loss or badly affected grapes if left uncontrolled.

Poor spray applications and poor timing of sprays can lead to an uncontrollable disease situation if weather favours development.



Some management practices in the vineyard can increase the risk of disease development. These include excessive use of nitrogenous fertilisers resulting in increased vigour and therefore excessive shading without adequate air circulation to dry out the canopy early in the day.

Not managing pest outbreaks can lead to secondary problems with disease such as lightbrown apple moth increasing the risk for botrytis, and mealy bug damage resulting in other moulds and rots.

Over use and poor timing of irrigation applications can produce thin skins and tight compact bunches increasing the risk for botrytis and other infections if splitting occurs.

Some varieties are more susceptible to disease than others, for example, bunch rot in Grenache and powdery mildew in Chardonnay.

Evaluation Process

While there are techniques available for quantifying disease incidence and severity in grapes, quantitative links to wine outcomes are not generally agreed.

Measurement

Currently, the degree of disease infection is determined by visual examination during vineyard assessment and during load assessment at the winery.

Quantification in the vineyard can be made using the Emmett and Wicks Disease Assessment Key. In this formal assessment process, a percentage incidence and severity rating of the disease is determined to assist in decision making.

Assessment of disease in the vineyard

Inspections for any vine health problems should start at the latest by veraison, or earlier if resources allow.

Assessment of diseases that may seriously threaten quality should be conducted in association with the winery. Assessors need to be trained in technical assessment of pests and diseases that can affect wine quality. It is important that the results obtained are statistically valid and the detail of recording needs to be accurate and consistent.

It is recommended that growers conduct random monitoring. If background information is available they may wish to undertake targeted 'hot spot' monitoring. If a disease is present in a 'hot spot' the remaining area can be assessed and compared. Thorough monitoring can involve 200 observations per 'hot spot' or block, stopping to assess 20 sites and assessing 10 bunches or leaves at each site by choosing one to five vines. Growers are advised, however, to consult purchasing wineries regarding their disease assessment protocols.

Assessment of disease at the receival point

It is difficult to accurately assess disease incidence and severity in loads, especially in machine-harvested red winegrapes at night. Consequently, some wineries place more people in the vineyard to ensure problems are recognised and assessed early.

When a load with disease-affected grapes arrives at the receival point, currently, assessment is visual, combined with sensory detection of odours and off taints in the grapes.

Results are recorded and acted upon according to individual winery procedures.

Winery tolerances and timing of notification

- **Best practice**—Deliver grapes with 0% disease.
- **Maximum tolerance**—Deliver grapes at the maximum tolerance where a winery has indicated, and especially where

it may affect pricing. Some general maximum tolerances used by wineries are:

- a) Powdery mildew—less than or equal to 3%
- b) Botrytis—less than or equal to 3%

Note that a measure at the receival point would be based on a visual or organoleptic (taste and smell) assessment. Measures of incidence and severity using the Emmett & Wicks Disease Assessment Key could only be made in the vineyard.

- **Notification of results**—Where grapes are above the maximum tolerance, growers and wineries need to be notified as soon as detected in the vineyard to discuss and agree on the outcome. Botrytis and other rots and moulds can develop rapidly, therefore, notification of rejection or penalties may only be possible immediately prior to harvest. Notification for powdery mildew should occur as soon as the disease is detected from routine vineyard assessments.
- If disease is detected at the receival point, the grower needs to be notified immediately (within 2 hours is acceptable), to discuss and agree on the outcome. The appropriate winery staff should also be contacted immediately as processing may be delayed.

7.2.2 Agrochemical Residue

Use of spray diaries has been common practice for some years now to help protect Australian wines from the risk of residue exceeding maximum residue limits (MRLs) for the export and the domestic market.

MRLs vary from one country to the next and for some markets they do not exist at all. It is the grower's responsibility to adhere to the withholding periods as recommended by their winery or The Australian Wine Research Institute (AWRI), and to use only those products listed that are registered for use in grapevines by the Australian Pesticides and Veterinary Medicines Authority.

Loss or risk potential

If growers do not adhere to the withholding periods recommended by their winery or The AWRI they run the risk of delivering grapes with residue that exceed MRLs. Such grapes can result in wines with residue exceeding MRLs in one or more markets. Residue contamination of Australian wine represents a major threat to the Australian wine industry.

Predisposing elements (causes for loss)

Common causes of excessive residue are:

- Poor spray calibrations resulting in a higher than recommended dose rate.
- Spraying vineyards with unregistered agrochemicals for grapevines.
- Spraying within the recommended withholding period.

Evaluation process

It is mandatory for accurate spray diaries to be maintained and returned to the winery prior to harvest. If this does not occur, grapes should not be accepted. Spray diaries are checked by wineries for discrepancies and monitoring for residue is carried out. Monitoring for residue is at the discretion of the purchasing winery and may occur in the vineyard, at the receival point or in testing the final wine blend.

Measurement

Samples of grapes, juice or wine are sent to the AWRI or other laboratories for testing. A delay of 10 days or more is to be expected for results.

Winery tolerances and timing of notification

- **Best practice**—Deliver grapes with no agrochemical residue.
- **Minimum tolerance**—Deliver grapes within the acceptable MRL.
- **Notification of results**—Results are often not known until post fermentation and sometimes not until after the final wine blend. The winery should contact the grower to inform them of any results that do not meet tolerances if not for imposing a penalty, then for feedback so that vineyard practices can be improved.

7.2.3 Matter other than grapes (MOG)

With expanded use of machine harvesting since the late 1970s, MOG has become an issue as most contaminants (other than chemicals) are directly related to mechanisation.

MOG includes all other vine material such as petioles, leaves, canes and broken arms of vines. MOG also includes foreign objects such as stones, picking utensils, trellis parts, metal objects and irrigation components. These are often difficult to detect in loads until in the crusher and it is highly variable as to how much material or how big an object will cause damage.

It should also be noted that MOG could be present in hand-picked loads.

Machine harvesting technology has been changing in recent years to greatly improve harvesting techniques and to reduce the amount of MOG in loads. Improvement is still needed, however, and often the harvester operator can play a major role in the purity of the harvest.

Growers share the responsibility of reducing MOG in the vineyard. They should clean up the vines after machine pruning to remove potential MOG like brittle dead arms caused by Eutypa, ensure vine rows are clear of foreign objects, and control snails and other potential pests.

Loss or risk potential

Losses can occur through processing problems caused by MOG, downtime for repairs to equipment, and the cost of equipment replacement. In some situations wineries have written into their grape purchasing agreements that growers may be liable for the cost of repairs if fault is established.

MOG can be detrimental to grape quality because of skin and berry damage, especially for whites. Wine quality can be affected through too much leaf in loads causing unwanted herbaceous character. Excessive leaves in the load may increase the risk of agrochemical residue because of vineyard sprays.

With excessive MOG, wineries are paying for unwanted waste, all of which must be removed at the crushing site.

Predisposing elements (causes for loss)

Common causes of problems are:

- Poorly set up machine harvester units.
- Absence of or poorly maintained magnets on harvesters.
- Harvesting of vines late in the season when they may be stressed and grapes are difficult to remove.
- Frost damage resulting in dead shoots that easily break off.
- Stressed vines in general, where leaves fall easily and vine wood is often more brittle than normal.
- Harvesting in wet conditions where water weighs down leaves and sticks and the harvester fans are unable to remove them.
- Poor pruning techniques in the vineyard and especially where hand clean-up following machine pruning has been inadequate.
- Minimally pruned vines can increase the potential for MOG, as there is a considerable amount of dry and dead wood present where no pruning has occurred.

- Old vines that contain considerable amounts of dead wood (possibly due to Eutypa or other trunk diseases).
- Poorly re-trellised vines that have not had the old wood removed.
- Objects left in the vineyard to mark posts and sprinkler heads not removed prior to harvest.
- Failure to inspect bins and removal of foreign objects prior to use.

Evaluation Process

MOG can be quantified by extracting and weighing it out in samples taken from loads but this is inefficient, time-consuming and too complicated to be a practical measurement tool. Sampling would need to be representative of the entire load.

At the receival point, the current method for evaluating MOG is by visual assessment utilising the methods outlined in the *Australian Winegrape Load Assessment Manual* and posters.

Assessment of MOG at the receival point

A rating system of 0-5 utilising a series of photographs, has been established and winery tolerance may vary in relation to pricing penalties, if any. The visual assessment requires a thorough inspection of every bin, truck or trailer presented for assessment at the winery. Establish a rating with reference to the photographs. Core samplers may assist in detecting MOG that is not visible on the top of the load. Ratings are categorised below. Refer to the *Australian Winegrape Load Assessment Manual* and posters. Note that the percentage of MOG given is only a guide.

MOG 0

- These are loads with little or no MOG (less than 1%).
- They will not cause quality or processing loss.
- All growers should aspire to this benchmark.

MOG 1

- Leaves, petioles and small pieces of canes or sticks may be present in low levels (1-2% total MOG).
- MOG at this level does not cause quality and processing loss.
- This level of MOG is acceptable.

MOG 2

- Considerable amounts of leaves, petioles, canes and small wood (still less than 3% total MOG).
- MOG at this level has the potential for quality and processing loss.
- Loads border on being not acceptable and penalties may start to apply.

MOG 3

- Excessive amounts of leaves, petioles, canes and small to medium sized wood (at or greater than 3% total MOG).
- MOG present at this level will cause quality and processing loss.
- This level of MOG is not acceptable.

MOG 4

- Large vine debris such as trunks, arms, excessive canes and potentially damaging foreign objects.
- MOG at this level will cause major quality and processing loss.
- This level of MOG is not acceptable.

MOG 5

- Damaging foreign objects and large objects that cannot be processed, including excessive amounts of large vine debris.
- MOG at this level is not acceptable and if in excess, loads may be rejected.



Winery tolerances and timing of notification

- **Best practice**—Deliver grapes at MOG 0 rating.
- **Maximum tolerance**—Deliver grapes less than MOG 2.
- **Notification of results**—If results fall above the maximum tolerance, growers need to be notified immediately (within two hours is acceptable), to discuss and agree on the outcome. The appropriate winery staff should also be contacted immediately as processing may be delayed.

7.2.4 Contamination

Contamination of loads of grapes can come from many sources. For this section it mostly refers to loads that may be contaminated with soil, fuel, oil or other lubricants, non food grade materials, dilution with water, unwanted additives or animal matter including insect pests.

Some contaminants are more detrimental to the resultant wine than others and can be easily detected via distinct odours such as fuels and oils. Contaminants that are severe are not tolerated and can result in instant rejection. If contamination is caused by a known accident it is an expected courtesy that the grower will notify the winery immediately so that contamination to processing equipment and wine tanks is prevented.

In the event of an accident resulting in contamination of grapes, it is recommended that growers establish a value of the losses with the winery for the purpose of making an insurance claim.

Loss or risk potential

Contaminants cause taints and off characters in wine. Those posing greatest risks are fuels and oils used in harvesting and delivery equipment.

Excessive numbers of insects can cause taints and off characters in wine.

Contaminated winery equipment results in wine losses and increased cleaning costs.

Unwanted additives to grapes such as gibberellic acid in sultanas that were originally destined for table grape use can slow processing time, resulting in lower juice extraction.

Incorrect additions of potassium metabisulphite may affect wine colour in reds and the wider export potential for that wine.

Soil contaminants risk damage to winery equipment such as pumps and crusher parts and can contaminate red wine ferments. Soil carted on the bottoms of bins may be a potential source of phylloxera spread or unwanted diseases and pests.

Addition of water dilutes flavour, colour and sugar in the load.

Predisposing elements (causes for loss)

Machine harvesters and loading equipment may contaminate loads with fuels and oils when hydraulic hoses come loose or fuel spillage occurs.

Delivery vehicles such as tractors, trucks and trailers can be sources of fuel contamination if leaks occur.

Uncovered loads that have to travel considerable distances or traverse unsealed roads increases the risk of sand and dirt contaminants.

Harvesting and loading bins in wet conditions on unsuitable surfaces can contaminate bins and loads, because of soil collecting on the bottom of bins.

Leaving grapes to stand in rainy conditions can result in dilution with water if not covered.

Undervine straw mulching may increase the risk of unwanted pests in loads.

Evaluation process

There are no methods in place that can accurately measure contaminants in loads at the winery receipt point. Often the contaminant is accidental and known, so action can be taken to prevent further losses. If not known and contaminated loads arrive at the receipt point, visual and sensory assessment can guide decision-making.

Evaluation relies heavily on notification from the vineyard backed up by sensory assessment at the receipt point.

Assessment of contaminants at the receipt point

A thorough inspection of all trucks, trailers and bins is undertaken to detect possible contaminants. Outsides of bins are checked for excessive dirt.

Some contaminants such as fuels and oils have strong odours and do not mix well with grape juice, so are easily detected. Soil contaminants are obvious from discolouration of loads, while dilution with water will be detected by a lower than expected Baume.



Winery tolerances and timing of notification

- **Best practice**—Deliver grapes with no contaminants as nil tolerance can be expected for serious contaminants like fuels and oils.
- **Maximum tolerance**—Fuels, oils and other serious contaminants, nil tolerance. Other contaminants within winery tolerances.
- **Notification of results**—If winery staff are not notified of possible load contamination and a contaminant is detected at the load assessment station, growers need to be notified immediately (within two hours is acceptable), to discuss and agree on the outcome. The appropriate winery staff should also be contacted immediately as processing may be delayed.

discuss and agree on the outcome. The appropriate winery staff should also be contacted immediately as processing may be delayed.

7.2.5 Varietal integrity

The presence of varieties other than the one expected to be in the load is not tolerated by wineries.

Consumers expect, and the wineries are obliged by law, to ensure that the wine in the bottle is true to label. Varietal substitution constitutes an act of fraud.

Loss or risk potential

It is detrimental to wine quality when the desired flavours and aromas are altered through the mixing of varieties.

Unwanted colour effects can occur in whites where red grape berries are present.

Label integrity is affected if a greater amount than the allowable percentage has been mixed, thus damaging the winery's reputation in the market.

The presence of malvidin diglucoside components, being an indicator of hybrid grapes (non-vinifera), is not acceptable in wine destined for the European markets.

Predisposing elements (causes for loss)

Inter-planting of varieties in vineyards combined with machine harvesting that cannot be selective raises the risk of varietal

integrity being compromised. Non-selective hand harvesting can also result in mixed varieties if not carefully monitored.

Rootstock shoots that have not been removed prior to harvest are a source of risk. Some can produce small coloured berries (e.g. Ramsey rootstock) and only a small amount will contaminate a load.

Harvesting and delivering the incorrect variety.

Poorly defined and identified harvest unit boundaries.

Evaluation Process

Visual assessment at the receival point is the only practicable method of ensuring varietal integrity.

Assessment of varietal integrity at the receival point

Check delivery records and paper work to make sure the correct variety has been delivered.

Conduct a thorough visual inspection of all trucks, trailers and bins to look for possible varietal mixing.

Results are recorded and acted upon as per winery procedures.

Winery tolerances and timing of notification

- **Best practice**—Deliver grapes with 100% of the variety agreed.
- **Minimum tolerance**—Deliver grapes with 100% of the variety agreed.
- **Notification of results**—If results fall below the minimum tolerance, growers need to be notified immediately (within 2 hours is acceptable), to discuss and agree on the outcome. The appropriate winery staff should also be contacted immediately as processing may be delayed.



7.3. CONDITION

Grapes that are evenly ripened, sound at the time of harvest and cool at delivery are in an ideal condition for winemaking.

7.3.1 Uneven ripening

Uneven ripening can present as bunches that contain small hard berries that remain green while other berries ripen. Bunches may have poor or uneven colouring.

Loss or risk potential

Unripe berries can lead to wines that are out of balance, with undesirable flavours, aromas and poor colour.

Predisposing elements (causes for loss)

- Harvesting too early before the bunches have reached their full maturity.
- Producing excessive crop that is too high for the functioning leaf area.
- Presence of a second crop because of frost damage or trimming shoots too early.
- Certain vine training methods that result in vertically separated fruiting zones can predispose to uneven ripening.
- Unfavourable weather conditions during flowering and remaining cool for prolonged periods.
- High variability within a harvest unit.

Evaluation Process

There are no simple tools for accurately measuring uneven ripening or immature berries at receival. Consequently assessments in the field or at the receival point are by visual means.

Assessment of uneven ripening in the vineyard

During routine vineyard inspections from veraison onwards, bunches are checked for signs of uneven ripening and immature berries. Options can be discussed among winery representatives and growers if there is a risk of not meeting minimum tolerances.

Assessment of uneven ripening at the receival point

A thorough visual assessment of the load can reveal uneven ripening and immature berries. However, it can be difficult to assess, especially in machine harvested loads. A lower than expected Baume may be an indicator of uneven ripening.

Winery tolerances and timing of notification

- **Best practice**—Deliver grapes that have fully ripened to meet the target Baume.
- **Minimum tolerance**—Deliver grapes with minimal immature berries and no second crop so as to meet the minimum Baume tolerance as per winery agreement.
- **Notification of results**—If results fall below the minimum tolerance, growers need to be notified immediately (within 2 hours is acceptable), to discuss and agree on the outcome. The appropriate winery staff should also be contacted immediately as processing may be delayed.

7.3.2 Temperature

In Australia, air temperatures can be high, for example greater than 35°C, during ripening and harvest. Deterioration of berries is possible if they are exposed to high temperatures for long periods. Managing vintage in hot conditions is therefore about good logistical management. This involves minimising the time from the commencement of harvest until the grapes are in tank where temperature can be controlled. Tolerances for temperature may vary from region to region.

Wineries should not reject grapes with a relatively high temperature where best practice has been applied but should provide guidelines to growers for harvesting. For example, harvest in the cooler part of the night for all varieties, then when conditions are cooler (below 25°C) reds can be harvested during the day.

Loss or risk potential

Processing hot grapes can require chilling, causing delays and increasing winery costs. Cold conditions can also increase processing costs due to having to heat up cold grapes to an adequate temperature for fermentation to commence.

Grapes harvested in hot conditions may be spoiled by oxidation, premature fermentation and may be excessively phenolic. Whites and sparkling wine styles require that grapes are harvested and maintained at lower temperatures.

Machine harvesting grapes in hot conditions can be difficult with high numbers of berries being left on bunches, resulting in a possible reduced tonnage for the grower. Attempting to remove the berries with the machine could result in a higher MOG rating, as the vines have to be shaken more vigorously to remove the berries.

Predisposing elements (causes for loss)

- Extended periods of hot conditions during harvest results in hot grapes.
- Harvesting grapes, especially whites, during the day in hot conditions.



- Carting hot grapes long distances and delaying delivery and the crushing process.
- Breakdowns that cause considerable delays in harvesting and processing, particularly if during the day.

Evaluation Process

Measurement

Temperature is measured at the receival point using a calibrated thermometer suitable for use in loads.

Sampling for temperature at the receival point

Measurements are taken for at least half the bins. If there is a discrepancy between the bins and the temperature is elevated, then there is a need to measure further.

For loads delivered in large vessels, it is recommended practice to measure temperature at three different points.

Results are recorded and acted upon as per winery procedures.

Winery tolerances and timing of notification

- **Best practice**—Deliver white grapes with temperatures of less than 20°C and red grapes between 18 and 25°C.
- **Maximum tolerance**—Deliver grapes that have been harvested in daily maximum temperatures of less than 30°C to prevent possible spoilage.
- **Notification of results**—If temperature exceeds tolerance, growers need to be notified immediately (within two hours is acceptable), to discuss and agree on the outcome. The appropriate winery staff should also be contacted immediately as processing may be delayed.

7.3.3 Spoilage

Spoilage of grapes can occur for various reasons between harvest and crushing. This section refers to spoilage detected at the receival point, such as: premature fermentation, oxidation and acetification. All are considered highly undesirable and can result in rejection.

Fermentation is detected in loads by checking for elevated temperatures in a load that are considerably higher than the average of other load temperatures measured during the same period. The load may also show signs of bubbling and have a

fermentation odour. Foam or froth may be present on the surface of the load.

Oxidation appears in loads as browning of juice and brown berries on bunches.

Acetification in loads produces a vinegar-like odour caused by vinegar producing bacteria and is often associated with bird damage, mould, rotting berries and the presence of vinegar flies.

Loss or risk potential

Unwanted taints caused by spoilage are difficult to remove without affecting the wine style. Acetification in particular can greatly affect wine quality.

Wild yeast strains from premature fermentation can contaminate wineries.

Oxidation increases the loss of the natural varietal flavour and colour, altering the aroma of the wine. Although some wine styles require some oxidative handling this is preferred under controlled conditions.

Spoilage can increase the cost of processing the grapes and can lower the quality and value of the resultant wine. The extent of spoilage depends on the time spent in the delivery vessel, the temperature of the load at harvest and the condition of the berries prior to harvest.

Whites should be delivered within two hours of harvesting and preferably harvested/delivered in bins and not in bulk so skin contact is minimised. Reds are less at risk of spoilage and can handle longer delays of up to five or six hours.

Predisposing elements (causes for loss)

Where there are time delays, spoilage risks can increase. Causes are poor logistical management and breakdowns.

Harvesting during excessive temperatures can increase the risk of spoilage.

Berry splitting caused by rain, fungal infection or some other means represents a loss of condition in itself, but also opens up the possibility of further spoilage through secondary infections and damage by birds and insects.

Machine harvesting resulting in split berries, opens the way for spoilage.

Grapes without the protection of potassium metabisulphite during harvest may result in spoilage.

Evaluation Process

There are no methods at the receival point for accurately measuring spoilage. Visual and sensory assessments are able to detect major spoilage problems, however, laboratory tests on the juice once in tank can confirm assessment if required.

Assessment of spoilage at the receival point

Visual and sensory inspection of all trucks, trailers and bins includes looking for signs of spoilage, especially if the load temperature is elevated. Results are recorded and acted upon as per winery procedures.

Winery tolerances and timing of notification

- **Best practice**—Nil tolerance. Deliver grapes with no spoilage as penalties can be severe and may result in rejection.
- **Minimum tolerance**—Nil tolerance for acetification and fermentation. Winery tolerances vary for oxidation.
- **Notification of results**—If spoilage results in a pricing penalty or rejection, growers need to be notified immediately (within 2 hours is acceptable), to discuss and agree on the outcome. The appropriate winery staff should also be contacted immediately as processing may be delayed.

7.3.4 Damaged berries

Many things can damage berries during ripening. This section refers to those berries damaged due to sunburn, excessive shrivelling, splitting, general berry breakdown, bird and insect damage.

Damaged berries are assessed in the vineyard during routine inspections. The outcomes of berry damage are best addressed in the vineyard. Where berry damage is severe, the price for the grapes may be reduced or the grapes rejected.

Loss or risk potential

Secondary infections and reduced grape quality cause losses to growers while, for the winemaker, odours and off flavours in wine can be generated by severely damaged berries.

Sunburn results in undesirable phenolic characters and general loss of flavour if severe.

Processing can be difficult where berries are excessively shrivelled or dehydrated, increasing winery costs and loss of income to the grower through reduced weight.

Predisposing elements (causes for loss)

Unfavourable seasonal conditions, such as rain causing splitting and berry breakdown, or extended hot periods causing berry drying, sunburn and shrivel.

Premature stress resulting in considerable leaf loss and over exposure of bunches can result in sunburn shrivel or dehydration of berries.

Inadequate pest control of insects and snails may lead to damage and contamination of grapes and cause secondary infections.

Birds cause damage by puncturing the skin as berries are ripening. Isolated vineyards with no other food sources are at higher risk of bird damage.

Poorly set up and operated machine harvester units can split berries.

Inadequate or inappropriate canopy management can result in over exposure causing dehydration, sunburn or shrivel of berries.

Evaluation Process

Visual and sensory assessments are the accepted methods. Most berry damage occurs in the vineyard and should be prevented from arriving at the receival point unless otherwise agreed.

Assessment of berry damage in the vineyard

During routine vineyard inspections from veraison onwards, bunches are checked for signs of berry damage. Options can be discussed if there is a risk of not meeting the minimum specification.

Assessment of berry damage at the receival point

It is difficult to accurately assess berry damage in loads, especially in machine harvested reds at night. It is routine, however, for visual and sensory inspection of all trucks, trailers and bins for signs of berry damage.

Winery tolerances and timing of notification

- **Best practice**—Deliver grapes that are entire and unblemished (nil berry damage).
- **Maximum tolerance**—Deliver grapes with minimal berry damage that will not result in a pricing penalty.
- **Notification of results**—If results exceed the maximum tolerance, growers need to be notified immediately (within 2 hours is acceptable), to discuss and agree on the outcome. The appropriate winery staff should also be contacted immediately as processing may be delayed.

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The publication is based on a final report to the Grape and Wine Research and Development Corporation (GWRDC), project number: WFA01/01. Principal Investigator: Wendy Allan. Research Organisation: Wendy Allan Consulting. Date: August 2003. Copies of the full report are available from the GWRDC, phone (08) 8273 0500.



Table 1: Summary of vineyard assessment specifications.

Specification	Criterion/Current method of measurement	Timing of assessment prior to harvest	Recommended Grower/Winery Tolerances Best practice	Downgrade/Rejection
Maturity				
Baume	Quantitative- most commonly refractometry, densiometry and hydrometry. Based on representative sample.	Commences post veraison, usually on a weekly basis.	Achieve target Baume for a designated winestyle	Outside Baume tolerance range
pH	Quantitative- pH meter, units	As for Baume	Achieve target pH where defined	Where defined in winery grape purchasing agreements
Titratable Acidity (TA)	Quantitative- g/L as Tartaric Acid	As for Baume	Achieve target TA where defined	Where defined in winery grape purchasing agreements
Colour (red grapes)	Visual and Quantitative Based on representative sample	From veraison onwards Primarily used to assist grape intake and batching.	Achieve target colour level for a designated winestyle	Below minimum colour tolerance, where winery has indicated.
Cropping level (and yield Estimation)	Formal crop assessment and estimation	Throughout season, depending on method: 10cm shoot growth, post fruit set and veraison	Achieve within target range	Exceeds winery maximum cropping level.
Purity				
Powdery Mildew Downy Mildew Botrytis Moulds and rots (other)	Visual, quantitative assessment procedure.	Throughout the growing season	No disease	Exceeds winery tolerance
Agrochemical residue	Spray diary check. Random or targeted sampling of vineyards. Follow-up quantitative analysis by AWRI or other laboratory	Pre-receival	ompliance with winery spray diary and withholding periods	Non compliance with spray diary or exceeds export Maximum Residue Limit (MRL)
Varietal integrity	Visual and DNA	Pre-receival	100% expected variety	Nil tolerance
Condition criteria				
Uneven ripening	Visual	Veraison/post veraison	Even ripening	Below winery minimum Baume tolerance or exceeds winery tolerance for immature bunches
Damaged berries ♣	Visual, sensory and formal assessment procedure	Post veraison	No damaged berries	Exceeds winery tolerance
Other vineyard specifications that are not yet widely assessed (used to determine potential winestyle and assist with batching parcels of fruit)				
Various canopy & fruit characteristics ♦	Visual and sensory- recording details on a formal assessment sheet to score vineyard.	Post veraison onwards with final assessment near target baume.	Best practice: Provide growers with feedback on assessment prior to pruning to assist the grower with optimising quality for the following season.	
♦ Various canopy & fruit characteristics – characteristics assessed varies between wineries and can incorporate: shoot length, leaf condition, fruit exposure, berry size, berry shrivel, flavour intensity, sugar/acid balance, skin chewiness/thickness, tannin intensity, colour in red berries and phenolics in white berries. ♣ Damaged berries: incorporates sunburn, shrivelled or dehydrated berries, split berries, berry breakdown, bird & insect damage.				

Table 2: Summary of load assessment specifications.

