Submission No 47

INQUIRY INTO WINE GRAPE MARKET AND PRICES

Organisation: Murray Valley Winegrowers Inc

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SUBMISSION

INQUIRY INTO THE WINE GRAPE MARKET & PRICES

By The

NSW PARLIAMENTARY STANDING COMMITTEE ON STATE DEVELOPMENT

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BACKGROUND

About Murray Valley Winegrowers Inc

Murray Valley Winegrowers Inc is the peak regional body representing the interests of wine grape growers in the Murray–Darling and Swan Hill wine regions in the Murray Valley zone of NSW and Victoria. The Murray Valley Winegrowers organisational structure includes Board representation from the Mildura Region Winegrowers Association, Robinvale and District Wine Grape Growers Association, and Swan Hill Wine Region Grape Growers Association, whose membership is drawn from vineyard owners in both NSW and Victoria.

Murray Valley Winegrowers represents 181 NSW grower members with vineyards in the Shires of Wentworth, Balranald and Wakool.

Profile: The Regional Wine Grape and Wine Production Sectors in NSW Murray Valley

The 2 wine regions that comprise the Murray Valley zone – Murray-Darling and Swan Hill – are the second largest wine grape producing zone in Australia; falling only 5000 tonnes short of overtaking the Riverland as Australia's largest wine grape production area in 2010 vintage. The Murray Valley wine regions produced a total of 328,000 tonnes in 2010, including 273,000 tonnes of wine grapes purchased from independent (non-winery) growers.

NSW growers account for approximately a third of the vineyard area and wine grape production from independent (non-winery owned) vineyards in the Murray-Darling and Swan Hill wine regions. Approximately 6000 hectares of vineyard are located in the NSW districts of these regions. NSW independent grower vineyard production in these regions accounted for approximately 100,000 tonnes at an estimated farm gate value of $38 million in 2009 and 90,000 tonnes at an estimated farm gate value of $26 million in 2010. Farm gate returns to NSW growers in the Murray Valley have fallen sharply from an estimated $66 million in 2005.

The Murray Valley (NSW) production zone is also a very significant wine grape processing and wine production centre, with 2 of the 3 largest wineries in the Murray-Darling and Swan Hill wine regions located at Buronga in NSW – the Australian Vintage Ltd 'Buronga Hill' winery, and Constellation Wines Australia's 'Stanley' winery, ranked as the 1st and 3rd largest regional wineries respectively. Both these wineries draw significant volumes of wine grapes from both NSW and Victorian growers. Australian Vintage also draws large volumes of fruit from vineyards its owns or operates in the Wentworth, Euston and Balranald districts which account for a large portion of the 55,000 to 60,000 of annual winery grown wine grape production in Murray-Darling and Swan Hill wine regions. The Australian Vintage Buronga Hill winery also contract processes large volumes of fruit for Orlando Wines and McPherson Wines (totalling approximately 53,000 tonnes in 2009) – making it the second largest winery in NSW, behind Casella Wines at Yenda in the Riverina.

The mid-sized Trentham Estates winery is also located in the Murray-Darling wine region at Trentham Cliffs in NSW – processing approximately 3000 tonnes of grower grown wine grapes per year.

In addition, a large volume of NSW grower grown fruit is shipped out of the zone for processing at Riverina based wineries – Casella, De Bortoli, McWilliams, The Wine Company and Warburn Estate – estimated at 12,000 tonnes in 2009 and 10,000 tonnes in 2010.

Murray Valley Production in the Context of Wine Industry Restructuring

In November 2009 the four national wine industry bodies – Winemakers Federation Of Australia, Wine Grape Growers Australia, Australian Wine & Brandy Corporation, and Grape and Wine Research & Development Corporation – released a Wine (Industry) Restructuring Action Agenda (WRAA) designed to inform the Australian wine industry on

the scale and location of wine grape and wine over-production, and provide guidance on how the industry should respond to bring its production in line with the intermediate and longer term market prospects for wine sales at viable margins. The first principle of the WRAA Statement was to begin the process of removing the oversupply of Australian wine grapes and wine that was preventing wineries from repositioning Australian wine at higher, more viable, price points in the domestic and international markets.

The WRAA Statement identified between 270,000 and 480,000 tonnes of existing wine grape production from across the country that would not be required by wineries to meet future market demand – the quoted range depending on best case and worse case future market scenarios. Based on an initial assessment on the basis of vineyard costs of production alone, between 20,000 and 40,000 hectares of vineyard was deemed to be unviable – or incapable of reducing costs of production sufficiently to meet the wine grape prices required for the market segments in which the wine produced could be sold. The WRAA Statement targeted, as the greatest area, of oversupply and excess production capacity, the cool-temperate wine regions, where far too many vineyards had been planted to supply ultra-premium and icon wines, but were instead producing only premium and popular premium quality; with the popular premium wine grapes directly competing with vineyards in the warm inland regions including the Murray Valley.

In total 130,000 tonnes of wine grape production from the 3 warm inland production zones of Riverina (NSW), Murray Valley (NSW & Victoria) and Riverland (SA) was identified in the WRAA analysis as not required in future – mostly on the basis of loss of markets for the popular premium bottled wines in export markets, the sale of bulk wine into export at unsustainable price levels, and declining wine cask sales on the domestic market.

But at the time of the 2010 vintage, the area of vines removed from production in the Murray Valley and in the Riverland regions together totalled an estimated 8000 hectares (4000 hectares in each zone), or the equivalent of 160,000 tonnes of vineyard production removed.

On a national basis, an assessment of progress in restructuring Australia's vineyard area against the published WRAA reduction targets has indicated decommissioned vineyards now total between 12,000 and 14,000 hectares against the lower target of 20,000 hectares of removals, but with the prospect of the decommissioning this calendar year of a further 1000 hectares of vineyard in the

Murray Valley regions alone, it is now clear that there will be an overcorrection in vineyard decommissioning in the Murray Valley, and across the warm inland production zones generally.

THE WINE GRAPE MARKET

Historical Market Performance

Average wine grape prices paid to growers in the Murray Valley have been in steady decline over the last 5 years- and particularly over the last 2 vintages. With the exception of the 2008 vintage which saw an upward spike in prices in response to drought concerns over the capacity of growers to produce commercial scale crops if they were not able to purchase temporary water, the average wine grape price trend has been in rapid decline. While the higher nominal wine grape prices seen in the 2008 vintage appear to run counter to this long term trend, once the high cost of over $200 per tonne for the purchase of temporary water to produce the 2008 vintage crop is taken into account, the real returns to growers per tonne have maintained a steady downward trend since 2005.

[Refer Appendix 1: Murray Valley Wine Grape Crush Survey, Pages 32 to 43, for historical trends in Calculated Average Purchase Prices for the Key Varieties in the Murray Valley]

Current Wine Grape Pricing Levels vs Production Costs

The current average benchmark cost of production per tonne of wine grapes in the Murray Valley is $376*
The average wine grape prices for both red and white wine grapes for the 2010 vintage were well below this benchmark cost – at $311 for reds and $283 for whites. In the previous vintage – 2009 – average prices for reds were marginally above the benchmark cost at $407 but were below the mark with whites, averaging $339. The differential in average red and white prices over the last 2 vintages has reflected a strong winemaker market trend away from Chardonnay, which at its peak represented 40% of Murray Valley vineyard area.

**(Source: Murray Valley Winegrape Cost Of Production Report; Retallack Viticulture June 2010).*

2010 Murray Valley Wine Grape Crush Survey

Each year the Department of Primary Industries Victoria, on behalf of Murray Valley Winegrowers, conducts a survey of the wine grape crush by wineries in the Murray Valley and other wineries from outside the zone that purchase wine grapes from growers in Murray-Darling and Swan Hill.

The Annual Crush Survey captures the trends in tonnes crushed and total crop value against the historical trends; actual and winery preferred tonnage crushed for the vintage by variety; price summaries by variety, 3 year future estimates on expected and preferred intakes by wineries; and trend graphs for each major variety.

The 2010 Survey confirmed the sharp drop in farm gate value of wine grapes purchased by wineries – falling 31% from $115 million to $80 million against the 2009 vintage; with average prices for red wine grapes falling by 24% and by 28% for whites. Total Murray Valley wine grape production (including winery grown grapes) fell 13% or 47,000 tonnes to 328,000 tonnes.

The 2010 Crush Survey showed some positive shifts in supply – demand balance. While Shiraz was still oversupplied, Cabernet Sauvignon and Pinot Noir supplies were short of winery demand, and Merlot supply was balanced. Chardonnay tonnage was also lower than winery requirements but all other whites remained above wineries preferred intake levels.

The outlook for the 2011 vintage shows overall winery demand for Murray Valley red wine grapes outstripping projected supply, driven by continuing strong demand for Cabernet Sauvignon, and a positive turnaround in demand for both Shiraz and Merlot, but overall projected white wine grape supply still higher than winery demand. However in the whites Chardonnay demand is projected to outstrip supply and since the Survey was completed there has been a pronounced positive shift in demand for Gordo Muscat Blanco in recent months (contrary to the winery demand picture reflected in the Survey immediately post-vintage 2010).

[Refer Appendix 1: 2010 Murray Valley Wine Grape Crush Survey]

Winery Commercial Arrangements Pre-Vintage 2011

The emergence of shortages of key wine grape varieties; the lifting of restrictions on intakes for 2011 by Constellation Wines Australia (the regions' largest grape purchaser); more active winery inquiry from other wineries that purchase grapes in the Murray Valley well ahead of the 2011 vintage; together with the offering of new selective grape supply contracts by a number of the major wineries, supports the view that the combined effects of the drought on production potential, and the large scale decommissioning of vineyards due to sharply declining wine grape returns over the last 5 years has seen a return to broad regional supply/demand balance, that should be seeing clear and improving price signals for growers. However, this is not the case, and Murray Valley Winegrowers contends that this lack of clear market signals will not change while ever wineries are not required to or refuse to disclose indicative prices until immediately prior to the commencement of harvest. The reality of such late market signals to growers are that growers have already had to negotiate zero price supply agreements to secure a 'home' for their grapes, or if they are not contracted to a grape purchaser have very limited time to negotiate the sale of their crop - often meaning they are forced to accept low and unsustainable prices. This reflects the total imbalance in market power between wineries and growers.

It is Murray Valley Winegrowers strong contention that as a consequence of the gross imbalance in market power between wineries and growers, and the secretive commercial behaviour of the major wine grape purchasers, designed to maintain the balance of market power overwhelmingly in wineries favour, the wine grape market is in failure. Normally, when the wine grape market is working according to the established laws of supply and demand – shortages in supply should see an increase in prices. While Murray Valley Winegrowers acknowledges that the current export market environment is tough with the high $A making sales growth hard to achieve and domestic market sales are flat, there are clear signs of improvement in market conditions, including a significant reduction in major winery inventories; improvement in wine demand in a number of major export destinations; and evolving shortages of the major red and white varieties against the wineries own projected demand for Murray Valley fruit in 2011. The emergence of a balanced supply-demand position within the Murray Valley is reinforced by the latest estimates of stocks to sales ratios from the Australian Wine & Brandy Corporation which finds a current position of 1.6 years stocks to sales – a low level on historic trends, suggesting that Australian production levels are tipping into shortage against increases of 4% in sales volumes and 5% in sales value predicted by the Australian Bureau of Agricultural & Resource Economics over the next year.

Despite this, with the exception of a relatively open scramble by wineries to lock in supply of Gordo grapes being sourced for rapidly growing demand for moscato winestyles, growers are not getting any consistent and clear market signals on prices from wineries. In fact, Murray Valley Winegrowers contends that wineries are purposely propagating a price information vacuum designed to suppress wine grape prices, in the face of an improving wine grape market balance.

Indeed, influential wine company Treasury Wine Estates (formally Fosters) which is the 2nd largest purchaser of wine grapes in the Murray Valley has recently moved to new “zero priced” contracts– asking growers to sign up to new 3 year supply agreements that have no minimum price or any explanation of how the winery will determine ‘fair market price’ going forward; providing their growers with no financial surety or capacity to negotiate working capital with their banks.

After recent communications with a number of the major wineries requesting consideration of early release of indicative prices to growers to provide financially struggling growers with greater financial certainty and to halt the continuing exodus of growers in the Murray Valley from the industry, it is clear to Murray Valley Winegrowers that it is the intention of these companies to not release indicative prices as long as they possibly can to try to steal another (or a series of) very cheap vintage/s of wine grapes – despite a markedly improved regional supply/demand balance and shortages of the major wine varieties.

PREVIOUS INQUIRIES

2005 Senate Inquiry Into The Wine Industry

The Senate Committee on Rural and Regional Affairs and Transport conducted an inquiry into the wine industry in 2005 with particular reference to the supply and purchase of grapes and the relationships between independent growers and winemakers. Of particular relevance to this Inquiry are the Senate Committee’s investigations of “the structure of the industry and how this impacts on the relationship between growers and producers; the nature of the contractual agreements between them; the implementation of quality benchmarks and whether these can be standardised in an industry-wide code of conduct.”

In the course of its investigations the Senate Inquiry was informed of a litany of exploitative behaviour by wine companies towards growers. Of particular note were the consistently negative experiences of growers in regard to:

- The practice of 'black booking' or 'black listing'- refusing to re-contract growers who had disputed grape supply agreements, quality assessments of fruit by the wineries, or grape prices.

- Coercive commercial behaviour – pressuring growers to agree to contracts that were overwhelmingly in the wine companies favour, including widespread use of aggressive "take or it leave it" tactics in regard to securing grower agreement on these contracts.

- Unilateral variation of contracts - including changes in prices originally offered with no recourse under the contract by the grower, and unilateral variation in quality assessment criteria and grading by wineries.

- Limited use of dispute resolution procedures in favour of employing determinations "at the absolute discretion of the wine company".

Alarmingly, the exploitative commercial behaviour and unfair contract arrangements reported to the Senate Inquiry in 2005 are still rife within the industry – despite the advent of the Australian Wine Industry Code Of Conduct in 2008, as a direct consequence of the Senate Inquiry recommendations.

It is telling that at a recent Wine Industry Relations Committee meeting between major winery and grape grower representatives, winery delegates admitted that the practice of 'black listing' growers was being used by wineries – noting that this practice was unacceptable behaviour.

[Refer Appendix 2: Report Of Senate Committee on Rural and Regional Affairs & Transport Inquiry Into The Australian Wine Industry 2005]

AUSTRALIAN WINE INDUSTRY CODE OF CONDUCT

Code Provisions

The Australian Wine Industry Code Of Conduct was finally signed off by the Winemakers Federation Of Australia and Wine Grape Growers Australia in December 2008 after more than 6 years of negotiations between grower representative bodies and the Winemakers Federation. The impetus for the Code arose from discussions between the major wine companies and grower representatives in a joint sector Wine Industry Relations Committee over a number of years – including the need for more transparency in contract agreements over how prices would be determined; the need for dispute resolution procedures; and a set of minimum contract provisions. However, it was not until the creation of the mandatory Horticulture Code Of Conduct and the 2005 Senate Inquiry that the major wineries were convinced of the need to negotiate a Code Of Conduct for the wine industry.

The Wine Industry Code is voluntary, but is binding on winery Code signatories. The Code is designed to reduce disputation in the industry through encouraging fair and reasonable commercial behaviour by wineries towards growers via contract arrangements for grape supply that are open, fair and transparent. It provides for minimum contract provisions, including:

- All contracts are to be in writing.
- Growers are encouraged to obtain independent legal and financial advice before signing any agreement, and are given time to seek this advice and fully consider the contract.
- Contract variations are to be in writing and by mutual agreement.
- A final written price must be provided by the winery before delivery of grapes.
- A fixed grape price or a clearly stated method by which a final price will be determined must be included.
- Indicative grape prices are to be provided to growers by December 15 in the Hunter Valley, Riverina, Murray Valley and Riverland, and to all other regions by January 15. These indicative prices are not binding on a winery.
- Terms of payment are to be clearly stated, and in the absence of a defined payment schedule, the South Australian regulated schedule will apply – 1/3rd at the end of the month following delivery; 1/3rd by June 30 and the final payment of 1/3rd by September 30.

The Code also provides for a standardised Dispute Resolution system administered by an independent Code Administration Committee, which can employ independent 3rd party experts to adjudicate in disputes if required. The Committee adjudicates in matters pertaining to allegations of Code breaches by wineries.

In Murray Valley Winegrowers view any independent assessment of the Code provisions would reach the undeniable conclusion that the Wine Industry Code is not an onerous burden on wineries, simply reinforcing commercial behaviour around contracts with growers that is commonplace and held as accepted commercial practice and corporate behaviour in other industry sectors. Nevertheless, the Australian Wine Industry Code Of Conduct has not been widely accepted or adopted by wine companies, and as a consequence the Code is failing in its objectives.

[Refer Appendix 3: Australian Wine Industry Code Of Conduct]

Industry Code Coverage: Performance Review

To date only 6 wine companies have signed the Code Of Conduct – Constellation Wines Australia, Orlando Wines, Treasury Wine Estates (Fosters), Tyrrell's Vineyards, Balnaves of Coonawarra and Henry Holmes Wines. These companies represent around 50% of purchased wine grape volumes, but only a tiny portion of the 2400 wine producing entities in Australia. Despite industry-wide promotion of the Code by both the Winemakers Federation Of Australia and Wine Grape Growers Australia the Code has failed to meet its initial targets of 75% coverage of purchased wine grapes in its first year and 85% coverage in its second year of operation.

It is noteworthy that Australian Vintage Ltd has not signed the Code despite being one of 4 wine companies involved in negotiating its final form. The other 3 negotiating companies are all signatories. It is also notable that 2 other large NSW based wine companies – Casella Wines and De Bortoli – have refused to adopt the Code. It is understood that Australian Vintage Ltd does not wish to apply the Code provisions to existing grower contracts, Casella Wines does not wish to adopt the Code's Dispute Resolution procedures, and De Bortoli does not believe in written contracts.

The Code Administration Committee commissioned a formal independent review of the Code, including impediments to its broader adoption within the industry, with the Code Review completed in April 2010. The independent reviewer made a number of far-reaching findings and recommendations:

- Many non-signatory wine companies believe the Code is not necessary for them because the "have good relationships with their growers" and are "already doing what the Code prescribes" – on which the reviewer commented that if this is the case there should be no impediment to those wineries signing.

- The fact that to date only one dispute has been formally reported and managed by the Code Administration Committee does not reflect the true picture of disputation – as it has been reported that growers feel intimidated by the threat of being 'black listed' if they dispute contracts, quality grading and prices, and existing signatories are seeking to manage disputes via internal company processes that do not allow dispute oversight by the independent Administration Committee. Further, existing signatories are reluctant to advise growers of their rights under the Code to prevent disputations – contrary to their explicit commitment to do so under the Code.

- Existing signatory wine companies have not educated their field and winery staff on their responsibilities to growers under the Code.

- The Code Dispute procedures need to be streamlined, costs for running dispute procedures removed to eliminate any cost impediment, and a major new industry education program on the Code undertaken.

- The Code performance measurements need to be changed from measures of the proportion of purchased tonnes of wine grapes covered under the Code, to numbers of winery signatories so as to encourage a meaningful level of winery engagement with the Code.
- The Code has not been successful to date, but should be given another 2 years in which to be adopted by wineries in meaningful numbers before decisions on its future, including any move to mandate an industry code, are made.

Following the review the peak industry bodies have adopted most of its recommendations – in particular new performance measures of attaining 25% of the top 100 wine grape purchasing companies in the next year, and 50% of these wineries in the year after.

Murray Valley Winegrowers contends that by any measure the adoption and the implementation of the Code by the wine production sector has been a failure and as such, this represents a damning indictment on a very large number of Australian wine companies.

Further, given the continued existence and widespread use by wineries of the exploitative commercial behaviour such as 'black listing', coercive tactics around contracts, and unilateral variation of contract terms, as reported to the 2005 Senate Inquiry – it is Murray Valley Winegrowers' contention that the lack of adoption of the Code is, in truth, because many wine companies do not wish to change a commercial culture that gives them all the market power and growers none.

The failure of the Code to bring any significant improvements in the fairness, openness and transparency of business dealings between wineries and growers ultimately leads to the conclusion that the current structure of grape supply arrangements in the wine industry allows exploitative commercial behaviour towards growers to persist, and because voluntary measures to bring about change in the commercial culture of the Australian wine industry have failed, Governments must now introduce legislative measures to protect growers' rights.

RECOMMENDATIONS FOR NSW GOVERNMENT ACTION

Murray Valley Winegrowers is aware of the explicit advice of the 2005 Senate Inquiry Into The Wine Industry that Government not intervene in the workings of wine grape market through any reintroduction of a statutory minimum price system for wine grapes. Murray Valley Winegrowers supports this recommendation – as the setting of statutory minimum prices has the potential to distort market signals, cause adjustments in supply of wine grapes to meet changes in the wine market to also become skewed, and ultimately to limit the potential upside benefits to growers through increased wine grape prices by slowing the flow-through of improved market demand into higher wine grape prices. It is not Murray Valley Winegrowers intention to argue for a return to regulated wine grape pricing in NSW or other States.

However, there is cause for the NSW Government and other Governments to examine legislative mechanisms by which exploitative behaviour by wineries can be limited; the rights of wine grape growers can be better protected; and market signals can be better delivered to growers via earlier communication of indicative prices by wineries – allowing growers to make better informed and more timely commercial decisions on wine grape production and marketing.

1: Adoption Of The SA Winegrape Industry Act (1991) Provisions

The South Australian wine industry's terms of payment are regulated by the SA Winegrape Industry Act (1991) provisions, that mandate the standard payment terms adopted in the Australian Wine Industry Code Of Conduct as the national fall-back position for contracts if another payment schedule for purchased wine grapes is not otherwise specified – ie: 1/3rd at the end of the month following the delivery of grapes; 1/3rd by June 30; and 1/3rd by September 30.

In addition, the SA Act also provides for the prohibition of any wine grape purchaser being allowed to purchase wine grapes in South Australia if that entity has not fully paid for the wine grapes purchased in the previous vintage.

Discussion

While the SA standard terms of payment have, in the past, been used by major wine companies as their standard payment terms and this has provided a quasi-national industry standard, there has been a more recent trend of wine companies outside SA (including wineries in NSW) introducing terms of payment that are financially disadvantageous to growers – such as an initial payment after delivery with the remaining portion paid in monthly instalments over the following 7 or 8 months or no initial payment or only part-payment with the balance to be paid once the winery sells the wine. Murray Valley Winegrowers is aware of a large number of instances where growers are still owed significant sums of money as much as two vintages after the delivery of the grapes in question.

Typically growers will use the first payment instalments to pay their harvesting and freight costs, and then to pay down bank finance provided to cover input costs during the growing season. Any profit margin will not accrue to the grower until the final standard instalment is paid by the winery.
In the current circumstances in the Murray Valley and elsewhere the final price for grapes is not even covering the growers' operating costs, so extended payment terms not only exacerbate the financial duress under which growers are currently operating but, in effect, mean growers are subsidising the operations of the wineries. A number of wineries have quoted their reasoning as being "the better alignment of grape payments with their cash flow from wine sales", however these arrangements are wilfully blind to the negative cash flow implications for growers and are exploitative.

In regard to the SA regulations on the prohibition of the purchase of new vintage wine grapes by an entity until all payments for the previous vintage wine grape supply have been completed, this is an extension of the same issue. The introduction of the same regulation in NSW would mean growers are less likely to be exposed to losing their final scheduled payments from one vintage or receiving no payment for the next vintage wine grapes in the event that financially stressed wine companies fold. This has happened four times to Murray Valley growers in recent history with the financial collapse of Norman Wines, Evans & Tate, Neqtar, and Grapes To The World leaving tens of millions of dollars owing to growers. It would be better for growers to lose final payments on one vintage through a winery being prohibited from purchasing more grapes in the following vintage than the grower face the prospect of losing payments from a first vintage and their entire payment from a subsequent vintage grape supply.

Recommendation 1: Adoption of the SA Winegrape Industry Act (1991) regulations on standard payment terms and the prohibition on wineries or other purchasers taking grapes in the next vintage when not all previous vintage wine grapes have been paid for.

2: Statutory Inclusion Of A Retention Of Title Clause In Grape Supply Contracts

Further to the serious negative financial impact on growers of the failure of wine companies before outstanding wine grape payments have been made, Murray Valley Winegrowers and other grape grower representative bodies have long supported the inclusion of a Retention Of Title Clause in grape supply contracts that would give growers some level of recourse in clawing back wine produced from their grapes equivalent to the monies owed to them by wineries.

Discussion

In the course of negotiation of the Wine Industry Code Of Conduct grape grower representative bodies attempted to have a standard Retention Of Title Clause inserted into the Code, but this was rejected by the major wineries. The compromise position was that if a Retention Of Title clause was included in a contract it should be stated clearly as to when title over the wine grapes passed from the grower to the purchaser. Generally it has been the practice within the industry that title passes once the grapes are delivered to the winery weighbridge, but the growing incidence of non-payment for wine grapes by wineries has led to a call by wine grape growers for greater protection of their rights to full payment. While recent changes to Federal Corporations Law now allows for a lien to be taken over goods supplied to a purchaser until full payment is received, this must be registered with the agreement of the purchaser – an unlikely outcome in the case of most wineries.

Murray Valley Winegrowers commissioned Finlaysons Lawyers – an Adelaide law firm specialising in wine law – to draft a standard Retention Of Title Clause for inclusion in wine grape supply contracts. It was subsequently suggested at the Joint Code Management Committee – established by the peak industry organisations to review proposed changes to the Wine Industry Code – that this clause be included in a revised Code. However, while representatives of major wineries on the Code Management Committee commended the Retention Of Title Clause as a good clause, they would not agree that it be included in the Code.

Consequently Murray Valley Winegrowers believes that the NSW Government and other Governments should now regulate for the inclusion of a Retention Of Title Clause in grape supply contracts.

[Refer to Appendix 4: Model Retention Of Title Clause developed by Finlaysons Lawyers for Murray Valley Winegrowers 2009]

Recommendation 2: Regulation for the inclusion of a Retention of Title Clause in all grape supply contracts.

3: Regulated Adoption of Major Wine Industry Code Of Conduct Provisions

As detailed earlier in this Submission, Murray Valley Winegrowers strongly contends that the voluntary approach to establishing a Code Of Conduct governing minimum contract provisions and dispute resolution between growers and wineries, has failed. As a consequence it is now appropriate that the NSW Government and other Governments mandate the central provisions of the Australian Wine Industry Code Of Conduct.

Discussion

Although the Wine Industry Code contains a number of minimum contract provisions, the core provisions are those that reflect the central tenets of the Horticulture Code Of Conduct – ie: all supply agreements between growers and purchasers must be in writing; a final price must be given to the grower in writing prior to delivery; and a fixed price or clearly defined methodology for how the final price will be determined by the purchaser must be included in the contract.

In support of this position Murray Valley Winegrowers makes the following points:

- Written contracts – rather than the verbal agreements still favoured by some wineries – are absolutely essential in a commercial environment where growers have very limited market power and exploitative commercial behaviour by wineries persists.

- There are still regular instances where growers must deliver their (perishable) crop to the winery, even though a final price has not yet been determined. There were a number of instances of this practice in the 2010 vintage in the Murray Valley where grapes for sparkling wine base were delivered in early January without a final price being determined and communicated to growers.

- Many wineries – including many of the major wineries – have adopted "zero price" contracts that do not specify either a fixed or minimum price, but rely on the determination of final price according to the winery estimation of the "market price" for the grapes. While 'market price' has traditionally been a measure of the prices being paid for a variety of grapes within a single region or grouping of regions (such as the 3 warm inland zones) and has been benchmarked and adjusted in final payments to the District Weighted Average price for a region, many new contracts do not specify how the winery will determine the final "market" price – leaving this at the absolute discretion of the winery to the disadvantage of the grower. In some cases, rather than setting the 'market price' against similar prices paid by other wineries in a region, some wineries are now assessing the 'market price' for wine grapes as being the external price the resulting product can be sold for on the domestic or export wine markets. Importantly, such assessment of final price by the winery are subjective and far beyond the purview of the grower.

Recommendation 3: Regulations be adopted to mandate the core provisions of the Australian Wine Industry Code Of Conduct, specifically that - all agreements must be in writing; the final grape price must be communicated to the grower in writing prior to delivery; and a fixed price or clearly defined methodology for setting a final market price must be included in all agreements.

4: Regulated Winery Advice on Indicative Prices

It is clearly apparent that the current Winery Code provision of indicative prices to be delivered to growers in the Hunter Valley and the 3 Inland wine zones by December 15 and elsewhere by January 15 leaves growers at a significant disadvantage in finding alternative purchasers for their fruit should they not agree with the indicative prices. In any case it would appear that growers contracted to supply wineries are effectively legally bound to supply their grapes, regardless of the price. Further, because the Code does not allow for price disputation on an indicative price, growers have little recourse under the Code provisions. Moreover, the limited adoption of the Code means the timing of indicative prices has little effect on the many wineries who advise growers of a final price, or in some cases amend the final price immediately prior to harvest when no alternative market options are available to the grower.

Discussion

While indicative prices are not binding on a winery, they give growers a reasonable indication of the market price for their fruit. However the current Code provision for the timing of advice of indicative prices, combined with wineries extreme hesitance to pre-empt the traditional immediate pre-vintage timing for the setting of grape prices, means growers are having to commit to grow and supply a crop with no market information whatsoever – until it is far too late to decide to not produce a crop, negotiate a new price, dispute the advised price, or seek an alternative market.

In the current financial environment where wine grape prices are well below cost of production, Murray Valley Winegrowers contends that it is unconscionable for wineries to allow growers to expend 80% of their yearly input costs to grow a grape crop, without any indication from wineries via indicative prices that the final price will cover the growers' cash operating costs. Even more so, in the circumstances of the 2010 vintage when wineries allowed growers to grow and deliver grapes that the wineries knew full well would not receive prices that would cover cash operating costs alone.

Further, all major wineries have their grape purchasing budgets approved by May each year – meaning they know within a few thousand tonnes exactly what they need to purchase for their wine market requirements and how much they have budgeted to pay for each variety. Therefore there is no reason why growers cannot be advised of indicative price levels by June 30 each year. This timing would allow growers to decide not to prune and grow a crop against the indicative market prices before they need to conclude the pruning season at the end of July each year.

Murray Valley Winegrowers contends that as this revised schedule of price advice pertains to 'índicative' rather than final grape price, there should be no impediment to its introduction across the industry by regulation.

Recommendation 4: Regulation of advice by wineries of indicative prices for the following vintage by June 30.

5: NSW Government to Promote These Initiatives for National Adoption within COAG Forums

The effectiveness of these recommendations would be significantly enhanced through national adoption. The South Australian Government has already indicated its intention to seek greater cooperation between the SA, Victorian, NSW and Commonwealth Governments on issues in relation to the wine grape sector.

Accordingly, Murray Valley Winegrowers would recommend that this Inquiry also advise the NSW Government that it would be appropriate to push for the national or, at a minimum, the tripartite adoption of these Submission recommendations in NSW, SA and Victoria or alternatively press the Federal Government to mandate these provisions via a new national mandatory Wine Industry Code. This could be achieved via the Primary Industries Ministerial Council and other Council Of Australian Governments forums.