Specification assessed	Criterion/Current method of measurement	Timing of assessment	Best practice	Recommended Grower/Winery Tolerances Downgrade/Rejection
Maturity				
Baume	Quantitative- refractometry densiometry and hydrometry	At receipt	Achieve target baume for a designated winestyle	Outside Baume tolerance range
pH	Quantitative- pH meter, units	At receipt	Achieve target pH where defined	Where defined in winery grape purchasing agreements
Titratable Acidity (TA)	Quantitative- g/L	At receipt	Achieve target TA where defined	Where defined in winery grape purchasing agreements
Colour (red grapes)	Quantitative	Sample at receipt	Achieve target colour level for a designated winestyle	Below minimum colour tolerance, where winery has indicated.
Purity				
Powdery Mildew Downy Mildew Botrytis Moulds and rots (other)	Visual and sensory	At receipt	No disease	Exceeds winery specification
Agrochemical Residue	Confirmation of spray diary	Prior to and at receipt	Compliance with winery spray diary and nil residue	Non compliance or no spray diary
MOG	Refer MOG standards as per <i>Australian Winegrape Load Assessment Manual</i> and posters	At receipt	MOG 0 rating (< 1% MOG)	Exceeds winery tolerance
Contamination ♥	Visual and sensory (smell)	At receipt	No contaminant	Nil tolerance
Varietal integrity	Visual and DNA	At receipt (DNA measure delayed)	100% expected variety	Nil tolerance
Condition				
Uneven ripening	Visual	At receipt	Even ripening	Below Winery minimum Baume tolerance or exceeds winery tolerance for immature bunches
Temperature	Quantitative - degrees Celsius	At receipt	Meets winery seasonal and winestyle specifications	Exceeds winery tolerance
Spoilage	Visual and sensory (smell)	At receipt	No spoilage	Nil tolerance
Damaged berries ♣	Visual and sensory	At receipt	No damaged berries	Exceeds winery tolerance
Other				
Grape purchasing agreement tonnes	Quantitative - weighing	At receipt with prior notice of final delivery	Achieve target tonnage	Tonnage exceeds grape purchasing agreement tolerance
MOG = matter other than grapes and incorporates: all vine matter, or foreign objects such as trellis parts, stones, metal etc. ♥ Contamination = incorporates soil, oil, non-food grade material, fuel or any other lubricant, dilution with water, animal matter, unwanted additives or any other contaminant not acceptable by FSANZ. Spoilage incorporates fermentation, oxidation and acetification. ♣ Damaged berries- incorporates sunburn, shrivelled or dehydrated berries, split berries, berry breakdown, bird & insect damage.				



Appendix 3

Australian Wine Industry Code of Conduct

Australian Wine Industry --- CODE^{OF} CONDUCT

December 2008

THE AUSTRALIAN WINE INDUSTRY CODE OF CONDUCT

The Australian Wine Industry Code of Conduct was officially launched on Friday December 19, 2008.

With the exception of Part 2 (Wine Grape Purchase Agreements), this Code takes effect on 1 January 2009. Signatories are only required to comply with Part 2 for all new Agreements entered into after 1 January 2009 in relation to the supply of wine grapes for vintage 2010 onward. With respect to existing Agreements, each Signatory agrees to offer to its winegrape growers to:

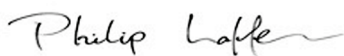
- apply the Code (with the exception of Part 2) with effect from 1 January 2009; and
- bring existing Agreements in line with the provisions of Part 2 of the Code at the time of any Material Variation to the Agreement or Associated Documents (as defined in the Code definitions).

This Code does not, by itself constitute, amend or replace any Agreement.

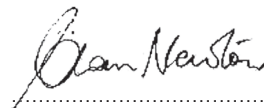
The aim of the voluntary Code is two-fold: firstly to establish a common Australian wine grape supply contract framework and secondly, to provide a dispute resolution system to manage disagreements which exist over price or quality assessments.

The Code has been developed by Wine Grape Growers Australia (WGGA) and the Winemakers' Federation of Australia (WFA) in the interests of a sustainable Australian wine industry and follows a recommendation by a Federal Senate enquiry in 2005. The research and development of the Code has been supported by the Federal Government's Department of Agriculture, Fisheries and Forestry.

Signed in Agreement on the 19th day of December 2008



Philip Laffer
President
Winemakers' Federation of Australia



Alan Newton
Chairman
Wine Grape Growers Australia



Mr Stephen Strachan,
CEO
Winemakers' Federation of Australia



Mr Mark McKenzie
Executive Director
Wine Grape Growers Australia

DISCLAIMER

WGGA, WFA, the Committee, their employees, officers and agents do not accept any liability for the results of any action taken in reliance upon, based on or in connection with this document. To the extent legally possible, WGGA, WFA the Committee and its employees, officers and agents, disclaim all liability arising by reason of any errors and omissions contained in this document.

LEGISLATION

All references to legislation are current at the date of the Code's release.

Capitalized words used in this Code have the meaning assigned to them in Appendix 1.

WINE CODE SECRETARIAT

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Part 1 — Preliminary

Title and Commencement of the Code

This Code is to be titled the **Australian Wine Industry Code of Conduct**. This is a non-prescribed, industry voluntary Code. Winegrape purchasers who elect to become Signatories will be governed by the Code in their commercial dealings with winegrape growers.

This Code has been developed for the Australian wine industry by the Wine Industry Relations Committee (WIRC), as a joint committee of the WFA and WGGA. The Executive Councils of WFA and WGGA have endorsed the Code.

With the exception of Part 2 (Wine Grape Purchase Agreements), this Code takes effect on 1 January 2009. Signatories are only required to comply with Part 2 for all new Agreements entered into after 1 January 2009 in relation to the supply of wine grapes for vintage 2010 onward. With respect to existing Agreements, each Signatory agrees to offer to its winegrape growers to:

- apply the Code (with the exception of Part 2) with effect from 1 January 2009; and
- bring existing Agreements in line with the provisions of Part 2 of the Code at the time of any Material Variation to the Agreement or Associated Documents (as defined in the Code definitions).

Except as expressly set out in this Code, the provisions of this Code are subject to all applicable Commonwealth, State and Territory laws and common law rights and obligations.

Intention

The intention of this Code is to set minimum standards for Agreements between winegrape growers and winegrape purchasers. The Signatories acknowledge that providing a clear basis for their commercial relations and an impartial, cost effective Dispute resolution scheme is important for harmonious relations between winegrape growers and winegrape purchasers.

Signatories to this Code acknowledge their existing legal obligations (for example, under the Trade Practices Act) not to engage in misleading or deceptive behaviour or unconscionable conduct.

Industry Endorsement

Signatories agree to be bound by the provisions of the Code in their commercial dealings with winegrape growers. Signatories commit to adopt the principles set out in the Code in their dealings with winegrape growers, and to provide the winegrape grower with a copy of the Code whenever a winegrape grower signs a new Agreement.

The register of Signatories will be maintained and available on the WFA and WGGA websites.

www.wfa.org.au

www.wgga.com.au

Signatories also commit to promoting the adoption of the Code.

WGGA and WFA agree to publicise and promote the Code and its Dispute resolution procedures, and to work to maximize its adoption within the industry.

Signatories to the Code

A winegrape purchaser may become a Signatory to this Code by providing a written notice to the Committee.

A winegrape purchaser may cease to be a Signatory by lodging a written notice advising the Committee they no longer wish to be a Signatory. In these circumstances, the winegrape purchaser will cease to be a Signatory on the date that their notice is received by the Committee, however, they remain bound by the provisions of Agreements entered into before that date which incorporate the Code either expressly or by reference.

Signatories to this Code agree that the Committee may publish their names as Signatories and may also publish the details of any Code breaches which the Committee has found applies to that Signatory at the time of the publication of the annual report and which have not been resolved by the Signatory. Signatories agree to release the Committee and each member of the Committee from any liability to the Signatory as a result of the publication of these details, provided all published information is accurate. However, details relating to any Dispute between a Signatory and a winegrape grower(s) which are notified to the Committee in accordance with Part 3 of this Code will remain confidential and may only be disclosed by the Committee in aggregate form (without the parties being named or specific details of the Dispute being disclosed).

Horticulture Code of Conduct

Some transactions in the winegrape supply industry are subject to the mandatory Trade Practices (Horticulture Code of Conduct) Regulations 2006. When Signatories to this Code participate in a transaction covered by the Horticulture Code of Conduct, the Horticulture Code of Conduct will prevail over this Code to the extent of any inconsistency.

Administration of Code

The Code will be managed by a Code Administration Committee (the Committee), comprising independent members jointly appointed by WFA and WGGA, in accordance with Part 5.

Review

A formal review of the Code will be conducted by the Committee after vintage 2010 by a suitably qualified person/s appointed by the Committee and thereafter the Committee will review the operations of the Code not less than every three years.

The objectives of the review of the Code shall be to:

- (i) Assess the extent to which the Code has reduced Disputes;
- (ii) Assess the effectiveness of the Dispute resolution system;
- (iii) Assess the performance of the industry against the performance targets contained in the Code, and recommend new performance targets as required; and
- (iv) Recommend any amendments to the Code required to address any problems or issues identified during the review process.

It is intended that this review will be completed by 30 June in the relevant year.

Performance Targets

Performance will be measured by the total numbers of Signatories, and the percentage of the national annual winegrape harvest purchased by those Signatories. The percentage-of-crush performance targets are:

- 75% of the purchased crush in first vintage after implementation
- 85% of the purchased crush in the second vintage after implementation

Code performance will be reported annually on a regional basis including number of Signatories, percentage of crush represented by the Signatories, the number of Disputes notified to the Committee and resolved under the provisions of the Code, as well as the number of breaches of the Code reported and resolved under the provisions of the Code.

Part 2 — Winegrape Purchase Agreements

As a minimum, all Agreements must:

- 1 be in writing, contain the elements set out in clauses 2.1 to 2.15. and be entered into and, if applicable, varied in accordance with clauses 2.16 and 2.17.
- 2 appropriately refer to any other important elements of the Agreement; and
- 3 be clear and concise and in plain English.

Minimum terms and conditions to be contained in an Agreement

2.1 Application of Code.

- 2.1.1 Each Agreement must contain a statement that the parties to the Agreement agree that it is governed by the Code and that, in the event of any inconsistency, the provisions of the Code in force on the date that the Agreement was entered into will prevail and will apply as if they formed part of the Agreement. If there is a change to the Code, each Signatory must make an offer to its winegrape growers to amend existing Agreements to reflect that change within three months of the date of endorsement of the change in accordance with clause 5.1.7.

2.2 Parties to an Agreement and Term of the Agreement

- 2.2.1 All parties involved in the winegrape purchase arrangements are to be identified in the Agreement including the winegrape purchaser, the winegrape grower and any landowner or lessee (if applicable).

All Agreements must specify the duration of the Agreement including commencement date and expiry date, or the termination mechanism (including applicable notice periods) where there is no fixed expiry date.

2.3 Pricing Methods

- 2.3.1 All Agreements must contain a fixed price and/or a clear statement as to how the final price payable will be determined.

2.4 Price Notification

- 2.4.1 Where the Agreement requires a price offer or a negotiation as part of the calculation of the price for the winegrapes, the winegrape purchaser must, unless prevented due to unforeseen and extraordinary reasons:

- 2.4.1.1 by 15 December each year - provide to its winegrape growers in the Hunter Valley, Riverina, Murray Darling/Swan Hill and Riverland regions Indicative Regional Prices for each variety of winegrape.
- 2.4.1.2 By 15 January each year – use its best reasonable endeavours to provide to its winegrape growers in all other regions Indicative Regional Prices for each variety of winegrape.

If an Agreement does not exist on the relevant date but is subsequently entered into prior to the vintage period (for example, an Agreement entered into in February), then the winegrape purchaser must provide the Indicative Regional Prices referred to above to the winegrape grower at the time the Agreement is entered into, unless the actual price offer is made at that time.

- 2.4.2 Notwithstanding clause 2.4.1, in all regions where the relevant Agreement requires the price to be agreed between the parties, any winegrape price offer required under the Agreement must be made:
- (a) if the winegrape purchaser undertakes a pre-vintage vineyard inspection prior to making a final winegrape price offer - as soon as practicable and, at the latest, prior to the anticipated harvest date for those winegrapes; and
 - (b) in all other cases – at least 10 Business Days prior to the anticipated harvest date for those winegrapes.

2.5 Price Adjustment

- 2.5.1 Any provision for price adjustment must be clearly spelt out and specify in a transparent manner any bonuses or penalties and the mechanism(s) used to determine bonuses/penalties.

2.6 Terms of Payment

- 2.6.1 The terms of payment are to be clearly stated and, unless otherwise agreed by the parties to the Agreement, shall be consistent with the industry standard of:
- 2.6.1.1 1/3 at the end of the month following the month of delivery;
 - 2.6.1.2 1/3 at the end of June; and
 - 2.6.1.3 balance at the end of September of the year that the first payment commenced.
- 2.6.2 The payment terms for any price adjustment or payments based on wine assessment shall be specified in the Agreement.
- 2.6.3 Any penalties for late payments shall be stipulated in the Agreement.

2.7 Tonnage and Vineyard Details

- 2.7.1 The Agreement must state whether the amount of winegrapes to be purchased is “area-based” or “specified tonnes” and must stipulate the area and/or the tonnes as the case may be.
- 2.7.2 The Agreement must clearly describe the winegrapes to be purchased.
- 2.7.3 Where relevant, the Agreement must specify the vineyard details such as patch/block number identification, identification of clones and rootstocks when required, or a vineyard map showing vineyard details for the vines to which the Agreement pertains.

2.8 Winegrape Standards, Assessment and Harvest

- 2.8.1 The Agreement must state any quality standards which apply to the winegrapes being purchased, including specifying any minimum requirements for maturity, purity and condition, relevant to the region and variety.
- 2.8.2 The Agreement must describe any assessment method for vineyard or weighbridge winegrape assessment which will apply under the terms of that Agreement if that method is directly inconsistent with the methods described in “Winegrape Assessment in the Vineyard and the Winery” (as amended from time to time and endorsed by WGGA and WFA).
- 2.8.3 The Agreement must specify the process for determining the harvest time(s) for the winegrapes.

2.9 Delivery and Freight

- 2.9.1 The Agreement must state the delivery point for the winegrapes and identify which party bears the costs and associated risks of freight.

2.10 Title in Winegrapes

- 2.10.1 The Agreement must state when title in the winegrapes passes from the winegrape grower to the winegrape purchaser. The Agreement must also specify the point at which the winegrape purchaser accepts or rejects the winegrapes.

2.11 Force Majeure

- 2.11.1 If there is a force majeure clause in the Agreement, it must be clearly specified.

2.12 Assignment and Sale of Vineyard

- 2.12.1 The Agreement must clearly specify any restrictions imposed by the winegrape purchaser on the rights to transfer possession or ownership of the relevant vineyard.
- 2.12.2 The Agreement must clearly specify any obligations on the winegrape grower upon the sale or disposal of possession of the relevant vineyard.

2.13 Professional Advice

- 2.13.1 An Agreement must contain a prominent statement that the winegrape grower signing the Agreement should seek independent legal, financial and taxation advice. This statement must appear just above the winegrape grower's signing provisions.

2.14 Dispute Resolution Clause

- 2.14.1 The Agreement must include a Dispute resolution clause that is consistent with Part 3 of this Code.

2.15 Reasonable Time

- 2.15.1 A Signatory may only enter into an Agreement with a winegrape grower after providing the Agreement and any Associated Documents to that winegrape grower and allowing the winegrape grower a reasonable period to read and understand the document and obtain independent advice before entering into the Agreement. For an Agreement which incorporates an obligation to buy and sell winegrapes from more than one vintage, a “reasonable period” is 15 Business Days from the date of receipt by the winegrape grower. For all other Agreements other than Spot Market Purchases, a “reasonable period” is 7 Business Days from the date of receipt by the winegrape grower. For Spot Market Purchases, a “reasonable period” will depend on the circumstances and may be a relatively short period (for example, less than one Business Day if harvest is imminent).

2.16 Variations

- 2.16.1 It is recognised that variations to Agreements from time to time may need to be negotiated. Any variation to an Agreement must be:

2.16.1.1 clearly specified, and

2.16.1.2 agreed, confirmed in writing and signed by all parties to the Agreement.

Agreements must not contain a provision which allows one party to unilaterally amend the Agreement without the other parties’ written consent to the specific amendment.

- 2.16.2 A Signatory may only vary an Agreement by providing that variation to the winegrape grower in writing and allowing the winegrape grower a reasonable period to read and understand the variation and obtain independent advice before signing their acceptance of the variation. For an Agreement which incorporates an obligation to buy and sell winegrapes from more than one vintage, a “reasonable period” is 15 Business Days from the date of receipt by the winegrape grower. For all other Agreements other than Spot Market Purchases, a “reasonable period” is 7 Business Days from the date of receipt by the winegrape grower. For Spot Market Purchases, a “reasonable period” will depend on the circumstances and may be a relatively short period (for example, less than one Business Day if harvest is imminent).

2.17 Failure to Comply

- 2.17.1 Failure to comply with clauses 2.1 through to 2.17, where applicable, will amount to a breach of the Code and may be referred to the Committee for disciplinary action.

Part 3 - Dispute Resolution

Purpose

Disputes in the main occur over the perceived inadequacy of the winegrape price, or over an apparent failure to comply with specifications for winegrape maturity, purity or condition resulting in either price adjustments or rejection of the winegrapes.

This section is intended to help resolve Disputes between the winegrape purchaser and the winegrape grower in a timely and cost efficient manner to preserve the ongoing commercial relationship.

The Code requires both parties to participate in the Dispute resolution procedure and to assist the Independent Expert by providing any information requested. Any Disputing Party who invokes the Dispute resolution process is agreeing to be bound by the Code in relation to the conduct of the Dispute, in particular, the clauses relating to defamation and to cost recovery.

The existence of a Dispute does not relieve any party of their obligations under the Agreement.

Powers of Independent Expert

Notwithstanding clause 2.1.1, the appointed Independent Expert will determine the Dispute by applying the terms of the Agreement and, where necessary, by applying the Independent Expert's own procedures, in the resolution of the Dispute, but only to the extent that the Independent Expert's resolution procedures are not inconsistent with the terms of the Agreement.

Subject to compliance with this Code, the decision of the Independent Expert is final and binding on all parties and cannot be appealed or challenged except in the case of a manifest error or proven misconduct.

Failure by a Signatory to comply with the determination of the Independent Expert will amount to a breach of this Code and the matter may be referred to the Committee for disciplinary action.

Information provided to the Independent Expert

All communications brought into existence in relation to the Dispute and provided to the Independent Expert shall be in confidence and without prejudice.

No documents brought into existence by a disputant for the purpose of consideration by the Independent Expert may be tendered in evidence by a party other than that disputant in any litigation of the Dispute.

3.1 Disputes over Winegrape Price

When a Dispute arises over a price offer made by a winegrape purchaser under clause 2.4.2 or, where no price offer is required to be made under clause 2.4.2, in relation to the calculation of the price in accordance with the Agreement, the parties agree to follow these resolution procedures:

- 3.1.1 Within 7 Business Days of:
 - 3.1.1.1 the determination of the price in accordance with the Agreement being notified to the winegrape grower (but only where no price offer is required to be made under clause 2.4.2); or
 - 3.1.1.2 the date of the price offer being made by the applicable party under clause 2.4.2;
the Disputing Party will inform the other party in writing of the background to the Dispute, the issue(s) in dispute and the outcome desired. This notice will be known as the **Notice of Dispute**. A summary of the Dispute (notifying the parties, the category of Dispute, tonnage and region) is to be supplied to the Committee by the Disputing Party at the same time.
- 3.1.2 Within 7 Business Days of receiving the Notice of Dispute, the other party will respond in writing, indicating whether the desired outcome is agreed, and, if it is not, whether that party wishes to offer another outcome, and inform the Committee in writing that a response has been provided.
- 3.1.3 The Disputing Party and the winegrape purchaser have 14 Business Days from the issue of the Notice of Dispute to negotiate a mutually agreed outcome. If these parties have not resolved the Dispute within this 14 Business Day period, they must jointly appoint an Independent Expert to make a determination of price. The Disputing Party and the winegrape purchaser must be satisfied that the Independent Expert is impartial and qualified to rule on the matter(s) under dispute.
- 3.1.4 If the Disputing Party and the winegrape purchaser cannot agree on the selection of an Independent Expert within 21 Business Days of the issue of the Notice of Dispute, the Presiding Member of the Committee (or other Committee Member appointed to preside in the event that the Presiding Member is unavailable) will appoint an appropriate Independent Expert from the panel of experts endorsed by the Committee upon application from either party, such application to be made within 28 Business Days of the issue of the Notice of Dispute.
- 3.1.5 The appointed Independent Expert will deliver a determination within 14 Business Days of the date of his or her appointment or, if the matter requires extensive research, submissions from the parties and/or investigation, will provide a reasonable timeframe in which to complete the task.
- 3.1.6 The Disputing Party and the winegrape purchaser agree to be bound by the determination of the Independent Expert in the absence of manifest error or misconduct and to share costs equally.
- 3.1.7 The Independent Expert will be engaged under their normal terms of engagement and in any event will be indemnified by the parties as to their costs and expenses.

3.2 Disputes over Downgrades and Rejections in the Vineyard

A Dispute may arise if a winegrape grower disagrees with an assessment by the winegrape purchaser that the winegrapes have failed to meet agreed specifications contained in the Agreement and a financial penalty is imposed or some or all of the winegrapes are rejected.

If a Dispute in relation to a field assessment occurs, the matter needs to be resolved quickly, ideally before the expected date of harvest, and may in some cases need to be resolved within a few days to avoid deterioration of the winegrapes.

A winegrape grower will advise the winegrape purchaser within a reasonable time prior to harvest, of any change in the condition of the fruit that could result in a downgrade or rejection of the winegrapes under the terms of the relevant Agreement. The winegrape purchaser will notify the winegrape grower of any decision by the winegrape purchaser to impose a financial penalty and/or reject the winegrapes in accordance with the terms of the Agreement.

When a Dispute arises in relation to the imposition of a financial penalty and/or rejection of the winegrapes as a result of a failure to meet agreed specifications contained in the Agreement, the parties agree to follow these resolution procedures:

- 3.2.1 The Disputing Party will, as soon as practicable, notify the winegrape purchaser in writing of the issue(s) in dispute and the outcome desired. This notice will be known as the **Notice of Dispute**. A summary of the Dispute (notifying the parties, the category of Dispute, tonnage and region) is to be supplied to the Committee by the winegrape grower at the same time.
- 3.2.2 The winegrape purchaser will respond in writing to the Disputing Party within 48 hours from the time of issue of the Notice of Dispute, indicating whether the desired outcome is agreed, and, if it is not, whether the winegrape purchaser wishes to offer another outcome, and inform the Committee in writing that a response has been provided.
- 3.2.3 If after 72 hours from the time of issue of the Notice of Dispute the Disputing Party and the winegrape purchaser have been unable to resolve the Dispute, the matter will be settled by an Independent Expert jointly appointed by them. They must be satisfied that the Independent Expert is impartial and qualified to rule on the matter(s) under dispute.
- 3.2.4 If the Disputing Party and the winegrape purchaser cannot agree on the selection of an Independent Expert within 96 hours from the time of issue of the Notice of Dispute, the Presiding Member of the Committee (or other Committee Member appointed to preside in the event that the Presiding Member is unavailable) will appoint an Independent Expert from the panel of experts endorsed by the Committee upon application from either party, such application to be made within 120 hours of the time of issue of the Notice of Dispute.
- 3.2.5 The appointed Independent Expert will deliver a determination within 48 hours of being appointed or, if the matter requires extensive research, submissions from the parties and/or investigation, will set a reasonable timeframe in which to complete the task.
- 3.2.6 The Disputing Party and the winegrape purchaser agree to be bound by the determination of the Independent Expert in the absence of manifest error or misconduct and to share costs equally.
- 3.2.7 The Independent Expert will be engaged by Disputing Party and the winegrape purchaser under their normal terms of engagement and in any event will be indemnified by the parties as to their costs and expenses.

3.3 Disputes over Downgrades and Rejections at the Weighbridge

Winegrape purchasers (or their agents/representatives) are encouraged to inspect the condition of winegrapes in the vineyard prior to harvest as a means of minimizing Disputes at the weighbridge.

A Dispute can arise at the weighbridge if winegrapes are downgraded (resulting in a financial penalty) or rejected if, in the opinion of the winegrape purchaser, they have failed to meet stipulated specifications. The matter needs to be resolved quickly, ideally within 12 hours of delivery of the winegrapes. The winegrape grower will be notified as soon as practicable of a downgrade or rejection of their winegrapes. The winegrape grower or the winegrape grower's agent/representative (in the event of winegrapes processed at a distance from the vineyard) should be given the opportunity where practical to inspect the rejected or downgraded winegrapes (within a reasonable time of delivery) and to try and reach agreement with the winegrape purchaser on the nature and extent of the downgrade and any resulting price adjustment to allow the continued processing of the winegrapes or the rejection of the winegrapes.

For the avoidance of any doubt but without limiting the other obligations set out in this clause, the Code does not require an Independent Expert to resolve disputes over downgrades and rejections at the weighbridge.

3.4 Legal Proceedings

The parties agree not to institute legal proceedings (except to obtain urgent interlocutory relief) or make any complaint to a regulatory authority in relation to a Dispute covered by Part 3 of the Code until all avenues open to them under Part 3 of the Code have been implemented and, where relevant, a determination made. The parties may institute legal proceedings (or take any other action that they consider appropriate) in relation to any other type of Dispute. Nothing in this clause affects or limits the operation of clause 3 relating to the powers of the Independent Expert.

Part 4 — Breaches of the Code

4.1 Complaints

- 4.1.1 A complaint of a breach of the Code by a Signatory must be referred to the Committee in writing.
- 4.1.2 Either a winegrape grower or a winegrape grower's association may lodge a complaint with the Committee.
- 4.1.3 A Signatory cannot lodge a complaint against another Signatory, unless the complaint relates to conduct that will bring the wine industry into disrepute.
- 4.1.4 The complaint must:
 - 4.1.4.1 State the name of the Signatory and the party bringing the complaint.
 - 4.1.4.2 Provide details as to the nature of the complaint by reference to this Code.
 - 4.1.4.3 Specify what outcome the Complainant believes will resolve the issue.
- 4.1.5 If a complaint alleging a breach of the Code is reported to the Committee, the Committee must take the following action prior to making a determination:
 - 4.1.5.1 notify the Signatory within 7 Business Days that a complaint has been lodged with the Committee;
 - 4.1.5.2 provide to the Signatory the details of the complaint and Complainant and the outcome the Complainant requires to resolve the complaint;
 - 4.1.5.3 allow the Signatory 21 Business Days to respond to the complaint in writing;
 - 4.1.5.4 provide the Signatory's written response to the Complainant; and
 - 4.1.5.5 in the event that the Complainant is not satisfied with the Signatory's response, allow the Complainant 14 Business Days to respond to the Committee.
- 4.1.6 If the matter has not been resolved in accordance with the procedure set out in clause 4.1.5, the Committee must sit and make a determination on the complaint.
- 4.1.7 A meeting of the Committee to rule on a complaint must occur within 30 Business Days from the date of the Complainant's final response.
- 4.1.8 If the Committee determines that no breach of the Code has occurred, the Committee is to write to the Complainant and the Signatory and provide its determination and reasons within 7 Business Days.
- 4.1.9 If the Committee determines that a breach of the Code has occurred then the Committee must write within 7 Business Days to the Signatory and provide the determination, reasons and remedy or penalty, if applicable.

- 4.1.10 If the Committee determines that a breach has occurred, the Committee may do any or all of the following:
 - 4.1.10.1 notify the Signatory what steps it would be required to take to remedy the breach.
 - 4.1.10.2 warn the Signatory that they may be removed as a Signatory to the Code if they do not remedy the breach within a reasonable period (which must be specified in the notice) and/or if they commit future breaches of the Code; and/or
 - 4.1.10.3 subject to clause 4.2, remove the Signatory from the list of Signatories to the Code.
- 4.1.11 If, subsequent to a finding that a Signatory has breached the Code, that Signatory rectifies the breach in accordance with the Committee's instructions, then the Committee must write to the Complainant within 7 Business Days and advise the Complainant that the Committee considers that the Signatory is no longer in breach of the Code.
- 4.1.12 In all cases, the Committee's determination may only be challenged in the case of manifest error or proven misconduct.

4.2 Removing a Signatory from the Code

- 4.2.1 In determining whether to remove a Signatory from the Code, the Committee must take into consideration the following:
 - 4.2.1.1 the nature of the complaint;
 - 4.2.1.2 the conduct of the Signatory and the Complainant;
 - 4.2.1.3 the conduct of the Signatory in responding to the Committee;
 - 4.2.1.4 the systemic nature (if any) of the complaint;
 - 4.2.1.5 the number of complaints referred to the Committee against the Signatory;
 - 4.2.1.6 whether the complaints made against the Signatory are the same or otherwise;
 - 4.2.1.7 any previous breaches of the Code by the Signatory;
 - 4.2.1.8 whether the conduct brings the wine industry into disrepute; and
 - 4.2.1.9 any other matter that the Committee considers relevant.