Recommendation 5: The NSW Government champion the adoption of common regulations over wine grape supply contracts across NSW, SA and Victoria or through the adoption of a national mandatory Wine Industry Code Of Conduct.

APPENDICES

Attached:

Appendix 1: 2010 Murray Valley Wine Grape Crush Survey

Appendix 2: Report of the Senate Committee on Rural and Regional Affairs & Transport Inquiry Into The Australian Wine Industry 2005

Appendix 3: Australian Wine Industry Code Of Conduct

Appendix 4: Model Retention Of Title Clause Developed by Finlaysons Lawyers for Murray Valley Winegrowers 2009

FOR FURTHER INFORMATION REGARDING THIS SUBMISSION

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DEPARTMENT OF
PRIMARY INDUSTRIES

Wine Grape Crush Survey 2010

Murray Darling / Swan Hill

Victoria
The Place To Be

ACKNOWLEDGEMENTS

The information contained in this survey was collected, analysed and published by Department of Primary Industries - Mildura, on behalf of the Murray Valley Wine Grape Industry Advisory Committee, comprising winery and grower representatives from the Murray Darling and Swan Hill regions.

The publication of this survey is made possible through the support of the wineries that processed fruit from Murray Darling and/or Swan Hill vineyards in 2010.

REPORT PREPARATION

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email customer.service@dpi.vic.gov.au

INTRODUCTION

Wine grape crush surveys are carried out in the Murray Darling and Swan Hill regions annually to provide early and accurate estimates of the tonnes and prices of grapes purchased and grown by wineries. These surveys also provide information on the estimated tonnes to be purchased and grown over each of the subsequent three years, together with an assessment of the tonnes that wine makers would prefer to receive.

The data is provided voluntarily by wineries on the understanding and guarantee that data for individual wineries will not be released. Only aggregated data is reported.

DATA REQUESTED FROM WINERIES

Wineries are asked to provide the following information by variety and region:

Tonnes Purchased

The tonnages purchased from independent grape growers.

Tonnes Own Grown

The tonnages the winery itself has grown.

Tonnes Preferred

The tonnages the wineries would have preferred to crush in the current vintage.

Committed Intake – Own Grapes, Committed Intake – Purchased Grapes, Total Required Intake for the next 3 years

The tonnages wineries are committed to crush for the next 3 years, and they would prefer to crush assuming no limitations on equipment, supplies etc.

Purchase Prices

The highest and lowest price paid for each variety and the total purchase value (post receival price, not including freight or end use bonuses) for each variety purchased.

DATA QUALITY

Responses were not received from all wineries sent survey forms and some wineries may not have been approached. The absolute tonnages should, therefore, be treated with care. A proportion of wineries did not supply all the data requested. This was particularly true of price data and future estimates.

The data has been checked exhaustively to eliminate transcription and analysis errors and to reduce, where possible, errors in data supplied by wineries. The data on the current vintage can be considered as accurate as possible.

The projections are a snapshot of the views of wine makers or company executives at the time of the survey. They are subject to variation with market fluctuations and changes in production over subsequent years. The projections are imperfect and will almost certainly vary with time.

DATA TREATMENT

All data provided by the wineries has been aggregated. Under an agreement with the wineries covering the provision of data, disaggregation is not permitted. It is not possible to provide data from individual wineries.

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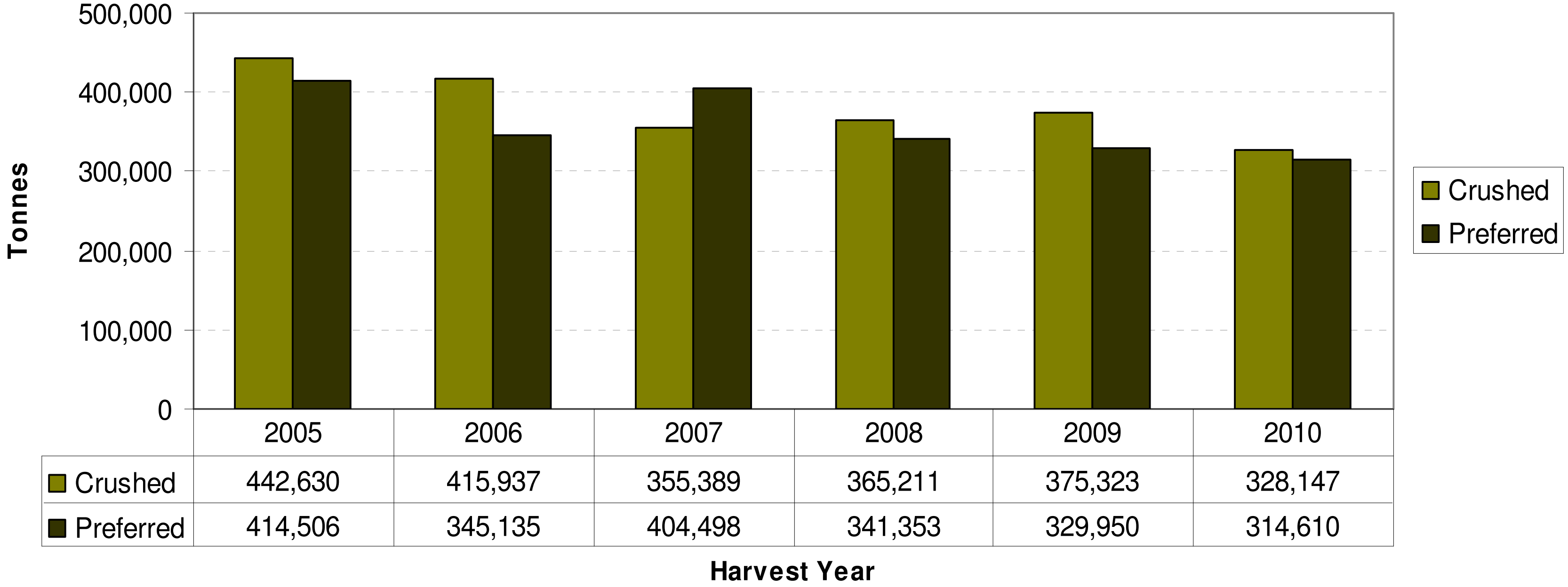
Summary Data and Yearly Trends

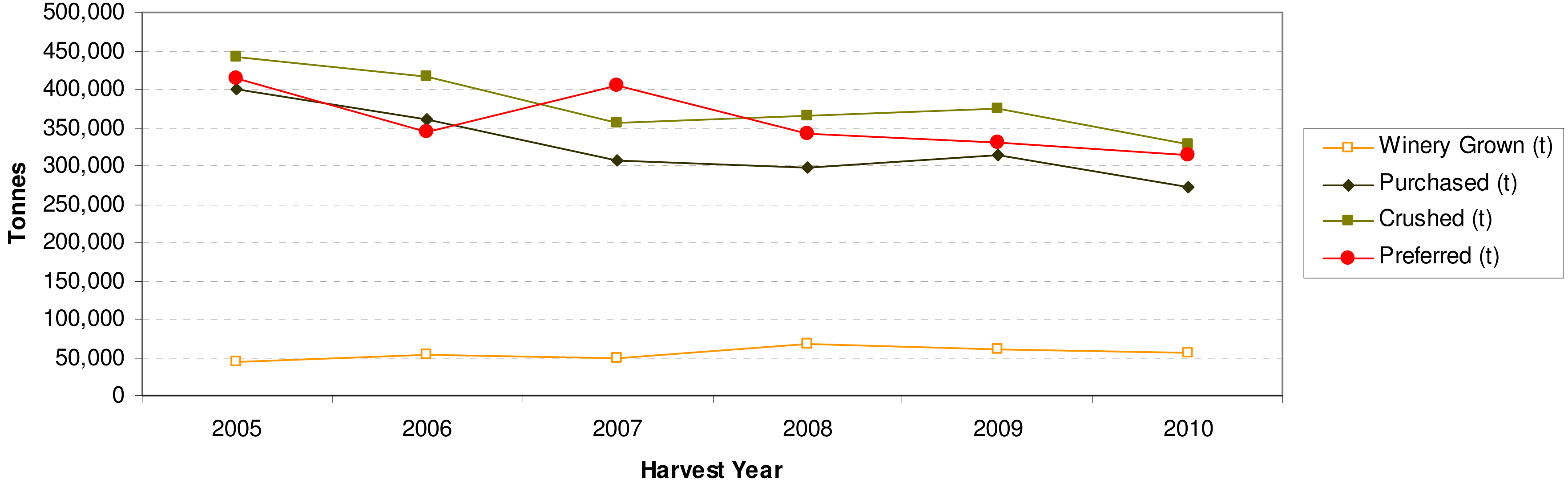
TOTAL TONNES CRUSHED AND TOTAL CROP VALUE

	Total winery grown	Total purchased	Total crushed (supply)	Total preferred (demand)	Tonnes from other growers as % of total	% of demand supplied	Estimated value of purchased grapes	Estimated value of total crush
Red	24,201	114,828	139,030	149,866	83%	93%	$35,746,852	$43,117,423
White	30,801	158,315	189,117	164,744	84%	115%	$44,888,904	$53,196,002
Total	**55,002**	**273,143**	**328,147**	**314,610**	**83%**	**104%**	**$80,635,756**	**$96,313,426**

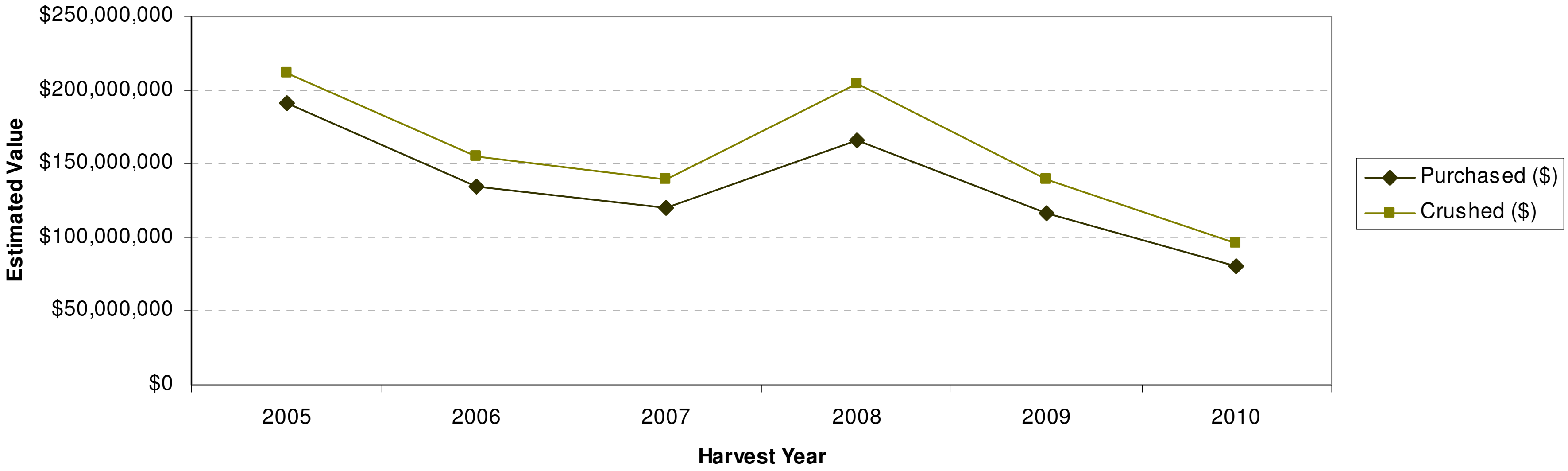
ACTUAL AND PREFERRED TONNAGES SINCE 2005



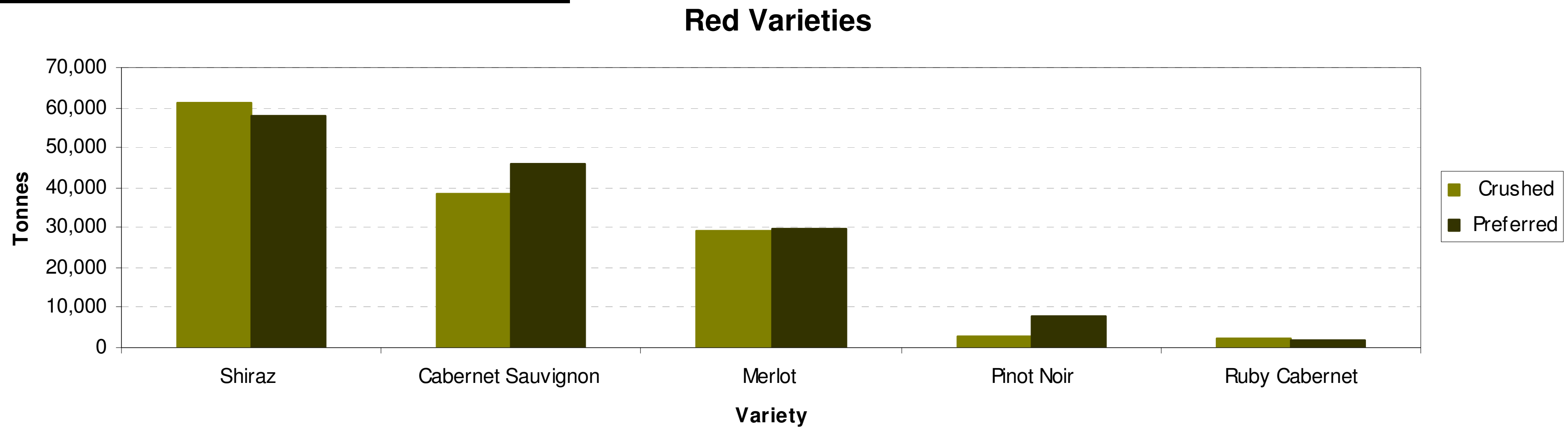
HISTORICAL TRENDS IN PRODUCTION

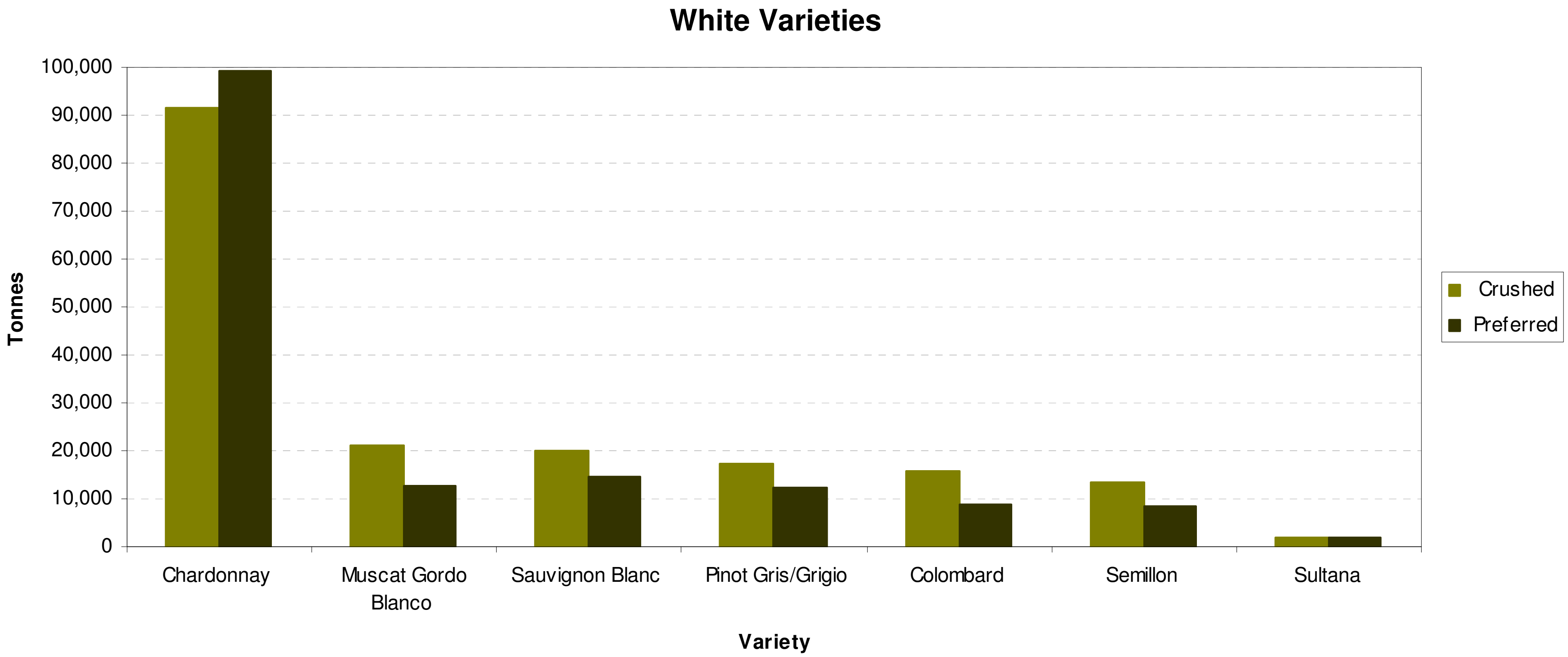


HISTORICAL TRENDS IN ESTIMATED VALUE OF PURCHASED FRUIT COMPARED TO TOTAL CRUSH



ACTUAL AND PREFERRED TONNAGES BY VARIETY

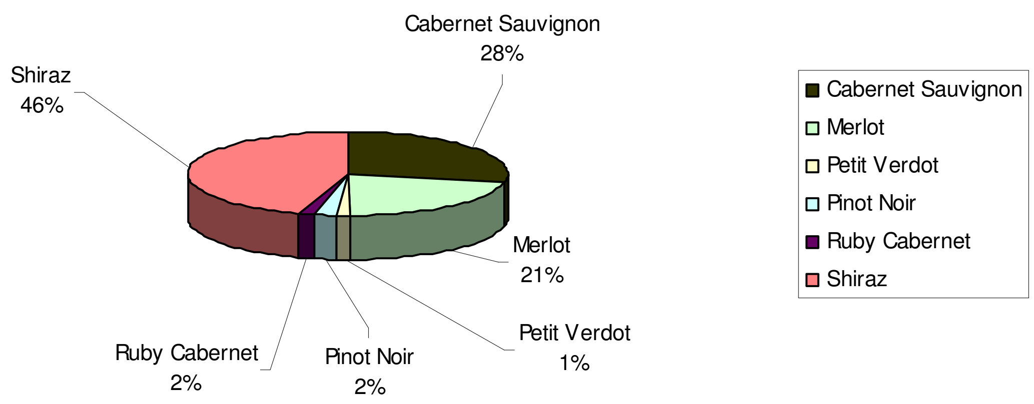




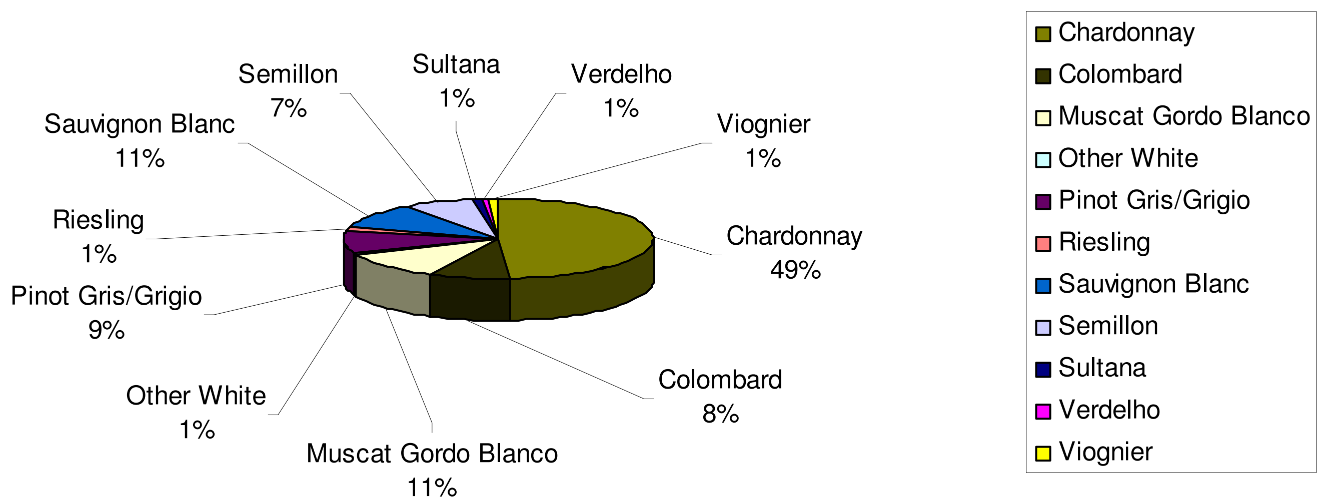
Note: Varieties with both crushed and preferred less than 2000 tonnes are not represented in these graphs.

PRECENTAGE OF TOTAL CRUSH BY VARIETY

Red Varieties



White Varieties



Note: Varieties with both crushed and preferred less than 1000 tonnes are not represented in these graphs.

Price and Tonnage Data

NOTES ON INFORMATION PROVIDED IN SECTION 2

Total crush

The total tonnes of grapes crushed from the Murray Darling / Swan Hill regions whether processed in that region, another region in Victoria or interstate. All wineries in Australia who source fruit from Murray Darling / Swan Hill vineyards are included in the survey collection process. Reported fruit is separated into fruit produced from the winery's own vineyards ("own grown") and from independent grower owned vineyards ("purchased").

Tonnes Purchased as % of Total

This statistic is calculated by dividing the tonnes purchased from independent growers (total other growers) by the total tonnes crushed. This figure is then expressed as a percentage. It indicates the proportion of grapes purchased from independent growers.

Calculated Average Purchase Value (formerly Weighted Average Weighbridge Price)

Calculated by dividing the total purchase value (post receival price, not including freight or end use bonuses) for a variety (summed across all wineries) by the total tonnes of the same variety purchased from other growers.

Winery grown grapes are not included in the calculation of the Calculated Average Purchase Value.

The Calculated Average Purchase Value in this report is calculated from data that is known to be incomplete. Therefore, it is possible that the Calculated Average Purchase Value is biased due to the incomplete data.

Lowest and Highest Prices

Wineries are asked to report the highest and lowest prices paid for any parcel of fruit of a particular variety, of any size. The highest of all highest prices and the lowest of all lowest prices are reported – provided that at least three wineries have provided this information for any particular variety.

The highest or lowest price may be for a very small parcel of fruit - and/or reflect an unusual pricing arrangement - eg payment by the hectare rather than per tonne, "spot market" sales of excess fruit etc.

Total value of purchased grapes

Calculated as the Calculated Average Purchase Value multiplied by the total tonnes purchased.

Estimated Total Value of All Grapes

Calculated as the Calculated Average Purchase Value of purchased fruit multiplied by the total tonnes crushed, for each variety.

If there is a variety where there are no purchases, then the average purchase value across all other varieties of the same colour in the same region is used to determine an estimated value for the own grown grapes.   Discrepancies will appear in the estimated total value of all grapes and the estimated total value of purchased grapes if the average price is calculated.

INTAKE AND PRICE SUMMARY DATA BY VARIETY FOR RED GRAPES

Variety	PURCHASED GRAPES SUMMARY Purchased (t)	Lowest price ($/t)	Highest price ($/t)	Total value purchased grapes ($)	Tonnes purchased as a % of total	Calculated average purchase value ($/t)	Winery grown fruit (t)	Total crushed (t)	Estimated total value ALL grapes ($)
Cabernet Franc	0					$0	4	4	$1,245
Cabernet Sauvignon	31,864	$80	$660	$9,972,530	83%	$313	6,549	38,412	$12,022,078
Grenache	646	$250	$643	$197,920	89%	$306	79	725	$222,106
Malbec	0						38	38	$11,830
Mataro	94			$34,691	59%	$368	65	159	$58,583
Merlot	23,134	$80	$600	$6,961,962	79%	$301	6,113	29,247	$8,801,534
Muscat a Petit Grains Rouge / Rose	177			$133,506	98%	$754	4	181	$136,523
Nebbiolo	0						40	40	$12,484
Other Red	372	$147	$900	$101,371	70%	$272	161	533	$145,177
Petit Verdot	1,538	$200	$500	$453,392	79%	$295	417	1,955	$576,346
Pinot Noir	2,587	$250	$1,238	$955,210	92%	$369	216	2,803	$1,034,829
Ruby Cabernet	141			$36,645	6%	$260	2,273	2,414	$627,740
Sangiovese	396	$250	$497	$125,810	47%	$318	443	839	$266,706
Shiraz	53,466	$100	$1,238	$16,596,496	87%	$310	7,749	61,216	$19,002,004
Tempranillo	412	$325	$600	$177,319	90%	$430	45	457	$196,682
Zinfandel	0						5	5	$1,557
Total Red winegrapes	**114,828**			**$35,746,852**	**83%**		**24,201**	**139,030**	**$43,117,423**

** The Calculated Average Purchase Value (formerly Weighted Average Weighbridge Price or WAP) is calculated from data that is known to be incomplete. Therefore, it is possible that the Calculated Average Purchase Value is biased due to the incomplete data.

INTAKE AND PRICE SUMMARY DATA BY VARIETY FOR WHITE GRAPES

Variety	PURCHASED GRAPES SUMMARY Purchased (t)	Lowest price ($/t)	Highest price ($/t)	Total value purchased grapes ($)	Tonnes purchased as a % of total	Calculated average purchase value ($/t)	Winery grown fruit (t)	Total crushed (t)	Estimated total value ALL grapes ($)
Canada Muscat	344			$119,415	97%	$347	10	354	$122,889
Chardonnay	75,172	$121	$700	$16,819,846	82%	$224	16,362	91,534	$20,480,813
Chenin Blanc	181			$29,748	98%	$165	3	184	$30,242
Colombard	14,559	$110	$400	$3,308,751	93%	$227	1,112	15,672	$3,561,568
Crouchen	38			$9,500	7%	$250	528	566	$141,543
Muscat a Petit Grains Blanc	305			$115,298	100%	$378	0	305	$115,298
Muscat Gordo Blanco	20,833	$200	$450	$6,134,301	99%	$294	206	21,039	$6,194,959
Other White	1,271	$280	$950	$445,211	98%	$350	31	1,302	$456,065
Pinot Gris/Grigio	15,857	$200	$685	$8,710,004	91%	$549	1,611	17,468	$9,594,665
Riesling	1,390	$200	$500	$416,390	70%	$300	585	1,974	$591,557
Sauvignon Blanc	15,195	$150	$500	$5,391,421	76%	$355	4,754	19,949	$7,078,206
Semillon	8,464	$125	$500	$2,111,426	63%	$249	4,913	13,376	$3,336,920
Sultana	2,022	$150	$300	$438,347	100%	$217	0	2,022	$438,347
Taminga	0						11	11	$3,131
Traminer	207			$93,078	100%	$450	0	207	$93,078
Verdelho	1,044	$170	$325	$260,816	83%	$250	207	1,251	$312,454
Viognier	1,434	$80	$1,238	$485,353	75%	$339	470	1,903	$644,269
Total White winegrapes	**158,315**			**$44,888,904**	**84%**		**30,801**	**189,117**	**$53,196,002**
Grand Total All winegrapes	**273,144**			**$80,635,756**	**83%**		**55,002**	**328,146**	**$96,313,426**

** The Calculated Average Purchase Value (formerly Weighted Average Weighbridge Price or WAP) is calculated from data that is known to be incomplete. Therefore, it is possible that the Calculated Average Purchase Value is biased due to the incomplete data.

INTAKE AND PRICE SUMMARY DATA BY VARIETY FOR RED GRAPES: MURRAY DARLING & SWAN HILL BASED WINERIES ONLY

Variety	PURCHASED GRAPES SUMMARY								
	Purchased (t)	Lowest price ($/t)	Highest price ($/t)	Total value purchased grapes ($)	Tonnes purchased as a % of total	Calculated average purchase value ($/t)	Winery grown fruit (t)	Total crushed (t)	Estimated total value ALL grapes ($)
Cabernet Franc	0						4	4	$1,221
Cabernet Sauvignon	26,371	$150	$600	$8,219,764	80%	$312	6,417	32,787	$10,219,814
Grenache	557	$250	$300	$165,131	86%	$297	79	636	$188,565
Malbec	0						38	38	$11,595
Mataro	0						65	65	$19,834
Merlot	14,415	$225	$600	$4,090,383	70%	$284	6,113	20,528	$5,824,881
Muscat a Petit Grains Rouge / Rose	177			$133,506	98%	$754	4	181	$136,523
Nebbiolo	0						40	40	$12,236
Other Red	278	$175	$900	$87,390	63%	$315	161	438	$138,029
Petit Verdot	1,235	$250	$500	$388,426	75%	$315	417	1,652	$519,636
Pinot Noir	1,815	$250	$500	$628,274	89%	$346	216	2,031	$702,917
Ruby Cabernet	0						2,273	2,273	$693,703
Sangiovese	302	$250	$350	$87,881	41%	$291	443	745	$217,059
Shiraz	43,184	$100	$600	$13,108,854	87%	$304	6,594	49,778	$15,110,404
Tempranillo	393			$166,464	90%	$424	45	438	$185,534
Zinfandel	0					$0	5	5	$1,526
Total Red winegrapes	**88,726**			**$27,076,073**	**79%**		**22,914**	**111,639**	**$33,983,476**

** The Calculated Average Purchase Value (formerly Weighted Average Weighbridge Price or WAP) is calculated from data that is known to be incomplete. Therefore, it is possible that the Calculated Average Purchase Value is biased due to the incomplete data.

INTAKE AND PRICE SUMMARY DATA BY VARIETY FOR WHITE GRAPES: MURRAY DARLING & SWAN HILL BASED WINERIES ONLY

Variety	Purchased (t)	Lowest price ($/t)	Highest price ($/t)	Total value purchased grapes ($)	Tonnes purchased as a % of total	Calculated average purchase value ($/t)	Winery grown fruit (t)	Total crushed (t)	Estimated total value ALL grapes ($)
	PURCHASED GRAPES SUMMARY								
Canada Muscat	321			$109,164	97%	$340	10	331	$112,565
Chardonnay	62,650	$121	$700	$13,865,834	79%	$221	16,193	78,843	$17,449,678
Chenin Blanc	161			$20,168	98%	$125	3	164	$20,543
Colombard	13,688	$120	$400	$3,183,679	92%	$233	1,112	14,801	$3,442,419
Crouchen	38			$9,500	7%	$250	528	566	$141,543
Muscat a Petit Grains Blanc	305			$115,298	100%	$378	0	305	$115,298
Muscat Gordo Blanco	19,788	$218	$400	$5,831,421	99%	$295	206	19,994	$5,892,128
Other White	1,155	$280	$600	$377,413	97%	$327	31	1,186	$387,542
Pinot Gris/Grigio	6,487	$200	$500	$2,654,063	80%	$409	1,611	8,098	$3,312,993
Riesling	1,067	$250	$500	$324,884	65%	$305	585	1,651	$502,946
Sauvignon Blanc	11,703	$150	$500	$4,189,415	71%	$358	4,754	16,457	$5,891,260
Semillon	7,815	$125	$500	$1,967,495	61%	$252	4,913	12,728	$3,204,193
Sultana	2,022	$150	$300	$438,347	100%	$217	0	2,022	$438,347
Taminga	0						11	11	$2,871
Traminer	207			$93,078	100%	$450	0	207	$93,078
Verdelho	740	$200	$300	$178,810	78%	$241	207	947	$228,732
Viognier	1,174	$175	$450	$327,561	71%	$279	470	1,643	$458,612
Total White winegrapes	**129,322**			**$33,686,131**	81%		**30,632**	**159,954**	**$41,694,747**
Grand Total All winegrapes	**218,047**			**$60,762,204**	**80%**		**53,546**	**271,593**	**$75,678,223**

** The Calculated Average Purchase Value (formerly Weighted Average Weighbridge Price or WAP) is calculated from data that is known to be incomplete. Therefore, it is possible that the Calculated Average Purchase Value is biased due to the incomplete data.