4.3 Cost Recovery

- 4.3.1 If the Committee determines a breach of the Code has occurred, the Committee may recover from the party in breach reasonable costs incurred by the Committee in determining the complaint.
- 4.3.2 Should a grapegrower or grapegrower association make a complaint alleging a breach that is subsequently found to be invalid then the Committee may recover from the grapegrower or grapegrower association reasonable costs incurred by the Committee in determining the complaint.

Part 5 — Administration of the Code

- 5.1.1 The Code will be administered by the Committee.
- 5.1.2 The Committee will comprise 3 independent members –including a Presiding Member and 2 other Members with appropriate commercial experience. All 3 Members will be jointly agreed by the Boards of both the WGGA and WFA.
- 5.1.3 The Committee will be supported by an independent secretariat jointly funded by WGGA and WFA.
- 5.1.4 All 3 Members will be appointed by a joint WGGA and WFA selection committee using selection criteria agreed by the Boards of both bodies.
- 5.1.5 A quorum shall comprise the Presiding Member and all other Members.
- 5.1.6 All decisions of the Committee must be made by way of simple majority.
- 5.1.7 Any recommendation to amend the Code must be unanimously agreed by all Members of the Committee and endorsed in writing by the Boards of WGGA and WFA. Any change to the Code which is endorsed between 1 January and 31 July in any year will take effect on 1 November in the same year. Any change endorsed between 1 August and 31 December in any year take effect on 1 November of the following year.
- 5.1.8 The Committee shall undertake the following roles:
 - 5.1.8.1 administer the Code, including the setting of reasonable fees to support the Dispute resolution system;
 - 5.1.8.2 manage the business operations of the Code including ensuring that suitable insurance arrangements are in place;
 - 5.1.8.3 produce an annual report to be published by 30 September each year, containing:
 - (i) a description of the nature and number of Disputes received and any other comments it wishes to make about conduct or trends in the industry; and
 - (ii) a report to the industry on the operations of the Code and the Committee and any matters requiring consideration by the industry arising from the activities of the Committee including the names of any parties removed from the Code;
 - 5.1.8.4 at the discretion of the Committee, maintain and publish a list of Code Signatories found to be in breach of the Code; and
 - 5.1.8.5 monitor the operation of the Code and, as appropriate, recommend any amendments to the Code that may assist in its operation, and consult with WGGA and WFA on any proposed amendments to the Code.

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APPENDIX 1

Definitions

“Agreement” means an Agreement between a winegrape grower and a Signatory for the supply of winegrapes.

“Associated Documents” means all documents that are incorporated by reference in or which form part or purport to form part of an Agreement.

“Business Day” means a day other than a Saturday, Sunday, public holiday or bank holiday in the State in which the vineyard to which the Agreement applies is situated.

“Code” means this Code.

“Committee” means the Code Administration Committee established to manage the operation of this Code in accordance with Part 5 – Administration Of The Code.

“Complainant” means, as applicable, a person, corporation or other body corporate:

- raising a Dispute for determination under the Dispute resolution procedures of this Code; or
- making a complaint to the Committee in accordance with Part 4 – Breaches of the Code.

“Dispute” means any disagreement between a Disputing Party and a Signatory which:

- may be referred by the Disputing Party for resolution in accordance with Part 3 of the Code; and
- is in relation to a matter which is permitted under the terms of the relevant Agreement to be disputed by the Disputing Party.

“Disputing Party” means a winegrape grower who initiates a Dispute resolution process under clauses 3.1 or 3.2 of this Code and/or any other party who is authorized or permitted under the terms of the relevant Agreement to do so on behalf of or in association with the winegrape grower.

“Independent Expert” means an independent, qualified person/s appointed by the parties to a Dispute or by the Committee to make a determination on Disputes notified to them under the terms of this Code.

“Indicative Regional Price” means, in relation to a variety of winegrapes, an indicative fair market price for that variety of winegrapes from that region for the next vintage which:

- is not winegrape grower or vineyard specific;
- is set by the winegrape purchaser acting reasonably;
- is not an offer capable of being accepted by a winegrape grower or binding on the winegrape purchaser; and
- is not a guarantee of the final price that will be offered to the winegrape grower.

“Material Variation” means any variation to an Agreement or Associated Documents whether as a unilateral variation permitted by the Agreement or by consent between the parties, other than a variation of the price or winegrape assessment methods already provided for in the Agreement. A Material Variation includes but is not limited to any variation of:

- The term of the Agreement including extensions;
- Terms of payment;
- Price adjustment criteria;
- Winegrape assessments including winegrape standards (other than as provided for in the Agreement);
- Specification of blocks, varieties and tonnages including production caps or quotas;
- Delivery and freight arrangements; and
- Dispute resolution procedures;

“Notice Of Dispute” means a formal written notification between the parties to a Dispute.

“Presiding Member” means the Independent Chair of the Committee.

“Signatory” means a winegrape purchaser who has notified the Committee that it will be bound by the Code.

“Spot Market Purchase” means an Agreement for the sale and purchase of winegrapes which is entered into between the parties less than 10 Business Days prior to the expected harvest date for those winegrapes (or, if there are more than one expected harvest date applicable to the Agreement, 10 Business Days prior to the earliest of these dates).

“WFA” means Winemakers Federation Of Australia.

“WGGA” means Wine Grape Growers Australia.

Australian Wine Industry
CODE^{OF} CONDUCT

Appendix 4

Australian Wine and Brandy Corporation industry statistics

BEVERAGE WINE PRODUCTION ('000 Litres)

	Unfortified Wine ^(a)			Fortified ^(b)	Total
	Red	White	Total		
1971-72	na	na	94 385	59 921	154 306
1972-73	na	na	117 381	54 328	171 709
1973-74	na	na	136 001	47 954	183 955
1974-75	na	na	166 817	68 484	235 301
1975-76	na	na	163 655	68 137	231 792
1976-77	na	na	190 096	62 471	252 567
1977-78	na	na	183 605	42 672	226 277
1978-79	na	na	216 481	58 041	274 522
1979-80	na	na	266 753	54 746	321 499
1980-81	na	na	237 786	45 659	283 444
1981-82	na	na	251 133	51 907	303 040
1982-83	na	na	238 129	33 541	271 670
1983-84	na	na	237 124	21 279	258 403
1984-85	na	na	337 127	43 893	381 020
1985-86	na	na	294 686	41 692	336 377
1986-87	na	na	306 804	31 766	338 570
1987-88	na	na	322 993	31 403	354 396
1988-89	na	na	399 203	36 937	436 140
1989-90	na	na	349 913	32 904	382 817
1990-91	na	na	312 024	33 817	345 841
1991-92	na	na	390 857	30 776	421 633
1992-93	na	na	392 575	22 264	414 839
1993-94	na	na	500 076	30 458	530 534
1994-95	na	na	433 005	25 399	458 404
1995-96	na	na	577 272	28 874	606 146
1996-97	na	na	538 123	28 656	566 779
1997-98	na	na	651 291	28 947	680 239
1998-99	na	na	771 957	21 433	793 389
1999-00	na	na	779 149	27 222	806 371
2000-01	na	na	1 016 306	18 460	1 034 766
2001-02	666 100	484 754	1 150 854	23 247	1 174 101
2002-03	599 098	420 295	1 019 393	18 170	1 037 562
2003-04	808 963	572 101	1 381 064	20 025	1 401 089
2004-05	760 721	639 352	1 400 074	20 275	1 420 348
2005-06	776 027	621 727	1 397 754	12 729	1 410 483
2006-07	472 322	474 674	946 996	8 013	955 009
2007-08	662 653	559 073	1 221 726	14 806	1 236 532
2008-09	623 078	537 287	1 160 365	10 867	1 171 233

NOTES & DEFINITIONS

Prepared 24 February 2010, updated annually

(a) Includes sparkling wine

(b) Production from unfortified wine made in the specified vintage year

na Not available

Note: May not total due to rounding.

Source: ABS Cat, Nos. 8366.0, 1329.0

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- Australia has approximately 2,300 wine companies. There are 172,676 hectares under vine. The total grape crush in 2008 was 1.831 million tonnes with 14 winemakers accounting for 70% of the total crush.
- In 2007/08 Australian Domestic Wine sales of 426.4 million litres were recorded with a wholesale value of A\$2 billion.
- Per capita wine consumption in Australia has stabilised at 22.4 litres per person per year in 2006. France leads global consumption at 53.9 litres per capita.
- Wine is fourth on the list of Australian farm exports after beef, wheat, wool and dairy.
- Australia is the world's sixth largest wine producer, as at 2006 (behind France, Italy, Spain, US and Argentina) and the fourth largest exporter. Australian wine is enjoyed in more than 120 countries.
- Exports reached a record A\$3.02 billion in July 2007.
- In 2006 Australia was the world's fourth largest wine exporter by volume capturing 8.5% of the global market (behind Italy, France and Spain).
- Australia is the leading supplier of the UK off-premise market holding a 22% share in 2007/08 by volume, with multiple grocers continuing to dominate. In 2008 the value of the market was over A\$800 million.
- Australia remains the most dominant supplier of wine to the off-trade in the Irish market with the largest volume growth in the off-trade in 2007 (up 2.2 million litres or 16%) clearly outperforming its closest competitors France and Chile.
- Australian wine exports to the US topped 21.4 million cases in 2008. The US accounted for over 27% of Australia's wine shipments by volume and value in 2008.
- Australia was the fourth largest supplier of the Canadian market in 2007/08 with about 14% of the market behind Canada (28%), France (16%) and Italy (15%).
- The top five destinations for absolute value growth in Australian wine exports in 2008 were, in order, China, Denmark, Hong Kong, United Arab Emirates and Japan.
- China was the clear stand-out in 2008 with the value of exports to the market increasing by 32% (A\$18 million) to A\$74 million. This ranked China as Australia's fifth largest market by value but first in value growth.
- Although ranked seventh in total value exported, Denmark recorded the second largest value growth in 2008. Driven by bulk shipments, the value of exports to Denmark increased by 14% (A\$7million) to A\$58 million.
- The value of Australian exports to Japan increased by 4% (A\$2 million) to A\$50 million in 2008. The growth came on the back of a 10% increase in the volume of bottled shipments to 8 million litres.

Appendix 5

Wine Restructure Action Agenda Statement

Wine industry must confront the reality of oversupply

A statement to the wine industry by the Winemakers' Federation of Australia, Wine Grape Growers' Australia, the Australian Wine and Brandy Corporation and the Grape and Wine Research and Development Corporation

Recognising the problem

It is widely acknowledged that the Australian wine industry is enduring its toughest period in two decades. All in the industry must recognise that this is our problem and we need to fix it.

Structural surpluses of grapes and wine are now so large that they are causing long-term damage to our industry by devaluing the Australian brand, entrenching discounting, undermining profitability, and hampering our ability to pursue the vision and activities set out in the *Directions to 2025* industry strategy.

Coupled with inefficient and/or inappropriate vineyard and wine operations, oversupply is amplifying and exacerbating fundamental problems in the industry, notably our decreasing cost competitiveness. As such it is compromising our ability to adopt new pricing structures and market solutions and adapt to changing market conditions.

Comprehensive analysis and consultation suggests at least 20% of bearing vines in Australia are surplus to requirements, with few long-term prospects. On cost of production alone, at least 17% of vineyard capacity is uneconomic.

The problems are national – although some regions are more adversely affected – and are not restricted to specific varieties or price points.

The industry must restructure both to reduce capacity and to change its product mix to focus on sales that earn viable margins. Bailouts are not an option and neither governments nor industry bodies should be expected to provide the answers; tough, informed decisions must be made by individual growers and wineries, from as early as the 2010 vintage.

The supply dimension

Australia is producing 20-40 million cases a year more than it is selling – roughly equivalent to total sales to our second largest export market, the UK. Our surplus already exceeds 100 million cases and at current rates of production and demand this will more than double in two years.

Drought, water shortages and climate change will continue to affect production but the impact is indiscriminate and largely insignificant given the scale of the problem. Estimates are that these factors combined can provide no more than 10% of the necessary reduction in supply.

The demand dimension

Australia's wine exports have fallen by 8 million cases and 21% in value since their peak in October 2007. The decline has been greatest for higher value exports, and where there has been growth at lower price points it frequently has been unprofitable and thus unsustainable. Over the same period domestic sales of Australian wine have fallen, while sales of imported wine have increased.

The global financial crisis has not helped, but it is far from the only factor; a strong dollar and our industry's cost competitiveness have been more significant. Better economic conditions will not automatically restore previous demand, and even if they do this would be insufficient to deal with our

fundamental problem. Even an ambitious growth target of 4 million cases a year – equivalent to 6% annual value growth for the entire Australian category – would only eliminate 20% of oversupply.

New market opportunities do exist, but they will take time and significant, sustained investment to unlock.

Issues with competitiveness

Oversupply is unpicking our price structure, distorting perceptions about our product and exacerbating competitive pressures.

Globally we have been forced to trade in the low-value / low-margin market to sell excess wine, yet our costs are too high for us to be viable in that market in the long term – we cannot match the cost structures of some competitors (including a subsidised Europe) at very low price points. Just as damaging is the image being created that Australia is only a low-cost producer, making it difficult for our premium wines to gain recognition and market traction.

Domestically, excess supplies have allowed supermarkets to move from customers to competitors by launching their own low-price products, without the need to invest in capital infrastructure or the long-term health of the industry. This clutters the market place and eats into margins.

A range of factors suggests our long-term terms of trade will continue to weaken, putting the commodity market further out of reach. These include:

- real increases in the price of water
- the likelihood of exchange rates remaining unfavourable
- lack of international uniformity on carbon emissions trading, with the likelihood that Australia's costs will rise relative to some commodity wine competitors
- a reduction in winery throughputs – leading to increased fixed unit costs – as the industry rationalises to eliminate over capacity
- increased costs of accessing and servicing capital.

Research and innovation are essential but cannot provide the answer given the necessary timeframe and the scale of the problem. We need to restructure our industry to ensure we can compete as a premium wine producer.

Issues with viability

Australia has significant problems in terms of vineyard and winery viability. In particular, too many regions produce uneconomic fruit because of high-grade cost structures. High-grade cost structures have only one option and that is to produce high-grade fruit. This is highlighted in two studies of wine regions completed this year. Both have been independently corroborated by industry consultants.

One study graded fruit from A to E then assessed viability in terms of whether vineyards exceed cost benchmarks for the relevant quality level. Its findings suggest that:

- in more than 20 regions 50% or more of the production for C and D grade fruit (premium and popular premium) is uneconomic
- in total, 36% of C grade fruit is uneconomic
- three of our highest profile and most productive regions for A and B grade fruit (specialty and super premium) struggle to produce C and D fruit at a competitive cost, with 50-60% of that fruit considered uneconomic
- 10 regions have 70% or more of production considered uneconomic – most are small, but three have total production of around 20,000 tonnes or more.

The second study provides a regional breakdown which shows that significant quantities of grapes bring a realised price that is below the cost of production.

Viability is a complex issue, given the patterns and history of vineyard and winery development, but it needs to be addressed decisively and immediately. Where costs of production are high, vineyards must be achieving A and B quality grapes. Some regions do this reasonably well, some poorly.

Addressing the problem

The primary focus must be on helping businesses and regions to strategically and honestly assess their current and likely future position then make appropriate decisions. In particular we need to address the options for vineyards and wineries that are underperforming. Some may need to leave the industry; others may need to change what they produce and how they do it.

The Wine Restructuring Action Agenda includes the following initiatives as an immediate response.

- From 23 November 2009, detailed and confidential supply data summaries will be provided to regional associations. These will examine each region in isolation and in relation to the national picture, with a focus on levels and patterns of viability.
- From 30 January 2010, a package of tools will be available to help individual vineyard operators assess their performance and viability. This will include: a checklist; an upgraded *Deloitte Ready Reckoner* to assess winery profitability by market, channel and price point; and an upgraded *Vinebiz* program to assess vineyard profitability.
- From early next year, briefings will be held in 14 regional centres (covering all States) to discuss regional data and issues and offer business stress testing to assist with decision making. The Federal Government has been approached to help facilitate this initiative, and State input is being sought.
- WFA and WGA will hold discussions with the Federal Government about improved exit packages for growers and small wineries seeking to leave the industry along the lines of drought and small block irrigator exit packages. Discussions also will be held with State Government agencies with regard to alternative land use options in wine regions.

Alongside these specific initiatives:

- The peak industry bodies will:
 - Work with the Federal Government to address aspects of the WET rebate that artificially allow uneconomic businesses to stay in business and thus contribute to overproduction.
 - Seek changes to regulations covering MIS schemes to ensure potential investors receive a fair picture of the wine industry's current position and cannot offset losses. The aim is to deter unwanted and unviable further vineyard expansion.
 - Work with regional associations on complementary issues related to demand and environmental sustainability.
- R&D priorities have been refocused to support the restructuring agenda, with an additional \$750,000 committed so far by the GWRDC to support a range of initiatives, including:
 - Substantial funding for research to support the Wine Australia market development strategy
 - China market competitor analysis
 - Further analysis reconciling supply and demand
 - The upgraded *Deloitte Ready Reckoner* and *Vinebiz* program.

In addition, we will address our market development investment to:

- Refocus on the emerging markets of Asia, where growing affluence and a shift in preference towards wine provide promising opportunities (eg North and South-East Asia, where Australia has a competitive advantage through geographic proximity and strong existing trade ties).
- Provide additional support for educational, promotional and relationship activities in core growth channel opportunities, including China, the US (on and off-trade, >\$10 a bottle), Quebec, Japan, UK (independent/specialist retail) and the Australian domestic market.

Conclusion

Oversupply is having a debilitating impact on Australian wine businesses and restructuring the supply base is both essential and inevitable.

Our objectives in releasing this statement and formulating an action agenda are to advance the adjustment process, to bring about more sustainable operating conditions as soon as possible, and to dispel any notion that the industry can trade its way out of its current problem or rely on the government to step in.

November 2009

Winemakers' Federation of Australia
Wine Grape Growers' Australia
Australian Wine and Brandy Corporation
Grape and Wine Research and Development Corporation

Appendix 6

NSW Wine Industry Research and Development Council – Briefing Paper Proposed Wine Tax Changes

NSW Wine Industry Research & Development Advisory Council

Briefing Note on Proposed Wine Tax Changes

We understand that the Henry Review recommends a move from the current system of value-based wine taxation to a volumetric system that taxes wine according to its alcoholic content.

The Review's recommendations that all alcohol is the same and should be taxed as such would result in a flat volumetric tax at the "beer" rate and the loss of the WET Rebate.

Wine was not taxed until the 1970's when the Fraser Government tried to unsuccessfully introduce a wholesale tax. Currently there is 41.9% tax on wine, comprising of 29% wine equalisation tax (WET) and 10% GST.

The WET rebate applies to the first \$1.72M of sales from any winery and is equivalent to up to \$0.50M on a winery's bottom line.

Restructuring

These tax changes are being proposed at a time when there is massive upheaval and restructuring occurring in the wine industry. This is due to a structural over-supply of grapes and wine and exacerbated by the loss of export markets due to the highly appreciated Australian dollar. This restructuring alone has already resulted in the loss of jobs, the removal of vines, and significant pressure on the livelihoods of grape growers, winemakers and regional communities.

Volumetric tax change will have its most significant impact on the large scale wine operations in warmer regions.

Losing the WET Rebate will impact on mainly medium size to smaller wineries which are reliant upon it for survival. These wineries are generally the key drivers for wine and food tourism in regional areas.

Employment

Adopting the Henry Review recommendations would mean 95% of wine would increase in price and 29,000 hectares of vines would become redundant with 12,000 job losses; 4,000 due to the loss of the WET Rebate and 8,000 due to the move to volumetric taxes. The multiplier effect in the wine industry is 4:1, meaning many more jobs reliant on the wine industry would be lost, mainly in regional Australia.

There are over 60 wine districts throughout Australia. The map below shows you the wine regions in NSW. As in New South Wales the wine industry is regionally based throughout Australia. This is where the bulk of the aforementioned jobs will be lost.

*NSW Wine Industry Research & Development Advisory Council
Briefing Note on Proposed Wine Tax Changes*



Loss of WET Rebate

There are around 2,300 wineries throughout Australia.

A recent study in the Hunter Valley showed that, of the 29 wineries surveyed, 24 relied on the WET Rebate to survive and 5 did not.

It is envisaged that the findings of the Hunter Study would be replicated throughout the 60+ Australian wine districts ie. 80% of wineries, mainly small and medium sized would go out of business.

Tax Avoidance Issues

The industry accepts that there are instances of the WET Rebate being misused. The key areas are:

- Inflating invoice sale price to generate an increased rebate. Essentially the concept is that the purchaser buys at an inflated price to claim a higher rebate and then is compensated from the wine seller by some means that equilibrates back to the real price. This practice may be facilitated by non arm's length transaction through interposed intermediaries.
- Rebates claimed on wine subsequently exported by Australian based exporters.
- Brokers who have created a profitable business from maximising WET rebate claims for owners of grapes and wine. This could be legal or not depending on the modus operandi of the broker.
- Retailers sourcing directly from multiple growers (for own brand or cleanskin wines) rather than from an individual winery to circumvent the \$500,000 rebate limit. This is presumably legal but increases the rebate outlays in ways probably not envisioned when the scheme was designed.
- Major retailer sources grapes from a grape grower with surplus (unsaleable) grapes. Retailer will ask grower (who retains ownership) to deliver grapes to a specified winery for contract winemaking and bottling. For example, grower delivers 1,000 tonnes that is converted into 70,000 cases of wine at a cost of \$15 per case. Grower invoices retailer for 70,000 x \$15 plus 29% WET = \$1,354,500. Grower claims WET rebate of \$304,500. Grower has increased his proceeds from his grapes from zero to \$304.50 per tonne. Retailer has sourced wine at a price below the cost of production purely through the Government subsidy. This would appear to be legal but is an unintended distortion of the market that undermines the viability of the wine sector.
- The ready availability of and trading in bulk wine provides ample opportunity to manufacture a "new" wine by small blending additions to the original wine. For example, Wine 1, a 100% Cabernet could have 5% Shiraz added to become Wine 2, which in turn could have 5% Merlot added to become wine 3. Note that for marketing purposes this Wine 3 could still be sold as a Cabernet under labelling legislation. It has been alleged that there are producers and traders who have set up a transactions process that enables them to claim a rebate for each version of the wine. Again, while it is legal to claim for a wine that has undergone such a "manufacturing" process, the intention was not to have this provision used as a means of generating multiple WET rebates.

Whilst these are symptomatic of any sector facing the structural challenges besetting wine at the moment, we are of the firm view that these small but significant loopholes can be fixed. There is no reason to throw the baby out with the bathwater causing the loss of many thousands of jobs and large scale winery closures

Immediate constructive discussions should occur between the Tax Office and the Wine Industry to resolve these issues.

Greg Jones
Chairman
☎ 0419 768 210

Peter Robson
Vice-Chairman
☎ 0 418 640 704

Appendix 7

Wine Grapes Marketing Board Submission to Senate Inquiry August 2005



Riverina
WINEGRAPE GROWERS

Riverina Wine Grapes Marketing Board
For the City of Griffith and the Local
Government Areas of Leeton, Carrathool
and Murrumbidgee
Riverina Winegrape Growers Centre
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**RIVERINA
WINE GRAPES MARKETING BOARD
SUBMISSION TO THE**

**Senate Rural and Regional Affairs and
Transport Reference Committee**

Inquiry into the Wine Industry

August 2005

**Brian Simpson
Chief Executive Officer
Wine Grapes Marketing Board**

Summary

- The wine grape industry lacks appropriate and accountable market signals that have lead to a wine grape over supply in certain key varieties.
- The over supply has lead to downward pressure on growers return for all varieties, regardless of their supply situation.
- A national register of vineyards is required and would work to address some of the fundamental supply problems within the industry.
- A code of conduct in the purchasing relationship would assist the industry to develop more structured linkages through the supply chain.
- The quality frameworks for wine grape assessment should be regulated via Government intervention or through the adoption of a standard code.
- Growers do not possess the ability to negotiate effectively with wine grape processors on, contracts, prices and quality aspects of wine grapes.
- A national growers' body is required to help develop the growers within the industry to position them to be able to work more effectively with wine grape processors.
- The national growers' body should be compulsorily funded with the assistance of federal legislation to ensure compliance by defined independent wine grape growers.

Riverina Wine Grapes Marketing Board

The Riverina Wine Grapes Marketing Board is a NSW Statutory Authority legislated under the *NSW Wine Grapes Marketing Board (Reconstitution) Act 2003* and *Agricultural Industry Services (Wine grapes Marketing Board) Regulation 2003*. The Board has been in existence since 1933 servicing the needs of wine grape producers within the City of Griffith and local government areas of Leeton, Carrathool and Murrumbidgee.

The Board is funded by an industry service charge that is compulsorily applied on all wine grape producers that produce greater than 20 tonnes of wine grapes and are that independent of wineries.

The Board was originally set up by petition of wine grape producers to counter the market power of local winemakers in the region. Until July 2000 the Board had the power to determine the market minimum price to be paid for varieties of wine grapes. This power (through vesting) was provided by the NSW Government under the *NSW Marketing of Primary Products Act 1983*.

Post 2000, the Board's vesting was removed after an extensive review of these provisions in accordance with *National Competition Policy* guidelines. The Board does however retain the authority to set and enforce terms and conditions of payment annually, subject to certain provision as set out in the Act. This power by order under the Board's Act was specifically authorised for the purposes of section 51 of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

The Board also compulsorily receives the price information of the market prices from individual wineries that purchase wine grapes from within the Board's area of operations. This make the Board well placed to offer market advice to growers that are seeking to place their wine grapes. It also serves to provide a greater level of transparency in the market place.

The Board also functions effectively as an agricultural industry services organisation, applying a \$3.90 per tonne service charge on wine grape production to fund a range of constituted services, as follows:

- (a) the development of a code of conduct for contract negotiations between wine grape growers and wineries,
- (b) the development of draft contract provisions with respect to the sale of MIA wine grapes to wineries, including provisions with respect to:
 - (i) the prices to be paid by wineries, and
 - (ii) the terms and conditions of payment to be observed by wineries, in relation to MIA wine grapes delivered to them by wine grape growers,
- (c) the promotion of private contracts for the sale of MIA wine grapes to wineries by wine grape growers,
- (d) the collection and dissemination of market and industry information, including the production and publication of indicator prices for MIA wine grapes grown in the Board's area of operations,
- (e) the conduct of research and development into plant health in relation to wine grapes,
- (f) the provision of education and training in relation to wine grape production and marketing,
- (g) the promotion (in association with organisations representing wineries) of wine made from MIA wine grapes,
- (h) the promotion of regional industry, including regional winemaking, within the Board's area of operations,
- (i) the representation of the wine grape industry in relation to the matters referred to in paragraphs (a)–(h).

The *Wine Grapes Marketing Board (Reconstitution) Act 2003* expires on 31 December 2007. A copy of the Act has been attached: **Appendix 1**.

The Riverina Wine Industry

The Riverina region is the largest named Geographical Indication (GI) within the Australian wine industry. It is home to approximately 500 wine grape producing families and business. The region is also home to 16 wineries, some of Australia's biggest family owned wineries are based in the region, including Casella Wines, McWilliam's Wines and DeBortoli Wines.

The region produces approximately 250,000 tonnes of wine grapes annually, comprising of 54 different varieties with the main production coming from commonly known varieties such as Chardonnay, Merlot, Semillon, Shiraz and Cabernet Sauvignon. A copy of the *Riverina Utilisation and Pricing Survey 2005-2010* is attached: **Appendix 2**. The survey details the production levels and farm gate values for wine grape purchases and winery owned production that occurred in the 2005 vintage year. It also contains winery forecasts of their preferred intake levels up to and including the 2010 vintage year.

The region is based within the Board's area of operations, the City of Griffith and the local government areas of Leeton, Carrathool and Murrumbidgee. Most of the production come from around the cities, towns and villages of Griffith, Leeton, Coleambally, Darlington Point, Hanwood, Yenda, Tharbogang, Beelbanger, Yanco, Bilbul, Lake Wyangan and Hillston. All

production excluding Hillston is irrigated from the Snowy River Irrigation System, via the Murrumbidgee River. Irrigation availability and infrastructure is managed by the privatised organisation Murrumbidgee Irrigation (once a NSW State owned corporation). 84% of the production from the region is produced by independent wine grape growers, all of whom fund the activities of the Board through the imposition of a service charge that is deducted in accordance with the legislation from the payments they receive from wineries for their wine grapes. The payments to growers are controlled through the Board depending on the type of contract relationship that the grower and winery have. A copy of the *Wine Grapes Marketing Board (Terms and Conditions of Payment) Order 2005* are attached, **Appendix 3**.