Estimates of Expected and Preferred Intakes

NOTES ON INFORMATION PROVIDED IN SECTION 3

ESTIMATES OF EXPECTED AND PREFERRED INTAKES FOR THE NEXT THREE YEARS

Committed intake – own grapes

The estimated tonnage of grapes sourced from winery owned or leased vineyards. This includes grapes owned by subsidiary or affiliated companies.

This figure takes into account intended new plantings that will come into bearing or intended removals during the projection period.

Committed intake – contracted purchases

Grapes wineries are committed to purchase in the projected year. Any arrangements that they consider to be binding are included. This may be written contracts or verbal agreements.

Only existing arrangements are reported. Planned or possible future contracts or renewals are not included.

Total required intake – demand

The total requirement for grapes to meet projected sales projections. This does not include planned purchases of bulk wine.

The % required/committed intake shows the percentage of the wineries' requirement that is already committed for a given year. Eg a figure of 83% indicates that wineries already have contracts (or own grown fruit) to supply 83% of their demand for that year.

Note:

- ***Not all wineries provide estimates of future intakes - particularly for the later projected years. Therefore projections for later years tend to underreport actual demand. The projections of future intake should be interpreted and used cautiously. It should be noted that there is considerable variation from one survey to the next in demand projections for the same future projected year, as marketing indications change. The projections should only be interpreted as general indications of current levels of confidence, and trends in varietal preferences.***

Wine grapes sought on the open market (possible spot market requirement)

This figure is inferred from the difference between committed intake (own grown & purchased) and total required intake.

Projected supply

This figure has been provided from the Australian Bureau of Agricultural and Resource Economics (ABARE).

Note:

- ***Projections regarding supply/demand should be regarded as a guide only. Growers should always conduct thorough research before committing to vine removals and planting. Consideration of new plantings should include whether secure markets will be available for the fruit when it comes into production. Increasingly, supply/demand is influenced by factors outside the region, i.e. over or under supply in other regions in Australia and elsewhere in the world, so regional figures must be considered in that context.***

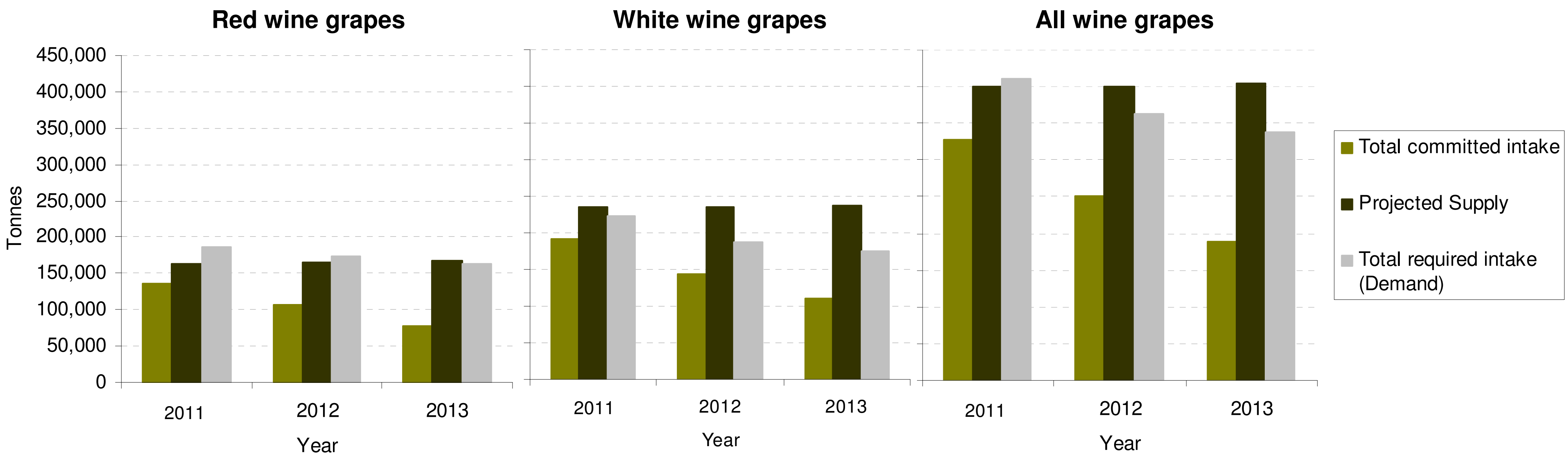
Wine grapes available on the open market

This figure is inferred from the difference between supply and committed intake (own grown & purchased).

Surplus or shortfall of grapes on the open market

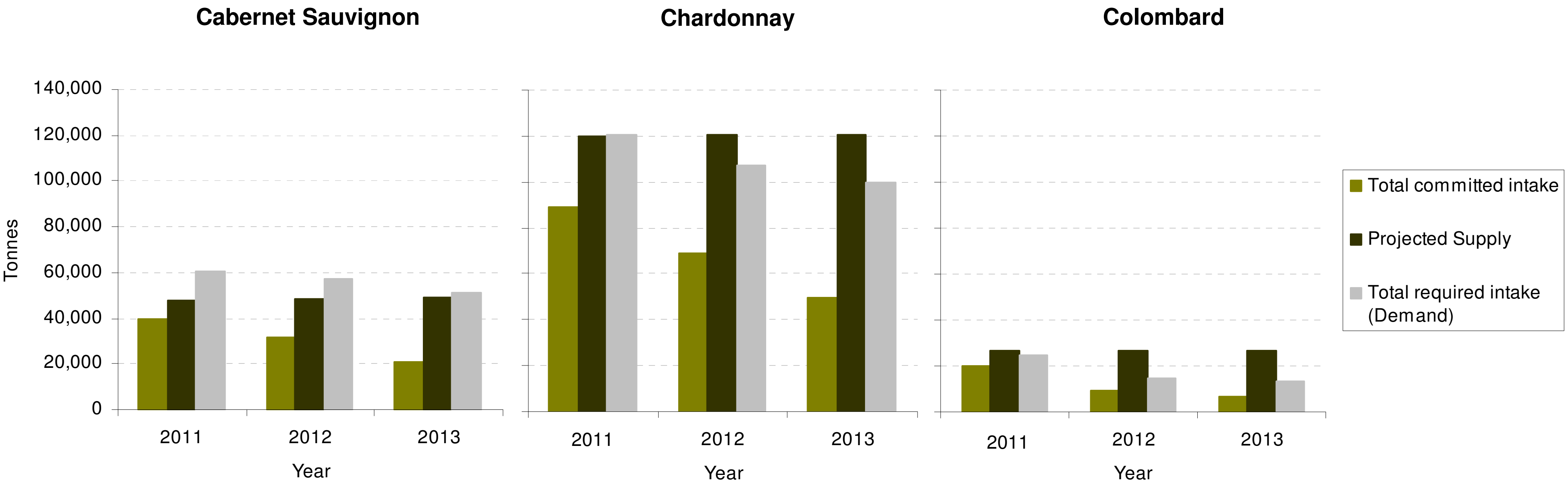
The difference between wine grapes sought on the open market and wine grapes available on the open market. However, when both projected supply and committed intake is greater than total required intake (demand), then the surplus/shortfall is recorded as zero. A negative number indicates a shortfall and a positive number indicates surplus.

	Winery grown grapes	Contract purchases	Total committed intake	Total required intake (Demand)	% required intake that is committed	Winegrapes sought on the open market (Possible spot market requirement)	Projected Supply	Winegrapes available on the open market	Surplus or shortfall of grapes on the open market	Surplus or shortfall as a percentage of demand
Red wine grapes										
2011	27,033	108,507	135,540	186,680	73%	51,140	164,028	28,488	-22,652	-12%
2012	28,153	78,964	107,117	174,647	61%	67,530	164,368	57,251	-10,279	-6%
2013	25,588	51,228	76,816	163,564	47%	86,748	167,025	90,209	3,461	2%
White wine grapes										
2011	35,473	156,239	191,712	223,335	86%	31,623	236,082	44,370	12,747	6%
2012	38,999	105,066	144,065	188,365	76%	44,300	234,920	90,855	46,555	25%
2013	39,434	71,647	111,081	174,420	64%	63,339	238,052	126,971	63,632	36%
All wine grapes										
2011	62,506	264,746	327,252	410,014	80%	82,762	400,110	72,858	-9,905	-2%
2012	67,152	184,030	251,182	363,012	69%	111,830	399,288	148,106	36,276	10%
2013	65,022	122,875	187,897	337,985	56%	150,088	405,077	217,180	67,093	20%



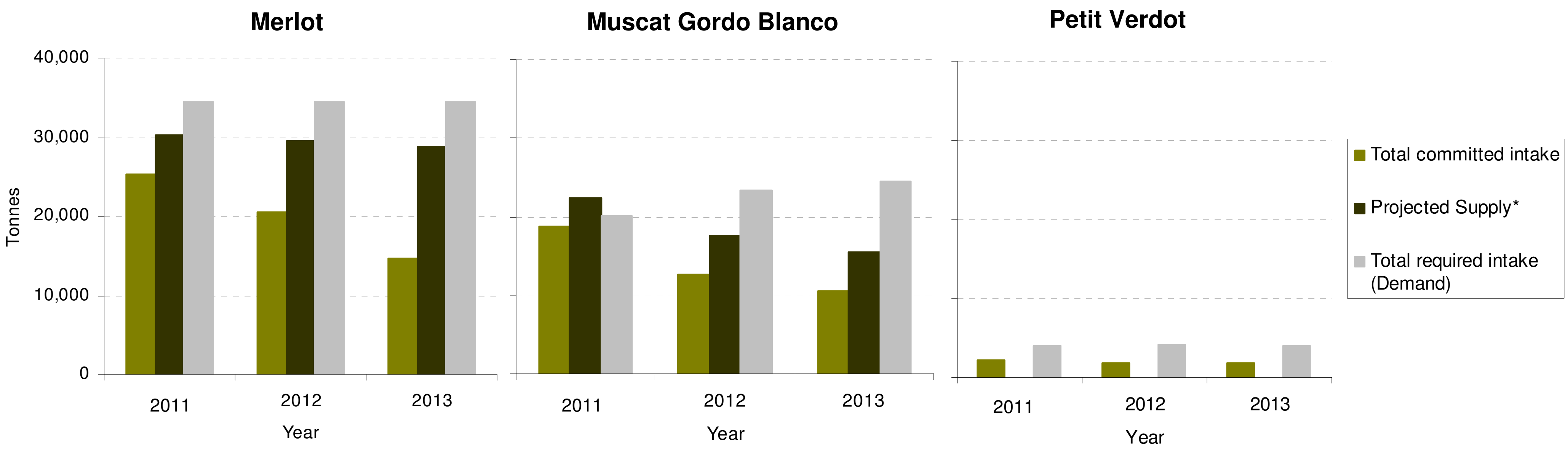
SUPPLY AND DEMAND ANALYSIS – MAJOR VARIETIES

	Winery grown grapes	Contract purchases	Total committed intake	Total required intake (Demand)	% required intake that is committed	Winegrapes sought on the open market (Possible spot market requirement)	Projected Supply	Winegrapes available on the open market	Surplus or shortfall of grapes on the open market	Surplus or shortfall as a percentage of demand
Cabernet Sauvignon										
2011	7,971	31,487	39,458	60,572	65%	21,114	47,595	8,137	-12,977	-21%
2012	8,321	23,274	31,595	57,265	55%	25,670	48,513	16,918	-8,752	-15%
2013	6,521	14,200	20,721	51,032	41%	30,311	49,333	28,612	-1,698	-3%
Chardonnay										
2011	19,331	69,989	89,320	120,705	74%	31,385	120,190	30,870	-515	0%
2012	20,181	48,765	68,946	106,853	65%	37,907	120,528	51,582	13,675	13%
2013	19,881	29,744	49,625	99,639	50%	50,014	120,784	71,159	21,145	21%
Colombard										
2011	1,670	17,998	19,668	24,455	80%	4,787	26,606	6,938	2,151	9%
2012	2,460	6,815	9,275	14,536	64%	5,261	26,631	17,356	12,095	83%
2013	3,120	3,435	6,555	13,051	50%	6,496	26,631	20,076	13,580	104%

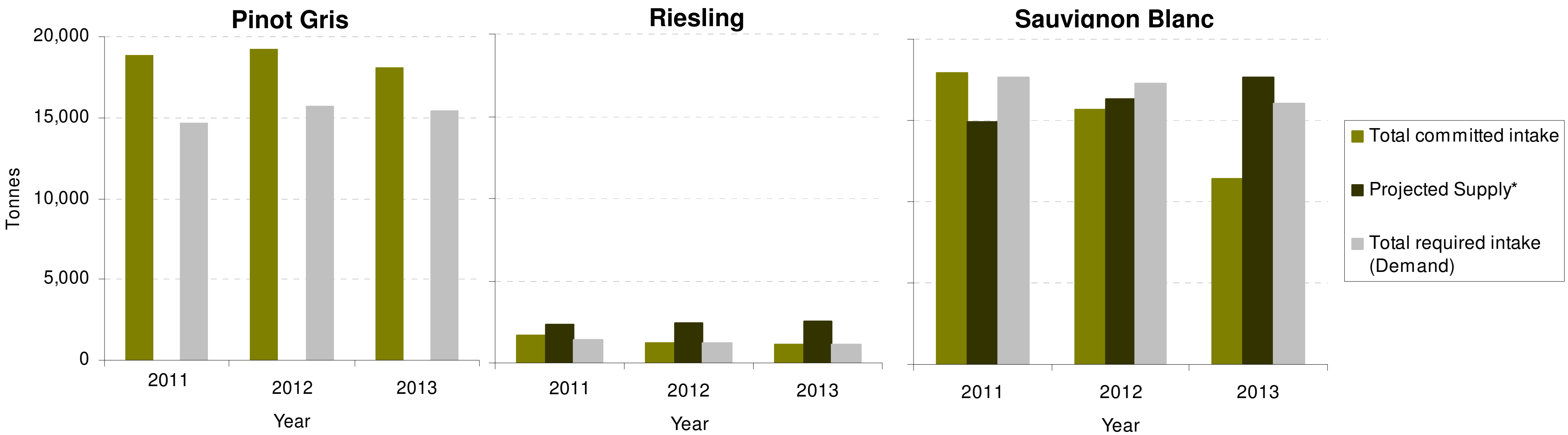


	Winery grown grapes	Contract purchases	Total committed intake	Total required intake (Demand)	% required intake that is committed	Winegrapes sought on the open market (Possible spot market requirement)	Projected Supply	Winegrapes available on the open market	Surplus or shortfall of grapes on the open market	Surplus or shortfall as a percentage of demand
Merlot										
2011	5,993	19,281	25,274	30,195	84%	4,921	34,437	9,163	4,242	14%
2012	5,993	14,520	20,513	29,465	70%	8,952	34,518	14,005	5,053	17%
2013	5,943	8,659	14,602	28,775	51%	14,173	34,518	19,916	5,743	20%
Muscat Gordo Blanco										
2011	625	18,077	18,702	22,473	83%	3,771	20,082	1,380	-2,391	-11%
2012	1,062	11,550	12,612	17,589	72%	4,977	23,366	10,754	5,777	33%
2013	1,497	9,036	10,533	15,457	68%	4,924	24,506	13,973	9,049	59%
Petit Verdot										
2011	477	1,728	2,205	4,008	55%	1,803				
2012	557	1,303	1,860	4,145	45%	2,285				
2013	557	1,218	1,775	4,078	44%	2,303				

* Individual data based on Petit Verdot no longer available from ABARE

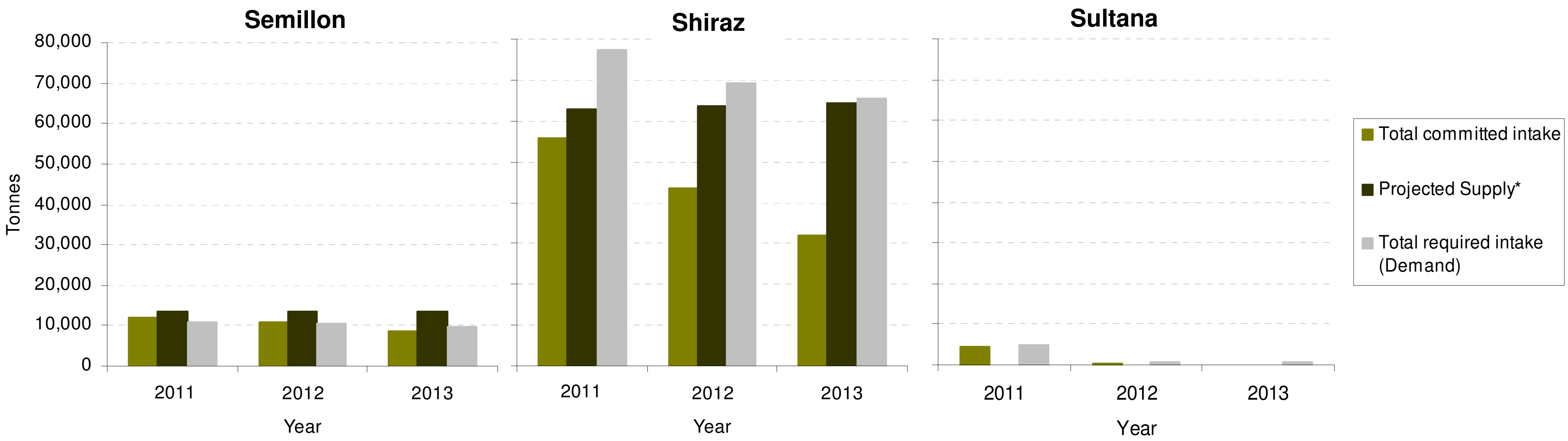


	Winery grown grapes	Contract purchases	Total committed intake	Total required intake (Demand)	% required intake that is committed	Winegrapes sought on the open market (Possible spot market requirement)	Projected Supply	Winegrapes available on the open market	Surplus or shortfall of grapes on the open market	Surplus or shortfall as a percentage of demand
Pinot Gris/Grigio										
2011	1,945	16,957	18,902	14,649	129%	-4,253				
2012	2,327	16,917	19,244	15,763	122%	-3,481	* Individual data based on Pinot Gris/Grigio no longer available from ABARE			
2013	2,617	15,454	18,071	15,411	117%	-2,660				
Riesling										
2011	759	942	1,701	1,375	124%	-326	2,306	605	0	0%
2012	759	477	1,236	1,230	100%	-6	2,418	1,182	0	0%
2013	659	477	1,136	1,080	105%	-56	2,512	1,376	0	0%
Sauvignon Blanc										
2011	4,654	13,305	17,959	17,610	102%	-350	14,946	-3,013	-2,664	-15%
2012	5,564	10,077	15,641	17,231	91%	1,590	16,320	679	-911	-5%
2013	5,424	5,997	11,421	16,009	71%	4,588	17,658	6,237	1,649	10%



	Winery grown grapes	Contract purchases	Total committed intake	Total required intake (Demand)	% required intake that is committed	Winegrapes sought on the open market (Possible spot market requirement)	Projected Supply	Winegrapes available on the open market	Surplus or shortfall of grapes on the open market	Surplus or shortfall as a percentage of demand
Semillon										
2011	4,955	7,193	12,148	10,950	111%	-1,198	13,423	1,275	0	0%
2012	4,955	6,023	10,978	10,518	104%	-460	13,451	2,473	0	0%
2013	4,605	4,120	8,725	9,611	91%	886	13,451	4,726	3,840	40%
Shiraz										
2011	8,897	46,800	55,697	77,414	72%	21,717	62,770	7,073	-14,644	-19%
2012	9,372	34,199	43,571	69,301	63%	25,730	63,565	19,994	-5,736	-8%
2013	8,982	22,877	31,859	65,479	49%	33,620	64,351	32,492	-1,128	-2%
Sultana										
2011	0	4,389	4,389	5,049	87%	660				
2012	0	232	232	915	25%	683				
2013	0	159	159	835	19%	676				

* Individual data based on Sultana no longer available from ABARE



Trend Graphs for Selected Varieties

NOTES ON TREND GRAPHS PROVIDED IN SECTION 4

The following graphs show the historical trends in tonnages for the 3 years preceding the current vintage where data exists and for the next 3 years where projected data is available.

Possible spot market requirement (wine grapes sought on the open market)

This figure is inferred from the difference between committed intake (own grown & purchased) and total required intake.

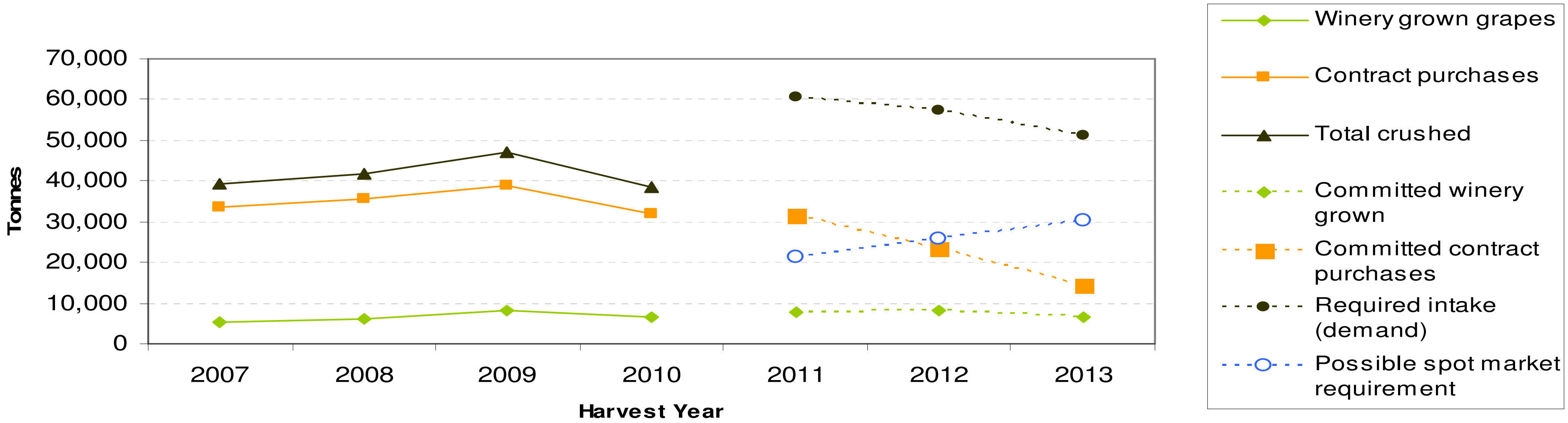
Where data exists, graphs showing the historical trend in weighted average price for 5 years preceding the current vintage are also included. These graphs represent the Calculated Average Purchase Value per Tonne (formerly Weighted Average Weighbridge Price) for all wine grapes purchased from the Murray Darling / Swan Hill regions, not only those purchased by Sunraysia wineries.

Graphs have been provided for major varieties in the 2010 vintage.

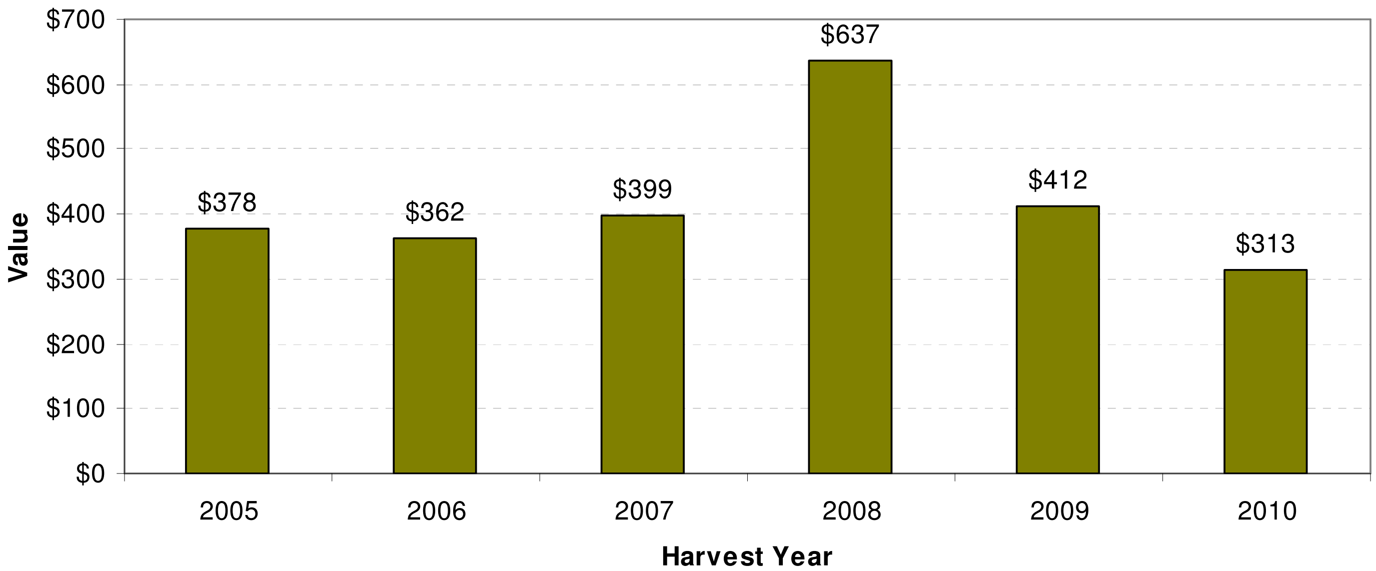
It is important to note that wineries were asked to only provide committed purchase figures on their existing arrangements. Planned or possible future contracts or renewals have not been taken into account in this figure. The projected spot market requirement may therefore change over time as contracts are renewed or new contracts signed.