The wine grape industry is a major financial contributor to the regional economy in the Riverina. The following table indicates its estimated contribution in 2005.

Table 1. Regional contribution of the MIA Wine Grapes Industry

	1993	2005 (est.)
Wine grapes for wine production (Tonnes)	102,880	248,861
Farm gate value of non-winery grown grapes	\$34m	\$95.2m
Wholesale value of MIA wine	\$170m	at least \$350m
Regional contribution of the wholesale value of MIA wine	\$119m	at least \$280m
Estimated full-time equivalent jobs in the grower sector	750	950
Number of employees – wineries during vintage	692	1,500
Number of employees – wineries outside vintage	651	1,200
Number of employees in service and support industries	513	600
Total regional direct and indirect employment (vintage)	1,955	3,050
Total regional direct and indirect employment (non-vintage)	1,914	2,750

Sources: 1993 data: MIA Business Enterprise Centre Ltd (1994:10). 2005 data based on WGMB (2005) & extrapolations from 1993.

Submission to the Inquiry

The Wine Grapes Marketing Board writes this submission to the Senate Rural & Regional Affairs & Transport References Committee Inquiry into the wine grape industry for and on behalf of all its constituted wine grape producers. The Board has also provided all wine grape producers with the opportunity to write their own submissions by advertising the inquiry via its regular communications to producers and via providing them with the opportunity to sign and send a form letter to the inquiry as individuals, *copy of form letter attached*, **Appendix 4**. The key issues raised in this form letter will form the basis of the Board's submission to the inquiry and through this approach provide information on the key areas of inquiry that are being focused on by the Senate Rural and Regional Affairs and Transport References Committee.

Issue One

The increasing volume of wine grapes available in Australia have been brought on by wineries providing insufficient communications to producers and inappropriate market signals.

The size of the wine grape “glut” within Australia as referred to within the Senate’s key area of inquiry is a question best answered by wine grape purchasers, i.e. the processor wineries. The Board’s concerns are that inappropriate market signals have been provided by the processing industry for a number of years that has led to a rapid build up of plantings.

The market signals provided were wineries requesting plantings of key varieties with no certainty that they would purchase these wine grapes when in full production. Anecdotal evidence suggests that winery staff were providing planting advice to producers based on their own perceptions of the market place without any fiduciary commitment that the fruit would be purchased by the wine company. Without any fiduciary arrangements wineries have been able to coerce growers into over planting thus enabling the price offer to be substantially lower.

The Wine Grapes Marketing Board has for many years been advising wine grape producers and the industry in general that plantings should not occur unless accompanied by a secure long term contract that offers a sustainable and acceptable price. While the Board’s advice may not have been fully heeded by the growing industry it is wineries that are giving growers false confidence that the wine grapes planted will return a profitable margin once in full production.

Within the Riverina over the past 5 years evidence indicates only a minor amount (1,000 tonnes) of wine grapes have been left (to rot) on the vines due to a lack of buyer interest. In particular, the 2002 vintage where the Board helped to place approximately 6,000 tonnes of wine grapes that were ejected from wineries. Many of these growers had been in long standing supply arrangements with wineries (some in excess of 30 years) were simply advised immediately prior to harvest that the winery did not require nor had the capacity to purchase their product.

In late 2004 a number of wineries advised growers that they could not take their production in 2005 and as there existed no formal written contract (only a history of supply for many years and some grower had verbal assurances from company personnel that the company would always purchase wine grapes some them) the growers were forced to seek alternative buyers for their wine grapes. It was during this time that the Board contacted the Retail Grocery Industry Ombudsman (Ombudsman for the Grocery Industry Code of Conduct) and advised growers that they could lodge complaints about these wineries if they wished. Some 15 growers lodged complaints in relation to three corporate wineries. Mediation was then setup with some positive outcomes but generally growers were required to seek another buyer as they would have had to use legal recourse to get the outcomes they were seeking, i.e. financial compensation for potential loss and/or the winery obligated to purchase grapes.

With regard to producers inventory levels in the Riverina the build up of infrastructure for wine grape juice holding and fermentation has been immense. Wineries have had to build extra capacity to enable the purchase of extra tonnes that they have stimulated into production and to supply export markets that were being developed. The Riverina used to

be a net exporter of finished wine to other major industry companies. Since the development of exports by, for example Casella Wines, the region now could be classified as a net importer of finished wine. Wineries do not undertake major purchases of finished wine unless current inventories require it. The current industry climate has also led to unsustainably low price offers for finished wines.

Growers of the Riverina moved a motion at a “prices crisis” meeting held this year that a national registration of vineyards is required by industry. This could be industry funded and managed by a peak industry grower body (for example one that is currently being proposed by industry). All interested parties wishing to develop a vineyard holding would be required to register their intent. This would provide the following benefits. One, allow the industry to be aware of the current levels of holdings for future forecasting of production, and two, provide the industry with sufficient scope to communicate the current status of the industry (subject to regional variations) of the proposed development. Too many speculative plantings have occurred without any understanding of the real market and the associated risks to the regional and national economies brought about by unabated development.

The registration process should not restrict plantings as this would be anti-competitive. However should plantings occur without prior registration the possibility of penalty provisions may need investigation.

Planting location, soil suitability, available irrigation and markets for the produce could form key factors in the decisions process and provision of information to potential industry entrants to ensure they are fully knowledgeable of the market and regional supply and demand conditions.

The project could be covered in terms of regulating the development of the market and for vine health purposes. This could be invaluable in the event of an outbreak of an exotic pest or disease, the industry would have full knowledge of the varieties and address details of all industry participants to ensure timely dissemination of information.

Issue Two

Supply and demand factors are not applied within the market effectively by the purchasers, thereby creating an unstable environment not conducive to investment activity.

Economic theory in reality is very different to what can be observed within the wine industry. While the product of increasing supply works to reduce the price offer to the wine grape producer many wineries often cite capacity constraints as a limiting factor when considering prices.

Comments by wineries that the production is in oversupply and beyond the actual capacity of their facilities have proved false when in this region (apart from the 2002 Vintage) all wine grapes have been purchased.

If winemakers do not have the capacity to process and store wine grapes they could not be in a position to take all the produce that is available in the market place. However, in the Riverina we have had examples of wineries taking fruit in large quantities from regions external to the Riverina on a regular annual basis. This consistent build up of stock, coupled with the expansion of holding and processing capacity levels at local wineries is anecdotal that the industry has and will continue to have the capacity to take wine grapes above and beyond their marketing requirements.

The concern of the producing industry is: Why are wineries continuing to purchase if the market that they supply will not be in a position to take the wine that is being produced? Maintaining high stock levels also comes at a cost to the winery that is ultimately forced onto the wine grape grower supplier.

The market for wine is driven by consumer demand, which is fickle and often stimulated by the price, i.e. lower prices for wine increase sales and reduce stock holdings. Whereas on the production side demand is falsely represented by innuendo that *“there is no room for the wine grapes”* but *“at a low price we can find the room”*. It may be stated that a level of greed exists where wineries will take all the product to ensure that their capacity is fully utilised to the detriment of the growers, through price reductions and with no real apparent benefit to consumers through similar price reductions.

However, the relationship between the movements in the prices being offered to growers and those that the consumer is asked to pay bears little commonality.

Issue Three

The relationship between growers and wine makers has continued to deteriorate because of their general disregard for the sustainability of producers. The industry needs to be able to operate closely but this is rarely achieved through the inconsistent approach to grading and quality standards.

This industry needs to be developed in concert, wineries and producers willingly cooperating and acting together to ensure that the consumer is offered a quality, value for money product. Within such a relationship there needs to be trust and accountability. This in reality is a far cry from the majority of transactions that occur.

Growers in general also fear that if they make a comment or statement about a price offer that is too low or a quality grading decision that is suspect they will be ill treated by that winery to a level that they may not even have a home for their produce. One example of fear of talking about the problems in the industry is the lack of participation into this inquiry. Growers believe that by commenting to the inquiry, whether making constructive remarks or not, the simple case that they have been involved in the process could see them forced to seek another home for their produce, a decision based on spurious grounds.

Anecdotal evidence from producers is that within the current period of oversupply the industry operates in what could be termed a master and servant relationship. Growers work under a lot of stress each year to ensure that they abide by the direction of the winery they deliver to, undertaking watering and chemical applications as directed with no liability on behalf of the winery regarding the end use quality of the wine grapes being produced.

Within the Riverina there are examples of wineries that communicate and work very well with producers to ensure production meets product specification. These relationships are cultivated on trust that the grower will have a home for their wine grapes and the winery can make changes to the husbandry techniques of wine grape production to alter fruit quality outcomes. However the final price offer is often a product of the region's price offer which is highly variable.

The structure of the industry ultimately favours the winery processor. They can set the price and the quality each year and dictate to the grower what these are. In some cases the grower who will commence the process of pruning and managing the preceding crop will

have no knowledge of the minimum price they will be offered or the quality factors that will be employed during the harvest period. Many may not know if they have a home for their wine grapes until just prior to harvest.

As there are no minimum enforceable standards in relation to the quality of wine grapes, the industry's market is frequently distorted by the whim of wineries. In the Riverina over the past 3 seasons there has been a major shift toward the use of colour in red wine grapes as a determinant of price. This has led to producers not being able to either meet the requirements to obtain a high price or understand the basis behind these decisions, they are not told why except for comment that this is what the consumer is seeking.

The sampling and testing processes for colour is highly variable and is not regulated by any industry body. This creates room for error and the possibility of unscrupulous behaviour. Flavour is another factor that is not fully understood as it cannot be effectively quantified by any objective means, but again it is used to calculate prices by some wineries.

The industry has developed initially based on the quality and increasing financial rewards to producers being paid on the level of sugar within the wine grape (baumé). The current position of baumé within the Riverina is that wineries expect a minimum level to be achieved prior to the wine grape being of a harvestable quality. Fruit that fall below these levels, due to rains or sample variation are financially penalised or subject to possible fruit rejection. Again these favour the buyer with all penalties and no rewards to the grower.

Issue Four

Contracts within the industry are not secure and are at best only made workable by legal intervention, which is cost prohibitive for individual producers.

The nature of contracts within the industry is highly variable. Within the Riverina the level of contracts has varied substantially over the past 2 years. As the Board's new legislation was developed to encourage contract standards and the development of a code of conduct including minimum standards and provisions within contracts, it has actually moved the industry toward contracts that work to favour the wineries.

In 2000 it was stated that only 15% of the grower population were subject to a written contract that nominated the price the producer would receive and the terms of payment for these wine grapes. Most of these contracts were notifiable to the Board, as under the then power of vesting producers needed to seek exemptions from the Board to allow them to enter these contracts. It should be noted that by a majority these contracts were entered into willingly by the wine grape growers.

Now in 2005 it is suggested that over 50% of the industry has entered into contracts of supply with wineries. One contract in particular offered by [Winery X]¹ prior to the 2004 Vintage used a minimum price of \$200 per tonne (well below the costs of production) to enable all wine grapes purchased within the Board's area of operations to be outside the legislated Board provisions for payment terms. [Winery X] made the offer of these contracts to growers when harvest was just about to commence. Growers felt they had to agree and

¹ The name of this winery has been withheld from the submission due to a reservation of rights that it has on the Wine Grapes Marketing Board to claim damages in relation a media release published by the Board that referred to the Board's concerns of the content, nature and terms of payment of the contract not being recommended as worthwhile in the industry. **See Appendix 5 for copy of the news release and legal correspondence.**

sign or they would not be able to deliver their produce to the winery if they did not. In doing such, growers contracted out of the Board's legislated terms and conditions of payment (for the duration of the contract) and were then subject to the new terms and dates of payment for their wine grapes which were a major departure from the industry standard.

**Table 2. Terms of Payment (TOP) Comparison -
Wine Grapes Marketing Board Standard v's [Winery X]**

<i>Payments</i>	<i>WGMB TOP</i>	<i>Amount (%)</i>	<i>Winery X TOP</i>	<i>Amount (%)</i>
1	14 May	33.33%	31 May	25%
2	24 June	33.33%	30 June	25%
3	14 October	33.34%	30 September	25%
4			15 December	25%

The conditions of the contracts within the industry give no provisions for major long term development of the industry. Growers can be asked to amend the contract by wineries, with fear that if the amendment is not entered into the grower will not be considered "on side" with the winery in the future. In 2004 and 2005 contracts that are expiring are in many cases not being renewed much to the chagrin of growers. For an example of the worth of contracts and winery commitments to these, the [Winery Y] this year is citing a Chardonnay imbalance within its own business and has begun the process of communicating to all contracted producers that it wishes to amend the contract, for the next two years to reduce the level of Chardonnay that they have agreed to purchase, by 25%. Growers are in no position to seek amendments in their favour. Growers for the [Winery Y] feel that by not agreeing to the amended terms they may possibly suffer ill treatment by the company in terms of the business relationship deteriorating and possible price reductions to their wine grapes by the subjective quality assessment process employed by the company. Growers feel that they are "damned if they do and damned if they don't", agree to the amendments.

Most contracts (apart from [Winery X] and some minor purchase arrangements) are supply agreements that bind the grower to the winery for a set duration of time (years) but offer no minimum price for the grower to have a level of financial comfort. The offer price is posted each year at the commencement of harvest and the grower, via the supply agreement has to deliver with no formal offer, negotiation and agreement occurring.

Under the statutory powers of the Board, growers that have no formal agreement that does not stipulate the price or the manner in which the prices are to be calculated, there are provisions for interest penalties to be applied should the winery not make the payment in accordance with the timeframes set out. The interest rate is stipulated in the legislation and enforceable by the Board. Standard industry contracts attempt to give a wide berth to interest by either not including it as a provision or by providing a time delay period for late payments that interest would not be applicable.

The discomfiting fact within this industry is that the grower, who has taken the opportunity to build a business relationship with a winery by entering into a contract, does not feel empowered sufficiently to pursue interest for overdue payments, due to concerns that this would impact on the relationship between the winery and the grower. Taking legal action is an option of last resort within this industry as growers that take the appropriate legal path to pursue compliance to a contract are regrettably treated harshly by the winery.

The development of a mandatory code of conduct or specified legislated trading terms that include the dates that producers will be paid and the right to interest should payments be

tardy is required within the industry. Within the Riverina, should the statutory authority of the Wine Grapes Marketing Board not exist within its current operations it would provide wine grape purchasers with the opportunity to manipulate and use growers financial returns for their own advantage with impunity (using growers as credit facilities). This industry requires a governing authority that can act on behalf of the wine grape grower without the need for the grower to be specifically identified, anonymity is required.

Issue Five

Quality wine grapes are not worth producing as wineries use quality to drive down grower returns by lower yields and the potential production life of the vine. Variations from winery to winery are confusing to a grower – consistent industry standards should be applied to the industry.

Wine grape quality in the wine grape industry is a variable factor, its application to wine grape producers differing from winery to winery. Within the Riverina some wineries work with producers to strive to achieve a quality product that best suits the wine styles for their market. Other wineries tend to approach quality in an ad-hoc manner, the case of “shifting goal posts” annually is a constant bane to wine grape producers.

Growers are told to reduce yields to increase the quality of the wine grapes but this factor within the production of wine grapes can only count for a part of the process. Growers of quality are rarely rewarded financially above those producers that are content on producing wine grapes that are high in production yields and anecdotally of lesser quality.

The industry needs a national system of quality benchmarks that can form the basis of a framework that growers could operate within. This framework should be intrinsically linked to end use value, i.e. higher priced wines should return producers a higher price per tonne. However having said this, growers must not be left to wait until the wine is produced and assessed as the wine grape growing industry has no control or input into the wine making part of the business and therefore could not be expected to influence the efforts of the wine makers.

Growers ideally need to be able to take a standard sample to a testing facility and be then advised what the quality grade is. To ensure samples are as uniform as possible the winemaker could also be involved in this process or it may be undertaken by a third party.

Once the quality is known the grower would then be able to ascertain the price he or she would receive for this product at the winery of choice or via a contractual relationship. Growers that move from winery to winery would be able to grade their production and then shop for the winery that would offer them the best return based on the various varieties that they produce.

The process described above would not dictate what the winery offer prices would be as these would need to be set by the winery with due care for the current market conditions and their ability to fund the purchases. Growers developed knowledge of their product would work to create a competitive market within the industry in relation to the price offer for the wine grapes. Wineries would also need to be prepared to pay the right amount for the appropriate quality or not receive any.

Current practice in the industry is that a winery will stipulate the quality they desire through baumé, colour and disease status. These can often be pre-harvest assessed by the winery

based on irrigation, fertilisation, wine health and canopy. Once a winery has received their preferred amount for a set level of quality further deliveries are placed into lesser value quality points. It can often become the case where those that are in good favour with the winery can achieve the higher price, when those that may well produce the higher quality are advised that the produce is inferior and would command a lesser return.

Other quality factors that are being, and can be, misused by wineries inappropriately, is the grading of the level of MOG (Matter Other than Grapes) contained in the deliveries. This refers to the level of matter that is made up of leaves, vine canes (stems and sticks), wood and other items such as stumps, wire and rocks, that may be delivered within a load of wine grapes. High levels are unacceptable and cause delays to the industry in terms of reducing the level of juice (*must*) that can be pressed from the wine grapes and the damage that may be caused to winery processing equipment and machinery. The current industry standard is for winery staff members (often seasonally employed) that may have not had any industry formally recognised training, to make assessments of grading on growers wine grape deliveries. It should be the case that the industry has better processes that are tangible in terms of educational requirements for its employees that are tasked with making financial assessments on grower's production.

This industry lacks truth and transparency. Growers have reported to the Board numerous cases where they have delivered C grade wine grapes and were instructed by the winery to place it into the same crushing facility as A grade (high quality) wine grapes. This then effectively blends the two grades. If a winery expects a grower to produce quality then they should be appropriately rewarded. Wineries are often cited as having paid lower prices when the fruit has actually ended up in a higher end use than its graded and priced value.

Regulated, irrefutable and quantifiable objective measurement standards are required in the industry as the current processes in operation breed distrust between grower and wineries. The competitive advantage that wineries may lose as a result of this type of regulation can be continued in terms of prices they may offer to growers on the various grades.

Issue Six

Growers require intervention by government to balance the market power of the wineries. Growers also need to be trained and provided with detailed assistance to development collectives for bargaining with wineries and be better skilled at negotiating with wineries to ensure their needs are adequately addressed in terms of pricing. Federal funding is needed to develop our skills base.

Growers consider that through regulation of the business relationship they will feel a level of security from wineries relative market power. While in the Riverina the Wine Grapes Marketing Board acts in the best interests of producers in accordance with its legislation to set and enforce standardised terms and conditions of payment, in reality without these, wineries would hold the ultimate power, only potentially yielding to growers that actually take it upon themselves to engage legal action in the event of a non or late payment.

Growers feel that the Board's activities in this regard offer them a level of comfort in anonymity. The wineries that are late in payment can be investigated by the Board on the request of a grower, whose details are not communicated to the winery for fear of retribution by the winery at a later time. As the Board has dealt with numerous breaches of its

legislation it has vast experience in this area. The winery is always seeking to identify the grower that advised the Board of the breach. In some instances where the growers details were suspected by the winery the grower has been advised by the winery that they will no longer purchase there fruit in future years.

The nature of contractual arrangements in this region do not adequately provide for the introduction of specialist independent arbitrators. While the national industry committee, the Wine Grapes Growers Australia and the Winemakers' Federation of Australian – Wine Industry Relations Committee (WIRC) has actively sought to introduce assessment specifications and dispute resolution clauses, the adoption of these industry agreed best practices has been minimal to almost non-existent within the Riverina. For example the regions two largest wine grape purchasers, [Winery X & Y] have no adequate consideration of dispute resolutions in terms of wine grape quality assessments, leaving the growers with no recourse. This type of “take or leave it” approach in the industry is not conducive to the development of sound business practices or sustainable industry development.

The skills levels of wine grape producers in terms of business development and relationships needs enhancing. In the NSW Riverina, FarmBis funding is no longer available to wine grape growers and just as the federal government has provided funds for the wine skills course for the industry's winemakers perhaps the opportunity to develop a package that can cater for the producer needs to be introduced. Training could cover business development and negotiation skills.

The industry could also benefit from simpler trade practices legislation that would allow groups of various sizes of wine grape producers to form collectives and negotiate with the winery for set volumes of a determined quality of wine grapes. Developing collectives and discussing grape quality would serve to benefit the growers and the wine makers of the industry.

As the industry currently stands, small growers that produce quality are forced to take the price set by the winery, there is no formal offer and acceptance is only a given through the delivery of the product by the grower. As a perishable product the industry cannot afford legislative systems that force delays through administrative process and possible postulation.

Issue Seven

Investigation by government is needed into the power of the retail giants Coles and Woolworths and their pricing policy of Australian wine to consumers and its effects on growers farm gate returns.

A major concern of wine grape growers is their reducing returns. These flow on from reductions in the margins that wineries are able to receive for their product. Consumers are losing the opportunity of purchasing wines at low prices because of the margin pressure being applied through the controlling power of the retail sector, in particularly Coles and Woolworths. Between these two companies they control the major share of the retails outlets for wine products.

Wineries in this end of the market are in general price takers and due to the limitations on the financial flexibility of their other inputs in the production chain often use the grower for their own margin stabilisation. However this process could be termed as defeatist in its

approach. The retailers are fully aware of the average purchase prices for wine grapes in all regions throughout Australia. The industry is abundant with price information down to a regional level. This knowledge allows them to extrapolate the actual cost to the wine maker for the wine and then enable a continued reduction in the margin to the wine maker which ultimately flows to the grower.

Wineries inputs are few and competitors in the production chain are few, glass bottle manufacturers within the Australian industry are limited to almost a monopoly status, packaging manufacture is within the same status. There exists very little opportunities for wineries to seek alternative input supply competitors to gain some advantage.

The federal government should investigate the price manipulation of the major retailers within the Australian market. Wineries would be reluctant to make statements to this regard for fear of not being able to supply them. The production and distribution chain need better structures that offer protection and a more open business relationship.

Issue Eight

Taxation of wine is very high and while this may have forced much of Australia's production to overseas markets the industry is selling more for less return.

Since the introduction of the Wine Equalisation Tax (WET) to "balance" the variation from the previous taxation system post the introduction of the Goods and Services Tax (GST) the wine industry has been making a much greater contribution to the taxation income of the federal government.

In the first year of introduction wineries across Australia complained about the impacts of this and their concern that it would stifle development and growth and lead to reductions of competitiveness. While this has proven to be true in many fronts as wineries are facing very difficult trading times, in particular the small to medium sized business, the concerns of the grower population is that much of the impact has been borne by the wine grape producers.

The cumulative reductions in growers financial returns that occurred in the Vintage immediately following the introduction the GST, the "*Australia's Simplified Taxation System*" mirrored the increased amount of funds paid by wineries to the government under the new system.

While the potential for coincidence is possible, the case remains that wineries that were forced through the new taxation system into a different financial situation, were able to defer the impacts of this by keeping their margins intact by making lesser value payments to wine grape producers. The growers paid the tax and were the net loser in the industry.

This conjecture is backed by a speech by Senator A.B. Ferguson in 23 March 1995 on taxation in the wine industry:

"I have a particular concern for the grape growers, which is the same concern I have always had for primary producers. The grape growers, who are primary producers, are price takers and not price setters. All of the difficulties we have seen in primary industries over the past few years are due to the fact that the primary producers have no control over the amount they receive for the goods they produce. Regardless of the cost of production, they take only what the market offers. But, because it value adds, the wine industry can be a price setter. It can reclaim its costs. It can make sure that it sells its product at a profit while the grape

growers cannot. Currently, the grape growers are undergoing a boom. Although production is down significantly this year—by up to 40 per cent in some places in the Barossa Valley—the increase in prices means that the growers are remaining viable and are going through good times. I remember a time, not so very long ago, particularly in the vine-pull era, when they were struggling just to hang on to their properties. I therefore urge this government to reject the recommendations of this commission of inquiry for an increase in taxes so that this industry, which has a target of \$1 billion of exports by the year 2000, is allowed to get on with its job without any impediments.”

Issue Nine

As a primary producer it constantly feels that the financial squeeze is being applied to the grass roots, the producer. Growers of quality should be able to ensure that they receive a viable return for their produce.

As a grower representative body it is concerning for the industry to be in a state of constant turmoil. Growers need some assistance that will work to balance the power that is constantly being applied by the wine makers within the industry. Such assistance need not impact on the competitiveness of the industry but should work to force unscrupulous behaviour out of the industry to ensure that growers that deal with a number of purchasers of their product are treated equally and fairly.

The industry needs to be united against those that do not work actively promoting and undertaking business methods and practices that are sound, honest and transparent. Without a viable production base the local and regional economies will suffer. Rationalisation of the industry without appropriate thought to the development of the economies that survive in the industry, could be catastrophic to this industry and others within Australia.

Conclusion

What the industry requires is an appropriately funded national grape growers' representative body. This responsibility has for many years been undertaken by the major inland production regions. To look further a field and obtain input and funding from the rest of Australia's wine grape producers is a necessity.

The national body should be able to act for and on behalf of growers and be tasked with the role of management of a suitable Mandatory Code of Conduct, for the benefit of all participants within the industry. The Code of Conduct should include provisions of minimum terms and conditions of payment for the entire industry. Wine grape purchases would only be allowed to purchase wine grapes if they complied with the terms and conditions of payment as minimum standards. These would override any current and future contracts in place. The introduction of possible penalty provisions would need to be instigated by the national representative body to ensure that the code was adhered to across the entire industry.

The national representative body should also be tasked with the role of maintaining the national registrar of vineyards. This would ensure that production statistics are accurate and would enable the body to ensure that it has completeness of revenues in relation to any levy charged.

It should have the power and sufficient funding to enable it to liaise with government to offer advice on the industry and plant health and its financial well being. It would also be able to consider the cost benefit of proposed research activities that require grower funding through the current industry levy. It would also be able to work with industry bodies such as Plant Health Australia, Grape and Wine Research and Development Corporation and the Winemakers Federation of Australia – actively representing the interests of producers.

To fund this body a national levy of all wine grape production that is not grown by wineries would be required. As an example of how this could be structured the Board proposes the standard as applied within its own area of operations through its current legislation.

The peak national body should be constituted for all growers that harvest greater than 20 tonnes of wine grapes in the calendar year, but should not include:

- (a) in the case of a corporation:
 - i. a grower that is also a winery, or
 - ii. a grower in which a winery has a controlling interest, or
- (b) in the case of an individual:
 - i. a grower who is also a winery, or
 - ii. a grower who is a director of a corporation that is a winery and who (as a grower) supplies the winery with all of the MIA wine grapes that he or she harvest.

The levy, or service charge would need to be set by an overseeing body based on approved budgets at a properly convened meeting of producers.

The Government should be integral in the maintenance of this system through its current levy collection departments for agricultural industries. The federal Government currently collects a compulsory levy for research and development that works to assist the industry. This process would be an extension of this.

The structure of the national wine grape growers body should take into account the diversity of the nations wine regions and existing grower representative bodies. As the Board is currently part of the steering committee that is seeking to form a truly national representative body within this industry it recommends that the Government look at what is currently being proposed.

On behalf of wine grape producers the Board's would like to offer its thanks to the Senate, Rural and Regional Affairs and Transport Reference Committee for their interest in this industry. The Board trusts that this inquiry into the wine industry has beneficial and recognisable outcomes that the industry can utilise to continue to develop and grow in a sustainable manner that benefits all participants.

References

MIA Business Enterprise Centre Ltd (1994) Riverina Wine Grape and Wine Industry: Submission to the Commonwealth Inquiry into the Winegrapes and Wine Industries, unpublished.

Ferguson Senator A.B, Senate Hansard 23 March 1995, Taxation: Wine Industry, page 2051.

Appendix 1

Wine Grapes Marketing Board (Reconstitution) Act 2003 Including **Agricultural Industry Services** **(Wine Grapes Marketing Board) Regulation 2003**

Wine Grapes Marketing Board (Reconstitution) Act 2003

Does not include amendments by:

Civil Procedure Act 2005 No 28 (not commenced)

Note:

This Act is to be repealed at the beginning of 1.1.2008 -- see sec 26.

Long Title

An Act to provide for the reconstitution of the Wine Grapes Marketing Board as an agricultural industry services committee under the *Agricultural Industry Services Act 1998*; to provide for the temporary regulation of the terms and conditions of payment for MIA wine grapes; and for other purposes.