Cabernet Sauvignon

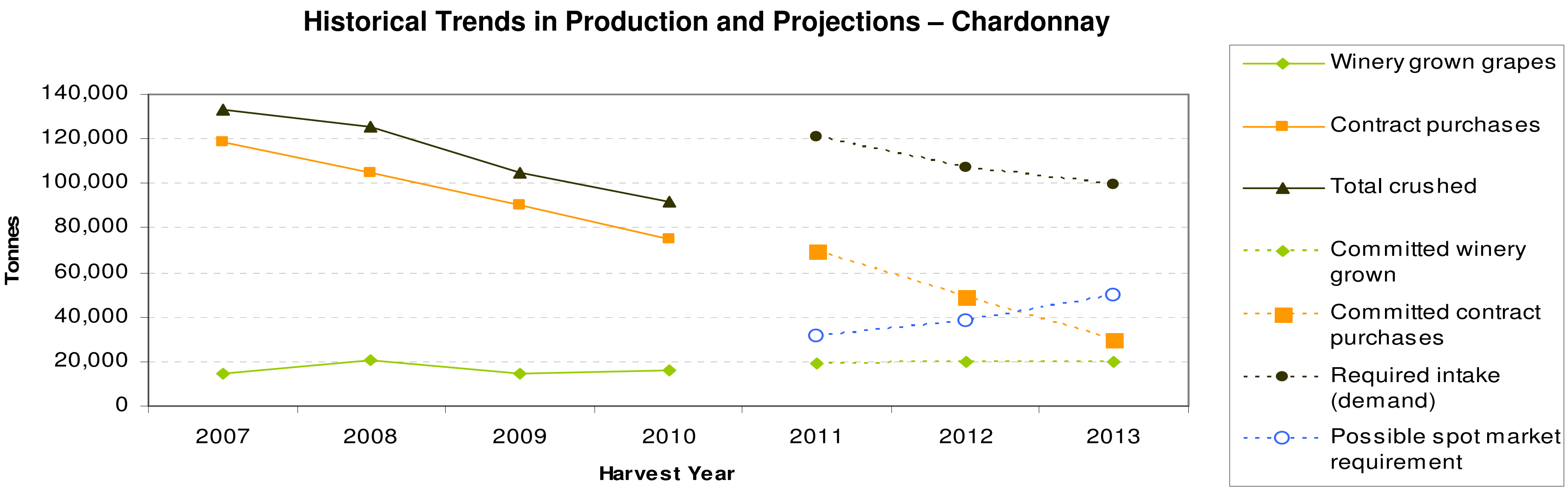
Historical Trends in Production and Projections – Cabernet Sauvignon

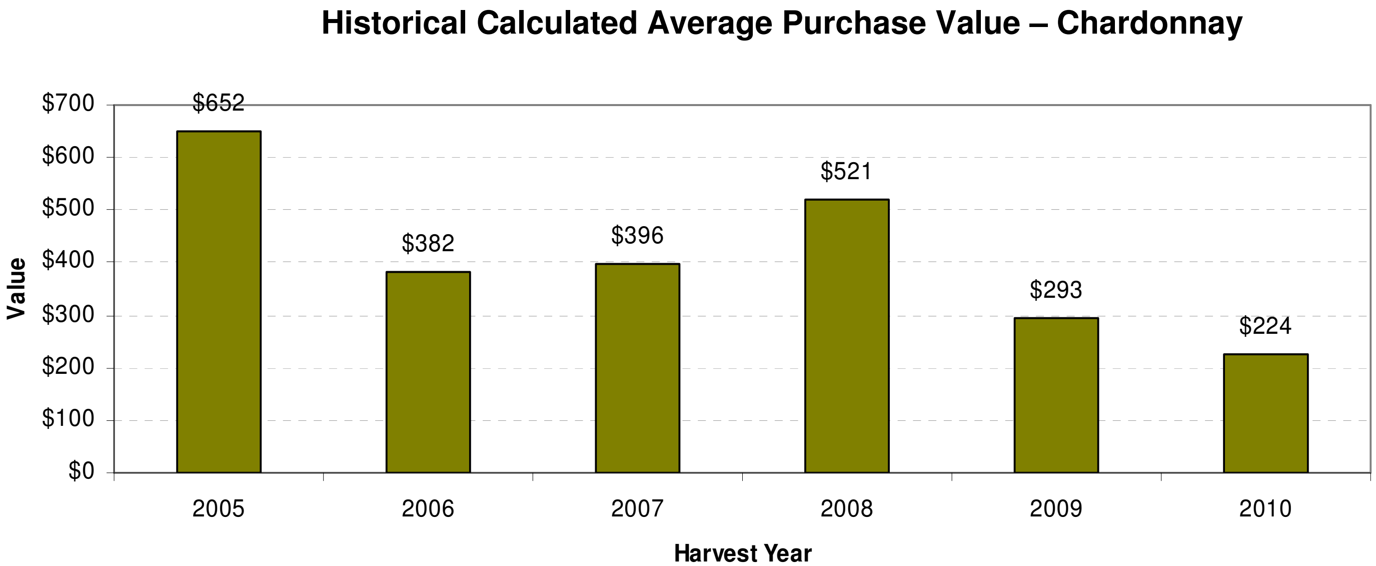


Historical Calculated Average Purchase Value – Cabernet Sauvignon

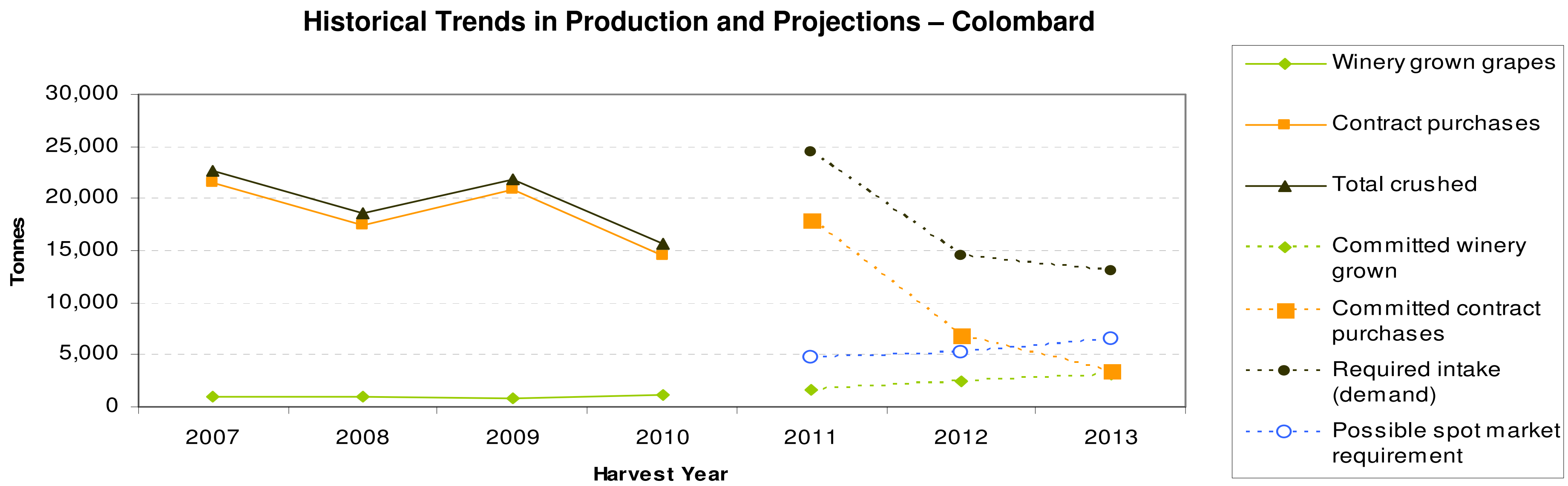


Chardonnay

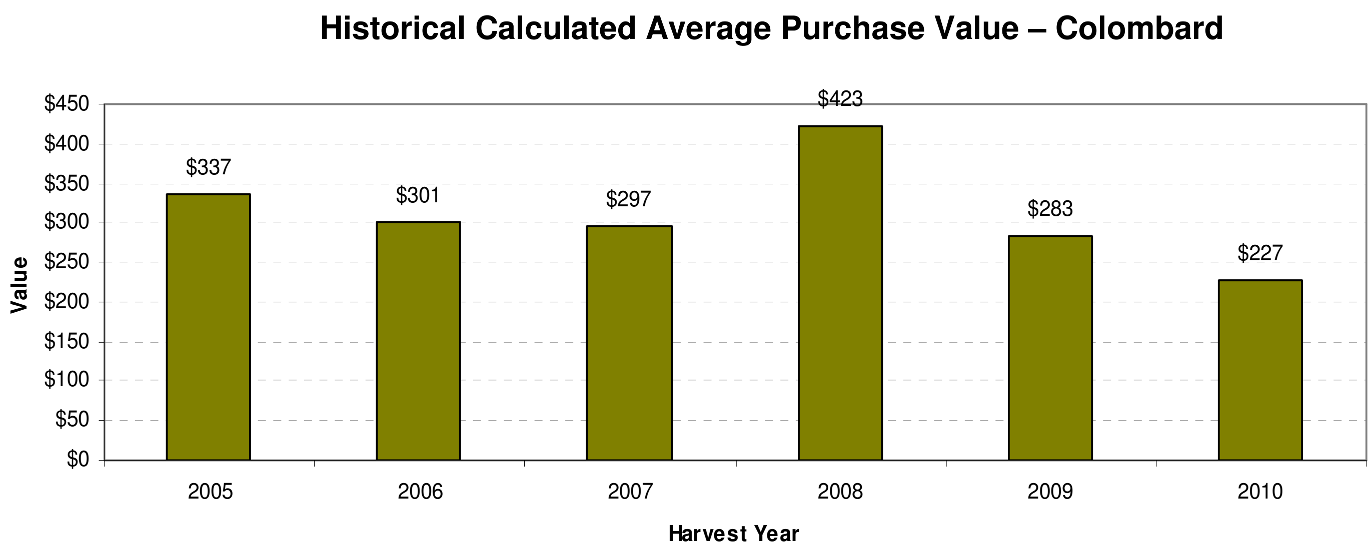

Historical Trends in Production and Projections – Chardonnay
140,000
120,000
100,000
80,000
60,000
40,000
20,000
0
Tonnes
2007
2008
2009
2010
2011
2012
2013
Harvest Year
Winery grown grapes
Contract purchases
Total crushed
Committed winery grown
Committed contract purchases
Required intake (demand)
Possible spot market requirement


Historical Calculated Average Purchase Value – Chardonnay
$700
$600
$500
$400
$300
$200
$100
$0
Value
$652
$382
$396
$521
$293
$224
2005
2006
2007
2008
2009
2010
Harvest Year

Colombard



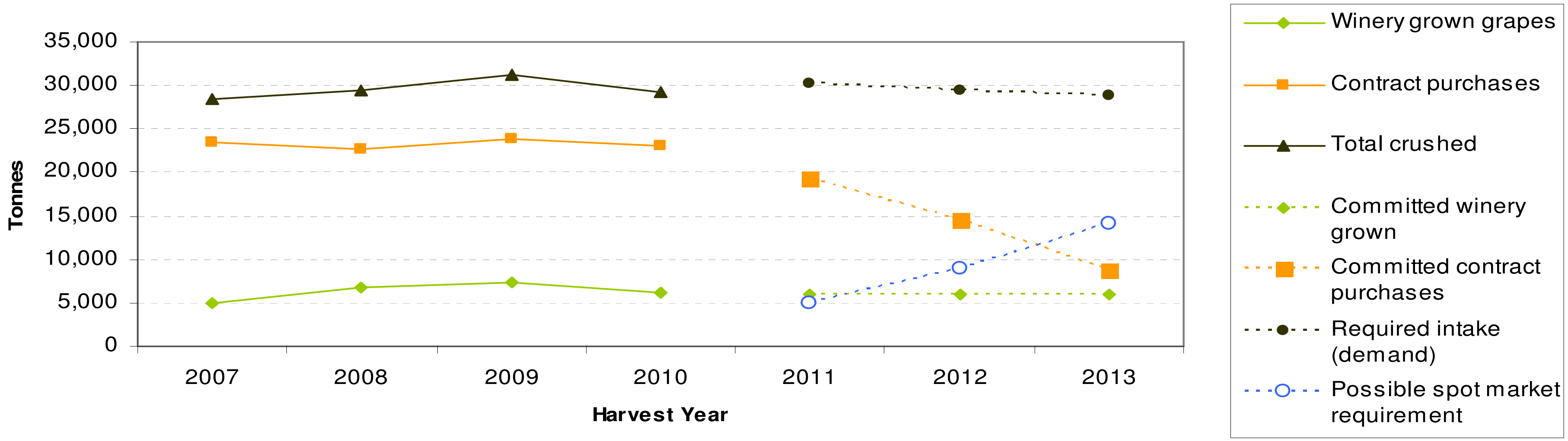
Historical Trends in Production and Projections – Colombard
Winery grown grapes
Contract purchases
Total crushed
Committed winery grown
Committed contract purchases
Required intake (demand)
Possible spot market requirement
30,000
25,000
20,000
15,000
10,000
5,000
0
Tonnes
2007
2008
2009
2010
2011
2012
2013
Harvest Year



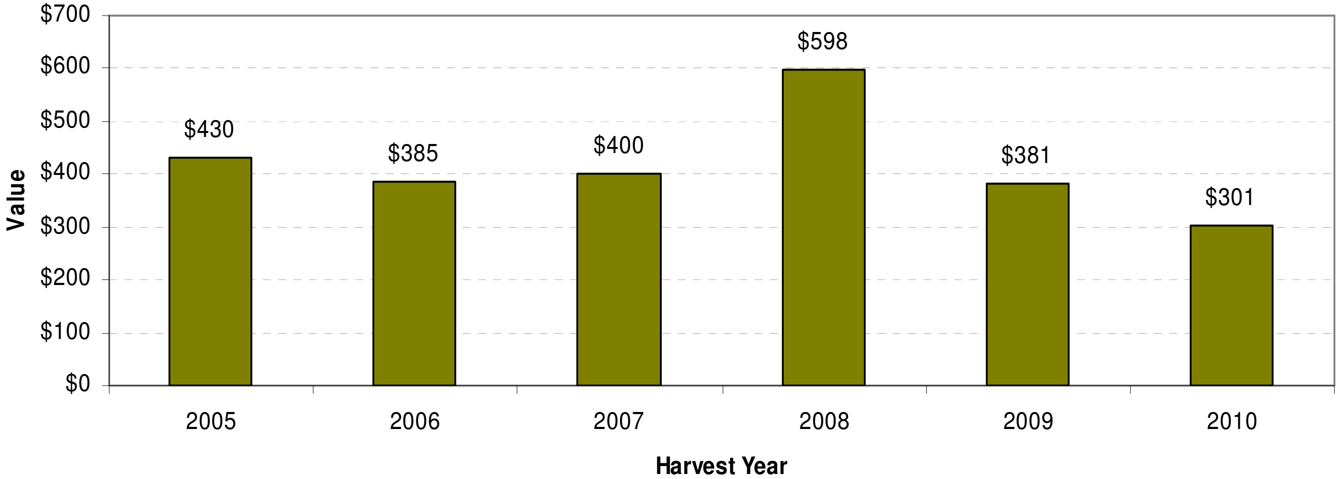
Historical Calculated Average Purchase Value – Colombard
$450
$400
$350
$300
$250
$200
$150
$100
$50
$0
Value
$337
$301
$297
$423
$283
$227
2005
2006
2007
2008
2009
2010
Harvest Year

Merlot

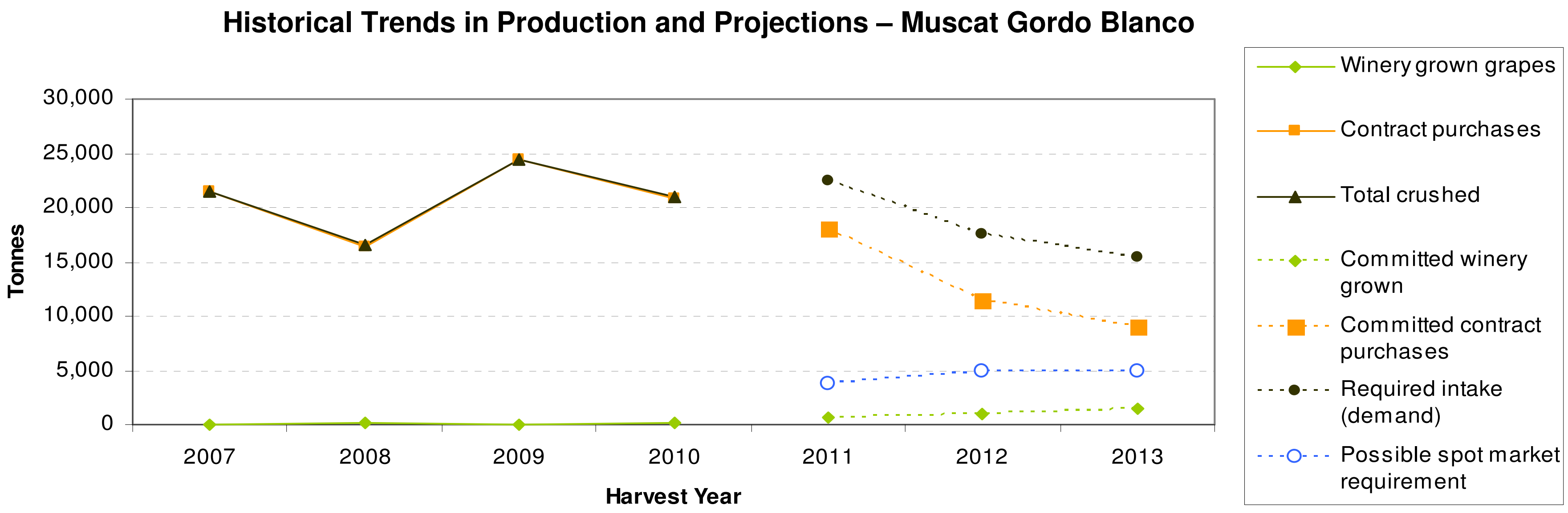
Historical Trends in Production and Projections – Merlot