Part 1 – Preliminary

1 Name of Act

This Act is the *Wine Grapes Marketing Board (Reconstitution) Act 2003*.

2 Commencement

This Act commences on 1 January 2004.

3 Definitions

In this Act:

"Board" means the Wine Grapes Marketing Board established by the regulation set out in Schedule 1.

"Board's area of operations" means the City of Griffith and the local government areas of Carrathool, Leeton and Murrumbidgee.

"complying contract" means:

(a) a contract that fixes:

(i) the prices to be paid for consignments of MIA wine grapes delivered during the current calendar year only, or the manner in which those prices are to be calculated, and

(ii) the date or dates by which those prices, or the various instalments of those prices, will be paid,

being a contract entered into before the first Monday in December of the previous calendar year, or

(b) a contract that fixes:

(i) the prices to be paid for consignments of MIA wine grapes delivered during both the current calendar year and one or more future calendar years, or the manner in which those prices are to be calculated, and

(ii) the date or dates by which those prices, or the various instalments of those prices, will be paid,

being a contract entered into at any time before the first delivery of wine grapes under the

contract, or

(c) a contract the subject of an approval in force under section 13.

"consignee" means a person to or for whom a consignment of MIA wine grapes is delivered.

"consignor" means a person by or from whom a consignment of MIA wine grapes is delivered.

"Department" means the Department of Primary Industries.

"Director-General" means the Director-General of the Department.

"duly contracted delivery" means a consignment of MIA wine grapes that is delivered pursuant to a complying contract.

"exercise" a function includes perform a duty.

"former Board" means the Wine Grapes Marketing Board, as constituted under the *Marketing of Primary Products Act 1983* immediately before the commencement of this Act.

"function" includes a power, authority or duty.

"MIA wine grapes" means any variety of grapes grown in the Board's area of operations for use for processing into wine, must, juice or wine spirit.

"price schedule" means a schedule issued by a person for the purpose of publicising the prices that the person will pay for MIA wine grapes delivered to the person during the period to which the schedule relates, as varied from time to time under section 4 (4).

Part 2 – Wine grapes marketing

Division 1 – Establishment of prices, and terms and conditions of payment, for MIA wine grapes

4 Price schedules

(1) Any person may provide the Board with a price schedule, in a form approved by the Board, for MIA wine grapes to be delivered to the person otherwise than pursuant to a complying contract.

(2) A price schedule:

(a) must set out minimum prices that will be paid for consignments of MIA wine grapes delivered during the period to which the schedule relates, and

(b) may set out minimum prices with respect to:

(i) different varieties and grades of wine grapes, and

(ii) different days and times of delivery.

(3) A price schedule must also set out:

(a) any factor, condition or circumstance that may operate to reduce any price offered for a consignment of MIA wine grapes, and

(b) the way in which any such reduction will be calculated.

(4) A person who has provided the Board with a price schedule may, by notice in writing given to the Board, vary the schedule from time to time so as:

(a) to change it in relation to wine grapes to which it already applies, or

(b) to extend it to wine grapes to which it does not already apply.

(5) A reduction in any price arising from the variation of a price schedule does not have effect until:

(a) 48 hours after the reduction is notified to the Board, in the case of a reduction

- notified to the Board before 30 January in the year concerned, or
- (b) 24 hours after the reduction is notified to the Board, in the case of a reduction notified to the Board on or after 30 January in the year concerned.
- (6) A person who has provided the Board with a price schedule must ensure that copies of the schedule, and any variation of the schedule, are made available to prospective consignors on request.

5 Board may make order as to terms and conditions of payment

- (1) The Board may at any time, by order published in the Gazette:
- (a) establish terms and conditions of payment for MIA wine grapes delivered during that year otherwise than pursuant to a complying contract, and
 - (b) establish a formula for calculating the amounts payable to the Board, towards any rates levied under the *Agricultural Industry Services Act 1998*, in relation to deliveries of MIA wine grapes, and
 - (c) establish a timetable in accordance with which:
 - (i) consignees are to make payments to the Board under sections 10 (1) (a) and 14 (1), and
 - (ii) the Board is to make payments to consignors under section 10 (1) (b).
- (2) The terms and conditions of payment referred to in subsection (1) (a) are to be established by the Board having regard to any submissions made by wineries and wine grape growers within the meaning of the regulation set out in Schedule 1.
- (3) Without limiting subsection (1) (a), the terms and conditions set by an order under this section may fix the rate at which interest is to accrue on the late payment of the price of MIA wine grapes so delivered, or on the late payment of any instalment of that price.
- (4) The rate at which interest is to accrue must not exceed the rate prescribed under section 95 (1) of the *Supreme Court Act 1970* for payment of interest on a judgment debt, plus 5 per cent.
- (5) Copies of each order under this section are to be published in at least one daily newspaper circulating throughout New South Wales.
- (6) A failure to comply with the requirements of subsection (5) with respect to an order under this section does not affect the validity of the order.
- (7) An order that is made under this section after 20 January in any year does not have effect until the following year.
- (8) The making of an order under this section is specifically authorised for the purposes of section 51 of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

Division 2 – Regulation of deliveries and payments for MIA wine grapes

6 Application of Division

This Division applies to any delivery of MIA wine grapes, other than a duly contracted delivery.

7 Deliveries of MIA wine grapes not to be accepted unless price schedule notified to Board

- (1) A person must not accept delivery of a consignment of MIA wine grapes unless a price schedule applicable to that consignment has been provided to the Board on or before 30 January in that year.
- (2) A person's contravention of subsection (1) does not affect the person's other obligations under this Division.

8 Persons accepting delivery of MIA wine grapes to furnish certain documentation

On accepting delivery of a consignment of MIA wine grapes, the consignee must give to the consignor, by handing to the person by whom the consignment is actually delivered, documentation that sets out:

- (a) the date of the delivery, and
- (b) the quantity and variety of the wine grapes in the consignment, and

- (c) the relevant provisions of the price schedule applicable to the consignment, and
- (d) any factor, condition or circumstance that operates to reduce the price payable for the consignment and the amount of any such reduction.

9 Minimum price to be paid for MIA wine grapes

(1) The price to be paid for a consignment of MIA wine grapes delivered on any day is taken to be:

(a) if the consignee has provided a price schedule to the Board:

- (i) the price offered for the consignment, reduced in accordance with any applicable factor, condition or circumstance set out in the price schedule applicable to the consignment, or
- (ii) the minimum price payable for the wine grapes in accordance with the price schedule applicable to the consignment,

whichever is the greater, or

(b) if the consignee has failed to provide a price schedule to the Board:

- (i) the price offered for the consignment, or
- (ii) a price equivalent to the average price for wine grapes of the same variety and grade delivered on the same day,

whichever is the greater.

(2) For the purposes of subsection (1) (b) (ii), the average price for wine grapes of a particular variety and grade delivered on a particular day is the arithmetic mean of the prices for wine grapes of that variety and grade, delivered on that day, set out in the price schedules provided to the Board.

10 How payments to be dealt with

(1) Unless the Board directs otherwise, either generally or in relation to a particular consignee or class of consignees:

(a) the price to be paid for MIA wine grapes delivered on any day is to be paid by the consignee to the Board in accordance with the Board's terms and conditions referred to in section 5 (1) (a), and

(b) the money received by the Board in relation to the delivery, less any amount calculated in accordance with section 5 (1) (b), must be paid by the Board to the consignor,

within the period allowed by the Board's timetable for payment under section 5 (1) (c).

(2) Such a direction may be given on the Board's own motion or on the application of one or more consignees.

Division 3 – General

11 Application of Division

This Division applies to any delivery of MIA wine grapes, including a duly contracted delivery.

12 Consignees to furnish Board with certain information

(1) On or before 1 May in each year, each consignee must furnish a report to the Board with respect to MIA wine grapes that have been delivered to the consignee during the period beginning 1 July in the previous year and ending on 14 April in that year.

(2) On or before 30 June in each year, each consignee who has received MIA wine grapes since 14 April in that year must furnish a supplementary report to the Board with respect to MIA wine grapes that have been delivered to the consignee since that date.

(3) The reports must include the following details in relation to each delivery:

- (a) the identity of the consignor of the delivery,
- (b) the quantity and variety of the wine grapes in the delivery,
- (c) except in the case of a duly contracted delivery, the price of the wine grapes in the delivery.

(4) A consignee must not fail or refuse to comply with the requirements of this section.

13 Board may approve certain contracts

- (1) The Board may approve a contract entered into on or after the first Monday in December of the previous year, being a contract that fixes:
 - (a) the prices to be paid for consignments of MIA wine grapes delivered during the current calendar year, or the manner in which those prices are to be calculated, and
 - (b) the date or dates by which those prices, or the various instalments of those prices, will be paid.
- (2) An application for the Board's approval to a contract may be made, in a form approved by the Board, by any party to the contract.
- (3) The Board's approval to a contract is taken to have been given if, at the expiry of 14 days after such an application has been made, the Board's decision on the application has not been given to the applicant.
- (4) An applicant may apply to the Administrative Decisions Tribunal for a review of its decision to refuse to give an approval under this section.

14 Consignees of duly contracted deliveries to deduct sums for payment to Board

- (1) If a consignee accepts a duly contracted delivery of MIA wine grapes, the amount calculated in relation to that delivery in accordance with section 5 (1) (b) is to be paid to the Board by the consignee within the period allowed by the Board's timetable for payment under section 5 (1) (c).
- (2) The amount may be deducted from any money payable by the consignee to the consignor with respect to that delivery.
- (3) This section does not apply to a duly contracted delivery of MIA wine grapes in respect of which an amount has been paid to the Board under this section in relation to a previous delivery of those wine grapes.

15 Minister may grant exemptions from Part

The Minister may, by order, exempt any specified person or class of persons, either conditionally or unconditionally, from the operation of this Part or any specified provision of this Part.

16 No contracting out

A contract or agreement is void to the extent to which it purports to exclude, modify or restrict the operation of this Part or has the effect of excluding, modifying or restricting the operation of this Part.

Part 3 – Miscellaneous

17 Departmental inspectors

- (1) In making a decision with respect to the appointment of a person to exercise the functions of a Departmental inspector under the *Agricultural Industry Services Act 1998* in relation to matters arising under this Act, the Director-General must have regard to any submissions or nominations made by the Board.
- (2) Despite subsection (1), a person may not be appointed to exercise any such function if the person is a member of the Board or a member of the Board's staff.
- (3) The powers exercisable by a Departmental inspector under section 33 of the *Agricultural Industry Services Act 1998* include the power to require a person to furnish the inspector with:
 - (a) information of the kind required to be included in a report under section 12 of this Act, or
 - (b) information of the kind necessary to establish whether or not a particular document is or is not a complying contract.
- (4) The powers exercisable by a Departmental inspector under section 34 of the *Agricultural Industry Services Act 1998* include the power to enter premises, and to inspect and take copies of documents, for the purpose of obtaining:

- (a) information of the kind required to be included in a report under section 12 of this Act, or
 - (b) information of the kind necessary to establish whether or not a particular document is or is not a complying contract.
- (5) A Departmental inspector may exercise functions under the *Agricultural Industry Services Act 1998* in relation to MIA wine grapes within or beyond the Board's area of operations.
- (6) The Board must pay to the Director-General such amounts as the Director-General may from time to time determine to defray the costs and expenses of Departmental inspectors in the exercise of such of their functions under the *Agricultural Industry Services Act 1998* as arise under this section.

18 Funding of Board's operations

Any amounts payable by the Board under this Act, and any costs or expenses incurred by the Board in the exercise of its functions under this Act, may be paid for out of the Board's general fund under Part 3 of the *Agricultural Industry Services Act 1998*.

19 Recovery of unpaid money

Any money due to the Board or the Director-General under this Act (including any money that becomes payable as a consequence of the revocation of a direction under section 10) may be recovered as a debt.

20 Proceedings may be taken in name of Board

- (1) Proceedings for an offence against this Act may be taken in the name of the Board by any officer of the Board who is authorised by the Board in that regard.
- (2) Proceedings taken in the name of the Board are, in the absence of evidence to the contrary, taken to have been commenced in accordance with an authority under this section.
- (3) This section does not prevent proceedings for an offence against this Act from being commenced by any person otherwise than in accordance with an authority under this section.

21 Directors and managers liable for offences committed by corporations

- (1) If a corporation contravenes a provision of this Act, each person who:
 - (a) is a director of the corporation, or
 - (b) is concerned in the management of the corporation,is to be treated as having contravened that provision if the person knowingly authorised or permitted the contravention.
- (2) A person may, under this section, be proceeded against and convicted for a contravention of such a provision whether or not the corporation has been proceeded against or convicted for a contravention of that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act.

21A Delegation

The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) to any member of staff of the Department.

22 Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003

Schedule 1 is taken to be, and has effect as, a regulation made under the *Agricultural Industry Services Act 1998* for the purposes of section 5 of that Act.

23 Abolition of former Board

The former Board is abolished.

24, 25 (Repealed)

26 Expiry of Act

This Act is repealed at the beginning of 1 January 2008.

Schedule 1 Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003

(Section 22)

Part 1 – Preliminary

1 Name of Regulation

This Regulation is the *Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003*.

2 Definitions

In this Regulation:

"area of operations", in relation to the Board, means the area of operations for which the Board is constituted, as set out in clause 5.

"Board" means the agricultural industry services committee established by this Regulation.

"former Board" means the Wine Grapes Marketing Board, as constituted under the *Marketing of Primary Products Act 1983* immediately before the commencement of this Regulation.

"MIA wine grapes" means any variety of grapes grown within the Board's area of operations for use for processing into wine, must, juice or wine spirit.

"the Act" means the *Agricultural Industry Services Act 1998*.

"wine grape grower" means a grower that belongs to the class of primary producers referred to in clause 4.

"winery" means a processor that processes MIA wine grapes within the Board's area of operations.

Part 2 – Establishment and functions of Board

3 Establishment of Board

- (1) There is established by this Regulation an agricultural industry services committee with the corporate name of the Wine Grapes Marketing Board.
- (2) The Board is a continuation of the former Board.

4 Class of primary producers for which Board is constituted

For any calendar year, the class of primary producers for which the Board is constituted includes all growers within the Board's area of operations who, during the previous calendar year, harvested more than 20 tonnes of MIA wine grapes, but does not include:

- (a) in the case of a corporation:
 - (i) a grower that is also a winery, or

- (ii) a grower in which a winery has a controlling interest, or
- (b) in the case of an individual:
 - (i) a grower who is also a winery, or
 - (ii) a grower who is a director of a corporation that is a winery and who (as a grower) supplies the winery with all of the MIA wine grapes that he or she harvests.

5 Area of operations of Board

The area of operations for which the Board is constituted consists of the City of Griffith and the local government areas of Carrathool, Leeton and Murrumbidgee.

6 Commodity for which Board is constituted

The commodity for which the Board is constituted is MIA wine grapes.

7 Agricultural industry services of Board

The agricultural industry services for which the Board is constituted are as follows:

- (a) the development of a code of conduct for contract negotiations between wine grape growers and wineries,
- (b) the development of draft contract provisions with respect to the sale of MIA wine grapes to wineries, including provisions with respect to:
 - (i) the prices to be paid by wineries, and
 - (ii) the terms and conditions of payment to be observed by wineries,
- in relation to MIA wine grapes delivered to them by wine grape growers,
- (c) the promotion of private contracts for the sale of MIA wine grapes to wineries by wine grape growers,
- (d) the collection and dissemination of market and industry information, including the production and publication of indicator prices for MIA wine grapes grown in the Board's area of operations,
- (e) the conduct of research and development into plant health in relation to wine grapes,
- (f) the provision of education and training in relation to wine grape production and marketing,
- (g) the promotion (in association with organisations representing wineries) of wine made from MIA wine grapes,
- (h) the promotion of regional industry, including regional wine-making, within the Board's area of operations,
- (i) the representation of the wine grape industry in relation to the matters referred to in paragraphs (a)-(h).

Part 3 – Other provisions relating to Board

8 Membership of Board

- (1) The Board is to consist of 7 members, of whom:
 - (a) five are to be elected by the Board's constituents, and
 - (b) two are to be appointed by the elected members.
- (2) If there are insufficient eligible nominees for election under subclause (1) (a), additional members are to be appointed by the elected members to make up the insufficiency.

9 Quorum for meeting of Board

The quorum for a meeting of the Board is 4 of its members.

10 Voting entitlements of constituents

The voting entitlements for the Board's constituents for both polls and elections is one vote per constituent.

11 Quorum for meeting of constituents

The quorum for a meeting of the Board's constituents is 30 constituents.

12 Financial year

The financial year of the Board is the year ending on 31 December.

Schedule 2 (Repealed)

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	No	number	Schs	Schedules
Cl	clause	p	page	Sec	section
ClI	clauses	pp	pages	Secs	sections
Div	Division	Reg	Regulation	Subdiv	Subdivision
Divs	Divisions	Regs	Regulations	Subdivs	Subdivisions
GG	Government Gazette	Rep	repealed	Subst	substituted
Ins	inserted	Sch	Schedule		

Table of amending instruments *Wine Grapes Marketing Board (Reconstitution) Act 2003 No 100*. Second reading speech made: Legislative Council, 20.11.2003; Legislative Assembly, 3.12.2003. Assented to 10.12.2003. Date of commencement, 1.1.2004, sec 2. This Act has been amended as follows:

2004	No 91	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2004</i> . Assented to 10.12.2004. Date of commencement of Sch 1.43, assent, sec 2 (2).
2005	No 64	<i>Statute Law (Miscellaneous Provisions) Act 2005</i> . Assented to 1.7.2005. Date of commencement of Sch 3, assent, sec 2 (1).

Table of amendments

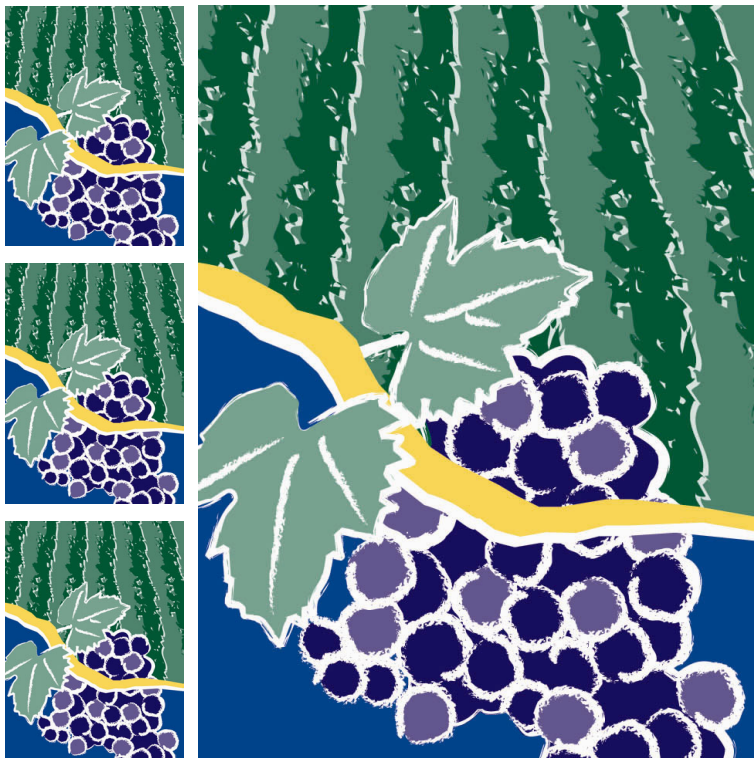
Sec 3	Am 2004 No 91, Sch 1.43 [1] [2].
Sec 21A	Ins 2004 No 91, Sch 1.43 [3].
Secs 24, 25	Rep 2005 No 64, Sch 3.
Sec 26	Am 2004 No 91, Sch 1.43 [4].
Sch 2	Rep 2005 No 64, Sch 3.

Appendix 2

Riverina Pricing and Utilisation Survey 2005-2010

2005 - 2010

WINE GRAPES MARKETING BOARD



RIVERINA WINEGRAPES PRICING AND UTILISATION SURVEY 2005 - 2010

JULY 2005



Australian Government
Australian Wine and
Brandy Corporation



Australian Government
Grape and Wine Research and
Development Corporation

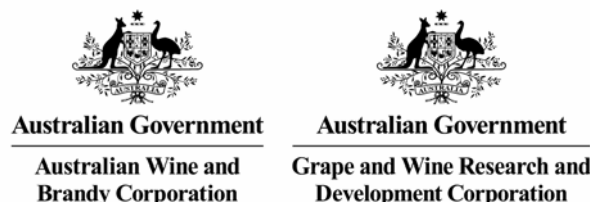
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INTRODUCTION

The Wine Grapes Marketing Board for the City of Griffith and the Local Government Areas of Leeton, Carrathool and Murrumbidgee commissioned this survey of wineries drawing fruit grown in the regions under the Board's jurisdiction. The coverage approximates to the Geographic Indication "Riverina".

This is principally a Riverina Wine Grapes Marketing Board funded project. Funding for this survey has also been provided the Australian Wine and Brandy Corporation and the Grape and Wine Research and Development Corporation.



This is the eighth year the survey has been conducted in the region. Data was collected using the form developed by the Australian Wine and Brandy Corporation for the Australian Regional Winegrape Crush Survey, which has common collection methodology and coordinated coverage to enable regional and State data to be aggregated to form a national position.

The Report is presented in Three Parts:

- Part 1** Sets details of grape price and intake data as well as purchases by wineries for the 2005 vintage.
- Part 2** Shows grapes crushed for 2005 and preferred intake data for the period 2006 to 2010.
- Part 3** Contains individual variety analysis of price, actual and expected intake, and preferred intake.

DATA REQUESTED FROM WINERIES

2005 Pricing Survey

All wineries that purchased grapes in the region were sent a questionnaire seeking information by variety on tonnes purchased, total purchase value per variety and the highest and lowest price per tonne paid. This amount is based on the post-receival price not including any amount added for freight or any end use bonuses other than bonus payments made at the time of the survey. It does not include any value for own-grown fruit.

Utilisation Survey 2005 - 2010

Wineries were asked to nominate their actual usage of grapes for 2005 vintage dissected into those sourced from their own vineyards (**own grown**) and those **purchased** from third parties. Future (expected) usage of grapes for the vintages 2006 to 2010 was also sought on the same basis, as well as preferred usage for those years. The **estimated usage** is *broadly* equivalent to the winery's estimate of grape supply over the reporting period, while **preferred usage** is broadly equivalent to demand.

The following definitions applied:

Tonnes Crushed

"Tonnes crushed" is the tonnage of grapes crushed by a winery or crushed on a winery's behalf used to make juice or wine in the past vintage. Tonnes crushed is made up of tonnes "own grown" and tonnes purchased. It excludes contract winemaking where ownership of the grapes does not remain with the winery.

Tonnes Expected

This is the tonnage of grapes expected to be delivered to the winery during the next five vintages, based on the winery's forecasts of supply/production from the winery's vineyards and other growers' vineyards.

Tonnes Preferred

The 'tonnes preferred' for the current vintage is the tonnage of grapes that the winery would have preferred to have crushed in an "ideal" vintage not affected by weather, contract commitments etc. This can be higher or lower than the tonnes crushed.

The 'tonnes preferred' for future years is the tonnage of grapes the winery would like to receive in order to meet projected requirements in accordance with sales forecasts. This would take into account projected growth and any restrictions in the area of capital equipment and inventory expansion, but would not take into account any possible grape supply restrictions.

Respondents were asked to differentiate expected intake between grape grown on their own vineyards and fruit purchased from other growers.

Data Collection and Processing

McGrath-Kerr Business Consultants Pty Ltd

Publication Formatting and Comments

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Copies of this document can be obtained via the Board's internet site in pdf format.

DISCLAIMER

While every effort is taken to ensure the accuracy of the data in this report, the Wine Grapes Marketing Board will not be held liable for the reporting of individual wineries and hence the aggregate information contained in this report.

Persons using this report for the purposes of investment decisions should not rely solely on the information contained in the report. Communication with industry bodies, existing producers and wine grape processors are invaluable as the aggregate information may mask individual wine company demand preferences.

The Wine Grapes Marketing Board recommends that before any plantings of new grape vines or re-plantings occur growers should have a valid contract. Information on the items growers should ensure are contained within a contract can be obtained by contacting the Board office.

Note: Any discrepancy between totals and sums of components is due to rounding.

PART 1: PRICE & INTAKE DATA**Intake 2001-2005 (tonnes)**

VARIETY	2001	2002	2003	2004	2005	% (+/-)
WHITE						
Chardonnay	21,210	30,258	29,129	37,954	47,581	25%
Chenin Blanc	681.89	1,223	955	1,045	1,072	3%
Colombard	8,015	12,168	10,811	14,071	13,359	-5%
Marsanne	1,340	1,724	1,043	1,619	882	-46%
Muscat Gordo	4,175	5,750	5,025	5,709	5,138	-10%
Pinot Gris	np	np	np	208	1,201	478%
Riesling	1,621	3,478	3,885	4,244	4,327	2%
Sauvignon Blanc	2,141	3,808	2,515	3,260	3,371	3%
Semillon	33,692	43,350	32,275	39,046	37,859	-3%
Traminer	2,295	3,668	3,210	3,611	4,863	35%
Trebbiano	5,517	7,072	5,657	6,117	4,914	-20%
Verdelho	3,000	4,950	4,215	5,649	5,811	3%
Viognier	np	np	np	np	481	
Other White	2,006	3,039	2,378	2,946	2,141	-27%
Total White	85,692	120,488	101,099	125,479	133,000	6%
RED						
CabSavignon	12,732	20,813	14,790	22,733	22,452	-1%
Durif	1,488	2,007	3,397	4,422	4,469	1%
Grenache	251	549	296	362	302	-17%
Mataro	1,684	1,859	1,773	2,023	1,499	-26%
Merlot	7,577	15,639	10,354	15,426	15,280	-1%
Petit Verdot	214	1,213	1,466	2,671	2,537	-5%
Pinot Noir	1,786	2,546	2,401	2,747	2,882	5%
Ruby Cabernet	8,433	12,245	8,566	11,085	11,779	6%
Shiraz	37,114	47,371	48,231	63,145	51,942	-18%
Zinfandel	494	966	764	902	749	-17%
Other Red	1,807	2,760	2,913	3,889	4,525	16%
Total Red	73,580	107,968	94,952	129,405	118,416	-9%
TOTAL	159,272	228,455	196,051	254,884	251,416	-1%

np – Not published or not available

Weighted Average Prices summary, 2000-2005

VARIETY	2000	2001	2002	2003	2004	2005	05/04
WHITE	\$/t	\$/t	\$/t	\$/t	\$/t	\$/t	%
Chardonnay	565	649	761	865	882	653	-26%
Chenin Blanc	318	333	327	332	352	329	-7%
Colombard	325	363	379	358	378	359	-5%
Doradillo	267	274	288	275	287	276	-4%
Marsanne	314	332	341	315	361	335	-7%
Muscat Blanc	363	400	393	384	387	369	-5%
Muscat Gordo	356	373	363	360	360	351	-2%
Palomino	296	307	303	270	321	301	-6%
Riesling	401	435	494	489	431	395	-8%
Sauvignon Blanc	383	354	401	393	498	504	1%
Semillon	338	371	395	388	411	411	0%
Traminer	491	565	614	481	453	408	-10%
Trebbiano	309	343	316	312	335	326	-2%
Verdelho	348	362	377	335	374	357	-5%
All White	383	428	470	500	534	484	-9%
RED							
Cab Sauvignon	670	558	440	448	425	402	-5%
Durif	447	540	519	431	444	400	-10%
Grenache	442	440	418	311	343	318	-7%
Mataro	427	408	305	289	321	320	0%
Merlot	565	556	482	413	422	408	-3%
Petit Verdot	441	503	466	471	388	385	-1%
Pinot Noir	557	574	502	419	478	474	-1%
Ruby Cabernet	518	501	401	387	358	337	-6%
Shiraz	506	593	504	465	457	439	-4%
All red	526	561	467	438	431	410	-5%
TOTAL	439	488	469	470	482	449	-7%

The decline in average values to \$449 per tonne (\$482 in 2004) has impacted greatly on the gross farm gate value of production across the region. In average terms the gross value of production has declined from \$123 million in 2004 to \$113 million in 2005. The average reduction in EBIT returns to wine grape production enterprises is approximately \$30,000.

Production values are now as low in average terms as they were in the year 2000, albeit with a larger area of production.