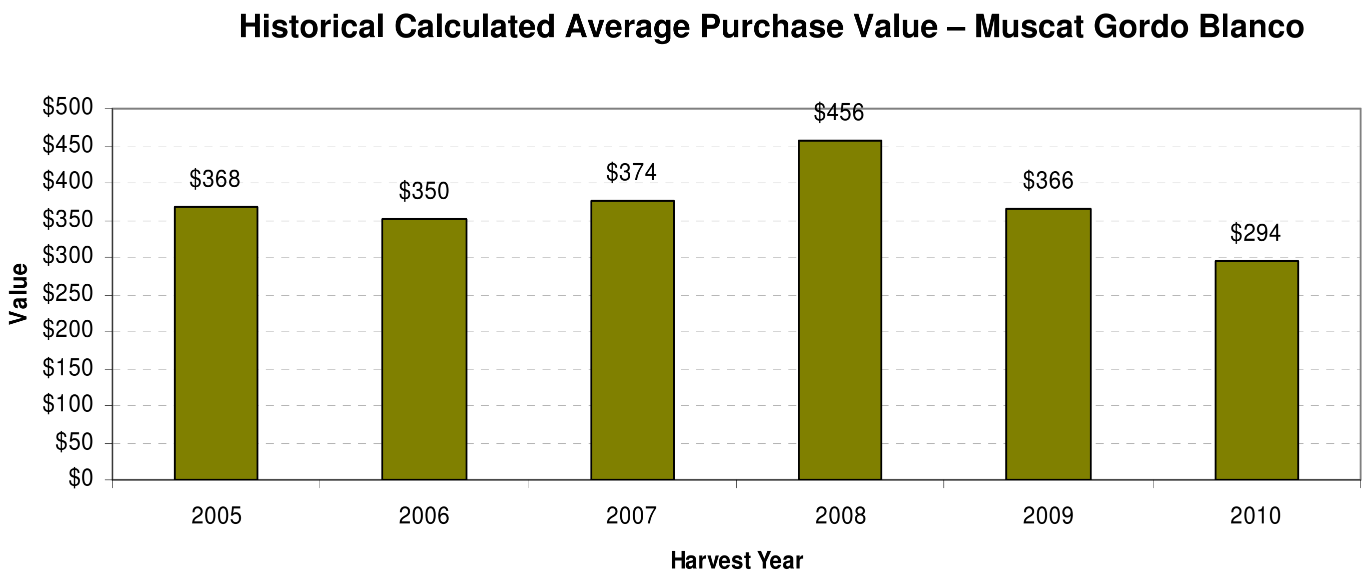


Historical Calculated Average Purchase Value – Merlot

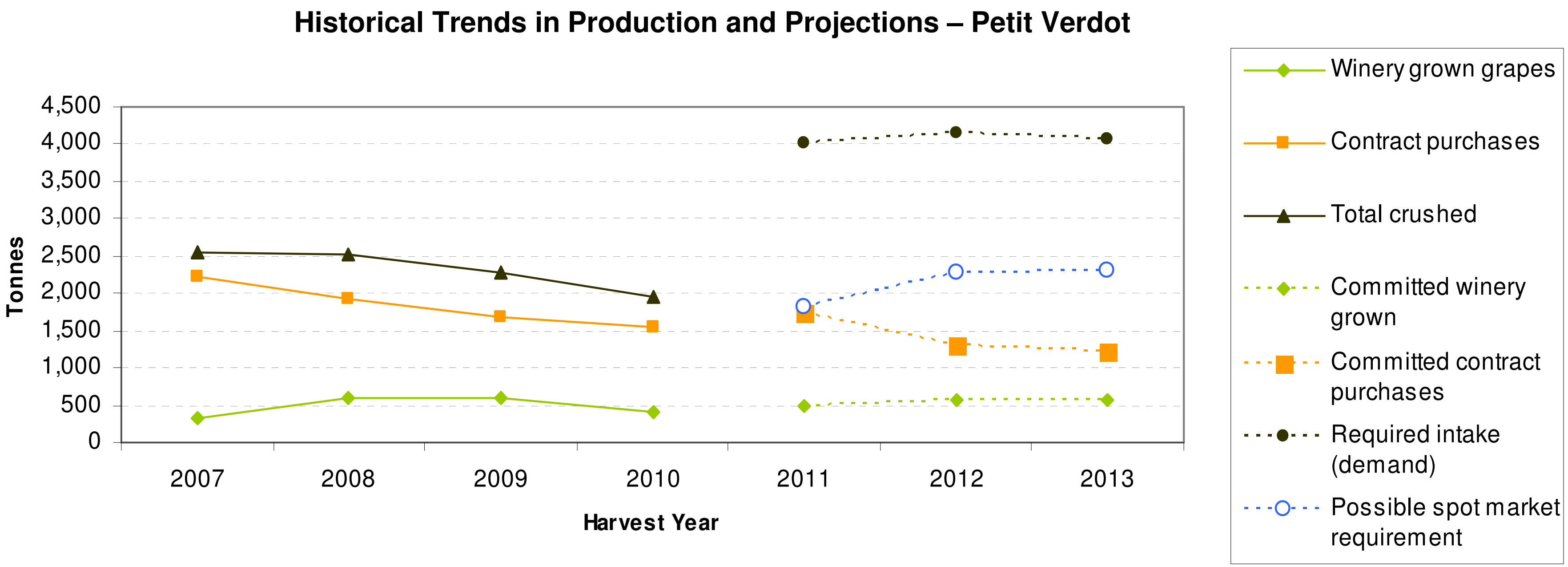


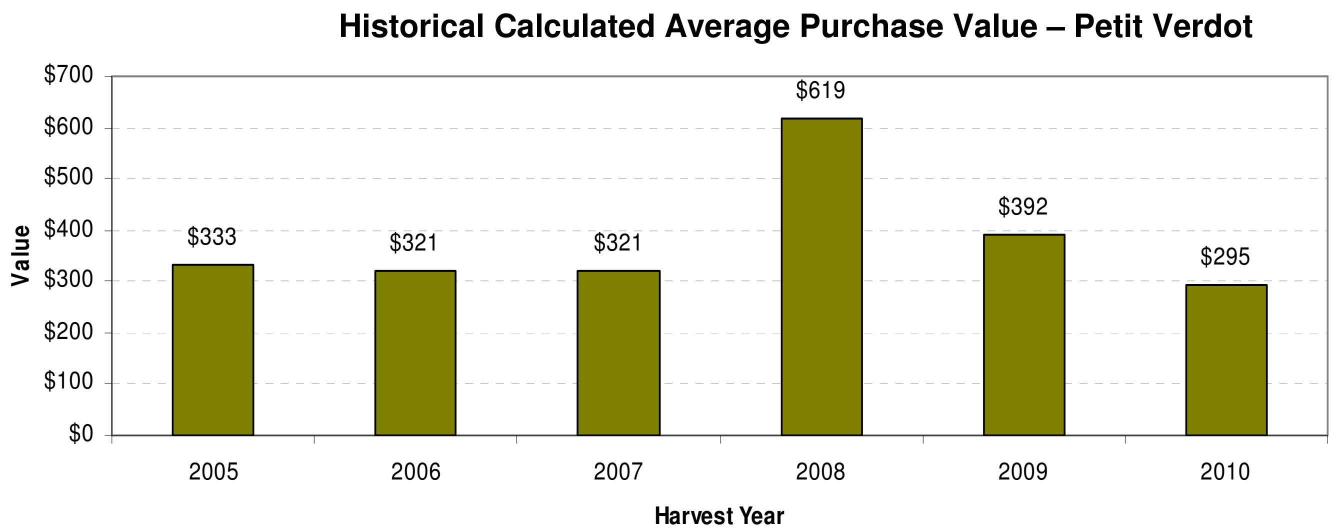
Muscat Gordo Blanco



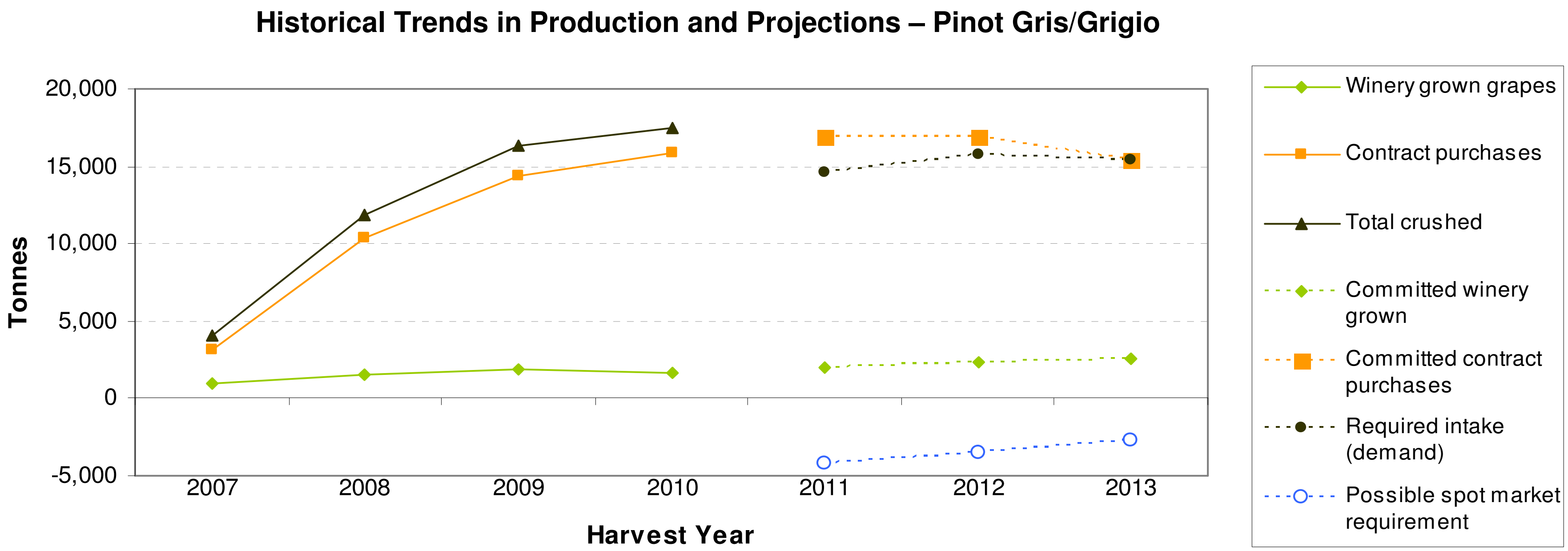


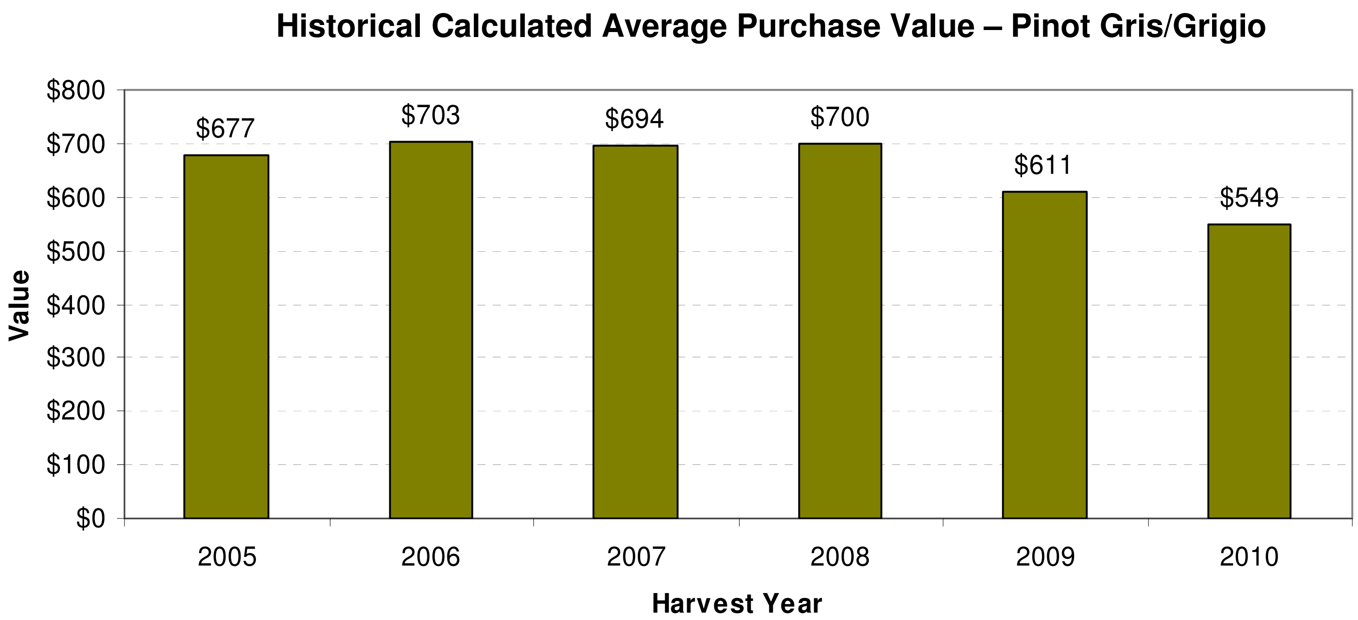
Petit Verdot



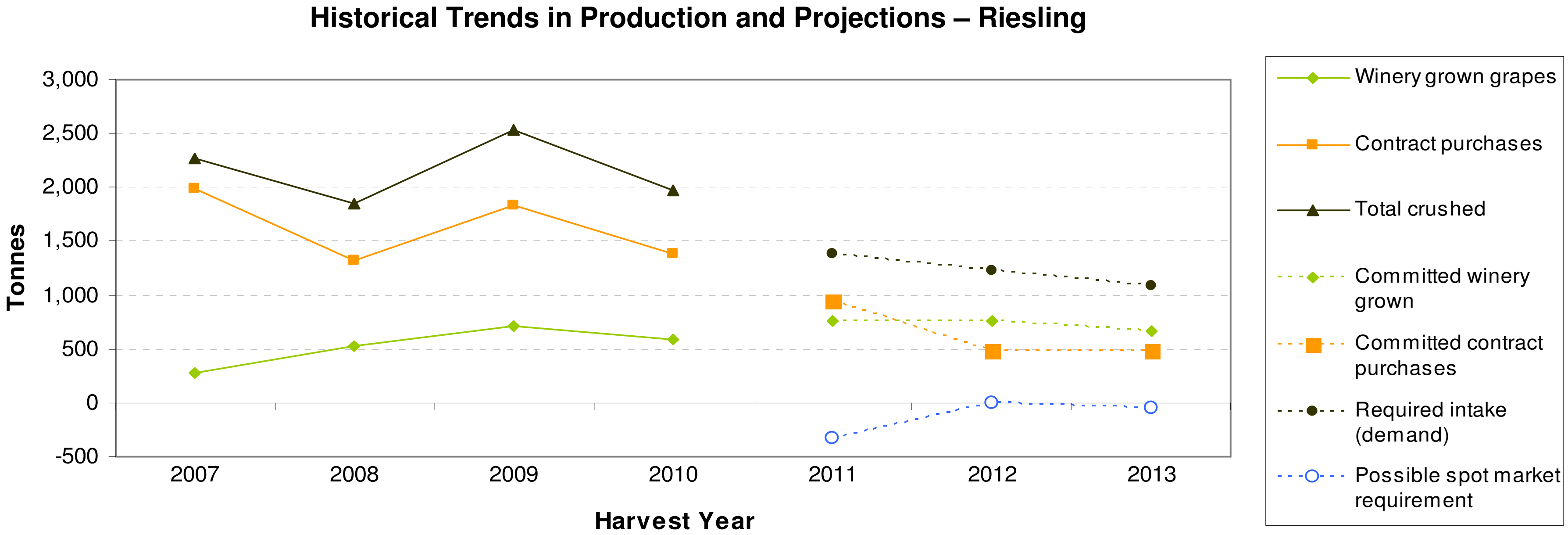


Pinot Gris/Grigio

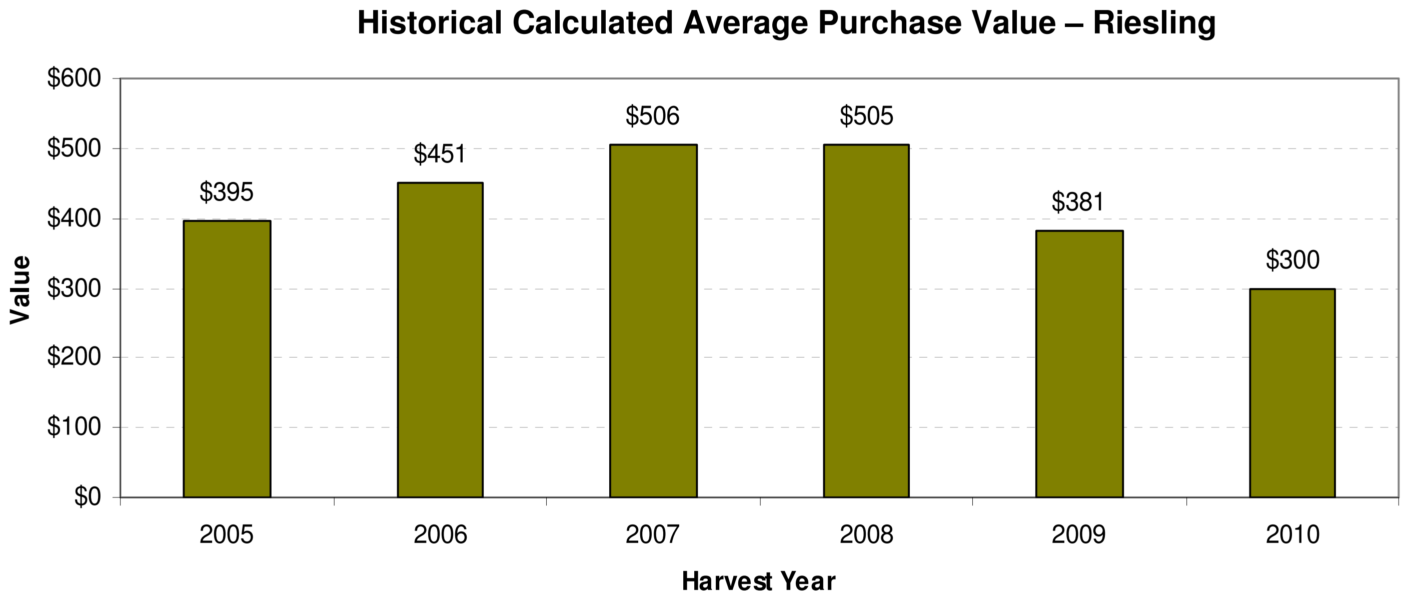




Riesling

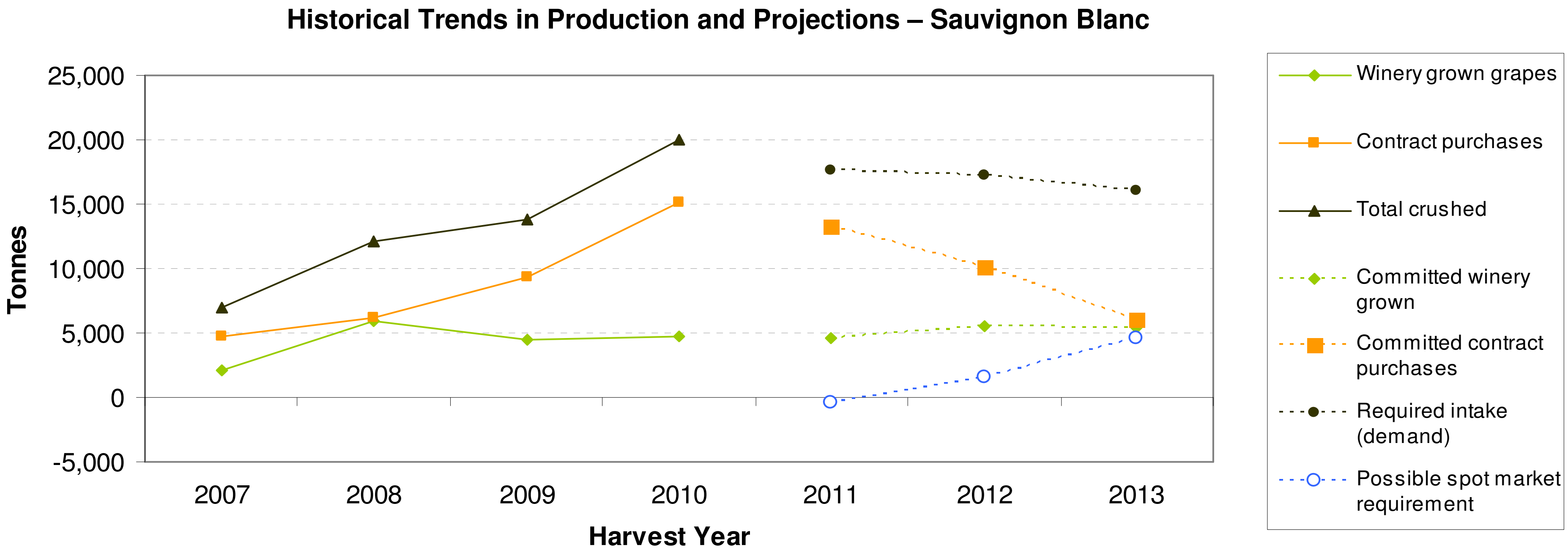


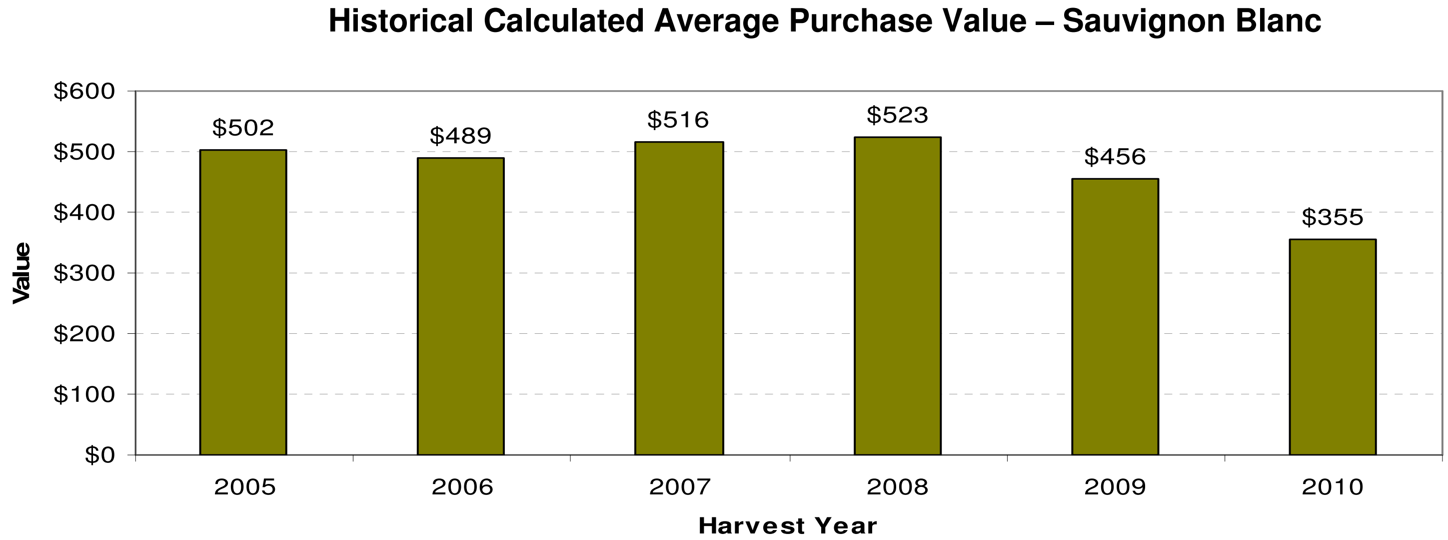
Historical Trends in Production and Projections – Riesling
3,000
2,500
2,000
1,500
1,000
500
0
-500
Tonnes
2007
2008
2009
2010
2011
2012
2013
Harvest Year
Winery grown grapes
Contract purchases
Total crushed
Committed winery grown
Committed contract purchases
Required intake (demand)
Possible spot market requirement



Historical Calculated Average Purchase Value – Riesling
$600
$500
$400
$300
$200
$100
$0
Value
$395
$451
$506
$505
$381
$300
2005
2006
2007
2008
2009
2010
Harvest Year

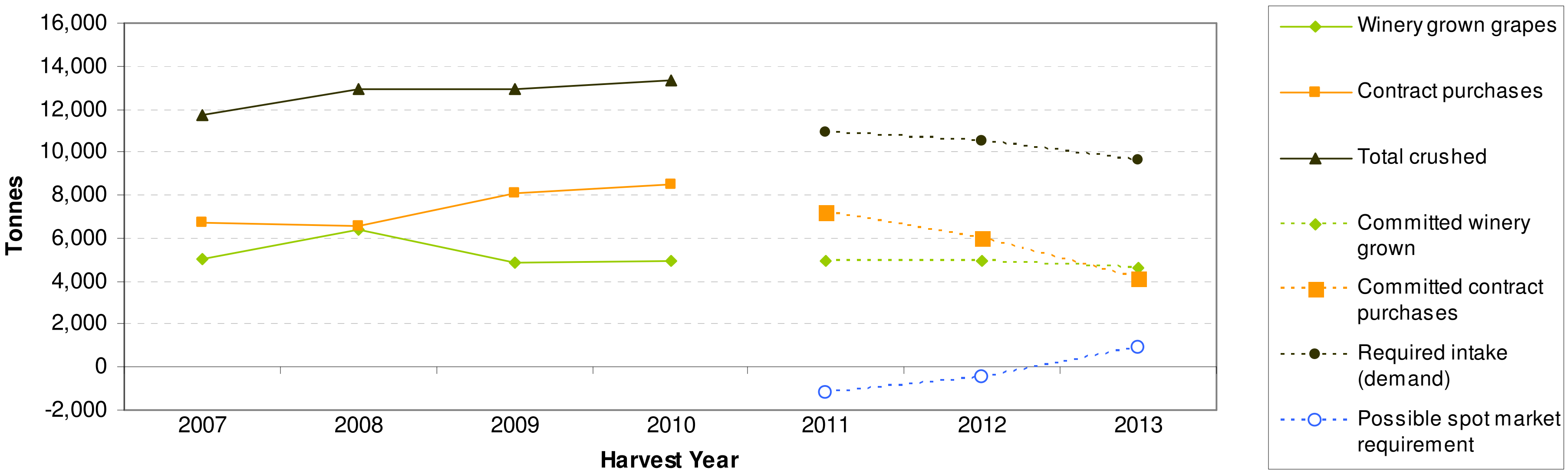
Sauvignon Blanc



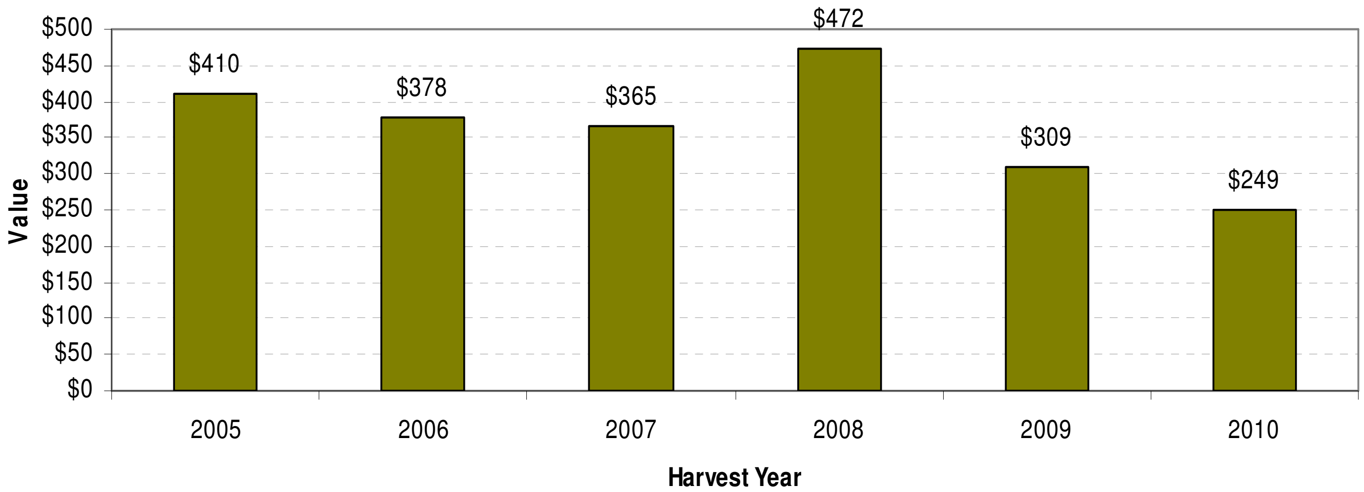


Semillon

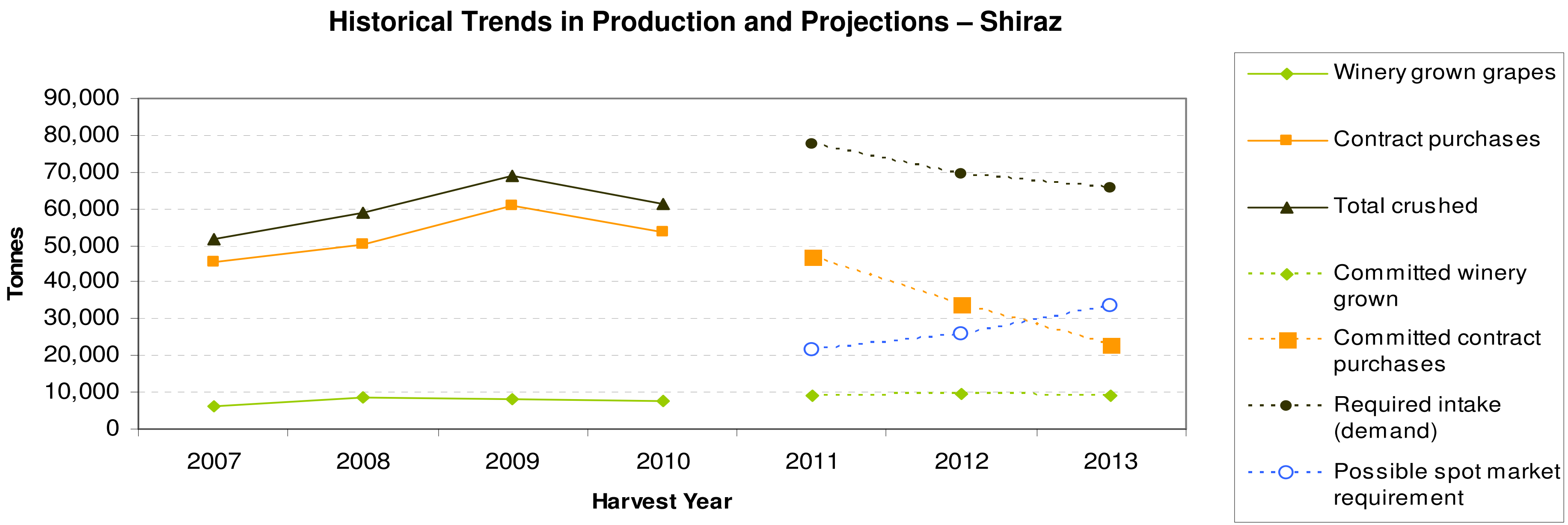
Historical Trends in Production and Projections – Semillon



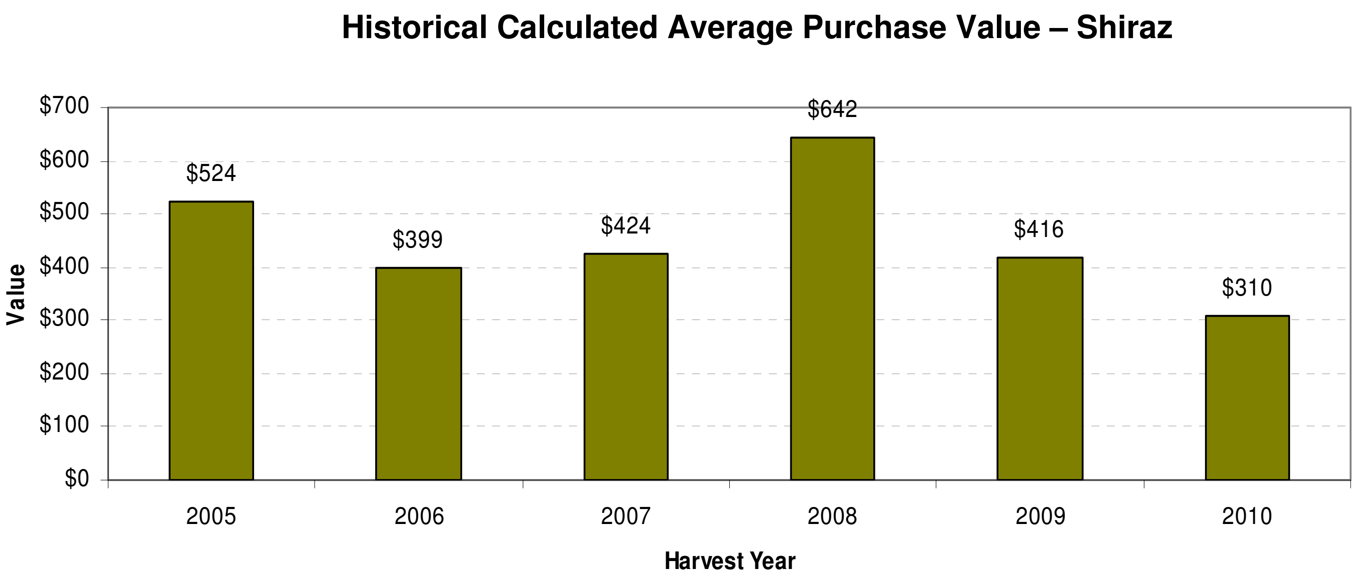
Historical Calculated Average Purchase Value – Semillon



Shiraz

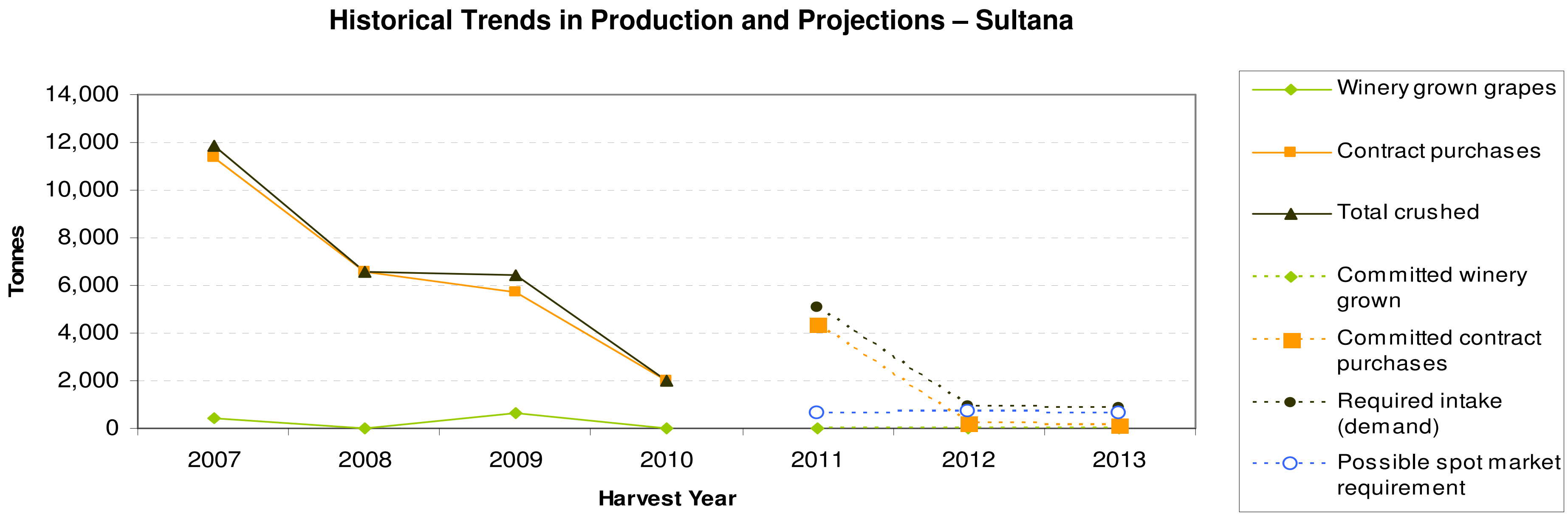


Historical Trends in Production and Projections – Shiraz
90,000
80,000
70,000
60,000
50,000
40,000
30,000
20,000
10,000
0
Tonnes
2007
2008
2009
2010
2011
2012
2013
Harvest Year
Winery grown grapes
Contract purchases
Total crushed
Committed winery grown
Committed contract purchases
Required intake (demand)
Possible spot market requirement

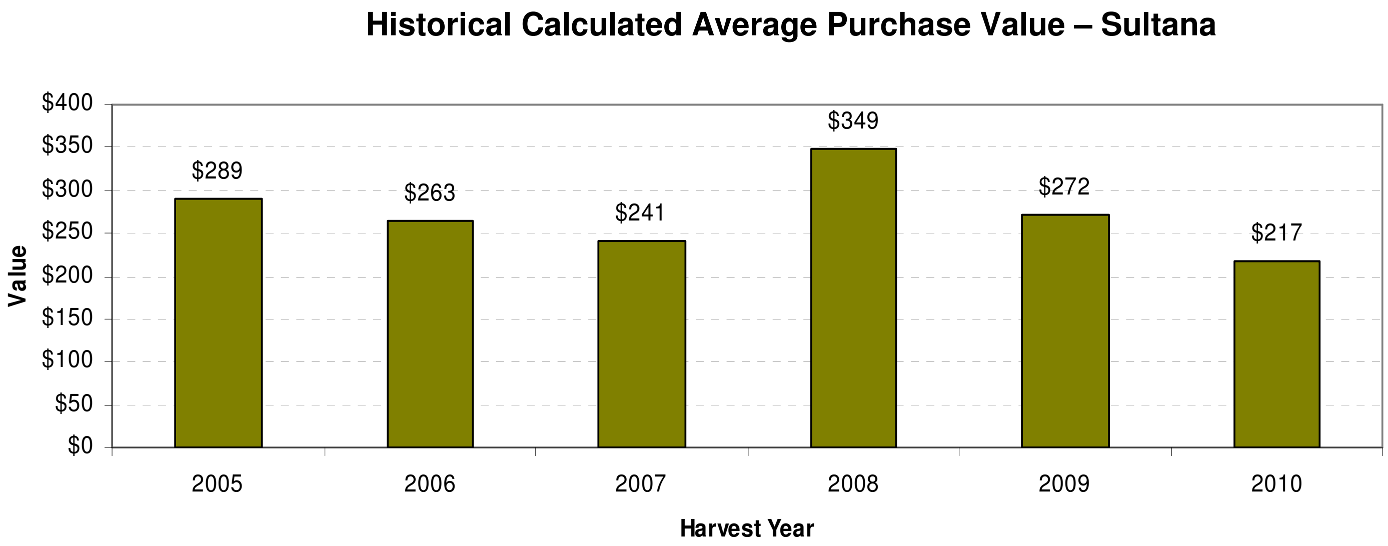


Historical Calculated Average Purchase Value – Shiraz
$700
$600
$500
$400
$300
$200
$100
$0
Value
$524
$399
$424
$642
$416
$310
2005
2006
2007
2008
2009
2010
Harvest Year

Sultana



Historical Trends in Production and Projections – Sultana
14,000
12,000
10,000
8,000
6,000
4,000
2,000
0
Tonnes
2007
2008
2009
2010
2011
2012
2013
Harvest Year
Winery grown grapes
Contract purchases
Total crushed
Committed winery grown
Committed contract purchases
Required intake (demand)
Possible spot market requirement



Historical Calculated Average Purchase Value – Sultana
$400
$350
$300
$250
$200
$150
$100
$50
$0
Value
$289
$263
$241
$349
$272
$217
2005
2006
2007
2008
2009
2010
Harvest Year

List of Wineries Returning Survey Forms

THANK YOU TO THE FOLLOWING WINERIES WHO RESPONDED TO THE 2010 SURVEY

Andrew Peace Wines
Angoves Pty Ltd
Australian Vintage
Berton Vineyards
Casella Wines Ltd
Constellation Wines Australia
De Bortoli Wines Pty Ltd
Deakin Estate
Dorrien Estate Winery
Fosters Wine Estates
Kingston Estate Wines Pty Ltd
McPhersons Wines
Mitchelton Wines
Nursery Ridge Estate
Oak Valley Estate Boutique Winery
Orlando Wines
Peter Lehmann Wines Limited
Qualia Wines
Pettavel Wines
Robinvale Organic & Bio-Dynamic Wines
The Wine Group
Trentham Estate
Tyrell's Vineyards
Vintage Traders
Warburn Estate
Wooden Eye Estate
Yalumba Wines (S Smith & Son)
Zilzie Wines

The Senate

Rural and Regional Affairs and Transport References Committee

The operation of the wine-making industry

October 2005

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Abbreviations

ABARE	Australian Bureau of Agricultural and Resource Economics
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
AWBC	Australian Wine and Brandy Corporation
AWGC	Australian Winegrape Growers' Council
DAFF	Department of Agriculture, Fisheries and Forestry
PGI Code	Produce and Grocery Industry Code
PIRSA	[Department of] Primary Industries and Resources South Australia
WFA	Winemakers' Federation of Australia
WIRC	Wine Industry Relations Committee

Summary and recommendations

CHAPTER 1 - Background

Australia's wine industry has expanded enormously in the last ten years, driven by strong growth in exports. Plantings of vines increased greatly in the late 1990s, peaking at 16,224 hectares in 1998. As the new plantings of the late 1990s have come on stream in the early 2000s, grape prices have fallen, wine production has increased faster than sales, wine prices have fallen, and the stock to sales ratio has increased.

The focus of this inquiry is the problems this situation has created for the viability of grape growers. As well, the report discusses the complaints growers make about their business relations with winemakers.

CHAPTER 2 - Issues to do with the supply and demand for grapes

Average grape prices have fallen from \$1049 per tonne in 1999 to \$755 per tonne in 2004. Since the peak, weighted average warm climate prices have fallen from \$857 to \$600 (white) and from \$1378 to \$419 (red). White grape prices are expected to continue falling to 2009-10. Red grape prices are expected to fall until 2006-07, then recover. Wine exports are expected to continue growing strongly, but the unit value of exports is expected to continue to fall.

For many growers grape prices are below the cost of production. Growers without contracts are being offered extremely low prices (\$100-\$200 per tonne) on the spot market. Winemakers are also under pressure: profit has trended down since 2002 and almost half surveyed wineries reported a loss in 2004.

Grapegrowing suffers the boom-bust cycle more than many agricultural industries because of the long lead time before vines come into production. This makes it more difficult to predict the market and to respond quickly to market signals. It is, therefore, all the more important to do as much as possible to make the industry more stable and to reduce the peaks and troughs of the market cycle.

The committee agrees that, given the underlying policy of allowing free enterprise in agriculture, there should not be government intervention in the market by controlling price or supply.

Other possible initiatives to stabilise the industry include:

- better market information and business planning advice to growers; and
- improving productivity and economies of scale.

A national register of vines appears worthwhile to improve market information and guide business decisions. The committee suggests that to be practical it would have to be based on compulsory reporting by growers. To base it on voluntary information-gathering, for example by a national growers' body, would be troublesome and unlikely to yield full information.

Recommendation 1 (paragraph 2.89)

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.

CHAPTER 3 - Problems in relations between grapegrowers and winemakers

During the inquiry the committee received evidence of exploitative business relations between winegrape growers and winemakers, with winemakers taking advantage of their stronger bargaining power in the present oversupply of grapes. The main concerns were:

- contracts offered on a 'take it or leave it' basis, with no genuine negotiation;
- contracts not being renewed, often after growers have been encouraged by winemakers to invest in improvements;
- prices notified late in the season, leaving growers little chance of negotiating alternative buyers;
- lack of objective, transparent standards for assessing the quality of grapes; and
- contracts are often unclear about how disputes over price or fruit quality should be resolved.

The ACCC has investigated complaints by winegrape growers, but found that they fall short of being unconscionable conduct within the meaning of the Trade Practices Act.

In the committee's view the behaviour described, whether or not it is 'unconscionable conduct' within the meaning of the Trade Practices Act, should be a cause for concern.

CHAPTER 4 - Improving the position of growers

The question arises whether there should be some regulation of the business relationships between grape growers and buyers. This could be by direct regulation of terms and conditions of trade, or by establishing a code of conduct, whether voluntary or mandatory.

The committee does not think there should be direct regulation by way of mandatory terms of trade. Freedom of contract is a fundamental principle of the free enterprise economy. In the committee's view we should be extremely cautious of interfering with it.

However, the committee agrees with a previous inquiry by the Senate Economics References Committee (March 2004) that clauses in contracts which allow one party to vary the contract unilaterally risk being exploited by the stronger party. The committee agrees that the Trade Practices Act should be amended so that the presence of a 'unilateral variation' clause is one of the matters that a court may consider in deciding whether conduct is unconscionable.

Recommendation 2 (paragraph 4.13)

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.

The bargaining position of growers may be improved by collective bargaining. The committee supports amendments to the Trade Practices Act currently before Parliament to make this easier.[1]

There are similarities between the problems of winegrape growers and the problems of fruit and vegetable growers which have given rise to the draft mandatory Horticulture Code of Conduct now under discussion.

The committee supports a mandatory code of conduct under the Trade Practices Act to regulate the sale of winegrapes. In view of the seriously poor relations between growers and some winemakers, as noted in Chapter 3, the committee does not think that a voluntary code would be sufficient to protect growers with weak bargaining power.

Recommendation 3 (paragraph 4.67)

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.

The committee supports current moves to establish a national winegrape growers' body.

---

1 The Senate passed the Trade Practices Legislation Amendment Bill (No. 1) 2005 on 11 October 2005, between the adoption and the publication of this report.

The committee also supports moves to establish a national wine industry body, with both growers and winemakers, to progress matters where they have shared interests. However, it appears to be assumed that the wine industry body would simultaneously be the winemakers' peak representative body. This invites the suspicion that winemakers would have favoured status within the wine industry body. It could lead to conflicts of interest.

Recommendation 4 (paragraph 4.94)

The committee recommends that any national wine industry body should be separate from a winemakers' representative body.

Chapter 1

Background

Conduct of the inquiry

1.1 The Senate referred the inquiry on 16 March 2005. The terms of reference are:

> The operation of the wine-making industry, with particular reference to the supply and purchase of grapes.

1.2 The committee proposed the inquiry after it became aware of the problems created by the current low price of winegrapes. The committee decided to focus on the following points:

- the size and nature of the winegrape glut, and wine producers' inventory levels;
- the structure of the industry and how this impacts on the relationship between growers and producers; the nature of the contractual agreements between them; the implementation of quality benchmarks and whether these can be standardised in an industry-wide code of conduct;
- the adequacy of the terms and implementation of the *Trade Practices Act 1974* in relation to winegrape growers; and
- the need for a national grape growers' representative body, the powers that it might have, and the means by which it might be funded, including any possible role for Government in overseeing an industry levy.

1.3 The committee advertised the inquiry in *The Australian* and invited submissions from peak bodies. The committee received 30 submissions (see Appendix 1) and held four public hearings (see Appendix 2). Submissions included 435 form letters from growers in the Riverina and Murray Valley regions, of which 115 attached additional comments. A sample of these comments is at Appendix 4. The committee thanks submitters and witnesses for their contribution. Submissions and transcripts of the committee's hearings are available on the parliament's internet site at www.aph.gov.au.

Structure of the report

1.4 Chapter 1 gives an overview of the present problem.

1.5 Chapter 2 discusses issues to do with the supply and demand for grapes, and possibilities for reducing the effect of peaks and troughs in the market cycle.

1.6 Chapter 3 considers issues to do with the apparent poor business relations between growers and some winemakers.

1.7 Chapter 4 discusses possibilities for improving relations between growers and winemakers, including a code of conduct for the winegrape trade and a national winegrape growers' body.