Grape Purchases Summary 2005

Wine Grape Varieties	Tonnes ¹ harvested	Tonnes ² purchased	Purchase price at weighbridge		Total purchase value \$	Weighted average price (\$/t)
			Lowest price (\$/t)	Highest price(\$/t)		
WHITE						
Chardonnay	47,436	39,536	200	1,024	25,830,818	653
Chenin Blanc	1,073	868	320	350	286,066	329
Colombard	13,072	12,672	320	392	4,547,351	359
Doradillo	94	94	270	350	26,052	276
Marsanne	881	633	200	500	212,228	335
Muscat Blanc (Frontignac)	1,478	1,075	360	400	396,160	369
Muscat Gordo Blanco	5,160	5,014	250	400	1,760,223	351
Other white (grouped)	210	547	270	700	227,069	392
Palomino	175	167	280	310	50,262	301
Pinot Gris	1,528	1,181	650	1,125	787,085	666
Riesling	4,316	3,420	298	500	1,349,399	395
Sauvignon Blanc	3,389	2,655	400	600	1,337,635	504
Semillon	37,921	32,796	300	650	13,489,233	411
Traminer	4,821	3,547	300	500	1,446,847	408
Trebbiano	4,864	4,585	260	375	1,496,118	326
Unsound / distillation white ³	n/a	171			34,200	200
Verdelho	5,503	4,475	300	500	1,598,286	357
Viognier	481	475	450	650	242,461	511
TOTAL WHITE	132,402	113,911			55,117,493	484
RED						
Barbera	454	315	270	400	99,206	315
Cabernet Franc	402	402	280	350	116,128	289
Cabernet Sauvignon	21,946	18,030	200	723	7,254,063	402
Durif	4,440	4,118	237	800	1,647,811	400
Grenache	301	301	250	400	95,535	318
Malbec	35	35	300	300	10,374	300
Mataro (Mouvedre)	1,496	1,487	250	410	475,222	320
Merlot	14,920	11,736	200	766	4,783,521	408
Other red (grouped)	1,498	723	250	1,800	277,258	383
Petit Verdot	2,476	2,263	274	600	871,730	385
Pinot Noir	2,830	2,012	380	575	953,419	474
Ruby Cabernet	11,352	11,190	240	793	3,772,769	337
Sangiovese	884	804	280	500	259,220	323
Shiraz	51,477	45,590	200	1,100	20,022,183	439
Tempranillo	908	900	300	650	481,905	536
Unsound / distillation red ³	n/a	335			79,774	238
Zinfandel	749	560	200	300	132,720	237
TOTAL RED	116,168	100,801			41,332,838	410
TOTAL ALL VARIETIES	248,570	214,712			96,450,331	449

¹ **Tonnes harvested** column is a total of all wine grape production recorded from within the Riverina Wine Grapes Marketing Board area of operations. Constituted wine grape production subject to a Board service charge of \$3.90 per tonne = 204,027 tonnes. Valuing total crop at average prices is approx. \$113m – independent growers return \$92 million (\$103m in 2004).

² **Tonnes purchased** column includes wine grapes purchased in the Riverina Geographical Indication from independent producers, winery-owned production and winery controlled fruit sold. Surveyed production in the Riverina Geographical Indication area for 2005 totaled 251,416 tonnes. 2,846 tonnes were grown outside the Board's area of operations.

³ **Unsound wine grapes** that were used for distillation purposes were recorded in their variety category by the Board.

PART 2: INTAKE 2005 & PROJECTIONS 2006 – 2010**Summary Table 2005 – 2010 (tonnes)**

	2005	2006	2007	2008	2009	2010
WHITE GRAPES						
Expected intake (t)	133,000	153,681	166,980	175,642	182,934	183,339
Preferred Intake (t)	133,705	151,571	161,285	170,651	179,736	180,526
Expected-Preferred (t)	-705	2,110	5,695	4,991	3,199	2,813
Difference/Preferred (%)	-0.5%	1.4%	3.5%	2.9%	1.8%	1.6%
RED GRAPES						
Expected intake (t)	118,416	130,267	135,127	143,015	151,254	152,682
Preferred Intake (t)	111,264	126,339	131,429	139,690	147,804	149,389
Expected-Preferred (t)	7,152	3,929	3,698	3,325	3,451	3,293
Difference/Preferred (%)	6.4%	3.1%	2.8%	2.4%	2.3%	2.2%
TOTAL GRAPES						
Expected intake (t)	251,416	283,948	302,107	318,658	334,189	336,021
Preferred Intake (t)	244,969	277,909	292,714	310,342	327,540	329,915
Expected-Preferred (t)	6,447	6,039	9,393	8,316	6,649	6,106
Difference/Preferred (%)	2.6%	2.2%	3.2%	2.7%	2.0%	1.9%

A positive figure indicates expected intake exceeds demand.

Major Variety Analysis 2005 – 2010 (tonnes)

Cabernet Sauvignon	2005	2006	2007	2008	2009	2010
Expected intake (t)	22,452	24,632	23,760	23,899	24,103	24,215
Preferred Intake (t)	21,710	23,173	22,382	22,592	22,735	22,848
Expected-Preferred (t)	742	1,459	1,378	1,307	1,367	1,367
Difference/Preferred (%)	3.4%	6.3%	6.2%	5.8%	6.0%	6.0%

Variety in slight surplus over the period

Chardonnay	2005	2006	2007	2008	2009	2010
Expected intake (t)	47,581	57,456	67,399	72,586	76,880	77,111
Preferred Intake (t)	42,616	53,370	62,400	68,505	73,497	73,958
Expected-Preferred (t)	4,965	4,086	4,999	4,080	3,383	3,152
Difference/Preferred (%)	11.7%	7.7%	8.0%	6.0%	4.6%	4.3%

Variety in slight surplus over the period

Colombard	2005	2006	2007	2008	2009	2010
Expected intake (t)	13,359	13,567	13,125	13,120	13,058	13,063
Preferred Intake (t)	13,518	13,874	13,433	13,489	13,475	13,537
Expected-Preferred (t)	-159	-307	-308	-369	-417	-474
Difference/Preferred (%)	-1.2%	-2.2%	-2.3%	-2.7%	-3.1%	-3.5%

Variety in balance.

Merlot	2005	2006	2007	2008	2009	2010
Expected intake (t)	15,280	18,011	18,371	20,524	22,853	23,740
Preferred Intake (t)	15,209	17,371	17,841	19,989	22,292	23,194
Expected-Preferred (t)	71	641	530	535	561	546
Difference/Preferred (%)	0.5%	3.7%	3.0%	2.7%	2.5%	2.4%

Variety in balance

Muscat Gordo	2005	2006	2007	2008	2009	2010
Expected intake (t)	5,138	5,234	5,158	5,163	4,651	4,564
Preferred Intake (t)	5,311	5,363	5,303	5,324	4,797	4,715
Expected-Preferred (t)	-173	-129	-145	-162	-145	-151
Difference/Preferred (%)	-3.3%	-2.4%	-2.7%	-3.0%	-3.0%	-3.2%

Variety in balance

Pinot Gris	2005	2006	2007	2008	2009	2010
Expected intake (t)	1,201	4,055	7,156	8,532	10,162	10,162
Preferred Intake (t)	5,169	6,259	7,359	8,704	10,311	10,361
Expected-Preferred (t)	-3,968	-2,204	-203	-172	-149	-199
Difference/Preferred (%)	-76.8%	-35.2%	-2.8%	-2.0%	-1.4%	-1.9%

Early shortage is being addressed by increased production in medium term

Sauvignon Blanc	2005	2006	2007	2008	2009	2010
Expected intake (t)	3,371	3,895	3,980	4,365	4,525	4,565
Preferred Intake (t)	3,867	4,084	4,109	4,409	4,559	4,609
Expected-Preferred (t)	-495	-189	-129	-44	-34	-44
Difference/Preferred (%)	-12.8%	-4.6%	-3.1%	-1.0%	-0.7%	-1.0%

Variety in balance

Semillon	2005	2006	2007	2008	2009	2010
Expected intake (t)	37,859	42,098	41,393	42,003	42,440	42,552
Preferred Intake (t)	37,903	41,054	39,610	40,059	41,632	41,774
Expected-Preferred (t)	-43	1,044	1,783	1,944	808	778
Difference/Preferred (%)	-0.1%	2.5%	4.5%	4.9%	1.9%	1.9%

Variety in balance

Shiraz	2005	2006	2007	2008	2009	2010
Expected intake (t)	51,942	59,399	65,048	70,914	76,573	77,014
Preferred Intake (t)	47,808	58,408	64,166	70,217	75,848	76,437
Expected-Preferred (t)	4,133	991	882	697	725	577
Difference/Preferred (%)	8.6%	1.7%	1.4%	1.0%	1.0%	0.8%

Variety in balance

Intake 2005 & Projections by Variety 2006 (tonnes)

	Usage 2005				2006 projections			
	Tonnes crushed			Tonnes Preferred	Tonnes EXPECTED			Tonnes Preferred
	Own grown	Purchased	Total		Own grown	Purchased	Total	
WHITE								
Chardonnay	8,045	39,536	47,581	42,616	9,401	48,055	57,456	53,370
Chenin Blanc	204	868	1,072	967	230	783	1,013	989
Colombard	687	12,672	13,359	13,518	736	12,831	13,567	13,874
Marsanne	249	633	882	985	372	831	1,203	1,031
Muscat Blanc	14	1,075	1,089	1,260	14	995	1,009	1,214
Muscat Gordo	123	5,014	5,138	5,311	138	5,096	5,234	5,363
Pinot Gris	20	1,181	1,201	5,169	20	4,035	4,055	6,259
Riesling	907	3,420	4,327	4,378	932	3,534	4,466	4,841
Sauvignon Blanc	716	2,655	3,371	3,867	562	3,333	3,895	4,084
Semillon	5,063	32,796	37,859	37,903	5,726	36,372	42,098	41,054
Traminer	1,281	3,582	4,863	4,635	1,288	3,625	4,913	4,720
Trebbiano	329	4,585	4,914	4,845	332	4,604	4,936	4,774
Verdelho	1,335	4,475	5,811	6,593	2,337	4,505	6,842	6,809
Viognier	7	475	481	555	7	2,212	2,219	2,249
Other white	107	944	1,052	1,103	73	703	776	941
TOTAL WHITE	19,088	113,912	133,000	133,705	22,168	131,513	153,681	151,571
RED								
Cab Sauvignon	4,422	18,030	22,452	21,710	5,463	19,169	24,632	23,173
Durif	351	4,118	4,469	4,595	360	3,952	4,312	4,307
Grenache	1	301	302	724	1	313	314	282
Mataro (Mouvedre)	12	1,487	1,499	1,440	20	1,001	1,021	985
Merlot	3,544	11,736	15,280	15,209	4,658	13,353	18,011	17,371
Petit Verdot	273	2,263	2,537	2,437	315	2,405	2,720	2,715
Pinot Noir	870	2,012	2,882	2,489	796	2,316	3,112	3,149
Ruby Cabernet	589	11,190	11,779	10,412	620	11,479	12,099	11,632
Sangiovese	75	804	879	878	76	820	896	896
Shiraz	6,352	45,590	51,942	47,808	6,974	52,425	59,399	58,408
Tempranillo	9	900	909	946	13	850	863	863
Zinfandel	189	560	749	669	190	560	750	750
Other red	929	1,809	2,738	1,947	839	1,300	2,139	1,808
TOTAL RED	17,617	100,799	118,416	111,264	20,325	109,942	130,267	126,339
TOTAL ALL	36,705	214,711	251,416	244,969	42,493	241,455	283,948	277,909

Projections by Variety 2007 – 2008 (tonnes)

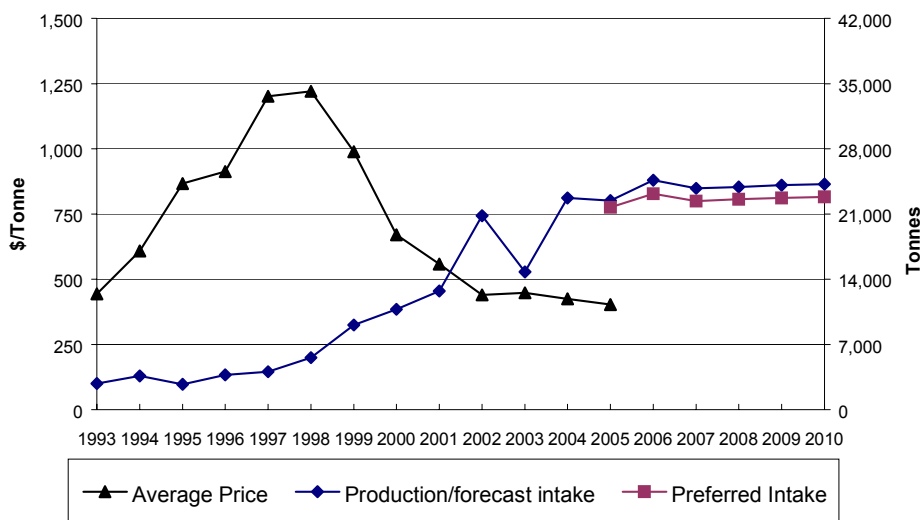
	2007 projections				2008 projections			
	Tonnes crushed			Tonnes Preferred	Tonnes EXPECTED			Tonnes Preferred
	Own grown	Purchased	Total		Own grown	Purchased	Total	
WHITE								
Chardonnay	9,601	57,798	67,399	62,400	9,801	62,785	72,586	68,505
Chenin Blanc	230	793	1,023	1,008	230	793	1,023	1,018
Colombard	736	12,389	13,125	13,433	736	12,384	13,120	13,489
Marsanne	372	766	1,138	977	372	766	1,138	988
Muscat Blanc	14	995	1,009	1,214	14	1,045	1,059	1,214
Muscat Gordo	138	5,020	5,158	5,303	138	5,025	5,163	5,324
Pinot Gris	20	7,136	7,156	7,359	20	8,512	8,532	8,704
Riesling	932	3,544	4,476	4,874	932	3,539	4,471	4,912
Sauvignon Blanc	562	3,418	3,980	4,109	562	3,803	4,365	4,409
Semillon	5,996	35,397	41,393	39,610	5,996	36,007	42,003	40,059
Traminer	1,288	3,715	5,003	4,803	1,288	3,835	5,123	4,927
Trebbiano	332	4,476	4,808	4,659	332	4,451	4,783	4,629
Verdelho	2,337	4,505	6,842	6,870	2,337	4,600	6,937	6,938
Viognier	10	3,271	3,281	3,311	15	3,714	3,729	3,759
Other white	75	1,115	1,190	1,355	75	1,537	1,612	1,777
TOTAL WHITE	22,643	144,337	166,980	161,285	22,848	152,794	175,642	170,651
RED								
Cab Sauvignon	5,463	18,297	23,760	22,382	5,463	18,436	23,899	22,592
Durif	360	3,932	4,292	4,287	360	3,942	4,302	4,297
Grenache	1	313	314	282	1	313	314	282
Mataro (Mouvedre)	20	1,001	1,021	985	20	1,001	1,021	985
Merlot	4,658	13,713	18,371	17,841	4,658	15,866	20,524	19,989
Petit Verdot	315	2,403	2,718	2,713	315	2,408	2,723	2,718
Pinot Noir	796	2,294	3,090	3,132	796	2,299	3,095	3,143
Ruby Cabernet	620	11,191	11,811	11,313	620	10,891	11,511	11,131
Sangiovese	76	820	896	896	76	825	901	901
Shiraz	6,974	58,074	65,048	64,166	6,974	63,940	70,914	70,217
Tempranillo	13	850	863	863	13	850	863	863
Zinfandel	190	570	760	760	190	570	760	760
Other red	839	1,345	2,184	1,808	839	1,350	2,189	1,813
TOTAL RED	20,325	114,802	135,127	131,429	20,325	122,690	143,015	139,690
TOTAL ALL	42,968	259,139	302,107	292,714	43,173	275,485	318,658	310,342

Projections by Variety 2009 – 2010 (tonnes)

	2009 projections				2010 projections			
	Tonnes crushed			Tonnes Preferred	Tonnes EXPECTED			Tonnes Preferred
	Own grown	Purchased	Total		Own grown	Purchased	Total	
WHITE								
Chardonnay	9,801	67,079	76,880	73,497	9,801	67,310	77,111	73,958
Chenin Blanc	230	825	1,055	1,029	230	838	1,068	1,040
Colombard	736	12,322	13,058	13,475	736	12,327	13,063	13,537
Marsanne	372	772	1,144	999	372	775	1,147	1,011
Muscat Blanc	14	1,060	1,074	1,214	14	1,080	1,094	1,214
Muscat Gordo	138	4,513	4,651	4,797	138	4,426	4,564	4,715
Pinot Gris	20	10,142	10,162	10,311	20	10,142	10,162	10,361
Riesling	932	3,544	4,476	4,953	932	3,551	4,483	4,960
Sauvignon Blanc	562	3,963	4,525	4,559	562	4,003	4,565	4,609
Semillon	5,996	36,444	42,440	41,632	5,996	36,556	42,552	41,774
Traminer	1,288	3,960	5,248	5,056	1,288	3,960	5,248	5,060
Trebbiano	332	4,425	4,757	4,599	332	4,432	4,764	4,604
Verdelho	2,337	4,677	7,014	7,000	2,337	4,731	7,068	7,067
Viognier	15	4,317	4,332	4,332	15	4,319	4,334	4,334
Other white	75	2,042	2,117	2,282	75	2,042	2,117	2,282
TOTAL WHITE	22,848	160,086	182,934	179,736	22,848	160,491	183,339	180,526
RED								
CabSavignon	5,463	18,640	24,103	22,735	5,463	18,752	24,215	22,848
Durif	360	3,947	4,307	4,302	360	3,957	4,317	4,307
Grenache	1	318	319	282	1	320	321	282
Mataro (Mouvedre)	20	1,003	1,023	985	20	1,004	1,024	985
Merlot	4,658	18,195	22,853	22,292	4,658	19,082	23,740	23,194
Petit Verdot	315	2,413	2,728	2,723	315	2,413	2,728	2,723
Pinot Noir	796	2,314	3,110	3,154	796	2,323	3,119	3,165
Ruby Cabernet	620	10,891	11,511	11,131	620	10,851	11,471	11,091
Sangiovese	76	825	901	901	76	830	906	906
Shiraz	6,974	69,600	76,573	75,848	6,974	70,041	77,014	76,437
Tempranillo	13	850	863	863	13	850	863	863
Zinfandel	190	580	770	770	190	580	770	770
Other red	839	1,355	2,194	1,818	839	1,355	2,194	1,818
TOTAL RED	20,325	130,930	151,254	147,804	20,325	132,357	152,682	149,389
TOTAL ALL	43,173	291,016	334,189	327,540	43,173	292,848	336,021	329,915

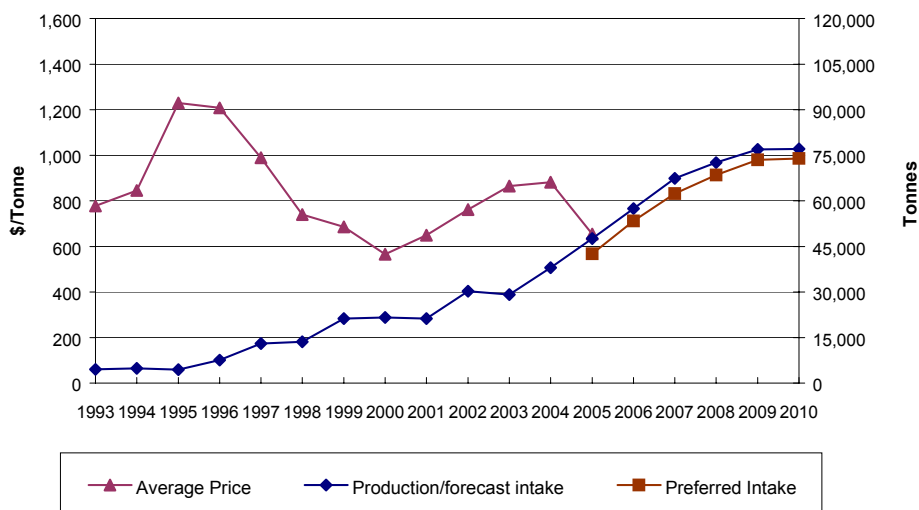
PART 3: VARIETY ANALYSIS

Cabernet Sauvignon



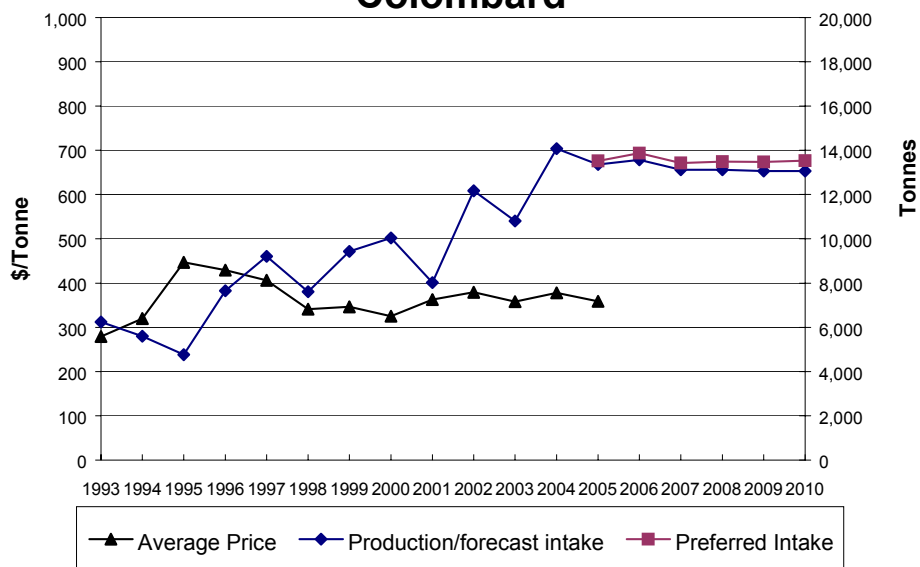
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	9,088	10,787	12,732	20,813	14,790	22,733	22,452	24,632	23,760	23,899	24,103	24,215
Preferred Intake							21,710	23,173	22,382	22,592	22,735	22,848
Average Price	989	670	558	440	448	425	402					

Chardonnay



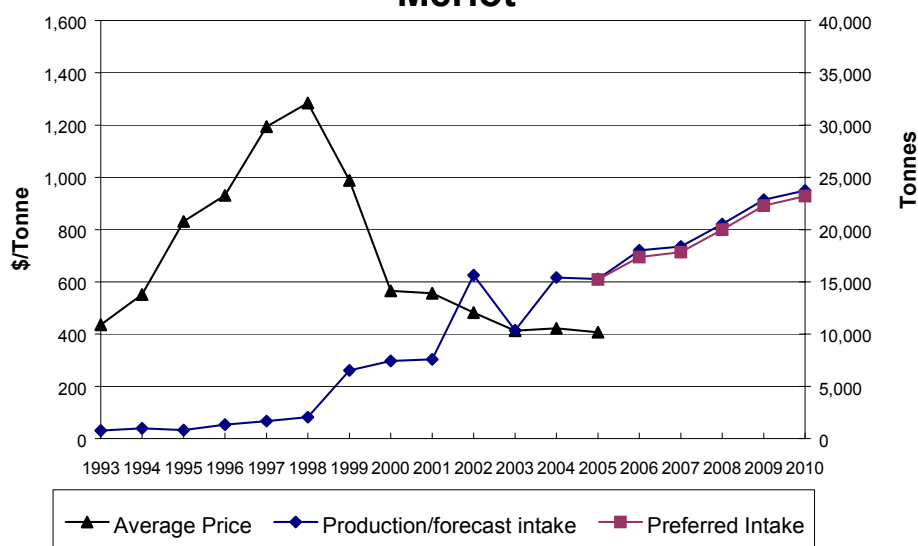
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	21,223	21,578	21,210	30,258	29,129	37,954	47,581	57,456	67,399	72,586	76,880	77,111
Preferred Intake							42,616	53,370	62,400	68,505	73,497	73,958
Average Price	686	565	649	761	865	882	653					

Colombard



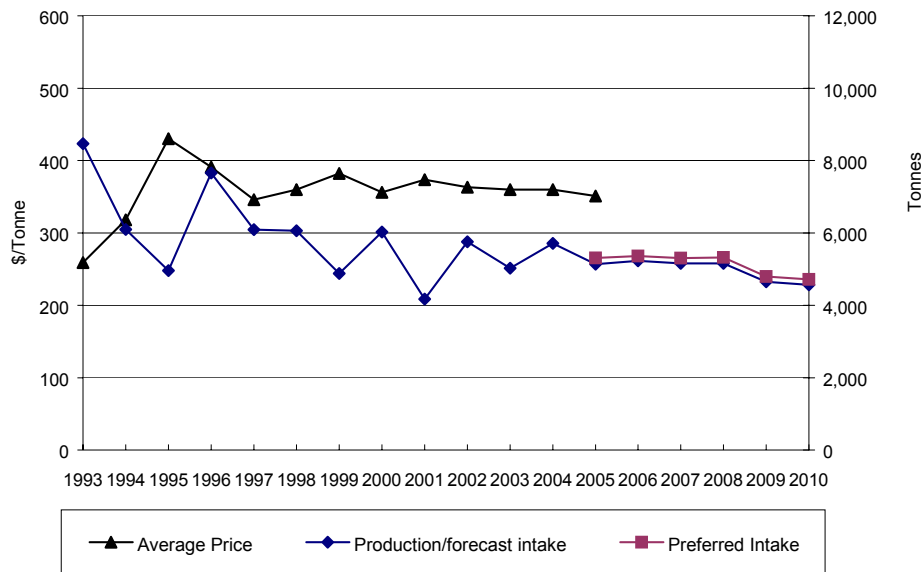
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	9,429	10,041	8,015	12,168	10,811	14,071	13,359	13,567	13,125	13,120	13,058	13,063
Preferred Intake							13,518	13,874	13,433	13,489	13,475	13,537
Average Price	346	325	363	379	358	378	359					

Merlot



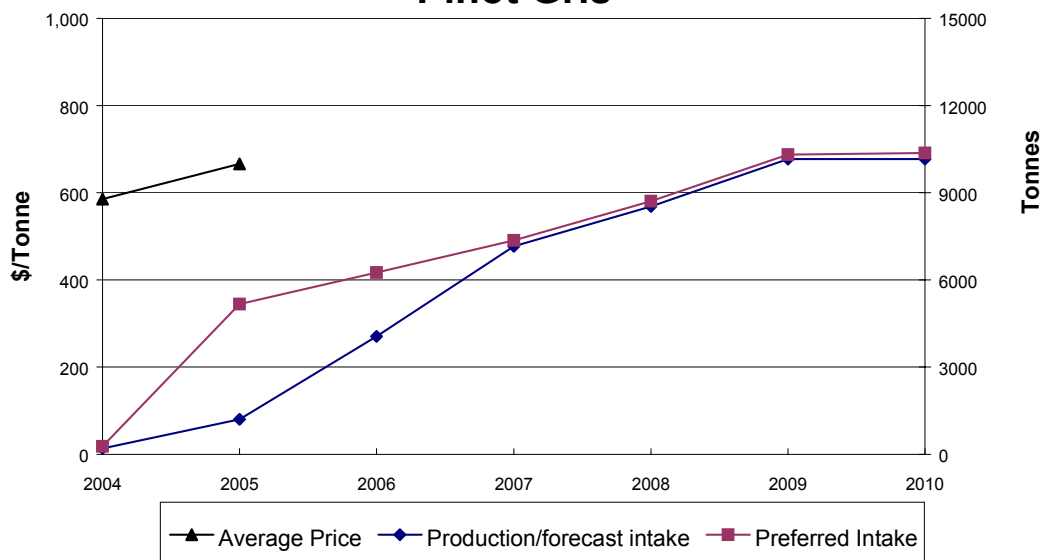
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	6,525	7,446	7,577	15,639	10,354	15,426	15,280	18,011	18,371	20,524	22,853	23,740
Preferred Intake							15,209	17,371	17,841	19,989	22,292	23,194
Average Price	988	565	556	482	413	422	408					