Overview

1.8 Australia's wine industry has expanded enormously in the last ten years, driven by strong growth in exports. Since 1994-5 production has almost trebled, while exports have increased five-fold. Average grape prices increased from a low of $493 per tonne in 1993 to peak at $1049 per tonne in 1999.[1]

1.9 In 1996 the Winemakers' Federation of Australia (WFA) released *Strategy 2025*, a statement of the goals of the industry over the next 30 years. *Strategy 2025* expressed the hope that from 1996 to 2025 grape production would increase from 850,000 tonnes to 1,650,000 tonnes, and exports would increase from 125 million litres per year to 600 million litres per year. This would require average annual planting of 1,500 hectares.[2]

1.10 The industry expanded much more quickly than expected. Plantings increased rapidly to peak at 16,224 hectares in 1998. In 2000, *The Marketing Decade*, an industry publication, warned that 'as a result of this rapid expansion, from the 2001 vintage onwards Australia is expected to enter a period where the grape supply shortfall of the last decade has been reversed.'[3] Commentator Kym Anderson said:

> [*Strategy 2025*] was developed with nothing more in mind than providing a 30-year vision for the future so as to stimulate a steady flow of investment. At the time those targets were considered by many observers as rather optimistic, since they involved a three-fold increase in the real value of wine production, 55 per cent of it for the export market… So convincing was that document (helped by the provision of tax incentives to high-income investors in the form of accelerated depreciation of vineyard construction costs), and so intense has been the subsequent investment that the industry has virtually reached that half-way point towards its 30-year target - that is, in just five vintages![4]

1.11 The 30 year targets have been reached in 10 years. As the new plantings of the late 1990s have come on stream in the early 2000s, grape prices have fallen, wine production has increased faster than sales and the stock to sales ratio has increased. Wine prices have fallen in response, as foreshadowed in *The Marketing Decade*:

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1 Winemakers' Federation of Australia, additional information 22 September 2005. Derived from Australian Wine and Brandy Corporation National Utilisation Project. Figures in 2004 dollars.

2 Winemakers' Federation of Australia, *Strategy 2025*, s6, 7

3 Winemakers' Federation of Australia and Australian Wine and Brandy Corporation, *The Marketing Decade - setting the Australian wine marketing agenda 2000-2010*, 2000, p. 24

4 K. Anderson, 'The Anatomy of Australia's Wine Boom: Lessons for Other Industries', *Agribusiness Review*, Vol. 8, 2000

> There is a strong likelihood of oversupply if the industry were to try and sell, at current prices and quality, all of the additional wine expected to be available in the next five years. However lower wine prices provide access to a larger share of the international market and therefore a higher probability of selling all the wine. In this sense, price adjustments usually clear the market and resolve the oversupply. [5]

1.12 Average grape prices have fallen to $755 per tonne according to the Winemakers' Federation; or, according to ABARE, to $600 per tonne (white) and $419 (red) in the warm climate regions. This is similar to the low point of 1993. Prices are expected to continue to fall for several years. [6]

1.13 The focus of the inquiry is the problems this has created for the viability of grape growers. As well, the report discusses the complaints growers make about their business relations with winemakers. These are underlying issues to do with the balance of bargaining power, which have become more urgent because of the current low prices.

Other issues for the future of the wine industry

1.14 The committee notes some other issues which may affect the long term economics of grape growing and/or winemaking:

- the long term decline in Australia's terms of trade in agriculture, and competition from other 'New World' countries; implying the need for continuing productivity growth;
- rising fuel costs, which may affect both the costs of production and consumer confidence;
- environmental management of irrigated agriculture and possible effect of water reform (most grapes are irrigated);
- effect of alcohol and wine tax policy on production and consumption of wine;
- effect of capital gains and negative gearing tax concession on property values and the opportunities for investors versus smallholders;
- effect of proposed workplace relations law changes, including requiring small businesses to incorporate;
- changes to the ownership and nature of the retail sector; and
- consolidation and concentration of ownership of winemakers.

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5 Winemakers' Federation of Australia and Australian Wine and Brandy Corporation, *The Marketing Decade - setting the Australian wine marketing agenda 2000-2010*, 2000, p. 26

6 Winemakers' Federation of Australia, additional information 22 September 2005 based on Australian Wine and Brandy Corporation figures. ABARE, *Australian Commodities*, March 2005, p. 54. ABARE, additional information, 9 September 2005, which updates the figures in *Australian Commodities*.

1.15 The committee notes that these matters have had, and will continue to have, a significant impact on the future of the industry, although they are not specifically discussed in this report.

A note on defining 'over-supply'

1.16 The Winemakers' Federation of Australia (WFA) rejected the notion that there is a winegrape 'glut'. Rather, the WFA believes that there is 'a cyclical imbalance at present, particularly of some red grape varieties. There is also a structural imbalance of some varieties in some regions.'[7]

1.17 Some submissions implied that 'over-supply' is a concept invented by wineries to justify low prices, and is rebutted by the fact that in the end most grapes do sell. For example:

> 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.[8]
>
> If we are in oversupply, why wasn't product left on the vine? I think a lot of wineries purchased that product because it was dead cheap on the premise that they could sell it down the track and they could store it.[9]

1.18 The Australian Wine and Brandy Corporation (AWBC) estimated that in 2005 about 2% of grapes were not sold. This may be compared with an estimated 3-4% in 2002.[10]

1.19 This reflects the nature of the market. In an efficient market where many buyers meet many sellers, the market will clear at the market clearing price. If sellers hold out for more, it is because they choose, if necessary, to keep unsold stock in the hope of getting a better price another day. With a perishable item like winegrapes that is impossible; hence the market will tend to clear at a price that is low enough. This contrasts with the position of winemakers, who have more flexibility to hold stock to cope with a temporary surplus of supply.

1.20 The AWBC suggested that unsold grapes are a sign of oversupply.[11] In evidence most references to 'oversupply' seemed to mean, more broadly: supply is such that the market-clearing price is below what the speaker regards as fair, or below what is needed for growers to break even. Conversely, in talk about restoring

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7 Submission 4, Winemakers' Federation of Australia, p. 2

8 Submission 29, Riverina Wine Grapes Marketing Board, p. 5

9 Mr M. De Palma (Murray Valley Winegrowers), *Committee Hansard,* 28 June 2005, p. 19

10 Submission 17, Australian Wine and Brandy Corporation, p. 4. The Winemakers' Federation of Australia estimated 3% in a June 2002, note: *Observations on the Winegrape Supply Situation*.

11 Submission 17, Australian Wine and Brandy Corporation, p. 4

‘balance’ in the market, ‘balance’ implicitly means: a balance of supply and demand which creates a price which allows a viable income to all concerned.

1.21 Whether on a narrower definition (unsold grapes indicates oversupply), or on a broader definition (struggling growers indicates oversupply), the committee accepts that there is currently a problem of oversupply.

Chapter 2

Issues to do with the supply and demand for grapes

Background: structure of the wine industry

Grape-growing

2.1 There are about 164,000 hectares of vines in Australia. South Australia has almost half the total. Victoria and New South Wales have almost a quarter each. The other states have small amounts.[1]

2.2 Australia-wide, 90% of grapes are used for winemaking, 6½% for drying, and 3½% for the table. These proportions differ between states: for example 99% of South Australian grapes, but only 72% of Victorian grapes, are used for winemaking.

2.3 Winegrapes are grown in 7,957 vineyards. The average area per vineyard is about 25ha in New South Wales and South Australia, 16ha in Victoria, and 13ha in the other states. 89% of vineyards, representing 87% of the area of vines, use irrigation.

2.4 The 'warm climate' regions (NSW Riverina, NSW/Victorian Murray Valley, and South Australia's Riverland) grow about 70% of Australia's winegrapes, and generally have higher yields, lower operating costs and receive lower prices than the 'cool climate' regions. Cool climate grapes tend to be targeted to wines at higher price points. The dominance of the warm climate regions is expected to increase.[2]

2.5 The 2004 crush was 1.817 million tonnes. This was 40% higher than the drought affected 2003 crop and 23% higher than the previous record in 2002. This was a result of above average yields and a moderate expansion in bearing area.

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1 All figures in this section not otherwise referenced are from Australian Bureau of Statistics, *Australian Wine and Grape Industry*, 2004, cat. 1329.0

2 CSIRO, additional information 8 June 2005. ABARE, *Australian Wine Grape Production Projections to 2006-07*, 2005, p.19

Table 1: Production of Grapes (tonnes)				
Year	**Winemaking**	**Drying**	**Table & Other**	**Total**
1994	661,282	212,870	45,456	919,608
1995	577,364	147,006	44,456	768,827
1996	782,381	248,342	55,786	1,086,509
1997	743,382	136,435	63,296	943,113
1998	870,627	176,570	64,972	1,112,170
1999	1,076,207	119,438	69,891	1,265,536
2000	1,111,137	133,454	66,791	1,311,382
2001	1,391,074	90,241	64,686	1,546,002
2002	1,514,501	152,863	86,524	1,753,888
2003	1,329,595	92,264	75,080	1,496,939
2004	1,816,556	129,489	68,920	2,014,965
Source: ABS cat 1329.0, various years				

2.6 Production of winegrapes has increased by 180% since 1994, driven by export growth of 350% in the same period.[3] This has been made possible by strong growth in plantings, particularly in the late 1990s, peaking in 1998-99:

Table 2: Annual Plantings of Winegrapes (ha)					
Year	**Total (ha)**	**Year**	**Total (ha)**	**Year**	**Total (ha)**
1987	1957	1993	3371	1999	11646
1988	1790	1994	6450	2000	6772
1989	3036	1995	7613	2001	7367
1990	2193	1996	8520	2002	6566
1991	1807	1997	12035	2003	6338
1992	2191	1998	16224	2004	5337
Source: WFA, Additional Information, 22 September 2005					

2.7 The estimated 2005 crush is 1.924 million tonnes. This is 6% more than 2004. Projections are for a 2% drop to 1.879 million tonnes in 2006, then a 3% increase to 1.933 million tonnes in 2007.[4]

2.8 In 2004, 24% of grapes were sourced from wineries' own vineyards, and 76% from independent growers.[5] There are significant regional variations to this

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3 Winetitles, *The Australian and New Zealand Wine Industry Directory*, 2005, p. 8. ABARE, *Australian Wine Grape Production Projections to 2006-07*, 2005, p. 13

4 Winemakers' Federation of Australia, *2005 WFA Vintage Report*, June 2005, p. 1. ABARE, *Australian Wine Grape Production Projections to 2006-07*, 2005, p. 14

proportion: for example, in 2001 in the Coonawarra region, only 15% of white and 24% of red grapes were sourced from independents.[6]

Wine making

2.9 The wine industry is extremely diverse, varying from small family companies to very large corporations. In 2004 there were 1,798 wineproducers (defined as companies selling wine commercially).[7] 364 winemaking businesses crushed 50 tonnes or more, at 410 locations.

2.10 There has been a long history of mergers and acquisitions by the major companies. The largest four companies (Hardy, Southcorp, McGuigan Simeon and Orlando Wyndham) account for about 50% of production. The largest twenty companies account for 80% of production.[8] Winemakers crushing more than 400 tonnes, though only about half the total winemakers, account for 98% of production.

2.11 Wine production increased by 71% from 1999-2000 to 2003-04. The dip in 2002-03 reflects the bad season in that year. The growth has been driven by modest growth in domestic demand and very strong growth in exports:

Table 3: Wine Production and Sales of Australian-Produced Wine ('000 L)

Year	Gross Wine Production	Domestic Sales	Exports	Total Disposals	Exports as % of Production	Exports as % of Disposals
1993-94	587,377	319,532	125,464	444,996	21.4%	28.2%
1994-95	502,796	313,357	113,663	427,020	22.6%	26.6%
1995-96	673,445	309,463	129,671	439,134	19.3%	29.5%
1996-97	617,379	333,591	154,393	487,984	25.0%	31.6%
1997-98	741,547	338,814	192,404	531,218	25.9%	36.2%
1998-99	851,143	348,349	216,149	564,498	25.4%	38.3%
1999-00	859,166	369,271	284,935	654,206	33.2%	43.6%
2000-01	1,076,538	384,847	338,289	723,136	31.4%	46.8%
2001-02	1,220,372	386,232	418,393	804,625	34.3%	52.0%
2002-03	1,085,985	402,479	518,642	921,121	47.7%	56.3%
2003-04	1,471,228	417,378	584,397	1,001,775	39.7%	58.3%

Source: ABS cat 1329.0, various years. Production by winemakers crushing more than 400 tonnes annually or with sales of more than 250,000 litres.

5 ABARE, *Australian Wine Grape Production Projections to 2006-07*, 2005, p. 37

6 Iain Fraser, 'The Role of Contracts in Wine Grape Supply Coordination: An Overview', *Agribusiness Review* Vol. 11, Paper 5 (2003)

7 Winetitles, *The Australian and New Zealand Wine Industry Directory*, 2005, p. 20

8 Winetitles, *The Australian and New Zealand Wine Industry Directory*, 2005, p. 24

2.12 The difference between production and sales reflects additions to inventories (stock). Inventories increased greatly in 2004:

Table 4: Beverage Wine held by Winemakers 30 June ('000 L)			
1994	656,706	2000	1,191,791
1995	642,459	2001	1,376,884
1996	782,281	2002	1,570,536
1997	815,558	2003	1,581,843
1998	900,299	2004	1,854,506
1999	1,089,583		
Source: ABS cat 1329, various years. Includes only winemakers who crush more than 400 tonnes annually and have domestic wine sales of 250,000 litres or more.			

2.13 The stock to sales ratio, which is the main indicator of the supply/demand balance, is expected to resume its downward trend in 2005 (after being boosted by the above average 2004 harvest). However it will still be at the same level as two years ago, which according to the Australian Wine and Brandy Corporation is still 18% higher than the 'desirable' level.[9]

Table 5: Stock to Sales Ratio					
1987-88	1.34	1993-94	1.46	1999-00	1.82
1988-89	1.56	1994-95	1.50	2000-01	1.98
1989-90	1.66	1995-96	1.78	2001-02	2.16
1990-91	1.66	1996-97	1.67	2002-03	1.96
1991-92	1.54	1997-98	1.69	2003-04	2.07
1992-93	1.41	1998-99	1.93	2004-05	1.94
Source: Winemakers' Federation of Australia, Additional Information, 22 September 2005					

Employment in the wine industry

2.14 In 2001 about 15,000 people had their main job in grapegrowing, and 15,000 in winemaking. This is a threefold increase over 1991 figures. In some wine growing areas, such as Swan Hill, Barossa Valley, Berri and Barmera, wine industry employment is over 25% of total employment.[10]

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9 Australian Wine and Brandy Corporation, *Upgraded Industry Forecasts Point to Continued Tightness*, 17 January 2005, p. 2

10 ABS cat 1329.0: 14,480 in winemaking and 15,629 in grape growing. Bureau of Rural Sciences, *A social atlas of Australia's wine regions, 2001/02*, 2004, p. 62

Grape and wine prices

2.15 Average winegrape prices in real terms, after increasing greatly in the late 1990s, have returned to the level of the mid 1990s, and lower in the warm climate areas:

Table 6: Trend in Winegrape Prices				
WFA based on AWBC National Utilisation Project (2004 $)		**ABARE Weighted Average Warm Climate Indicator Prices (2005 $)**		
			White	**Red**
1992	505	1992-93	485	527
1993	493	1993-94	505	719
1994	635	1994-95	738	984
1995	767	1995-96	802	1070
1996	773	1996-97	857	1252
1997	976	1997-98	791	1378
1998	1043	1998-99	687	1259
1999	1049	1999-00	592	882
2000	915	2000-01	597	784
2001	905	2001-02	632	740
2002	866	2002-03	671	575
2003	814	2003-04	669	501
2004	755	2004-05 estimate	600	419
Source: Winemakers' Federation of Australia, Additional Information, 22 September 2005. ABARE, *Australian Commodities,* March Quarter 2005, p. 54, updated by Additional Information, 9 September 2005.				

2.16 As well, because of the current oversupply, uncontracted growers have been offered very low prices on the spot market. For example, for the 2005 vintage, spot prices of $140 per tonne for premium grapes in the Riverland were reported, and $100 to $200 in the Murray Valley.[11]

2.17 Prices tend to be more volatile in warm climate regions than in cool climate regions, since at times of oversupply the lower quality grapes (that are traditionally sourced from warm climate regions) tend to be abandoned as better grapes are available at relatively lower prices. On the other hand, the major category of grapes in oversupply is red grapes sourced from the higher cost cool climate areas.[12]

11 Submission 7, Murray Valley Winegrowers, p. 2. Primary Industries and Resources South Australia, *A report on the impact of current grape-pricing trends on the Riverland region*, April 2005, p. 36

12 Submission 17, Australian Wine and Brandy Corporation, pp. 4 and 8

2.18 The average price of wine has also declined, as export growth is concentrated at lower price points. Export prices have also been affected by the appreciation of the Australian dollar in recent years.

Table 7: Price Per Litre, Exported Wine, (2005 $)					
	Million Litres	**Price per Litre**		**Million Litres**	**Price per Litre**
1992-93	103	3.80	1999-00	287	5.54
1993-94	131	3.65	2000-01	339	5.29
1994-95	114	4.30	2001-02	416	5.12
1995-96	130	4.47	2002-03	508	4.92
1996-97	155	4.70	2003-04	581	4.49
1997-98	194	5.12	2004-05	661	4.16
1998-99	216	5.53			
Source: ABARE, Additional Information, 9 September 2005					

Australia in the world market

2.19 Australian wine sales are about $4.5 billion per year, of which $2.5 billion is exports (2003-04). This may be compared, for example, with about $4 billion for wheat exports and about $2.3 billion for wool exports.[13]

2.20 Australia is the world's 7th largest producer of wine, but because the largest producers (France, Italy and Spain) are very large, this is still only 3.8% of total world production. Australian exports are about 1.4% of world production.[14]

2.21 Exports, as a proportion of total production, have been increasing. In 2003-04 exports were about 40% of production (ABS, Table 3 above) or 43% (ABARE).[15] Among wine-exporting nations Australia has the highest ratio of exports to total production.

2.22 The UK, the USA, Canada, Germany and New Zealand take 84% of Australia's exports. This proportion has increased over the past decade from 77% of Australia's exports.

2.23 The high reliance on exports and the small presence of Australian exports in proportion to the total world market leaves the Australian industry exposed to influences such as exchange rate movements and competition from the growing wine industry in other 'New World' countries.

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13 AWBC, *Australian wine sales 2004 at a glance.* ABARE, *Australian Commodities,* March quarter 2005, pp. 19 and 54

14 In 2001: Australian exports 375 million litres; world production 26,473 million litres.

15 ABARE, *Australian Commodities,* Vol. 12, No. 1, March Quarter 2005, p. 48

Projections

2.24 According to ABARE, 'In the short term, a combination of lower export values and above average yields in the previous vintage are expected to result in further reductions in prices for both red and white wine grapes in 2004-05… However, tighter supplies and improved demand from wineries will result in a price recovery in the medium term.'[16] ABARE predicts that in the five years to 2009-10:

- the bearing area of grapes will increase by about 15 per cent to 176,000ha;
- winegrape production will increase by about 12 per cent to 2.1 million tonnes;
- the proportion of production from cool climate regions will fall;
- domestic sales will grow modestly to almost 500 million litres;
- exports will increase to about 1.2 billion litres - about double the 2003-04 figure;
- the unit value of exports will continue to fall;
- white grape prices will continue to fall; and
- red grape prices will continue to fall in the short term, then recover slightly after 2006-07.[17]

Table 8: Outlook for Winegrape Production and Prices

	Bearing Area (ha)	Production ('000 tonnes)	Average Price (2004-05 $A per tonne)		Exports (ML)	Exports Value (2004-05 $A million)	Exports Value $/tonne
			White	Red			
2002-03	140,000	1,411	687	589	508	2,502	4.92
2003-04	146,000	1,895	685	513	581	2,606	4.49
2004-05	153,000	1,872	629	439	679	2,791	4.16
2005-06	159,000	1,879	590	407	778	3,013	3.87
2006-07	163,000	1,933	552	401	880	3,251	3.69
2007-08	167,000	1,982	528	446	980	3,560	3.63
2008-09	171,000	2,037	505	473	1,082	3,879	3.59
2009-10	176,000	2,095	488	503	1,181	4,260	3.61

Source: ABARE, *Australian Commodities,* March Quarter 2005, p. 54. Forecast weighted average warm climate indicator prices. Differences from corresponding ABARE figures in Table 6 are because Table 6 is based on updated estimates.

16 ABARE, *Australian Commodities,* Vol. 12, No. 1, March Quarter 2005, pp. 53-4

17 ABARE, *Australian Commodities,* Vol. 12, No. 1, March Quarter 2005, pp. 55-6

Issues raised in submissions

Grape prices below cost of production

2.25 The key issue raised in submissions is that for many growers grape prices are below the cost of production:

> The Australian grape growing industry is now at a crisis point with many growers unviable at current grape price levels. This insecurity and lack of confidence is impacting severely on regional economies where in the last decade, viticulture has provided a significant revival.[18]

2.26 For example, Murray Valley Winegrowers gave figures showing the decline in prices in the NSW/Victorian Murray Valley since 1999:

Table 9: Weighted Average Price of Winegrapes, Murray Valley ($/tonne)

	Cabernet Sauvignon	Merlot	Shiraz
1999	1135	1092	1146
2000	803	773	812
2001	726	723	736
2002	686	614	802
2003	538	596	657
2004	487	535	620
2005 (est)	350	450	500

Source: Submission 7, Murray Valley Winegrowers

2.27 The South Australian Department of Primary Industries and Resources (PIRSA) recently estimated the costs of production of Riverland farms at between $330 per tonne on a 600ha farm and $763 per tonne on a 10ha farm.[19] The Riverland Winegrape Growers Association noted that most Riverland growers rely on off-farm income.[20]

2.28 Growers reliant on the spot market, as opposed to growers under contract, are particularly hardpressed. The proportion of growers reliant on the spot market varies greatly around the country. For example, in the Riverland, 90% of growers are under contract; in the Murray Valley only two thirds. In the Murray Valley the spot price for

18 Submission 30, Wine Grape Growers Australia Inc., p. 5

19 Primary Industries and Resources South Australia, *A report on the impact of current grape-pricing trends on the Riverland region*, April 2005, pp. 28 and 41

20 Primary Industries and Resources South Australia, *A report on the impact of current grape-pricing trends on the Riverland region*, April 2005, p. 65

premium reds in the last few years has been $100-$200 per tonne.[21] There was evidence that some winemakers are not renewing contracts, presumably because at this time of oversupply they feel more confident of sourcing grapes on the spot market.[22] KPMG comments that 'this trend represents a significant shift in risk from winery to grower.'[23]

Winemakers are also under pressure

2.29 There was evidence that winemakers are also under pressure. Profit has trended down since 2002 and almost half surveyed wineries reported a loss in 2004. Deloitte (which carries out the survey concerned), commented in 2004 that in response to continuing poor financial results 'some wineries may choose to merge to achieve cost and/or distribution efficiencies, while others may be forced to exit the market.' The listed winemakers have performed best.[24]

2.30 The Winemakers' Federation of Australia noted other matters that have put downward pressure on wine prices:

- appreciation of the Australian dollar;
- strong growth of the industry in other 'New World' countries; and
- retail consolidation increasing the bargaining power of wine buyers. Coles and Woolworths hold about 45-50% of the retail wine market, and this proportion is expected to increase. The consolidation trend is also apparent in major export markets such as the United Kingdom.[25]

2.31 Mr Moularadellis (Riverland Winemakers Association), commented:

> A winemaker can only provide pricing stability if it is offered to them by their customers, and that just does not exist… You only have to look at the public companies, and the rates of return that they are making on their assets, to be able to see that the industry is under significant pressure.[26]

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21 Submission 7, Murray Valley Winegrowers, p. 2. Mr C. Byrne (Riverland Winegrape Growers Association), *Committee Hansard,* Berri, 27 June 2005, p. 6

22 For example, McGuigan Simeon has advised 270 Riverland and Sunraysia growers that their contracts will not be renewed past 2007. Primary Industries and Resources South Australia, *A report on the impact of current grape-pricing trends on the Riverland region*, April 2005, p. 64

23 KPMG, *Australian Grape and Wine Outlook 2004,* December 2004, p. 12

24 Deloitte, *Annual Financial Benchmarking Survey for Australian Wine Industry - Vintage 2004,* 2004, p. 3

25 Submission 4, Winemakers' Federation of Australia, p. 7

26 Mr B. Moularadellis (Riverland Winemakers Association), *Committee Hansard,* Berri, 27 June 2005, pp. 22,24

2.32 Winemakers' stock to sales ratio is unusually high, creating pressure to clear stock in hand and leading to lower prices. There is concern that official statistics may underestimate stock.[27] Mr Moularadellis said:

> One major company that is no longer owned by Australian interests honoured its contracts and paid the growers what was due under those contracts. As a result of that, it wrote down in excess of $60 million and is no longer owned by Australian shareholders; it is part of a multinational. There are numerous other examples of large companies, medium-sized companies and small companies that have paid significantly high prices for grapes based on the market at the time and then have had to write stocks down.[28]

2.33 Growers, on the other hand, argue that they are bearing an unfair share of the industry's troubles:

> WGGA accepts that such negative market factors will obviously impact on grape prices. However, we contend that because of their powerless position, growers have been forced to accept an inequitable share of those impacts…. Grapegrowers have had their prices slashed by 50% while winemakers endure comparably tiny fluctuations in average prices for wine.[29]

Concerns about growth at lower price points

2.34 Many submissions were concerned about the growth of production, particularly for export, at lower price points. They were concerned that this might damage the quality and reputation of Australian wine. For example, the Riverland Winegrape Growers Association said:

> Growers are confounded by the progressive shift away from quality emphases and increasing reliance on bulk wine to increase through-put to achieve low cost of production objectives. Growers perceive the focus is increasingly less on growing quality winegrapes and more on reducing unit costs of production. This quality spiral is being driven by the declining price spiral.[30]

2.35 Mr De Palma (Murray Valley Winegrowers) said:

> As an industry we are perpetuating the low end market because we are oversupplying ourselves for no reason. An oversupply market does no-one any good.[31]

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27 Submission 24, Department of Agriculture, Fisheries and Forestry, p. 5

28 Mr B. Moularadellis (Riverland Winemakers Association), *Committee Hansard,* Berri, 27 June 2005, p. 26

29 Submission 30, Wine Grape Growers Australia Inc., p. 4

30 Riverland Winegrape Growers Association, in Primary Industries and Resources South Australia, *A report on the impact of current grape-pricing trends on the Riverland region*, April 2005, p. 64

31 Mr M. De Palma (Murray Valley Winegrowers Inc.), *Committee Hansard,* 28 June 2005, p. 18

2.36 Primary Industries and Resources South Australia (PIRSA) has noted that 'the concern amongst growers is that they believe that there has been undue emphasis on price discounting and, in particular, on export of bulk (essentially commodity) wine and that this is undermining the reputation of Australian warm climate wines.'[32]

2.37 The Winemakers' Federation made the following comments on this proposition:

> … we have up to a seven-year lead time in this industry, you do get market signals wrong; it goes with the territory. Because of that, we need to have a system in place where that fruit can be processed, even if it is at a price that is below the long-term sustainability for growers or wineries. The alternative in the last 12 months for a lot of fruit that was processed at very low prices would have been for it to sit on the vine.[33]

2.38 PIRSA has argued similarly that 'because demand for popular premium wines is relatively stable (around an upward trend) and grape production fluctuates, there is an important role for the international bulk market in absorbing seasonal and cyclical surpluses.'[34] KPMG suggests that growth in bulk exports also reflects 'increasing cross-border ownership of the Australian industry and associated moves to pack offshore'.[35]

Comment

2.39 Clearly the main cause of the current low grape prices is the boom in plantings of the late 1990s. Plantings have slowed greatly since then, and removal of vines has increased, which is a rational response to market signals.[36] Both domestic demand and exports are expected to continue growing. The committee accepts the expert projections that the market will return to balance in the medium term.

2.40 However, this is small comfort to the growers who have gone bankrupt in the interim, or to the regional economies which depend on them. As noted in paragraph 2.14, in some regions over 25% of all employment is in the wine industry. For example, the Mudgee Wine Grape Growers Association said:

> It is probable that almost all grape growing business within the Mudgee region was unprofitable in 2004 and 2005…. The conclusion we draw is

32 Primary Industries and Resources South Australia, *A report on the impact of current grape-pricing trends on the Riverland region*, April 2005, p. 12

33 Mr S. Strachan (Winemakers' Federation of Australia), *Committee Hansard,* Adelaide, 27 June 2005, pp. 15-16

34 Primary Industries and Resources South Australia, *A report on the impact of current grape-pricing trends on the Riverland region*, April 2005, p. 37

35 KPMG, *Australian Grape and Wine Outlook 2004,* December 2004, p. 9

36 Australian Wine and Brandy Corporation, *Upgraded Industry Forecasts Point to Continued Tightness*, 17 January 2005, p. 2

> that many small growers will be bankrupted over the next 3 years. This has a dramatic impact on the local economy.[37]

2.41 Grapegrowing suffers the boom-bust cycle more than many agricultural industries because of the long lead time before vines come into production. This makes it more difficult to predict the market.

> It is not an industry like the wheat industry, where, if the wheat is no good this year, that is fine—you can make a decision to grow barley, triticale or whatever you like. Once the grapes are in, it takes a while for them to come out again, so people tend to stick with them and our lows tend to last a bit longer than our highs.[38]

2.42 This makes it all the more important to do as much as possible to make the industry more stable and to reduce the peaks and troughs of the market cycle. Suggestions for this are considered further below.

Effect of the former tax incentive for vineyards

2.43 Some submissions argued that the former tax incentive for planting vines must bear serious responsibility for the excessive plantings of the late 1990s.