Muscat Gordo



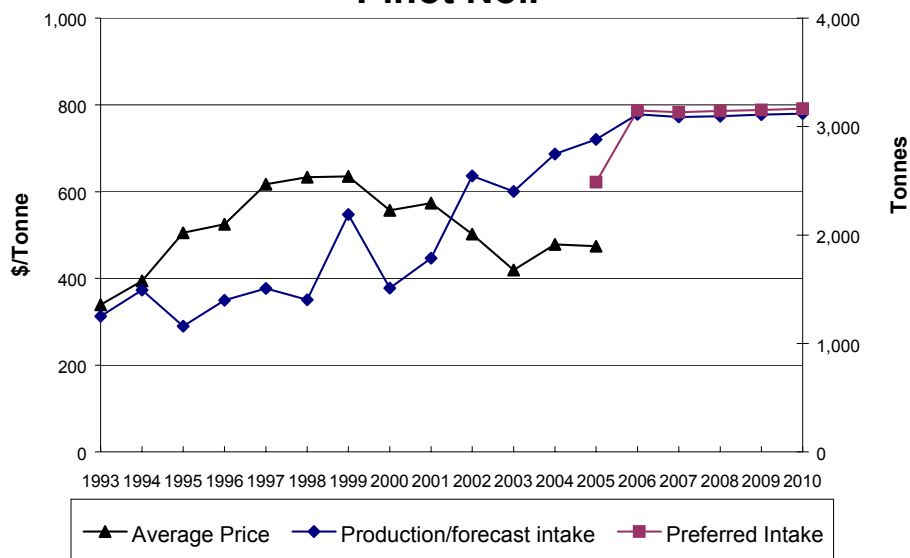
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	4,880	6,022	4,175	5,750	5,025	5,709	5,138	5,234	5,158	5,163	4,651	4,564
Preferred Intake							5,311	5,363	5,303	5,324	4,797	4,715
Average Price	382	356	373	363	360	360	351					

Pinot Gris



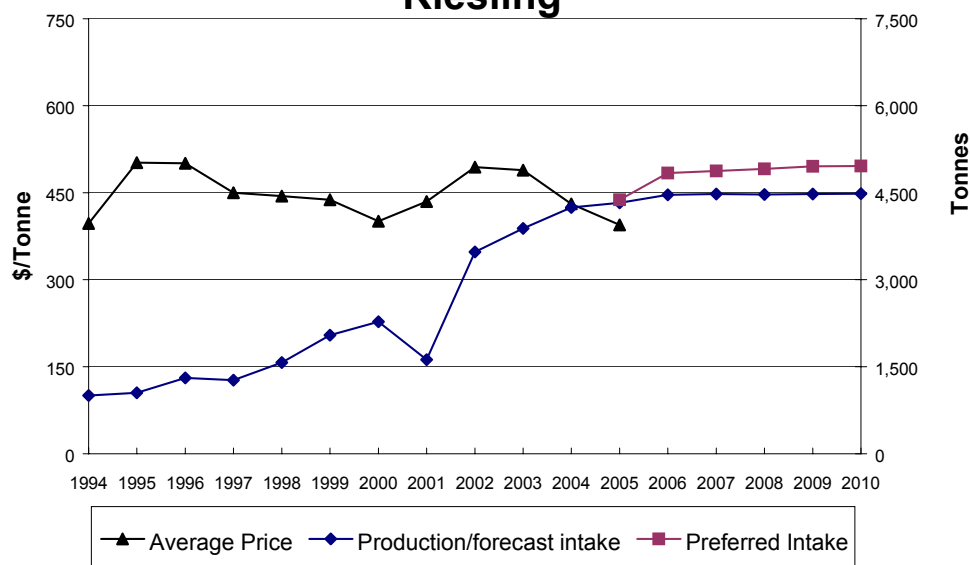
	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	208	1,201	4,055	7,156	8,532	10,162	10,162
Preferred Intake	279	5,169	6,259	7,359	8,704	10,311	10,361
Average Price	585	666					

Pinot Noir



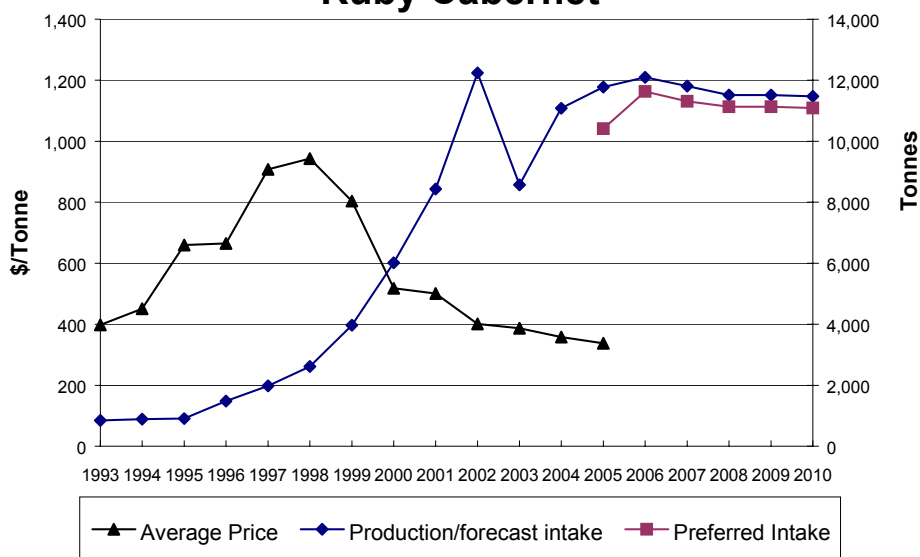
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	2,191	1,510	1,786	2,546	2,401	2,747	2,882	3,112	3,090	3,095	3,110	3,119
Preferred Intake							2,489	3,149	3,132	3,143	3,154	3,165
Average Price	635	557	574	502	419	478	474					

Riesling



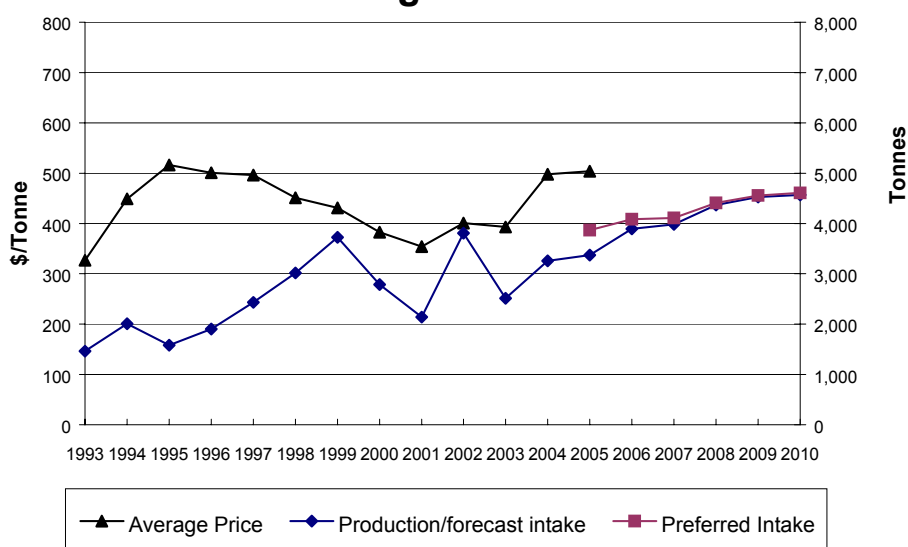
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	1,570	2,045	2,279	1,621	3,478	3,885	4,244	4,327	4,466	4,476	4,471	4,476	4,483
Preferred Intake								4,378	4,841	4,874	4,912	4,953	4,960
Average Price	444	438	401	435	494	489	431	395					

Ruby Cabernet



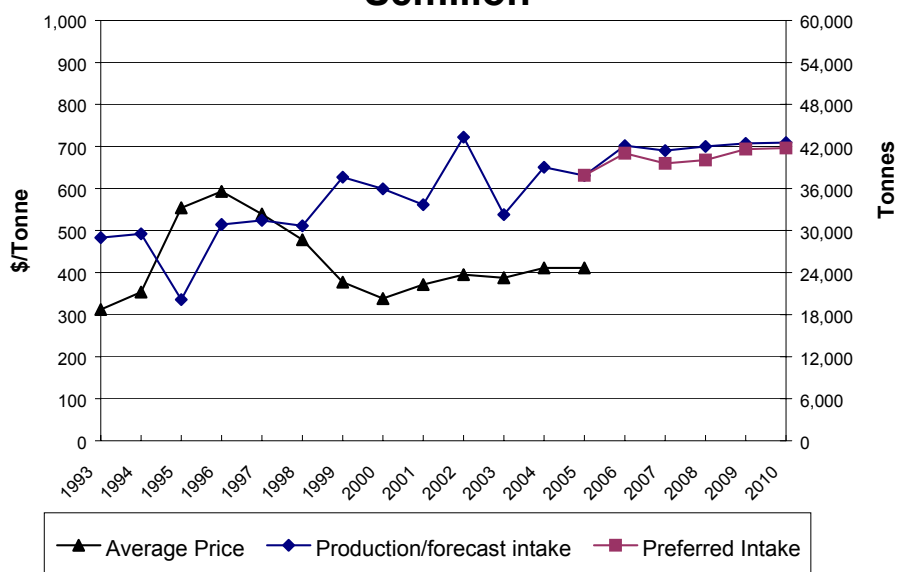
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	3,970	6,014	8,433	12,245	8,566	11,085	11,779	12,099	11,811	11,511	11,511	11,471
Preferred Intake							10,412	11,632	11,313	11,131	11,131	11,091
Average Price	804	518	501	401	387	358	337					

Sauvignon Blanc



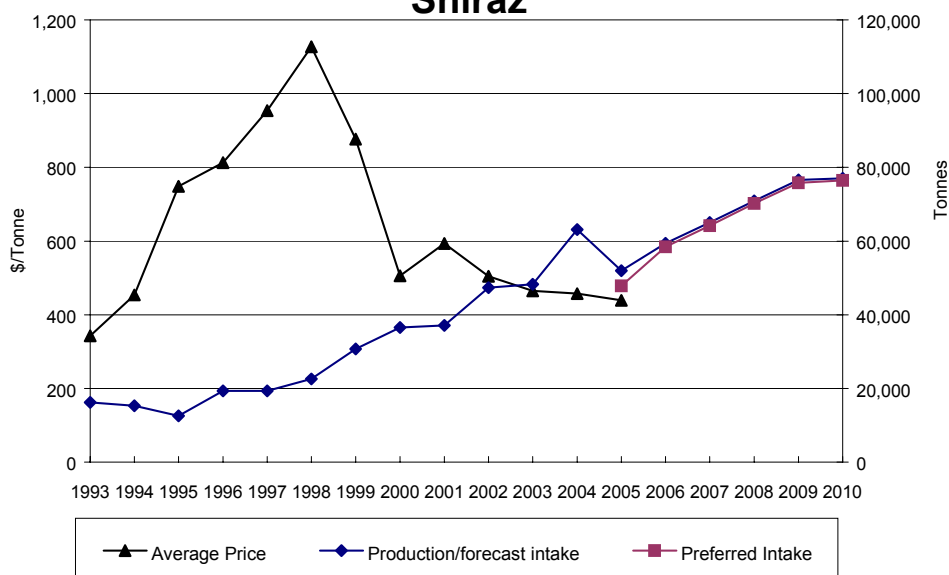
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	3,726	2,784	2,141	3,808	2,515	3,260	3,371	3,895	3,980	4,365	4,525	4,565
Preferred Intake							3,867	4,084	4,109	4,409	4,559	4,609
Average Price	431	383	354	401	393	498	504					

Semillon



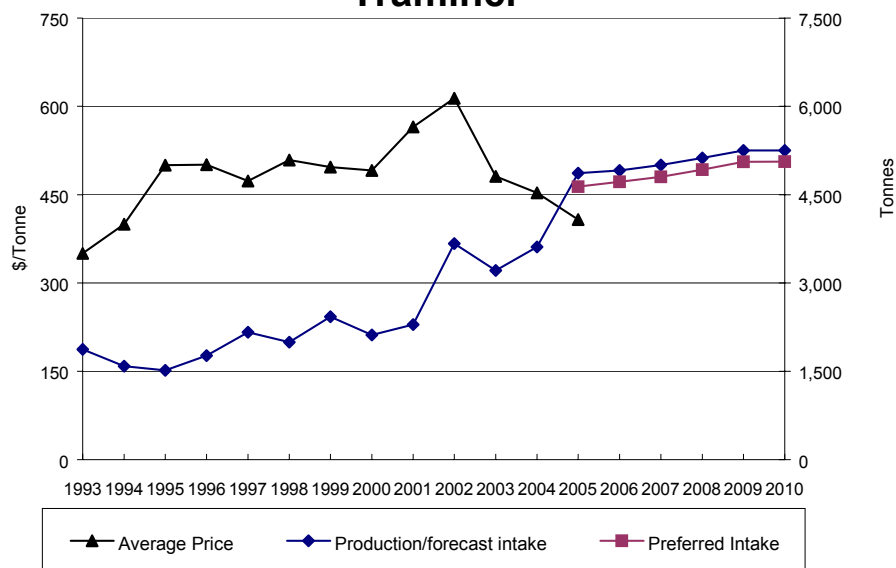
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	37,615	35,956	33,692	43,350	32,275	39,046	37,859	42,098	41,393	42,003	42,440	42,552
Preferred Intake							37,903	41,054	39,610	40,059	41,632	41,774
Average Price	377	338	371	395	388	411	411					

Shiraz



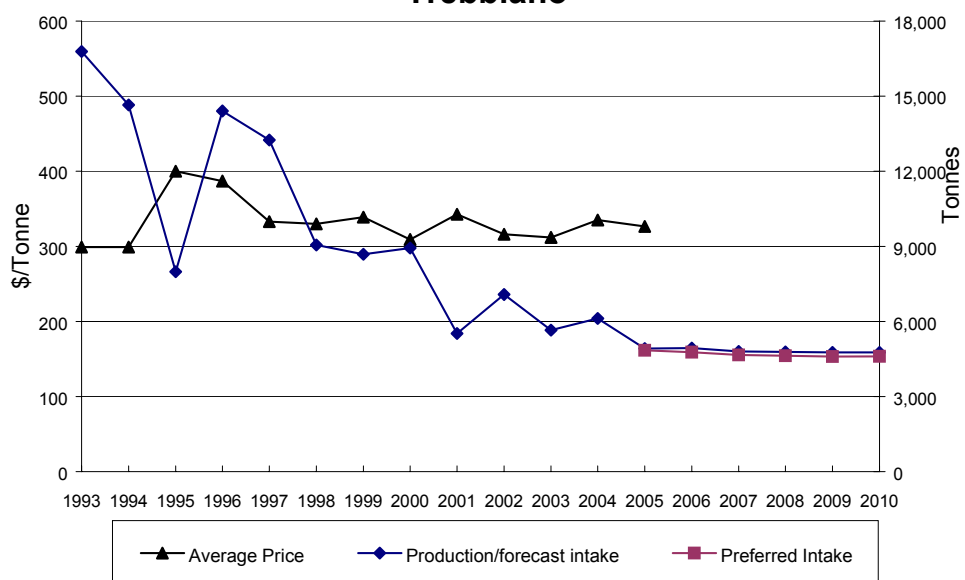
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	30,731	36,507	37,114	47,371	48,231	63,145	51,942	59,399	65,048	70,914	76,573	77,014
Preferred Intake							47,808	58,408	64,166	70,217	75,848	76,437
Average Price	877	506	593	504	465	457	439					

Traminer

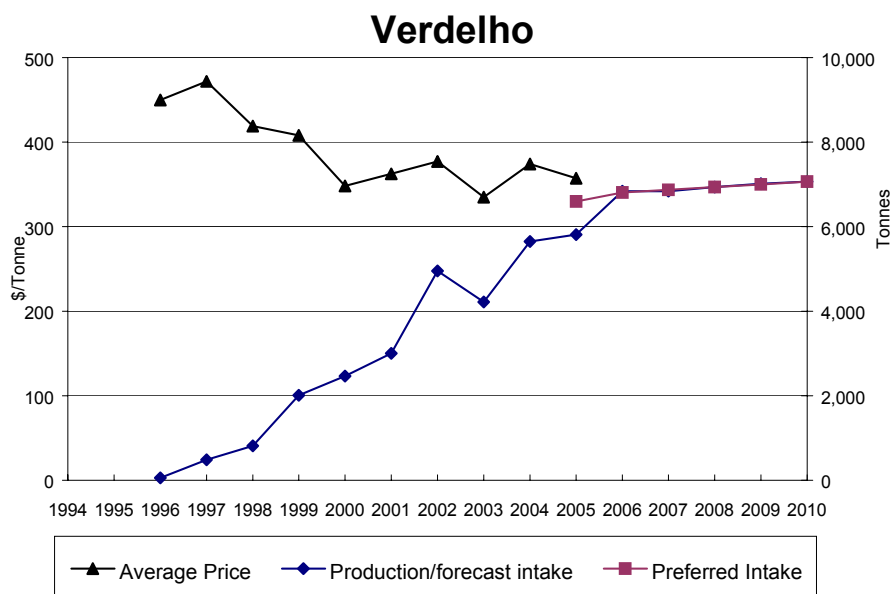


	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	2,425	2,116	2,295	3,668	3,210	3,611	4,863	4,913	5,003	5,123	5,248	5,248
Preferred Intake							4,635	4,720	4,803	4,927	5,056	5,060
Average Price	497	491	565	614	481	453	408					

Trebbiano



	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	8,680	8,934	5,517	7,072	5,657	6,117	4,914	4,936	4,808	4,783	4,757	4,764
Preferred Intake							4,845	4,774	4,659	4,629	4,599	4,604
Average Price	339	309	343	316	312	335	326					



	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Production/forecast intake	2,011	2,466	3,000	4,950	4,215	5,649	5,811	6,842	6,842	6,937	7,014	7,068
Preferred Intake							6,593	6,809	6,870	6,938	7,000	7,067
Average Price	408	348	362	377	335	374	357					

SURVEY CONCLUSIONS

The data contained in the Riverina Pricing & Utilisation Survey 2005 – 2010 has been compiled from data collected by regional wineries. It is important that growers and potential investors within the industry look further than these figures when making decisions to plant wine grapes. **The use of this survey as a guide to planting intentions is concerning and all industry participants must be aware of the inherent risks of this.**

In terms of the future Riverina regional forecast position, care must be taken in terms of these trends as the continued pressure of wine grapes from other Australian regions being purchased locally may work to provide sufficient volumes to meet local winery demand. Local availability is a key factor that must be controlled in terms of planting speculations. Growers should aim at all times to get written confirmation (contracts) that any plantings will be taken up for lengthy duration. Ideally such contracts should contain a sustainable base price for the appropriate development of the market and should include the contract provisions as recommended by the national industry Wine Industry Relations Committee (joint working committee of the Wine Grape Growers Australia and the Winemakers' Federation of Australia).

Forecasted differences between the winery preferred and expected tonnes should be read with caution by the industry as winery forecasts relate to sales increases across the board, which in reality may not occur. Aggregated figures can also mask individual wineries reductions in preferences for key varieties. Growers should question the survey data that was provided to this survey from their individual wine grape purchasers.

The 2005 year saw a return to the region producing more white wine grapes than red, a position that has stood for many years except in 2004 when Shiraz production ballooned unexpectedly. Semillon remained well balanced in terms of volume and did fall as would have been expected if it follows the up and down trend of the 2001 – 2004 period. Shiraz production dropped a significant 18%, this was forecasted by producers that noted bunch numbers were the same of the previous abundant season but their size was reduced. Also in a number of emerging varieties notably Pinot Gris (or Grigio) production rose, it is well on the way to become a significant variety in the region, serving consumers taste shifts.

Chardonnay prices have declined rapidly in the past 12 months now that supply is exceeding current winery requirements. Notably Chardonnay production has more than doubled since 2001, however the price has now dropped back to the values being received by growers in 2001. The possibility of the price moving downward now that supply has lifted is very high and should work to limit further plantings.

Overall white varieties dropped in value which reflected winery sentiment that sufficient production is now occurring across these varieties. The reductions in prices were not warranted regionally as production did decline due in part to hail damage and the drier growing conditions, however the price declines were more a symptom of large volumes of wine grapes becoming available from other inland region's of Australia at lower than sustainable prices. These wine grapes are likely to continue to impact on the Riverina regions price offer until industry sales grow to meet the available supply and plantings abate.

Red wine grapes also suffered price declines on top of a major reduction in production. The same national factors played a part in the reductions to prices, i.e. wine grapes from other regions. The proliferation of colour as a price determinant also has impacted on the average returns for key red varieties and may continue to do so until the industry finds more appropriate and accountable mechanisms for grading.

The data shown in the major variety analysis shows the fickle nature of the industry due in part to the availability of excess wine grapes from other regions and a perceived desire to continue the supply development in the industry. In previous Riverina Pricing & Utilisation Surveys winery forecasted preferred intake for 2005 showed a different story than actually became the case in 2005.

The following tables of key varieties have been provided to show how much winery sentiment has altered over the years.

Cabernet Sauvignon		2005	2006	2007	2008	2009	2010
2004 position	Expected intake (t)	24,128	25,193	25,793	32,941	37,931	
2005 position	[Actual]\Expected intake (t)	[22,452]	24,632	23,760	23,899	24,103	24,215
2004 position	Preferred Intake (t)	27,324	29,172	30,720	36,686	39,197	
2005 position	Preferred Intake (t)	21,710	23,173	22,382	22,592	22,735	22,848

For Cabernet Sauvignon the winery position has altered with regard to their preferred intake, in 2004 wineries showed a steady demand position for this variety of greater than 3,000 tonnes above the expected vintage intake level (above 10%¹ variation out until 2008). This position has now dropped by almost 6,000 tonnes in the 2005 year (down to 3.4% variation) and is now indicating that a minor surplus exists. While the surplus in this variety is minor it shows that wineries preferred position does alter.

Chardonnay		2005	2006	2007	2008	2009	2010
2002 position	Expected intake (t)	38,056	42,663	42,908			
2003 position	Expected intake (t)	50,610	67,039	76,709	79,647		
2004 position	Expected intake (t)	49,652	61,151	70,638	76,095	81,898	
2005 position	[Actual]\Expected intake (t)	[47,581]	57,456	67,399	72,586	76,880	77,111
2002 position	Preferred Intake (t)	37,497	40,937	44,485			
2003 position	Preferred Intake (t)	62,309	67,909	73,629	76,019		
2004 position	Preferred Intake (t)	58,861	67,602	70,427	76,935	82,573	
2005 position	Preferred Intake (t)	42,616	53,370	62,400	68,505	73,497	73,958

Chardonnay positioning has been critical in relation to the build-up of plantings across the region. If we look back to the 2002 survey, wineries were indicating that this variety was well balanced with variations between the expected and preferred intake levels (green shading) minor from 2005 all the way through until the 2007 vintage season (well balanced and not requiring further plantings development).

In 2003 (white shading) the forecast for 2005 changed dramatically (19% variation) and was a major signal to wine grape producers that strong demand for this variety required more production (almost 12,000 tonnes), which promptly balanced out in the 2006 to 2008 years. During these years price signals also remained high. The 2004 survey data (yellow shading) also forecast that this variety would be greater than 9,000 tonnes in shortage (15.6% variation) for the 2005 vintage season but would be reduced in 2006 leading to a well balanced position in 2007 – 2009.

¹ It is accepted that a variation in the expected and preferred tonnes position of 10% and above is a signal that further plantings of a variety may be required. Less than 10% would be balanced.

The current survey shows a dramatic fall back in prices from the previous vintage of 26% (\$882 to \$653) which was also tied in to the rise in production of 25% (37,954 – 47,581 tonnes). While for the current vintage production spiked it is poignant to note that it is well below the preferred intake position given for the 2005 vintage in the forecasts of 2003 and 2004. Indeed a more subdued position for the next five years has been provided by wineries in the current survey (minor surplus out until 2010).

What is concerning is that the expected productions levels provided within this survey for 2006 until 2009 are less than the demand position stated in the last 2 surveys. This shows how the available wine grapes, wine stocks and consumer preferences have altered throughout time.

Merlot		2005	2006	2007	2008	2009	2010
2004 position	Expected intake (t)	16,667	18,417	19,845	25,300	33,547	
2005 position	[Actual]\Expected intake (t)	[15,280]	18,011	18,371	20,524	22,853	23,740
2004 position	Preferred Intake (t)	24,681	27,217	29,795	31,704	35,761	
2005 position	Preferred Intake (t)	15,209	17,371	17,841	19,989	22,292	23,194

While the current survey data for Merlot indicates a well balanced variety a different picture can be drawn from the survey data from 2004. The 2004 survey (pink shading) forecast strong demand for this variety in 2005, in reality the price has declined along with the production of this variety falling to almost 10,000 tonnes below forecast demand for the current vintage.

The more subdued position in 2005 (white shading) shows that the industry is now more cautious in its predictions, perhaps rightly due is part to the availability of this variety from other inland regions and cool regions that are in surplus at very low prices.

Muscat Gordo		2005	2006	2007	2008	2009	2010
2004 position	Expected intake (t)	5,649	6,024	5,946	6,011	5,581	
2005 position	[Actual]\Expected intake (t)	[5,138]	5,234	5,158	5,163	4,651	4,564
2004 position	Preferred Intake (t)	7,502	7,827	8,627	8,804	9,854	
2005 position	Preferred Intake (t)	5,311	5,363	5,303	5,324	4,797	4,715

With Muscat Gordo again the figures are now more subdued than the previous survey information. Whereas in 2004 (green shading) the industry perceived a shortage for the 2005 vintage this has not been the case.

This variety has in fact now returned to a more balanced position for the longer term projection, much different from the previous survey that was calling for production to almost double by 2009. Demand has moved aside to a more steady level of production.

Semillon		2005	2006	2007	2008	2009	2010
2004 position	Expected intake (t)	42,043	43,738	43,521	44,860	46,977	
2005 position	[Actual]\Expected intake (t)	[37,859]	42,098	41,393	42,003	42,440	42,552
2004 position	Preferred Intake (t)	43,892	45,928	46,429	48,805	50,637	
2005 position	Preferred Intake (t)	37,903	41,054	39,610	40,059	41,632	41,774

Semillon is another variety that is also showing a reduction in the level of demand. In 2004 (green shading) wineries signaled that more tonnes of this variety was needed to meet the preferred level of intake, providing a moderate level of demand out until 2009.

Now in 2005 the returns (\$/tonne) have steadied for Semillon, winery demand has waned and is now indicating that it could be over supplied out until 2010, given the minor difference in positions it could be said that this variety is well balanced and that little or no plantings are required.

An answer to why demand has subdued for this variety could be the abundance of Chardonnay across the region which has a balancing effect on the demand for Semillon due to wineries ability to blend a percentage of Semillon into Chardonnay. While volumes of Chardonnay is high and at reduced prices Chardonnay wine production is likely to be 100% true to variety.

Shiraz		2005	2006	2007	2008	2009	2010
2002 position	Expected intake (t)	57,372	60,019	62,059			
2003 position	Expected intake (t)	56,411	58,129	58,274	59,646		
2004 position	Expected intake (t)	66,746	73,688	85,037	93,874	101,918	
2005 position	[Actual] Expected intake (t)	[51,942]	59,399	65,048	70,914	76,573	77,014
2002 position	Preferred Intake (t)	50,429	53,611	56,047			
2003 position	Preferred Intake (t)	69,697	70,428	72,169	72,669		
2004 position	Preferred Intake (t)	80,141	85,662	89,299	94,410	102,909	
2005 position	Preferred Intake (t)	47,808	58,408	64,166	70,217	75,848	76,437

Shiraz is an interesting variety (as with Chardonnay) and to look back at the position of wineries it is interesting to note that through this time major export market development has occurred post 2002 by major wineries in the Riverina, notably Casella Wines [yellow tail]. This has stimulated growth in demand, most noticeably the preferred intake position from the 2004 survey year (light blue shading).

Supply and demand in 2002 (pink shading) showed a major oversupply of this variety that would have prevented any development in plantings across the region. 12 months later 2003 (white shading) the position had reversed with the forecast for strong growth required, again in 2004 (light blue shading) the same story was told to industry but with a bit more moderation in the future years 2007 – 2009.

The variations for the 2005 and later years are a major cause for concern. For example the forecast position of 2005 was: 6,943 tonnes oversupply (in 2002); 13,256 tonnes undersupply (in 2003); 13,395 tonnes undersupply (in 2004); 4,134 tonnes oversupply (in 2005). Development decisions within such a market environment could involve high risk as not just regional production needs to be taken into account.

The major concern of the industry is the cyclical nature of the market. Production lead times account for a part of the process but these are stimulated by the market. This season 251,416 tonnes was harvested off 54 different varieties across the region. This figure accounts for the production that was taken up and purchased (at varying prices).