2.44 A tax incentive for establishing grapevines was introduced in 1993 as part of a package of measures agreed between the wine industry and the government to facilitate the passage of the 1993 budget through the Senate. The incentive consisted of allowing capital expenditure on establishing grapevines to be written off over four years. A Committee of Inquiry into the Winegrape and Wine Industry noted in 1995 that this 'considerably reduced the effective tax rate on new investment in vineyards' and 'provides most assistance where a tax entity has a taxable income against which the costs can be written-off':

> Given that it can take up to five years before a new vineyard produces a flow of income, the four year tax write-off for vineyards provides greater benefit for taxpayers with established vineyards who are increasing their plantings and for large diversified companies entering the industry, than it does for new businesses.[39]

2.45 At that time some grapegrowers opposed extending the concession beyond owner-operators on the grounds that this could 'encourage the entry of short term investor or corporate operators and risking an oversupply of grapes':

> Growers fear that the relaxation… will seriously harm their futures in the industry due to the incentive for short term investors [to be] part of a huge expansion and [who] subsequently, when the taxation measures cease to

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37 Submission 26, Mudgee Wine Grape Growers Association, pp. 1-2

38 Mr J. Caddy (CCW Cooperative Ltd), *Committee Hansard,* 28 June 2005, p. 35

39 Committee of Inquiry into the Winegrape and Wine Industry, *Winegrape and Wine Industry in Australia*, June 1995, p. 329

> give them benefit in their operation, will leave the industry and leave the potential oversupply situation for full time long term growers to have to deal with.[40]

2.46 By 1998, grapegrowers were warning that the tax incentive would cause an excess of new plantings. At that time, commentators Osmond and Anderson considered that the current boom was 'largely market driven with only a small element of influence from government intervention.' By 2000 there were reportedly 'calls within the industry to extend the tax relief to encourage wineries to invest in infrastructure to handle that additional tonnage'.[41] In 2001 winemakers reportedly argued that market forces were mainly responsible for the expansion of the industry.[42]

2.47 In 2002, grapegrowers reportedly said:

> We've been negotiating with government for three and a half years to remove the tax incentive for new plantings… If you look at the plantings, it's the large corporates that have gone in with hundreds of acres, they're the ones that have caused the oversupply, the traditional farmer, the traditional horticulturalist that plants 10 or 20 acres, he hasn't caused the oversupply, it's the system that has taken advantage of the accelerated depreciation that has caused the oversupply.[43]

2.48 In 2002, the office of the then Minister for Agriculture, Fisheries and Forestry reportedly calculated that the accelerated depreciation provision had saved only $4 million across a $300 million investment, and said that the government did not intend to abolish any tax breaks in the rural sector.[44]

2.49 In submissions to government in 2003, the Winemakers' Federation of Australia suggested ending the tax incentive:

> These provisions have assisted the orderly growth of the vineyard sector. Nevertheless, the more immediate industry priority is to safeguard the viability of wineries and their regional economic contributions. Removal of

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40 South Australian Farmers Federation, quoted in Committee of Inquiry into the Winegrape and Wine Industry, *Winegrape and Wine Industry in Australia*, June 1995, p. 329

41 Mr R. Marlowe (Winegrape Growers Council of Australia), quoted in 'A not-so-rosy time for reds', *The Australian and New Zealand Grapegrowers and* Winemaker, May 2002. R. Osmond & K. Anderson, *Trends and Cycles in the Australian Wine Industry, 1850 to 2000*, 1998, p. 15. Mr A. Piccoli MP, NSW Legislative Assembly Hansard, 28 November 2000, p. 109991

42 ABC Queensland Country Hour Summary, 4 July 2001, Summary: 'The growers say the scheme has encouraged overproduction… The winemakers say that is rubbish, market forces have been responsible for the billion dollar investment in the industry.' At www.abc.net.au/rural/qld/storiess323247.htm (September, 2005)

43 Leo Pech (Australian Wine Grape Growers' Association) & John Dal Broi, reported in ABC *Landline*, 9 June 2002, at www.abc.net.au/landline/stories/s571509.htm (September, 2005)

44 ABC *Landline*, 9 June 2002, at www.abc.net.au/landline/stories/s571509.htm (Sept 2005)

> accelerated depreciation provisions enables the government to refocus this important provision towards a higher industry and government priority.[45]

2.50 The Government abolished the concession in the 2004 budget, saying this was in response to 'concerns that accelerated depreciation arrangements – which drove considerable expansion of the industry over the past decade – could lead to oversupply.'[46]

2.51 The South Australian Farmers' Federation in its submission to the committee claimed that the former tax incentive, continued for too long, bears serious responsibility for encouraging the excessive plantings of the late 1990s:

> Growth has exceeded all expectations and the justification for this provision has disappeared. As a consequence, it was removed in the May 2004 budget, effective from 1 October 2004. There is a strong case to say that from an industry view point, this change occurred much later than it should have, and that this delay has contributed substantially to the current record production and inventory levels.[47]

2.52 The Winemakers' Federation of Australia accepted that 'a proportion of these new plantings were 'speculative', partly stimulated by accelerated depreciation incentives and not necessarily backed by a winery contract.' However the Federation also argued that 'the level of impact that [the tax concession] had on the industry is massively overplayed':

> I think the fact that prices were so high—and prices were high, in part, because of the level of the Australian dollar at that point—was ultimately the reason why people came into this business'.[48]

Comment

2.53 It is clear that the tax incentive, whether or not it was the main cause, contributed to the explosion of plantings in the late 1990s. With hindsight, given the present problems, it is clear that it was continued longer than necessary. It appears that growers realised this before the winemakers did, yet the message was not being received by government. This illustrates the need for an effective national growers' body able to convey such messages.

2.54 The committee suggests that there is a need for government to consider the economic effects of such measures not only when establishing them, but also by way

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45 Winemakers' Federation of Australia, pre-budget submissions, February 2003 and October 2003.

46 Hon. Warren Truss, *Wine industry initiatives welcomed*, Media Release, 12 May 2004

47 Submission 3, South Australian Farmers' Federation, p. 4

48 Submission 4, Winemakers' Federation of Australia, p. 4. Mr S. Strachan (Winemakers' Federation of Australia), *Committee Hansard,* Adelaide, 27 June 2005, p. 3

of regular monitoring to ensure that they are still needed and achieving their purpose. This needs to include regular consultation with a broad range of stakeholders.

Should there be price or supply controls?

2.55 The committee now considers possible initiatives to make the industry more stable and sustainable, and to reduce the peaks and troughs of the market cycle. Firstly, the question arises, whether government should try to control price or supply in some way.

2.56 A few submissions suggested this. Most strongly opposed it. The Winemakers' Federation of Australia argued strongly that 'there is no rationale for government intervention in the operations of the wine market':

> Intervening in such market mechanisms will usually have undesired consequences. Intervention in other agricultural markets in the past, such as regulations in the domestic dairy and wool industries (eg minimum pricing) resulted in significant market inefficiencies and costly readjustment processes, once the regulations were removed. It is paramount that the wine industry avoids these types of situations.[49]

2.57 The Department of Agriculture, Fisheries and Forestry (DAFF) argued that 'the industry appears to have responded rationally to forecast and current market signals… little evidence exists to support regulatory intervention in supply side management...'[50] The Australian Wine and Brandy Corporation also supported market-based solutions in preference to regulation.[51] No submissions to the committee's inquiry from industry organisations, whether winemakers or grapegrowers, disagreed.

2.58 On the other hand, many submitters did comment on the need for better market information and advice to guide investors, to prevent a recurrence of the excessive planting of the late 1990s. This is considered further below.

Price controls

2.59 A few submitters suggested that the price of grapes should be controlled in some way.[52] Implicitly this would be based on some concept of a 'fair' price with reference to the cost of production. There are precedents for this. For example, The Riverina Wine Grapes Marketing Board used to have power to set a minimum market price, but this was removed in 2000 after a review in accordance with National

49 Submission 4, Winemakers' Federation of Australia, p. 9

50 Submission 24, Department of Agriculture, Fisheries and Forestry, p. 7

51 Submission 17, Australian Wine and Brandy Corporation, p. 3

52 For example, in Submission 23, form letters submitted by growers.

Competition Policy guidelines (the Board still has powers to set default terms and conditions of payment and to compulsorily obtain price information from wineries).[53]

2.60 A related suggestion is that contracted growers, who may be receiving survival prices, and uncontracted growers, who are receiving offers far below their costs on the spot market, should somehow share the pain more evenly:

> No-one should get $150-200 per tonne. Some contracts are probably too high. Everyone, and not just reds and chardonnay, should bring $500-700 per tonne and we could survive.[54]

Comment

2.61 The committee does not agree with price control. A legislated floor price, if it was higher than the market price, would simply mean that more product would not sell. The only way to prevent that would be to control supply as well. None of the organisations that provided evidence suggested that. What would happen if the target supply was less than growers wished to offer? How would a regulator decide who would get a permit to harvest their grapes?

2.62 It is said that price control of grapes introduced in South Australia in 1966 'did nothing to relieve the inequities and imbalances in the market'.[55] More recently, the failure of the former Reserve Price Scheme for wool, which collapsed with huge debts in 1991, shows the risks of trying to manipulate a market in this way.[56]

Supply controls

2.63 Supply could also be controlled by subsidising a vine pull or by regulating plantings.

2.64 No submissions, whether from grape growers or winemakers, favoured a vine pull. Mr Stone of the Murray Valley Winegrowers said:

> If you have a large scale subsidised vinepull, in three or four years time there is going to be a shortage.[57]

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53 Submission 29, Riverina Wine Grapes Marketing Board, p. 1

54 Submission 23, form letters submitted by growers.

55 J. Halliday, *A History of the Australian Wine Industry 1949-1994*, p. 12

56 From 1970 to 1991 the Australian Wool Commission (later Australian Wool Corporation) guaranteed to buy all wool offered to it at a set floor price. When this price exceeded the market price, a stockpile of wool developed which could not be onsold. The stockpile peaked at 4.7 million bales with associated debt of $2.8 billion. The scheme was abandoned in 1991 and the last of the stockpile was sold only in 2001.

57 Mr M. Stone (Murray Valley Winegrowers Inc.), *Committee Hansard,* 28 June 2005, p. 15

2.65 The Riverina Wine Grapes Marketing Board argued that there should be compulsory national registration of vineyards, but did not think that plantings should be restricted 'as this would be anti-competitive'.[58]

2.66 The Commonwealth spent over $6 million on a vine pull scheme in 1985-88.[59] In 1993 it introduced a tax incentive to encourage planting of vines (see paragraph 2.44).

2.67 A few submissions seemed to suggest controls on planting, without detailed proposals.[60] The committee suggests that this would raise the same problems as price control concerning the likely inefficiencies of government trying to second-guess the market.

Comment

2.68 The committee agrees that, given the underlying policy of allowing free enterprise in agriculture, the government should not intervene in the market by controlling price or supply.

2.69 However, the committee recognises that supply may be affected by future regulation for environmental purposes, such as controls on land use or water supply.

2.70 Other possibilities for making the wine industry more stable are considered below.

Other initiatives to stabilise the industry

Better market information and business advice

2.71 Many submissions raised the need for better market information and advice to guide investors. Implicitly, the main purpose of this would be to prevent a repeat of the excessive plantings of the late 1990s. The AWBC commented that 'a well informed wine sector, which is sophisticated enough to interpret and apply available information, is key to ensuring sustainability and profitability.'[61]

2.72 According to the Australian Wine and Brandy Corporation (AWBC) 'the Australian wine sector is widely acknowledged as having "excellent data which

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58 Submission 29, Riverina Wine Grapes Marketing Board, p. 5

59 $6,279,000 in total was spent on a Dried Vine Fruits Assistance Scheme and a Wine Industry Adjustment Scheme. Department of Agriculture, Fisheries and Forestry, Additional Information: Answers to Questions on Notice.

60 Submission 23, form letters submitted by growers. In February 2005 Wine Grape Growers Australia suggested 'no vineyard expansion without the security of a fair contract for the purchase of fruit for a predetermined term and price; no speculative vineyard developments.' *Major wine grower group insists on change*, news release 17 February 2005.

61 Submission 17, Australian Wine and Brandy Corporation, p. 9

allows us to monitor trends and risks in a timely manner"'. Prominent examples include the regular analysis and updates of the market outlook provided by the AWBC, as well as funding for ABS viticulture collections and ABARE's annual production and intake projections.[62] However, it does appear that there is not as much information as would be desirable about how many vines there are in Australia. There is accurate information for South Australia, but less so for other states. Mr Jim Caddy, of CCW Cooperative Ltd, said:

> Market situations say that we are going to have highs and lows, and that is fine, but if we can work together we can trim them out. We are still going to have our highs and lows but we are not going to have super lows and super highs. Part of that problem is information. We do not know how many grapes are grown in Australia, so when people make their projections nobody really knows. We might be 200,000 or 300,000 tonnes out.'[63]

2.73 Statistics on inventories are also uncertain.[64]

2.74 Submissions proposed that there should be a national register of vines.[65] McGuigan Simeon argued that 'this is essential not only to monitor complete vineyard plantings but also to understand the variety by variety availability, and therefore be able to determine whether the variety is in undersupply, oversupply or balance.'[66] It was suggested that maintaining the register could be a role of a national growers' body. Presumably there would need to be some legislative backing if growers were to be forced to register. DAFF suggested that, without compulsion, there might be significant cost in keeping the information up to date. The benefits and costs would have to be considered.[67]

2.75 It is also important to get information out to the stakeholders. The Australian Wine and Brandy Corporation described its recent innovation: online WINEFACTS Statistics. However 'the uptake of WINEFACTS Statistics among independent grapegrowers and their representative organisations has thus far been low… There is an important government role in facilitating independent growers' access to initiatives such as WINEFACTS statistics.'[68]

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62 Submission 17, Australian Wine and Brandy Corporation, p. 9. Submission 4, Winemakers' Federation of Australia, p. 9

63 Mr J. Caddy (CCW Cooperative Ltd), *Committee Hansard,* 28 June 2005, p. 34

64 Submission 17, Australian Wine and Brandy Corporation, p. 6

65 For example, Submission 29, Riverina Wine Grapes Marketing Board, p. 1. Mr C. Byrne (Riverland Winegrape Growers' Association), *Committee Hansard,* Berri, 27 June 2005, p. 2

66 Submission 10, McGuigan Simeon, p. 1

67 Mr D. Mortimer (DAFF), *Committee Hansard,* 10 August 2005, p. 7

68 Submission 17, Australian Wine and Brandy Corporation, p. 10

2.76 Growers also need business planning skills to help them structure their businesses so they can survive the downturns in the business cycle. The AWBC commented:

> If price volatility for warm inland fruit is greater than for fruit from the rest of Australia, warm inland growers need to be aware that this is the nature of their market and appropriate business plans are needed to accommodate forward price volatility. The factor that will facilitate such awareness is accurate, timely and accessible information and interpretation. Traditionally, most independent grapegrowers do not seek such information and interpretation as individuals. Rather, they rely on their representative organisations…[69]

2.77 The South Australian Farmers Federation noted that there is an increasing trend to grapes being the only crop on the farm, which increases the risk to growers.[70] The Riverina Wine Grapes Marketing Board said that 'the skills levels of wine grape producers in terms of business development and relationships needs enhancing'.[71]

Improving productivity and economies of scale

2.78 It appears that there is potential for improving productivity in winegrape growing. Primary Industries and Resources South Australia (PIRSA) recently estimated the costs of production of Riverland farms of varying sizes. There were substantial economies of scale, with costs dropping from $763 per tonne for a 10ha farm to $330 per tonne for a 600ha farm. This suggested that to get an 8% return at $650 per tonne requires at least 50ha; at $450 per tonne it requires at least 150ha. At present 61% of Riverland farms are less than 10ha, and only 4% are greater than 50ha. In the Murray Valley the average farm is about 20ha.[72]

2.79 This raises the obvious possibility of amalgamating farms. According to Dr Dambergs this has already been occurring:

> Other than people who have outside income, as in my case, those sorts of [10 to 20 acre] properties will not be viable in the future. There has been a large degree of consolidation just in the last 10 years, with people buying out neighbours. People who could see what was going to happen were expanding… There is not too much of that happening now because nobody really has the resources to do it. Every industry and every business has boom and bust cycles. In the next boom cycle I am sure that a lot more of

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69 Submission 17, Australian Wine and Brandy Corporation, p. 9

70 Submission 3, South Australian Farmers' Federation, p. 7

71 Submission 29, Riverina Wine Grapes Marketing Board, p. 11

72 Primary Industries and Resources South Australia, *A report on the impact of current grape-pricing trends on the Riverland region*, April 2005, pp. 7, 28 and 41. Mr M. Stone (Murray Valley Winegrowers), *Committee Hansard,* 28 June 2005, p. 12

> the smaller places will be absorbed and consolidated as the opportunities arise.[73]

2.80 Mr Moularadellis suggested that bigger vineyards will also improve the bargaining power of growers:

> I would suggest that the retailer has significantly more power than any producer and that producers have significantly more power than any grape grower. And so the natural consequence is for producers—wine makers—to get bigger to deal with that retail power, and the natural consequence must be that growers must get bigger.[74]

2.81 Other witnesses did not agree that amalgamating farms is a practical solution:

> This region has grown up on small vineyards. It is impractical to try to imagine that we could move to a region of big vineyards because suddenly we would have to diminish our population by two-thirds.[75]

2.82 PIRSA has suggested possibilities for improving the efficiency or bargaining power of Riverland growers:

- collaborative marketing structures can improve growers' bargaining power and reduce transaction costs for wineries;
- syndication or consolidation of production from many farms under one management unit. This could include assigning management of the vineyard to an external manager, or leasing or selling vineyards into a trust or company in which the participants have shares;
- 'new generation cooperatives'. These typically replace the requirement to take all produce from all members with a combination of quality specifications and a payment-for-quality system that parallels that of the client;
- syndication of machinery; and
- consolidation of properties to take advantage of economies of scale.[76]

2.83 PIRSA estimated that from 2004 to 2015, under a 'Base Case' scenario Riverland grape production would increase by 37 per cent and wine industry employment (grape-growing and winemaking) would increase by 10 per cent. Under a 'potentially achievable' scenario, which assumes somewhat higher export growth and

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73 Dr R. Dambergs (Australian Wine Research Institute), *Committee Hansard,* Berri, 27 June 2005, p. 35

74 Mr B. Moularadellis (Riverland Winemakers Association), *Committee Hansard,* Berri, 27 June 2005, p. 32. Similarly Submission 19, Great Southern Plantations, p. 2

75 Mr C. Byrne (Riverland Winegrape Growers Association), *Committee Hansard,* Berri, 27 June 2005, p. 13

76 Primary Industries and Resources South Australia, *A report on the impact of current grape-pricing trends on the Riverland region*, April 2005, p. 48

a ‘structural productivity growth’ of 22 per cent over the period, grape production would increase by 113 per cent and total wine industry employment by 61 per cent.[77]

Possible structural adjustment assistance

2.84 A few submissions suggested that there should be structural adjustment assistance for winegrape growers. For example:

> It is interesting to note that millions of dollars have been spent restructuring the dairy and sugar industries…. The Sugar Industry Reform Package is worth $400 million and is prepared to fund each sugar grower $100,000 tax free to exit the industry. Wouldn’t it be appropriate that the wine industry receive exceptional circumstances funding while it adjusts through this turbulent period?[78]

2.85 Mr Byrne of the Riverland Winegrape Growers Association said that ‘we have to come up with a formula that will enable those who want to exit the industry to do so with some dignity rather than be squeezed out and left on the scrap heap’:

> There are growers who do not have preferred varieties and do not have the means to upgrade to those preferred varieties. They have a sense of futility about their future in the industry either because of that situation or because of their age or some other circumstance. They would like in normal circumstances to move on and enable the rationalisation process to occur. Someone else, perhaps a neighbour, would buy that property thereby improving their own economy of scale and giving that person an exit opportunity.[79]

Comment

2.86 The committee agrees that there is a need for better market information and business planning advice to guide growers. Improving basic statistics would logically be the role of the bodies that already handle that: the ABS, AWBC and ABARE. Improving the business planning skills of growers would be an obvious role for a national growers’ body. The national growers’ body is considered further in Chapter 4.

2.87 A national register of vines appears worthwhile to improve market information and guide business decisions, if it is generally supported by growers. The committee suggests that to be practical it would have to be based on compulsory reporting by growers. To base it on voluntary information-gathering, for example by

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77 Primary Industries and Resources South Australia, *A report on the impact of current grape-pricing trends on the Riverland region*, April 2005, p. 50ff.

78 Submission 16, Mr J. Gropler, p. 1

79 Mr C. Byrne (Riverland Winegrape Growers Association), *Committee Hansard,* Berri, 27 June 2005, p. 13

the national growers' body, would be troublesome and unlikely to yield full information.

2.88 Compulsory reporting would require regulation under state law. The committee recommends that DAFF should consult peak bodies and state authorities to progress this.

Recommendation 1

2.89 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.

2.90 The committee notes the evidence that rationalisation and amalgamation of farms has been occurring. This may be expected to continue under market forces. The committee notes PIRSA's estimate that even allowing for this, total employment in the Riverland wine industry is expected to continue growing. Presumably the same forces are at work elsewhere. The growth of the industry may be expected to cushion the effects of structural change on regional communities.

2.91 The committee is not convinced that there is a case for structural adjustment support to growers. The industry does not suffer from declining world prices to the same extent as the sugar industry. Neither is it suffering a significant one-off drop in income because of the end of price support, as was the case in the dairy industry in 2000. Prices are expected to stabilise in a few years, and long term growth is expected.

2.92 The Commonwealth's 'Exceptional Circumstances' assistance would not be applicable. Exceptional Circumstances Assistance is intended to respond to a rare, severe event such as a drought. It is not available in a case of foreseeable change or where the problem arises from a need for structural adjustment – for example, in response to a long-term downturn in commodity prices.[80]

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80 *Information Handbook - Exceptional Circumstances Assistance*, July 2005, pp. 9-10

Chapter 3

Problems in relations between grapegrowers and winemakers

3.1 During the inquiry the committee received evidence of exploitative business relations between winegrape growers and winemakers, as winemakers take advantage of their stronger bargaining power in the present oversupply of grapes. This chapter outlines these concerns.

3.2 The evidence was provided to the committee in the stories of individual growers and in summary comments by their representative organisations. Growers of the Riverina and Murray Valley regions submitted 435 form letters of which 115 attached personal comments. A sample of these comments is at Appendix 4. They give a clear picture of the grievances of growers. Those grievances go beyond matters of price.

3.3 The committee also notes comments made by grower organisations to the effect that many growers hesitate to complain for fear that it will count against them in future dealings with wineries.[1]

3.4 The committee was not trying to collect detailed evidence of particular cases, and has no basis for passing judgement on individual cases or individual winemakers. There was no evidence on whether bigger winemakers are any more exploitative than smaller ones. There was evidence to suggest that some winemakers have very sound relationships with growers, and others do not; and that it is not necessarily the case that 'the bigger the uglier'.[2] The ACCC, which has dealt with complaints about alleged unconscionable conduct, noted that it is not the case that any one winemaker is the focus of many complaints.[3]

3.5 Growers emphasised that their complaints about the way business is done are quite distinct from their regret that prices are currently low:

> While some of the issues impacting on grape growers are cyclical or caused by outside influences and may or may not be overcome through changing conditions over the effluxion of time, the root cause of much of the current crisis is not cyclic but rather, unsatisfactory terms and conditions by which grapes are sold, prices are set and payments are made.[4]

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1 For example, Riverina Wine Grapes Marketing Board, p. 6

2 Mr C. Byrne (Riverland Winegrape Growers Association), *Committee Hansard,* Berri, 27 June 2008, p. 9

3 Mr M. Pearson (Australian Competition and Consumer Commission), *Committee Hansard,* 10 August 2005, p. 17

4 Submission 30, Wine Grape Growers Australia Inc., p. 6

Growers' complaints

3.6 The types of concerns expressed by growers included:

- contracts offered on a 'take it or leave it' basis, with no genuine negotiation;
- contracts not being renewed, often after growers have been encouraged by winemakers to invest in improvements;
- prices notified late in the season, leaving growers little chance of negotiating alternative buyers;
- lack of objective, transparent standards for assessing the quality of grapes; and
- contracts are often unclear about how disputes over price or fruit quality should be resolved.

Negotiation of contracts

3.7 Growers complained that contracts are offered, or offered for renewal, on a 'take it or leave it' basis, with no real negotiation. For example:

> Whilst the majority of King Valley growers have written contracts in place, there is a large variation in the terms and conditions of such contracts. In recent years some wineries have honoured their contracts while others have either dishonoured the contract or have enforced several amendments benefiting the winery and not the grower.[5]
>
> As an individual, whether large or small, it is an absolute lost cause to try and negotiate a fair and reasonable outcome for your product when you are dealing with a large corporate entity which will say, 'Take it or leave it.'[6]

Contracts not being renewed contrary to reasonable expectations

3.8 Growers complained that contracts are not being renewed as winemakers find it advantageous to rely more on the spot market. For example, the South Australian Farmers Federation reflected this in its concerns.[7] Mr Joe Gropler told the committee that:

> Growers that had previously had contracts with wineries are now being told that their contracts won't be renewed and that they must find a new outlet for their grapes (impossible during a glut). [8]

3.9 Of course, whatever the expectation, there is no breach of contract if a party simply acts according to the termination clause in the contract. There should be no expectation that a contract will run forever, if that is not in the contract. However,

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5 Submission 20, King Valley Vignerons, p. 3

6 Mr M. De Palma (Murray Valley Winegrowers), *Committee Hansard,* 28 June 2005, p. 4

7 Submission 3, South Australian Farmers' Federation, p. 6

8 Submission 16, Mr J. Gropler, p. 1.

when the behaviour rejects a long-standing relationship which the grower (it is implied) took on trust, the concern has an additional dimension:

> [In 2002] 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. [9]

3.10 In addition, growers suggested that winemakers had encouraged them to invest, with the implication that they would take the product, but this has not been honoured:

> 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…. it is wineries that are giving growers false confidence that the wine grapes planted will return a profitable margin once in full production.[10]
>
> Producers encouraged vine planting, recommended specific varieties and offered attractive contracts, then constrained acceptance of these grapes and terminated contracts when supply exceeded their needs and/or expectations.[11]
>
> One example of inequity includes a number of instances where winemakers have demanded certain developments (eg replanting to different or in some cases the same variety, or changes in irrigation systems) to be implemented by grape growers as a condition of the supply contract, only to then refuse delivery. [12]

3.11 The Winemakers' Federation denied that winemakers have encouraged unwise investment:

> In 2000 we released a document called *The Marketing Decade*. That document was a recognition of the rate of plantings that had gone into the industry…. It put out some quite significant warning bells about what would potentially happen if we were not able to achieve the sales growth that we, as an industry, coveted. I have to say that in hindsight it has proven to be very accurate. But we did do that, and that is an example of how we were addressing those issues as we went through.[13]

3.12 This comment was supported by Mr Victor Patrick of Fosters Wine Estates:

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9 Submission 29, Riverina Wine Grapes Marketing Board, p. 4

10 Submission 29, Riverina Wine Grapes Marketing Board, p. 4

11 Submission 28, Weeks Consulting Pty Ltd, p. 1

12 Submission 3, South Australian Farmers' Federation, p. 7

13 Mr S. Strachan (Winemakers' Federation of Australia), *Committee Hansard,* Adelaide, 27 June 2005, p. 9

> There were certainly a number of articles published to say that the production growth was starting to look as though it was growing at a faster rate than the export growth… the major companies certainly were communicating with their grower base regularly about these sorts of themes… In a lot of cases, our organisation made it perfectly clear that we had our future supply in place and we did not need extra.[14]

Timing of offers and payments

3.13 Growers complained that the timing of offers has gradually got later in the season. They implied that this has been a deliberate tactic by winemakers to make it harder for growers to shop around for a better offer before harvest (assuming their contract allows that). For example, King Valley Vignerons indicated that:

> Throughout the 1990's it was a standard business practice for wineries purchasing grapes from our region to issue prices in mid to late January each year. However, since 2000 the price issue date has got later and it is now common for all wineries to issue prices in mid March... [This] means that some growers are delivering grapes (early ripening varieties) to wineries with no idea of the price they will receive for their product… We see no reason why grape prices cannot be issued in December when growers undertake crop estimations.[15]

3.14 Similarly, the Riverland Winegrape Growers Association said:

> In many cases this year, growers were picking grapes before they had had a final offer. You cannot slow down the grapes; they are a perishable product…[16]

3.15 Growers also expressed concern that some winemakers are moving away from the standard three instalment payment for grapes. The Riverina Wine Grapes Marketing Board advised that 'Winery X' is offering contracts with four instalments, the last being on 15 December. The Board argued that this is effectively 'using growers as credit facilities'.[17] Growers thought it was particularly oppressive for winemakers to insist on the three instalment delayed payment even when paying extremely low prices on the spot market. It was said that the first instalment would not even cover transport costs.

3.16 Growers also made the following claims in relation to price setting:

- there is no realistic negotiation on price;

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14 Mr V. Patrick (Fosters Wine Estates), *Committee Hansard,* Adelaide, 27 June 2005, p. 8

15 Submission 20, King Valley Vignerons, p. 2

16 Mr C. Byrne (Riverland Winegrape Growers Association), *Committee Hansard,* Berri, 27 June 2005, p. 18

17 Submission 29, Riverina Wine Grapes Marketing Board, p. 9. Similarly, Submission 20, King Valley Vignerons, p. 3

- there is no transparency about how prices are set; and
- there are problems with assessing the quality of grapes.

No realistic negotiations on price

3.17 Growers complained that there are often no realistic negotiations on price. For example, according to the Riverina Wine Grapes Marketing Board, 'most contracts… 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.'[18]

> 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.[19]

3.18 Similarly Murray Valley Winegrowers indicated:

> There are no formal provisions that allow for meaningful price negotiations. And if no dispute resolution process is available, and the grower is under contract to supply fruit, what choice is there but to 'accept' the price?[20]

3.19 It was sometimes unclear whether these complaints alleged breach of contract, or merely unfair pressure. The Riverina Wine Grapes Marketing Board argued that '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':

> [Winery Y] 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.[21]

3.20 Similarly from the Riverland Winegrape Growers Association:

> I cannot say the example you gave of a winery saying, 'Here is a contract, but now we are not going to buy the grapes' has not happened, but it is not a common occurrence. It is more common—there are two wineries where

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18 Submission 29, Riverina Wine Grapes Marketing Board, p. 8

19 Riverina Wine Grapes Marketing Board, News Release, 17 February 2004

20 Submission 7, Murray Valley Winegrowers, p. 2

21 Submission 29, Riverina Wine Grapes Marketing Board, p. 8

> this has occurred very recently—for growers to receive letters from the winery saying, 'We are buying your grapes, but we cannot afford to pay the price that was in the contract, so we are going to offer you something less.' I guess the growers in most cases feel, 'I have no option because I don't have any bargaining power.'[22]

No transparency on how prices are set

3.21 A closely related matter is the lack of clarity about how prices are set. A 'take it or leave it' approach to a price offer might be more acceptable if it was clear that the offer was based on some objective, transparent, industry accepted, procedure. It appears that this is often not the case. For example, witnesses said:

> The huge variation in prices paid by different wineries for what is essentially the same product has left growers totally bewildered as to how the 'market price' is determined.[23]

> The pricing is set by the buyer and no correspondence is entered into. The price paid is totally based on the field personnel's assessment which is a very subjective taste test. It is wholly exposed to abuse in the interest of corporate profitability.[24]

> …our final payments are determined by the final selling price of the resulting wine (a market-based contract). As growers we are not privy to any of the sale details, ie price, buyers, quality etc. We simply take their word for it…. It seems wrong that they can give a market-based contract yet divulge none of the details of that market.[25]

3.22 In contracts which set a price with reference to the average price for the region, it may be unclear how this figure is reached:

> If you are to arrive at a regional average that implies that you have got to know what everyone in the region is paid. So if someone is going to wait until everyone else is paid and then pay the average it is a bit screwy. I guess the way it was used was considered to be fair because there would still be consideration included in the offer, therefore making it a contract. There would be a price. The mention of the district weighted average price would be in the sense of saying, 'We will pay you this price, which is our offer price, or the district weighted average, whichever is the greater.' So there was reasonable opportunity there for growers to measure the risk. But, increasingly, the opportunity for wineries to know what the district weighted average was was blurred because they are not allowed to know

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22 Mr C. Byrne (Riverland Winegrape Growers Association), *Committee Hansard,* Berri, 27 June 2005, p. 11

23 Submission 20, King Valley Vignerons, p. 2

24 Submission 18, Creeks Edge Vineyard and Winery Pty Ltd, p. 3

25 Mr R. Gebert, *Committee Hansard,* Mildura, 28 June 2005, p. 42

what other wineries are paying and so they cannot possibly estimate what the district weighted average is going to be.[26]

Problems with assessing grape quality

3.23 Growers complained that assessment of grape quality is not transparent. For example, Mr Stone of Murray Valley Winegrowers said:

> None of the equipment used is subject to third party checks, no legal procedures are in place to protect the integrity of the results and results are provided to growers after harvest—sometimes long after harvest—without any means for them to be challenged. Instruments of trade in other industries have to conform to the National Measurement Act but not as yet in the Australian wine industry.[27]

3.24 Growers particularly claimed that assessment of colour and flavour is erratic:

> 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.[28]

> We still have companies that just chew and we have other companies that just sip and that is the extent of their testing.[29]

3.25 Evidence provided in submissions also indicated that wineries' quality standards often change over time without apparent reason:

> 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.[30]

> Quality criteria change from season to season… which inhibits the ability and opportunity for growers to manage vines for optimum quality.[31]

3.26 If so, this is not only a problem of fairness to growers, but also a cause of inefficiency for the industry as a whole.