What directions or investment decisions can be drawn from these reports? For example the following table shows the total expected crush for the 2005 that wineries have forecast will be produced and the variation between this and what they have advised industry they were prepared to purchase (the 2005 year is the actual purchased tonnes):

2005 Vintage Year Forecasts		
Forecast Year	Total Tonnes expected	Over (under) supply
2002	254,714	15,271 tonnes
2003	243,796	(32,098) tonnes
2004	280,237	(51,071) tonnes
2005	251,416	6,477 tonnes

Are the forecasts made in the 2003 and 2004 surveys responsible for a surge in plantings growth across the region? It could be suggested that drier conditions and water availability for irrigated crops are making wine grape production an economical option for new entrants to join the industry. Perhaps wineries were then looking to source more wine grapes from local producers to ensure quality characteristics are maintained, an area that is difficult if you are importing from other regions. Whatever the current position is the industry should be concerned that the industry was previously seeking a preferred levels of as high as 331,308 tonnes from within the Riverina but is now able to source these wine grapes from other regions.

Uncertainty is possibly the only constant within this industry. As an industry the growers and processors need now more than ever to work actively together to ensure that the boom bust cycle is reduced.

Appendix 3

Wine Grapes Marketing Board (Terms and Conditions of Payment) Order 2005

The Wine Grapes Marketing Board, for the City of Griffith and the local government areas of Leeton, Carrathool and Murrumbidgee in pursuance of Part 2, Section 5 of the *Wine Grapes Marketing Board (Reconstitution) Act 2003*, make the following Order.

Dated, the 7th day of January 2005.

WINE GRAPES MARKETING BOARD (TERMS AND CONDITIONS OF PAYMENT) ORDER 2005

under the Wine Grapes Marketing Board (Reconstitution) Act 2003

1. Name of Order

Wine Grapes Marketing Board (Terms and Conditions of Payment) Order 2005.

2. Commencement

This Order commences on 7th January 2005, by motion of the Wine Grapes Marketing Board.

3. Duration

This Order has effect for the 2005 calendar year only.

4. Validity of Order

- (1) The making of this Order by the Wine Grapes Marketing Board under Section 5 of the *Wine Grapes Marketing Board (Reconstitution) Act 2003* is specifically authorised for the purposes of section 51 of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.
- (2) The making of this Order does not limit or remove any obligations parties to this Order may have under the *Wine Grapes Marketing Board (Reconstitution) Act 2003*.

5. Definitions

In this Order:

Act means the Wine Grapes Marketing Board (Reconstitution) Act 2003.

Board means the Wine Grapes Marketing Board established by the regulation set out in Schedule 1 of the Wine Grapes Marketing Board (Reconstitution) Act 2003.

Board's area of operations means the City of Griffith and the local government areas of Carrathool, Leeton and Murrumbidgee

complying contract means:

(a) a contract that fixes:

- (i) the prices to be paid for consignments of MIA wine grapes delivered during the current calendar year only, or the manner in which those prices are to be calculated, and
- (ii) the date or dates by which those prices, or the various instalments of those prices, will be paid,

being a contract entered into before the first Monday in December of the previous calendar year, or

(b) a contract that fixes:

- (i) the prices to be paid for consignments of MIA wine grapes delivered during both the current calendar year and one or more future calendar years, or the manner in which those prices are to be calculated, and
- (ii) the date or dates by which those prices, or the various instalments of those prices, will be paid,

being a contract entered into at any time before the first delivery of winegrapes under the contract, or

(c) a contract the subject of an approval in force under section 13 of the Act.

consignee means a person to or for whom a consignment of MIA wine grapes is delivered.

consignor means a person by or from whom a consignment of MIA wine grapes is delivered.

constituted grower means for any calendar year, the class of primary producers for which the Board is constituted includes all growers within the Board's area of operation who, during the previous calendar year, harvested more than 20 tonnes of MIA wine grapes, but does not include:

- (a) in the case of a corporation:
 - (i) a grower that is also a winery, or
 - (ii) a grower in which a winery has a controlling interest, or
- (b) in the case of an individual:
 - (i) a grower who is also a winery, or
 - (ii) a grower who is a director of a corporation that is a winery and who (as a grower) supplies the winery with all of the MIA wine grapes that he or she harvests.

duly contracted delivery means a consignment of MIA wine grapes that is delivered pursuant to a complying contract.

EFT means electronic funds transfer.

MIA wine grapes means any variety of grapes grown in the Board's area of operations for use for processing into wine, must, juice or wine spirit.

6. Application of sections

- (1) *Section 7, 8 and 9* of this Order applies to the Terms and Conditions of Payment for all MIA wine grapes delivered to consignees by consignors that are not a duly contracted delivery.
- (2) *Section 10* of this Order applies to the Terms and Conditions of Payment for the rates levied by the Wine Grapes Marketing Board under the *Agricultural Industry Services Act 1998*, in relation to deliveries of all MIA winegrapes from constituted growers within the Board's area of operations.

7. Terms and Conditions of Payment for the year 2005

- (1) The purchase price for all MIA wine grapes purchased shall be paid by consignees to the Board or as directed by the Board as noted in the timetables in this section and where appropriate in accordance with *Section 9* of this order.
- (2) Payments made by consignees directly to the Board pertaining to deliveries of MIA wine grapes delivered to consignees by consignors.

Table 1: Payments made to the Board by Consignees

Timetable	Structure
10 th May 2005	1/3 total delivery value (33.33%)
21 st June 2005	1/3 total delivery value (33.33%)
11 th October 2005	1/3 total delivery value (33.34%) including all bonus payments

- (3) The Board may direct payments for MIA wine grapes to be made directly to consignors by consignees only upon completion in full of an "*Application to Make Payment Directly to Growers*" made and received by the Board on or prior to 25th February 2005.
 - (i) Applications are available from the Board.
 - a. No fees or charges for processing of applications will apply.
 - b. Notification of Board direction will be made 25th March 2005.
 - (ii) Failure to comply with any or all conditions of the application made in accordance with this Order may result in the revocation of any direction made by the Board pursuant to the application.

- (4) Payments made directly to consignors by consignees excluding all applicable levies for MIA wine grapes delivered to consignees by consignors under direction by the Board.

Table 2: Payments Made to Consignors by Consignees and the Board

Timetable	Structure
13 th May 2005	1/3 total delivery value (33.33%)
24 th June 2005	1/3 total delivery value (33.33%)
14 th October 2005	1/3 total delivery value (33.34%) including all bonus payments

- (i) All payments made to the Board by consignees on MIA wine grapes delivered by consignors are to be paid to growers in accordance with *Table 2* of this Section or at earlier dates by notice to the Board.

8. Default payments for deliveries of MIA wine grapes

- (1) Interest shall apply on all late payments made for purchased MIA winegrapes whether the consignee has been directed by the Board to make payments directly to consignors or not at the rate prescribed under section 95 (1) of the *Supreme Court Act 1970* for payment of interest on a judgement debt, plus 5 per cent.
- (2) Payments made in accordance with this section shall occur in accordance with instruction of the Board.
- (3) Any money due to the Board, including any money that becomes payable as a consequence of the revocation of a direction under section 10 of the *Wine Grapes Marketing Board (Reconstitution) Act 2003* may be recovered as a debt.

9. Manner and timing in which payments are to be made

- (1) Notwithstanding any previous section in this Order this clause applies to payment by all consignees accepting deliveries of MIA wine grapes from consignors otherwise than pursuant to a direction by the Board. Payments are to be:
 - (i) Paid as a valid bank cheque made out to the Wine Grapes Marketing Board and receipted by the Board by 12 midday of the due date, or
 - (ii) Transferred to the Board's nominated banking account by EFT so as to cause all funds to be cleared by the due date. A confirmation of the transaction must be forwarded by facsimile to the Board on the same day.
- (2) Notwithstanding any previous section in this Order this clause applies to all payments made to consignors by consignees accepting deliveries of MIA wine grapes from consignors pursuant to a direction under the Act by the Board:
 - (i) Made available as a cheque made out to the consignor for pickup by consignors by 12 midday on the due dates, or
 - (ii) Transferred by EFT to consignor's nominated banking account so that funds are cleared by the due dates. A confirmation of the transaction must be forwarded to the grower on the same day, or
 - (iii) Sent as a cheque made out of the consignor via Australia Post to consignors post marked on the date directed.
- (3) No payments made available for consignor pickup are to be retained by the consignee for greater than 24 hours.
- (4) Revocation of a Board direction may result from non-compliance of the manner within this Order.

10. Calculation and payment of Wine Grapes Marketing Board levies

- (1) Levies are applicable on deliveries of MIA wine grapes on all constituted growers.
- (2) The leviable rate for 2005 is \$3.90 per tonne (fresh weight) of winegrapes.
- (3) In the case of a consignee receiving Board direction to make payments to consignors directly the levy amount shall be deducted by the consignee from the payment for deliveries of MIA wine grapes and then remitted to the Board in the following timetables and structure.

Table 3: Payments of Levies to the Board

Timetable	Structure
13 th May 2005	\$1.30 per tonne delivered
24 th June 2005	\$1.30 per tonne delivered
14 th October 2005	\$1.30 per tonne delivered

Table 4: Alternate Payments of Levies to the Board

Timetable	Structure
30 th June 2005	\$3.90 per tonne delivered

- (4) Payments of levies by consignees in accordance with *Table 4: Alternate Payments of Levies to the Board* are required to advise the Board in writing by 29th April 2005. No penalty or discount will be provided to the consignee for payments made in this manner.
- (5) Failure to remit levies to the Board within the timetable, structure and the approved manner may cause a revocation of a Board direction made in accordance with this Order.
- (6) All levies payable to the Board in accordance with the timetable in Subsection 3 of this Section are to be paid to the Board in the following manner:
 - (i) To the Board's nominated banking account by EFT on the due dates, including a confirmation of the transaction sent by facsimile to the Board on the same day, or
 - (ii) Sent as a business cheque made out to the Wine Grapes Marketing Board via Australia Post postmarked on the due dates.
 - (iii) Delivered to the registered offices of the Board on the due dates.

All enquiries in relation to this Order should be directed to:

**Mr Brian Simpson
Chief Executive Officer**

**Riverina - Wine Grapes Marketing Board
182 Yambil Street Griffith NSW 2680
PO Box 385 Griffith NSW 2680
Phone: 02-6962 3944 Fax: 02-6962 6103
Mobile: 0438 388 828 Email: bsimpson@wgmb.net.au**

Copies of this Order can be downloaded from the Board's website in PDF format:
<http://www.wgmb.net.au>

Appendix 4

**Form letter provided to Riverina wine grape producers by the
Wine Grapes Marketing Board.**

Inquiry into the Wine Industry

To Whom It May Concern

The Australian wine industry is currently in crisis with declining prices and increasing market rationalisation of the industry by processors has seen the balance of market power move strongly against wine grape producers.

The key issues that I/we would like to make in my submission to the inquiry are:

- The increasing volume of wine grapes available in Australia have been brought on by wineries by providing insufficient communications to producers and inappropriate market signals.
- Supply and demand factors are not applied within the market effectively by the purchasers, hereby creating an unstable environment not conducive to investment activity.
- The relationship between growers and wine makers has continued to degrade by their general disregard for the sustainability of producers. The industry needs to be able to operate closely but this is rarely achieved through the inconsistent approach to grading and quality standards.
- Contracts within the industry are not secure and are at best only made workable by legal intervention, which is cost prohibitive for individual producers.
- Quality wine grapes are not worth producing as wineries use quality to drive down grower returns by lower yields and the potential production life of the vine. Variations from winery to winery are confusing as a grower – consistent industry standards should be applied to the industry.
- Growers require intervention by government to balance the market power of the wineries. Growers also need to be trained and provided with detailed assistance to development collectives for bargaining with wineries and be better skilled at negotiating with wineries to ensure their needs are adequately addressed in terms of pricing. Federal funding is needed to develop our skills base.
- Investigation by government is needed into the power of the retail giants Coles and Woolworths and their pricing policy of Australian wine to consumers and its effects on growers farm gate returns.
- Taxation of wine is very high and while this may have forced much of Australia's production to overseas markets the industry is selling more for less return.
- As a primary producer it constantly feels that the financial squeeze is being applied to the grass roots, the producer. Growers of quality should be able to ensure that they receive a viable return for their produce.
- Other comments: _____

Name: _____

Street Address: _____

Signature: _____

Town: _____

Postcode: _____

Appendix 5

**News Release of the Wine Grapes Marketing Board regarding
contracts**

Copy of letter from [Winery X] solicitor in relation to the newsletter

17 February 2004

WINE GRAPES MARKETING BOARD

For the City of Griffith & Shires of Leeton, Carrathool and Murrumbidgee



NEWS RELEASE

ARE WINEGRAPE CONTRACTS WORTH CONSIDERING

The Wine Grapes Marketing Board is recommending that winegrape growers from within the Riverina do not sign winegrape supply contracts that do not allow them to calculate the price that they will receive for their winegrapes for the duration of the contract or do not follow the industry standard three payment structure.

It has come to the Board's attention that growers are being asked to enter into 3 year contracts where there is no disclosed realistic purchase price but instead the price will be as nominated by the winery for the coming as well as future vintages covered by the contract. The payment terms offered are 4 equal payments a dramatic departure from the accepted industry standard.

These contracts may be considered complying contracts within the terms of the new legislation however the Boards view is that they are definitely not within the spirit of the legislation. These contracts do not disclose a price for forthcoming vintages that could be viewed as viable. They do not adopt an objective standard that would give any growers or their lenders any comfort that a fair price will be paid for the grapes delivered over future vintages.

Prices for winegrapes should not be determined by a winery in its sole discretion. Under these contracts a winery could nominate an unrealistic price, having no obligation to offer a market price. There needs to be a mechanism that can be employed by growers that allows for negotiation to occur. These types of contracts only serve to provide a fertile ground for litigation.

The Board understands why wineries may not wish to be bound by fixed price contracts for long periods of times in what can be a volatile market. However the Board considers that the solution is for wineries to have an objective criteria or standard that can be used with an appropriate dispute resolution clause. For example the parties can agree to pay a reasonable price for each vintage and that would be sufficient for contractual purposes.

Brian Simpson, Chief Executive Officer for the Board stated, "The developments of formal contracts are a good step for the industry but what these types of contracts are attempting to do is not viable for the longer term stability of the industry. Growers in the region need to be aware that since the introduction of the Wine Grapes Marketing Board (Reconstitution) Act 2003 the Board's Term and Conditions of Payment no longer apply to any grower that willingly enters into a contract that forms a complying contract by definition of the Act."

Growers that are considering a contract with a winery should contact the Wine Grapes Marketing Board or their solicitor prior to entering into the agreement. Confidentiality clauses do not apply if you are seeking explanation to the content of the contract.

"Growers should also be aware that a contract may be void if you are forced to sign into it." Mr Simpson advised.

- end -

For further comments please contact:

Brian Simpson
Chief Executive Officer,
02 6962 3944
0438 388 828

AR:RW:

26 February 2004

Wine Grapes Marketing Board
182 Yambil Street
GRIFFITH NSW 2680

Dear Sirs

RE: **XXXXXXXXXXXXXX** PTY LTD

As you are aware we act on behalf of **XXXXXXXXXXXXXX** Pty Limited.

It has come to our attention that the Board through its press release has advised growers not to enter into contracts with our client although conceding that the contracts offered by our client are complying contracts. As a result, the security of grape supply to our client's winery is under threat.

Our client takes the view that the Board has acted ultra vires the powers accorded it under the Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003 in tendering advice to growers not to enter into what are complying contracts.

We are instructed to seek an undertaking from the Board that it will cease and desist from providing such advice and disseminating its views through press releases and the like. Should we not receive such an undertaking before 4.00pm on Friday 27 February, we intend to take legal action to injunct the Board from such conduct.

Regardless of any action that might be undertaken as noted above, we reserve our rights to claim damages against the Board for interference with our client's commercial relations.

Yours faithfully,
MACKENZIE & VARDANEGA

Per:



cc Minister for Agriculture
cc Adrian Piccoli MP

Appendix 8

Nugan Quality Foods – Contract 2010

WINE GRAPE PURCHASE AGREEMENT

AGREEMENT dated

2009

BETWEEN Nugan Quality Foods Pty Ltd
ACN 001 200 880. ABN 85 001 200 880
Farm 1059 Crawford Road, Hanwood
Griffith NSW 2680 Australia

('Purchaser')

AND the party referred to in Item 1

('Seller')

AGREEMENT

1. SUPPLY

- 1.1 The Purchaser agrees to purchase and the Seller agrees to sell the Produce on the terms of this Agreement.

2. QUALITY

- 2.1 The Produce must meet the quality parameters set out in Item 3 and Item 4. The Purchaser may reject any delivery of Produce which the Purchaser acting reasonably determines does not meet these parameters.
- 2.2 Defects are to be assessed at point of delivery. Defect points are cumulative and result in Price Reduction and or Rejection as set out in Item 4.

3. DELIVERY

- 3.1 The Seller must cause the Produce to be delivered to the Purchaser within on the days and in the quantities directed by the Purchaser in writing, provided that such days will fall within the corresponding periods specified in Item 2.
- 3.2 The Seller will be in breach of this Agreement if the Seller fails to deliver the Produce in accordance with the directions referred to in clause 3.1.

3.3 PAYMENT

- 3.4 The price for all sound Produce delivered by the Seller pursuant to this Agreement shall be calculated by the Purchaser as set out in Item 2.

3.5 The price payable for the Produce shall be paid Nett of all levies, by the Purchaser to the Seller, in three equal instalments at the following intervals 30 days from the end of the month of delivery, 30th of June and the 31st October.

3.6 The Purchaser shall be entitled to set-off any amounts owed by the Seller to the Purchaser pursuant to this Agreement, or where the quantum of such amount is unascertained, the Purchaser's reasonable estimate of such amount.

4. PASSING OF RISK AND TITLE

4.1 Risk in and title to the Produce passes to the Purchaser when the Produce has been delivered to and accepted by the Purchaser.

5. GOODS AND SERVICES TAX

5.1 All prices and other monetary amounts specified or referred to in this Agreement shall be taken to be exclusive of Goods and Services Tax ('GST') unless expressly stated to be GST inclusive.

6. GOVERNING LAW AND JURISDICTION

6.1 This Agreement is governed by the law of New South Wales.

6.2 Each Party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts of New South Wales.

7. NOTICES

7.1 A notice required or authorised to be given or served on a Party under this Agreement must be in writing and may be given or served by facsimile, post or hand to that Party at its facsimile number or address appearing in this Agreement or as may otherwise be notified by a Party from time to time.

8. FORCE MAJEURE

- 8.1 Neither party shall be liable for any failure to perform or observe any term of this Agreement if performance has been delayed, hindered, restricted or prevented by any circumstance not within the direct control of the parties including without limiting the generality of the foregoing, acts of God, strikes, lock-outs, or other industrial disturbances or hostilities, or compliance with any valid order of any governmental or public authority and the time and times of the performance of the obligation on the respective party's part to be performed in accordance with the provisions of this Agreement shall be extended by the period equal to each such period of delay provided that such party shall forthwith give notice to the other party in accordance with the provisions of this Agreement and shall endeavour to remove or remedy the cause thereof with all due diligence and expedition. Despite anything in this clause, a lack of funds shall not constitute a force majeure and a failure to pay money is never excused by force majeure.

9. DEFINITIONS AND INTERPRETATION

- 9.1 In this Agreement except where the context otherwise requires:

'Agreement' means this agreement including its schedules, annexures and exhibits.

'Business Day' means any day other than a Saturday, Sunday, bank holiday or public holiday in New South Wales, Australia.

'Produce' means the Produce described in Item 2.

'Item' means an item in the Schedule.

'Month' means calendar month.

'Parties' means each of the parties to this Agreement and **'Party'** means any one of them.

'Price' means the price per tonne for the Produce referred to in Item 2.

EXECUTED as an agreement.

SIGNED for and on behalf of the Purchaser

.....
Signature of authorised person

.....
Signature of Witness

.....
Name of authorised person

.....
Name of Witness

.....
Date

SIGNED for and on behalf of the Seller

.....
Signature of authorised person

.....
Signature of Witness

.....
Name of authorised person

.....
Name of Witness

.....
Date

SCHEDULE

ITEM 1	SELLER DETAILS
Seller Name	
Address	
ABN:	
Contact Numbers	Ph: MOB:

ITEM 2 – QUANTITY/VARIETY OF PRODUCE, DELIVERY PERIOD AND PRICE

Variety	Quantity	Price	Delivery Period	Contract Period
Grape				

ITEM 3: QUALITY (TO BE ASSESSED AT GROWER VINEYARD)

1. For Sour Rots and Botrytis in Red and White Varieties the level of infection by field sampling must be below or No greater than 5% of berries infected.
2. For Downy Mildew, the level of infection determined by field sampling at minimum acceptable Baume, must be below 10%.
3. For Powdery Mildew, the level of infection determined by field sampling at min acceptable Baume must be below 5% of bunches and stems sampled.
4. The level of either dry berry or sun burnt berries must be below 10% of a sample of berries.
5. The level of either bird pecked or larval chewed berries must be below 10% of a sample of berries. This bird/insect damage may be associated with sour rots and botrytis, in which case the level of acceptance will be as for Sour Rots.
6. The level of either uneven ripened or immature berries must be below 10% of sample berries.
7. If any rogue varieties are identified in field, the grower is to be informed and reminded of Load Defects, there is NIL acceptance of reds in whites, or whites in reds. Any such deliveries will be refused unloading and returned to the grower.

ITEM 4. DEFECTS / PENALTIES TO BE ASSESSED AT POINT OF DELIVERY..

Defect points are accumulative and Penalties are outlined below:

Defect Points	Maximum Penalty
1	Nil
2	5% Price Reduction
3	10% Price Reduction
4	15% Price Reduction
5	Rejection

Load Defect Comment	Maximum Defect Points
Fermentation	5
Acetification-Vinegar Smell / Vinegar flies	5
Contamination: Oils Fuels Greases	5
Contamination: Soil, Heavy Dust, Gravel	5
Mouldy , Mildew- Smell Appearance	5
Water Dilution	5
Temperature of Grape in Bin / Load	
Over 35 C or 10 c above overnight Minimum	5
Over 32 C or 8 C above overnight Minimum	4
Over 30 C or 7 C above overnight Minimum	3
Material Other Than Grapes MOG	
MOG 5	5
MOG 4	4
MOG 3	3
MOG 2	2
MOG 1	1
Bin Juice Oxidization	4
Rogue Varieties	5

Appendix 9

Nugan Quality Foods – Contract Variation 2010



Nugan Quality Foods

AGREED AMENDMENT dated _____ 2010

BETWEEN Nugan Quality Foods Pty Ltd
ACN 001 200 880. ABN 85 001 200 880
Farm 1059 Crawford Road, Hanwood
Griffith NSW 2680 Australia

(‘Purchaser’)

AND

Seller Name	
Address	
ABN:	
Contact Numbers	

We the above parties agree to amend the Wine Grape Purchase Agreement as believed between the Parties dated the 25th day November 2009, as to replace the price per tonne shown in Item 2, with the value of \$100.00 per tonne.

EXECUTED as an agreement.

SIGNED for and on behalf of the Purchaser

.....
Signature of authorised person

.....
Signature of Witness

.....
Name of authorised person

.....
Name of Witness

.....
Date

SIGNED for and on behalf of the Seller

.....
Signature of authorised person

.....
Signature of Witness

.....
Name of authorised person

.....
Name of Witness

Appendix 10

South Australia Wine Grapes Industry Act 1991

South Australia

Wine Grapes Industry Act 1991

An Act relating to the marketing of wine grapes.

Contents

1	Short title
3	Interpretation
4	Application
5	Indicative price
6	Terms and conditions of payment
7	Consultation
8	Orders
9	Conditions for acceptance of delivery
10	Offences

Legislative history

Appendix—Divisional penalties and expiation fees

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Wine Grapes Industry Act 1991*.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

payment includes any form of monetary consideration or non-monetary consideration to which a monetary value can be assigned;

processor includes a person who purchases wine grapes for resale to a processor;

producer means—

- (a) a person by whom, or on whose behalf, wine grapes are grown for sale;
- (b) where wine grapes are grown for sale by a partnership or under a share farming agreement—the partners or the parties to that agreement,

but does not include an employee or other person who acquires no interest in the grapes;

production area means—

- (a) the areas of the district councils of Barmera, Berri, Loxton, Mannum, Mobilong, Morgan, Paringa and Waikerie; and
- (b) the hundred of Katarapko; and
- (c) the hundreds of Bowhill, Fisher, Forster, Nildottie and Ridley in the area of the district council of Ridley; and
- (d) the hundred of Skurray in the area of the district council of Truro; and
- (e) the municipalities of Murray Bridge and Renmark; and
- (f) the counties of Young and Hamley; and
- (g) any other part of the State that the Governor may, by regulation, declare to be part of the production area;

sale includes supply;

wine grapes means any variety of grapes used or intended to be used for processing into wine, must, juice or grape spirit.

- (2) For the purposes of this Act, if wine grapes are supplied to a processor for processing and the product derived from the processing is sold to that processor or some other processor, the contract of sale will be taken to be a contract for the sale of the grapes by the supplier to the processor who purchases the product.

Note—

For definition of divisional penalties (and divisional expiation fees) see Appendix.

4—Application

This Act does not apply in relation to the sale of wine grapes by a member of a registered co-operative to the co-operative.

5—Indicative price

- (1) The Minister may, by order, recommend a price (expressed as an amount per tonne) for wine grapes grown in the production area and sold to a processor.
- (2) The price may vary according to the variety of wine grapes.

6—Terms and conditions of payment

- (1) The Minister may, by order, fix terms and conditions relating to—
 - (a) the time within which payment for wine grapes must be made by processors; and
 - (b) payments (which are to be regarded as payments in the nature of liquidated damages) to be made by processors in default of payment within that time.
- (2) In determining terms and conditions, the Minister must not differentiate between processors.
- (3) Any terms and conditions fixed under this section are implied in every contract for the sale of wine grapes to a processor and any provision of a contract or other instrument is void to the extent of any inconsistency with those terms and conditions.

7—Consultation

- (1) The Minister must, before recommending prices or fixing terms and conditions under this Act, consult representatives of both producers and processors and may consult such other persons as he or she thinks fit.
- (2) A person may, at the request of the Minister or otherwise—
 - (a) make a submission to the Minister on the exercise of powers under this Act; and
 - (b) engage in discussions or negotiations incidental to making or considering such a submission.

8—Orders

- (1) The Minister may vary or revoke an order under this Act by subsequent order.
- (2) The Minister must publish in the Gazette each order made under this Act.
- (3) An order under this Act comes into operation on the date of its publication in the Gazette or on such later date as is specified in the order but may, if it so provides, apply to contracts made before the date on which it comes into operation.

9—Conditions for acceptance of delivery

- (1) A processor must not accept delivery of wine grapes for processing unless—
 - (a) all amounts that have previously fallen due for payment by the processor for wine grapes received by the processor, or any person acting on the processor's behalf, in a previous season have been paid in full; or
 - (b) the processor has been granted an exemption under this section.

Penalty: Division 5 fine.

- (2) If a processor enters into a contract for the sale of wine grapes and is prohibited by this section from accepting delivery of the grapes, the processor will be regarded as being in breach of a fundamental condition of the contract.
- (3) The Minister may, by written notice, exempt a processor from this section subject to such conditions (if any) as the Minister specifies in the notice.
- (4) The Minister may, by written notice, revoke an exemption or vary or revoke any conditions to which an exemption is subject.
- (5) A processor who contravenes or fails to comply with a condition of an exemption is guilty of an offence.

Penalty: Division 5 fine.

10—Offences

- (1) Offences against this Act are summary offences.
- (2) Proceedings for an offence against this Act must be commenced within 12 months after the date on which the offence is alleged to have been committed.
- (3) Proceedings for an offence against this Act must not be commenced except with the authorisation of the Minister.

- (4) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

Legislation amended by principal Act

The *Wine Grapes Industry Act 1991* amended the following:

Prices Act 1948

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1991	71	<i>Wine Grapes Industry Act 1991</i>	12.12.1991	12.12.1991 (<i>Gazette 12.12.1991 p1747</i>)
1992	78	<i>Wine Grapes Industry (Indicative Prices) Amendment Act 1992</i>	3.12.1992	3.12.1992

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	§
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	§
s 3(1)		
production area	amended by 78/1992 s 2	3.12.1992
Sch	<i>omitted under Legislation Revision and Publication Act 2002</i>	§

Appendix—Divisional penalties and expiation fees

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—

Division	Maximum imprisonment	Maximum fine	Expiation fee
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

Note: This appendix is provided for convenience of reference only.