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26 Mr C. Byrne (Riverland Winegrape Growers Association), *Committee Hansard*, Berri, 27 June 2005, p. 18

27 Mr M. Stone (Murray Valley Winegrowers), *Committee Hansard,* 28 June 2005, p. 3

28 Submission 29, Riverina Wine Grapes Marketing Board, p. 7. See also Appendix 4.

29 Mr P. Englefield (Robinvale Wine Grape Growers Association), *Committee Hansard,* 28 June 2005, p. 10

30 Submission 29, Riverina Wine Grapes Marketing Board, p. 9

31 Submission 28, Weeks Consulting Pty Ltd, p. 5

3.27 The Riverina Wine Grapes Marketing Board claimed that grapes are often assessed by insufficiently qualified people:

> 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.[32]

3.28 The committee also received evidence that claimed that a lack of transparent standards of assessment can lead to unscrupulous behaviour:

> This industry lacks truth and transparency…. 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.[33]

3.29 It was argued that it is unfair that growers should pay for the results of the winemaker's actions - for example, when quality is downgraded because of deterioration caused by the winemaker demanding delayed harvest or extra transport.[34] The same argument applies to payments based on finished wine quality, over which the grower may have little control:

> There are mistakes in the winemaking process that, I would suggest, the growers carry at the end of the day.[35]

3.30 On the other hand, the Winemakers' Federation argued that payment based on finished wine quality rewards growers who produce better grapes. [36]

3.31 The South Australian Farmers' Federation noted concerns about:

- apparent undue weight attributed to previous years' quality assessments for a particular vineyard or block;
- grapes assessed at the quality suitable for the current run, rather than the inherent quality of the delivered grapes; and
- dissatisfaction 'when the field assessment before the harvest was good, but after the wine was processed some months later, the quality assessment of the grapes was downgraded.'[37]

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32 Submission 29, Riverina Wine Grapes Marketing Board, p. 10

33 Submission 29, Riverina Wine Grapes Marketing Board, p. 10

34 For example, Submission 1, Globe Wines Pty Ltd; Submission 3, South Australian Farmers Federation, p. 7 and Submission 28, Weeks Consulting Pty Ltd, p. 4.

35 Mr P. Englefield (Robinvale Wine Grape Growers Association), *Committee Hansard,* 28 June 2005, p. 11. Similarly, Mr J. Caddy (CCW Cooperative Ltd), *Committee Hansard* 28, June 2005, p. 41.

36 Mr V. Patrick (Fosters Wine Estates), *Committee Hansard,* Adelaide, 27 June 2005, p. 13

37 Submission 3, South Australian Farmers' Federation, pp. 7-8

3.32 Weeks Consulting suggested that quality parameters should be reliably measurable by 'calibrated, reproducible and legally recognised methods (similar to the provisions of the Weights and Measures Act)'[38]

3.33 There have been initiatives to improve the situation. In evidence, the Winemakers' Federation referred to *Winegrape Assessment in the Vineyard and at the Winery*, published in 2003 at the initiative of the Wine Industry Relations Committee (which has representatives of both growers and winemakers). The ACCC suggested that this publication could be the basis of a code of conduct on assessing quality. However Mr Byrne of the Riverland Winegrape Growers Association said, 'we have failed to have it implemented, because there is no compelling reason at this time to have it implemented in such a way that it would compel parties to comply.'[39] The Wine Industry Relations Committee is also working on establishing industry standards for assessing sugar and colour.

3.34 'Flavour and character' are particularly hard to objectify. *Winegrape Assessment in the Vineyard and at the Winery* notes that '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…'

> 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.[40]

Research on objective quality assessment

3.35 The committee notes that there has been a strong research focus on developing better and quicker assessment of grape quality. Dr Hardie of the Cooperative Research Centre for Viticulture said that 'this has been a whole of industry objective since about 1990':

> The best example I could give you would be the measure of red colour for wine grapes. The initial method that was introduced there was a very time-consuming method of punching little segments or disks of skin and extracting the colour from those over quite a lengthy period. The work of the cooperative research centre has been to try and speed up that test

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38 Submission 28, Weeks Consulting Pty Ltd, p. 7

39 Submission 4, Winemakers' Federation of Australia, p.12; Submission 11, Australian Competition and Consumer Commission, p. 7 and Mr C. Byrne (Riverland Winegrape Growers Association), *Committee Hansard,* Berri, 27 June 2005, p. 3

40 W. Allan, *Winegrape Assessment in the Vineyard and at the Winery*, p. 3

> through the use of NIR spectroscopy. That has rapidly been adopted by the industry.[41]

3.36 However advances in testing colour have not removed complaints from growers about claimed variability in the results (see paragraph 3.24 above[42]). As well, flavour is still hard to measure:

> There are hundreds of flavour compounds in the fruit and many more are generated in the fermentation process… The technology is beyond us at this point in time because it is so complex. There are many grape attributes that go into determining the style of the product. We are trying to identify at least the key ones.[43]

Comment

3.37 In the committee's view it is hardly satisfactory that grape prices may not be settled until long after delivery, and may reflect quality factors that cannot be described objectively and appear to be at the buyer's discretion. Continued research effort is essential in the attempt to make assessment of grape quality more objective, and continued effort is needed to encourage winemakers to adopt more objective measures. The aim should be to have price settled at the time of delivery as far as possible, based on criteria which are clearly known in advance.

3.38 The committee has not investigated wine industry research and development generally and does not comment on whether the total research effort is appropriate in proportion to the size of the industry and the potential payoffs. That is a matter for the industry to work out with government and the various research bodies.

3.39 The committee also notes that recommending research priorities from the growers' perspective would be an obvious role for a national growers' body.

3.40 However, the committee does not believe that more research will solve all problems. For example, it appears there is no likelihood of objectifying 'flavour' any time soon. If it suits the parties to have a payment for something like finished wine quality, that is a matter for agreement under contract, and there is no reason why it should be prevented. If it suits a winemaker to impose such a condition on an unwilling grower, then we are back to the fundamental problem of uneven bargaining power, and this is not solved by a quality assessment standard.

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41 Dr J. Hardie (Cooperative Research Centre for Viticulture), *Committee Hansard,* 28 June 2005, pp. 22-3

42 See also comments in Appendix 4.

43 Dr J. Hardie (Cooperative Research Centre for Viticulture), *Committee Hansard,* 28 June 2005, pp. 24-25

Problems with dispute resolution

3.41 The difficulty of assessing grape quality objectively, as this affects the price paid, makes it all the more important to have orderly ways of resolving disagreements.

3.42 Contracts may or may not have dispute resolution provisions. The Wine Industry Relations Committee's recommended best practice contract elements include a dispute resolution clause. The key elements of it are:

- prompt, written communication;
- where the dispute is over quality or price: the parties agree to refer the matter to an independent expert and abide by the expert's decision; and
- the parties share equally the costs of the independent expert.[44]

3.43 For example, DAFF reported that in 2004 and 2005, 'Using the dispute resolution process provisions in their contracts… 172 Riverland and Sunraysia growers referred the prices [offered by McGuigan Simeon] to an independent expert. The expert made a binding decision that increased the price, but not to the level sought by growers.'[45]

3.44 However, grower groups argued that dispute resolution conditions are not used enough. In the Riverland, according to Mr Byrne, 'there are some wineries that are encouraging us all the way in the work that we are doing here with standards of contract, with dispute resolution clauses and the like. There are others who do not have the faintest interest in going down that path with us.' In the Murray Valley, according to Mr Stone, 'very few arrangements and agreements for the sale of wine grapes… contain provisions that enable growers to involve an independent third party should a conflict arise over price or fruit quality assessment.' The Riverina Wine Grapes Marketing Board said that 'the adoption of these industry agreed best practices has been minimal to almost non-existent within the Riverina':

> The region's two largest wine grape purchasers… have no adequate consideration of dispute resolutions in terms of wine grape quality assessments, leaving the growers with no recourse. This type of "take it or leave it" approach in the industry is not conducive to the development of sound business practices or sustainable industry development.[46]

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44 Submission 4, Winemakers' Federation of Australia, Attachment. Murray Valley Winegrowers, Additional Information, 5 August 2005.

45 Submission 24, Department of Agriculture, Fisheries and Forestry, p. 9. See also Mr C. Byrne (Riverland Winegrape Growers Association), *Committee Hansard,* Berri 27 June 2005, pp. 3 and 10.

46 Mr C. Byrne (Riverland Winegrape Growers Association), *Committee Hansard,* Berri, 27 June 2008, p. 9; Mr M. Stone (Murray Valley Winegrowers), *Committee Hansard,* 28 June 2005, p. 2 and Submission 29, Riverina Wine Grapes Marketing Board, p. 11.

3.45 The Winemakers' Federation of Australia argued that it is not true to say that wineries do not use dispute resolution provisions:

> For example, the Hardy Wine Company has dispute resolution clauses in all its cool area contracts, and over half of its warm inland area grape supply. McGuigan Simeon has clauses in all of its contracts, and these were used effectively by growers in 2005 to dispute the price offered. Orlando Wyndham also has a dispute resolution clause which has been used in all contracts since 2003.[47]

3.46 Murray Valley Winegrowers commented on this:

> The cool areas, where, it is said, Hardy has dispute resolution clauses in all contracts, account for less than 20% of the company's annual intake. In the Murray Valley NONE of the 400 growers under contract to Hardy has the benefit of dispute resolution provisions… Apart from McGuigan Simeon (which has announced its intention not to renew existing contracts after 2007) and Orlando, both of which currently have dispute resolution provisions, the other major (now largest) grape buyer in Australia is Southcorp, taken over recently by Foster's. Legal advice suggests that the dispute resolution provision in the warm-climate Southcorp contracts is meaningless, given that it's overtaken by a later "sole winemakers' discretion" clause.[48]

3.47 Growers also argued that even when contracts have dispute resolution provisions, at a time of over-supply, growers hesitate to use them for fear of being discriminated against at contract renewal time.[49]

3.48 The harmful interaction between lack of transparency on price-setting, lack of reliable quality assessment, and lack of dispute resolution procedures, is shown in the summary comment of the Wine Grape Growers Association:

> Growers are concerned that these parameters which determine the price they will eventually receive for their produce are subjective and out of their control and/or lack transparency. Where instruments are used to measure quality the measuring equipment is not required to be subject to periodical, third party checks to ensure the integrity of the process. Results are provided to growers after the fruit has left the farm gate (often some considerable time after harvest) without any means for them to be challenged.[50]

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47 Winemakers' Federation of Australia, Additional Information, 23 August 2005

48 Murray Valley Winegrowers, Additional Information, 13 September 2005, p. 2

49 For example, Submission 29, Riverina Wine Grapes Marketing Board, pp. 6 and 11

50 Submission 30, Wine Grape Growers Australia Inc., p. 6

Comment

3.49 In the concerns summarised above it was often unclear whether growers were alleging breach of contract or simply 'unfair' behaviour under contract. In relation to price-setting and quality assessment, it was often unclear whether growers were claiming dishonesty by wineries, or whether they were simply dissatisfied because they do not trust the winery's honesty and have no way of checking it. Some submissions explicitly claimed breach of contract or fraudulent behaviour by wineries, but there is no indication of how widespread this is.

3.50 Either way, it is clear that there is a serious problem of poor relations between growers and winemakers. This cannot be good for the industry as a whole, which depends on cooperative industry development to secure its future against growing international competition.

> 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.[51]

3.51 The current oversupply of grapes has allowed exploitative behaviour by some winemakers and given more urgency to the problems. But the problems are underlying. It is not the case that winemakers have more bargaining power at times of glut, but growers have more power at times of shortage, with implication that over time things even out. Growers are price takers, and are at risk of being exploited, at all times, because they grow a perishable product which has no other use.

3.52 Problems such as non-transparent price-setting procedures and subjective, changeable quality parameters should be cause for concern regardless of whether this year's prices are high or low.

Legal remedies

3.53 If winemakers have been breaching contracts, as submissions occasionally claimed and sometimes implied, legal remedies should be available. The Winemakers' Federation, in context of arguing that a mandatory code of conduct is unnecessary, said that 'Australia has a legal system that provides significant and adequate recourse to parties that are in dispute over existing contracts (or supply arrangements).'[52]

3.54 On the other hand, growers argued that taking legal action is expensive, stressful, and generally impractical for growers:

51 Submission 29, Riverina Wine Grapes Marketing Board, p. 6

52 Submission 4, Winemakers' Federation of Australia, p. 12

> Contracts within the industry are not secure and are at best only made workable by legal intervention, which is cost prohibitive for individual producers.[53]
>
> There is no realistic avenue for appeal or dispute resolution. Civil litigation, with its punitive costs, clearly is not a feasible option for growers though it is an option for, and has been used by, producers.[54]

3.55 Apart from breach of contract, it is also possible that exploitative behaviour is 'unconscionable conduct' within the meaning of the *Trade Practices Act 1974*. This could allow the aggrieved party to take action for damages or to seek an injunction to stop the conduct (Trade Practices Act, s82). The ACCC may also initiate an action.

3.56 Many submissions from growers obviously felt that the behaviour they complained of ought to be called 'unconscionable'. However the ACCC stressed that in defining 'unconscionable conduct' within the meaning of the Act, the bar is set high. Driving a hard bargain is not unconscionable conduct:

> The cases that the ACCC has pursued with regard to unconscionable conduct all have an unscrupulous factor. It is more than tough negotiating… The law will not apply to situations where a business has merely driven a hard bargain.[55]
>
> There is generally some sense of picking out an individual and not being fair to that individual. So if it is an industry wide activity, if you like—if that is the process industry-wide and it is reasonably well-known or understood—it would be highly unlikely that that alone would be unconscionable.[56]

3.57 The ACCC has investigated complaints by winegrape growers, but found that they fall short of unconscionable conduct. The ACCC also commented that 'grower complaints over the fairness of price and quality assessments are not always completely accurate; often, other factors may be present but unknown to growers':

> We are aware that growers typically compare the price they receive for their fruit with the price their neighbour receives. Not surprisingly, where there is an apparent price differential for what appears to be identical quality fruit, growers perceive that they are not being treated fairly or equitably.[57]

3.58 The ACCC also said in many cases growers had not effectively used review or mediation provisions in their contracts before approaching the ACCC.[58]

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53 Submission 8, form letters submitted by Riverina growers.

54 Submission 28, Weeks Consulting Pty Ltd, p. 4

55 Submission 11, Australian Competition and Consumer Commission, p. 11

56 Mr M. Pearson (Australian Competition and Consumer Commission), *Committee Hansard,* 10 August 2005, p. 18

57 Submission 11, Australian Competition and Consumer Commission, pp. 4-5

58 Submission 11, Australian Competition and Consumer Commission, pp. 4-5

3.59 Provisions in the Trade Practices Act about 'misuse of market power' apply only to 'horizontal' behaviour among competitors, not to relationships between suppliers and their customers.[59]

3.60 The committee notes the discussion of unconscionable conduct in the Senate Economics Committee's 2004 report on the effectiveness of the Trade Practices Act in protecting small business.[60] Relevantly, the Economics Committee did not support banning standard form 'take it or leave it' contracts, and it did not support adding an 'unfair contracts' provision to the present unconscionable conduct provisions. It did support amending the Act to clarify that the presence of a 'unilateral variation' contract condition is a matter that a court may have regard to in deciding whether conduct is unconscionable - see paragraph 4.10 below.

Comment

3.61 The committee accepts that the behaviour described above may not be 'unconscionable conduct' within the meaning of the Trade Practices Act. However, it is still cause for concern.

3.62 The committee agrees with growers that it is not realistic to suggest that the remedy to exploitative behaviour is legal action. Legal action is expensive and stressful for individual growers. It is inhibited by the fear that it will lead to payback in future contract negotiations. In any case, it appears that most of the behaviour of concern probably falls short of being breach of contract.

3.63 All the problems above arise fundamentally from the imbalance of bargaining power. This flows through to contract conditions just as it does to the price offered:

> I guess the market at the time of signing determines the terms by which those contracts are more favourable either for the grower or for the winemaker. In a position where the market is very short, winemakers will agree to terms that perhaps they will not agree to when the market is long.[61]

3.64 It could be argued that offering a contract renewal with later dates of payment (for example) is no different ethically from offering a price lower than last year's. Obviously many growers do not see it that way. They accept that prices depend fundamentally on the balance of supply and demand, but still feel aggrieved when what they regard as oppressive contract conditions come on top of that.

3.65 Chapter 4 considers possibilities for improving the situation of growers.

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59 Submission 11, Australian Competition and Consumer Commission, p. 10

60 Senate Economics References Committee, *The effectiveness of the Trade Practices Act 1974 in protecting small business*, March 2004, p. 30ff

61 Mr B. Moularadellis (Riverland Winemakers Association), *Committee Hansard,* Berri, 27 June 2005, p. 24. Similarly Mr M. Stone (Murray Valley Winegrowers), *Committee Hansard* 28 June 2005, p. 5.

Chapter 4

Improving the position of growers

4.1 In view of the unsatisfactory situations described in Chapter 3, the question arises whether there should be some regulation of the business relationships between grape growers and buyers. This could be by direct regulation of terms and conditions of trade, or by establishing a code of conduct, whether voluntary or mandatory.

Direct regulation of terms and conditions

4.2 In Chapter 2 the committee considered and rejected the possibility of directly regulating grape prices or supply. There are also precedents for regulation of business relations other than concerning price. For example, the Riverina Wine Grapes Marketing Board sets a default timetable for payment by three instalments on stated dates (14 May, 24 June, 14 October). Growers and buyers can contract out of this; but contracting out is controlled to the extent that the contract must be a 'complying contract': that is, it must state prices 'or the manner in which those prices are to be calculated'; and it must state dates of instalment payments. These conditions are presumably intended as some protection to growers. Nevertheless the Board is concerned because in 2004 many growers were offered contracts which proposed a four stage payment - 'a major departure from the industry standard'. [1]

4.3 Similarly, the draft Horticulture Code of Conduct now under discussion proposes that if there is no condition on timing of payments in an agreed terms of trade, a default maximum delay will apply (what the default should be is open for stakeholder comment).[2]

4.4 But a regulation that says 'contracts must state the timing of payments' is very different from a regulation that says 'contracts must provide for payment by the following dates'. Should standard conditions on matters such as the three stage payment be compulsory for all, with no ability to contract out?

4.5 Submissions did not suggest this. It raises the prospect of unintended consequences. A risk of any regulation interfering with freedom of contract is that it might prohibit deals which both parties want. It might encourage winemakers to rely more on the spot market, which would probably not be to the advantage of growers. It might encourage winemakers to source more from their own vineyards, or to source grapes more from areas which have less regulation (supposing the transport logistics makes this possible).

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1 Submission 29, Riverina Wine Grapes Marketing Board, p.8; *Wine Grapes Marketing Board (Reconstitution) Act 2003* [NSW], s3

2 Centre for International Economics, *Horticulture Code of Conduct - a regulation impact statement*, July 2005: Draft Code, s15

Comment

4.6 Freedom of contract is a fundamental principle of the free enterprise economy. In the committee's view we should be extremely cautious of interfering with it.

4.7 There is of course a matter of degree. A regulation that says 'contracts must state the timing of payments', and a regulation that says 'contracts must provide for payment on the following dates', both interfere with freedom of contract to some degree. The second does so more than the first. Where is the boundary between reasonable and excessive regulation?

4.8 Arguably regulations of the first type go to ensuring that contracts include essential matters and are clear in their terms. The aim of this is to prevent disputes and to prevent the stronger party exploiting the weaker by interpreting unclear terms to their advantage or otherwise trying to move the goalposts. The committee agrees with regulation to this extent. This is the essence of mandatory codes of conduct, discussed below.

4.9 Arguably, regulations of the second type aim to influence the commercial outcome to the benefit of the weaker party. Given the importance of freedom of contract, the committee does not think there should be regulation at this level of detail. The commercial outcome depends primarily on the balance of supply and demand. Trying to affect this by regulation will not secure a sustainable industry.

4.10 The committee notes the discussion of unconscionable conduct in the Senate Economics Committee's 2004 report on the effectiveness of the Trade Practices Act in protecting small business. That report considered 'unilateral variation' clauses - contract conditions which allow one of the parties to vary the contract without further negotiation or without the other party's agreement.

4.11 During that inquiry, the ACCC voiced concerns that unilateral variation clauses could be unreasonably exploited by the stronger party. The ACCC and the Senate Economics Committee recommended that unilateral variation clauses should be added to the list of matters which a Court may have regard to in deciding whether conduct is unconscionable (*Trade Practices Act 1974*, s51AC(3), s51AC(4)). The Government has agreed to this recommendation.[3]

4.12 The committee supports this move and encourages the government to bring forward the relevant amendment to the Trade Practices Act as a priority. This will be relevant to winegrape growers as it seems likely that there will be much renegotiation of contracts in the next few years as older contracts run out.

3 Senate Economics References Committee, *The effectiveness of the Trade Practices Act 1974 in protecting small business*, March 2004, p.40; Government response, *Senate Hansard,* 23 June 2004, p. 24765.

Recommendation 2

4.13 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.

Collective bargaining

4.14 Submissions to the committee's inquiry argued that collective bargaining should be made easier, to reduce the problem of asymmetric information: many small growers with limited market knowledge bargaining with buyers who are large well-resourced companies.[4] For example, the Riverina Wine Grapes Marketing Board said:

> 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.[5]

4.15 In a recent discussion paper on proposals to make collective bargaining easier, the Australian Competition and Consumer Commission (ACCC) commented:

> When negotiating with big business, small businesses often feel that they have little or no bargaining power and that they are sometimes forced to accept unfavourable terms and conditions, including unfavourable prices…. The inevitable consequence of such an imbalance in bargaining positions is, generally speaking, the offering by the monopoly supplier of standard form contracts, on terms dictated by, and likely to be to the advantage of, the party offering the contract… Such contracts would generally be offered on a 'take it or leave it' basis, with limited, if any, scope by the acquirer to have input into the terms of the contract.[6]

4.16 Collective bargaining would be likely to be anti-competitive and to breach the Trade Practices Act. However the ACCC, where it is in the public interest, can permit arrangements which would otherwise be prohibited (by 'authorisation' under s88 of the Act). Generally, particularly in relation to small businesses collectively bargaining with a larger business, the ACCC finds that the effects of collective bargaining are fairly benign, and most applications are allowed. In recent years the ACCC has authorised collective bargaining by chicken growers, dairy farmers, sugar cane

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4 There are many small winemakers, but a few large ones dominate the market. See paragraph 2.10 above.

5 Submission 29, Riverina Wine Grapes Marketing Board, p. 11

6 Australian Competition and Consumer Commission, *Authorising and notifying collective bargaining and collective boycott issues paper*, July 2004, pp. 8 and 10

growers, lorry owner-drivers, TAB agents, hotels, newsagents and small private hospitals among others.[7]

4.17 However, the legal requirements of the 'authorisation' procedure may become an impediment to collective bargaining. The 'Dawson review' of the Trade Practices Act in 2003 recommended a streamlined 'notification' procedure to give small businesses easier access to collective bargaining.[8] Amendments to implement this are in the Trade Practices Legislation Amendment Bill (No. 1) 2005. The bill passed the House of Representatives on 10 March 2005 and was the subject of a Senate committee report tabled 16 March. Mr Stone of the Murray Valley Winegrowers commented:

> Two years ago the Dawson review of the Trade Practices Act recommended that notification to the ACCC replace the cumbersome and expensive authorisation system. The government accepted that recommendation. Collective bargaining may provide growers with the means to legally form groups to engage wineries in genuine negotiation but, two years later, we are still waiting to see that collective bargaining.[9]

4.18 Use of cooperatives might also improve the position of growers. For example, the CCW Cooperative in the Riverland has 740 members and supplies most of BRL Hardy's Riverland grapes. This results from a historical relationship between the cooperative and Hardy. CCW Chairman Jim Caddy said the arrangement is 'probably unique':

> Hardy Wine Company has got a contract with CCW Cooperative, so Hardy Wine Company cannot go to our growers individually and, basically, cannot white-ant us. That is the situation you need…. We have returned probably 10 per cent above Riverland average to our growers over the last four or five years.[10]

4.19 Mr Stone of the Murray Valley Winegrowers commented that Murray Valley growers have been considering forming a similar cooperative, but 'Hardy's attitude to that is lukewarm at best'.[11]

4.20 Other possibilities for collective action by growers to improve either their productive efficiency or their bargaining power are noted at paragraph 2.82.

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7 ACCC: *Collective bargaining and collective boycotts: ACCC issues paper*, Media Release, 7 July 2004

8 Sir D. Dawson and others, *Review of the Competition Provisions of the Trade Practices Act*, 2003, p. 121

9 Mr M. Stone (Murray Valley Winegrowers), *Committee Hansard,* 28 June 2005, p. 3

10 Mr J. Caddy (CCW Cooperative Ltd), *Committee Hansard,* 28 June 2005, pp. 32-33

11 Mr M. Stone (Murray Valley Winegrowers), *Committee Hansard,* 28 June 2005, p. 47

Comment

4.21 The committee considers that the bargaining position of particularly small growers would be improved by making more use of collective bargaining. The committee therefore urges the Government to give priority to passing the collective bargaining notification amendments to the Trade Practices Act, and encourages winegrape growers to use the new provision.[12]

Collective boycotts

4.22 The Winemakers' Federation of Australia (WFA) objected to the prospect of collective boycotts (where members of the collective make a compact not to deal with the opposing party except on the conditions demanded by the collective). Collective boycotts, like collective bargaining, may breach the anti-competitive provisions of the Trade Practices Act, but can be authorised subject to the public benefit test. The WFA said:

> It needs to be recognised that companies are not obligated to negotiate with such collectives. However, this does open the possibility that such a group will attempt to use the collective boycott recourse. This type of exclusionary practice is not compatible with an open and competitive market and is completely unnecessary… WFA does not support the introduction of mechanisms that will allow collective boycotts.[13]

Comment

4.23 The committee does not agree with the WFA's apparent suggestion that collective boycotts should be banned or made more difficult.

4.24 The committee notes that the planned amendments to the Trade Practices Act do not change the public benefit test or the scope of activities that may be authorised: they merely provide a streamlined alternative to the authorisation procedure.

4.25 It is also noted that banning collective boycotts would be a significant change to the Trade Practices Act. The ACCC's collective bargaining discussion paper argued that in some situations the threat of a collective boycott may be the only thing that gives the collective any teeth. The Dawson Review considered and rejected the argument that the new notification process should not be available for collective boycotts. It said: '…collective bargaining, of its nature, may involve a collective boycott, and the committee would not favour such a restriction.'[14]

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12 The Senate passed the Trade Practices Legislation Amendment Bill (No. 1) 2005 on 11 October 2005, between the adoption and the publication of this report.

13 Submission 4, Winemakers' Federation of Australia, p. 13

14 Australian Competition and Consumer Commission, *Authorising and notifying collective bargaining and collective boycott issues paper*, July 2004, p. 26. Sir D. Dawson and others, *Review of the Competition Provisions of the Trade Practices Act*, 2003, p. 120

A code of conduct for the winegrape trade?

4.26 If there should not be direct regulation of actual terms of trade, the question arises whether there should at least be a code of conduct to regulate the types of matters that must be included in terms of trade. This might alleviate growers' problems to some degree.

Background on codes of conduct

4.27 An industry code of conduct may be recognised by regulations under the *Trade Practices Act 1974.* The regulations may define a code as voluntary or mandatory. Voluntary codes bind corporations that agree to be bound by them. Mandatory codes bind all corporations that participate in the industry. Sections 51ACA-51AE were added to the Trade Practices Act in 1998, to improve fair dealing between big and small businesses, as the government's response to a report of the House of Representatives Standing Committee on Industry, Science and Technology: *Finding a Balance - towards fair trading in Australia*, 1997.[15]

4.28 Under the Trade Practices Act, if a bound corporation contravenes a code it may be liable to a civil action for damages (s82) but it is not liable to a pecuniary penalty (as s76, which creates pecuniary penalties, excludes Part IVB).

4.29 There are no voluntary codes prescribed under the Trade Practices Act. There is one mandatory code: the Franchising Code of Conduct (1998)**.** Its purpose is to 'address the imbalance of power between franchisors and franchisees' and to 'raise the standards of conduct in the franchising sector.'[16] It replaced a voluntary Franchising Code of Practice (1993) which was 'widely viewed as ineffective'.[17] A review of the Franchising Code of Conduct in 2000 found widespread support for the code.[18]

4.30 Industries may of course develop voluntary codes on their own initiative without reference to the Trade Practices Act. The ACCC encourages this, and has published guidelines for developing voluntary codes.[19] The Produce and Grocery Industry Code of Conduct is one such code that is relevant to grape growers.

15 *Trade Practices Amendment (Fair Trading) Act 199*8

16 Trade Practices (Industry Codes - Franchising) Regulations 1998 and Explanatory Statement.

17 Department of Employment, Workplace Relations and Small Business, *Review of the Franchising Code of Conduct - report of the Franchising Policy Council*, May 2000, p. 64

18 Department of Employment, Workplace Relations and Small Business, *Review of the Franchising Code of Conduct - report of the Franchising Policy Council*, May 2000

19 Australian Competition and Consumer Commission, *Guidelines for Developing effective Voluntary Industry Codes of Conduct*, February 2005

The Produce and Grocery Industry Code of Conduct

4.31 The Produce and Grocery Industry Code of Conduct (PGI Code) was developed as the government's response to a 1999 parliamentary committee report *Fair Market or Market Failure*.[20] The report considered that there was 'a significant problem… in relation to the practices of big business at the supply level… unfair business conduct continues to undermine and damage those in less powerful positions.' The report recommended a mandatory code, however the government preferred a voluntary code.[21] The code is not prescribed under the Trade Practices Act: it is an initiative of the Commonwealth at administrative level in consultation with peak organisations.

4.32 From 16 July 2001, the government also appointed and funded a Retail Grocery Industry Ombudsman (now Produce and Grocery Industry Ombudsman), to provide a dispute resolution service.

4.33 Provisions of the code relevant to the problems of winegrape growers discussed in Chapter 3 are:

- all relevant produce standards and specifications will be provided to suppliers before a contract is made (s5.1);
- written contracts should have a dispute resolution clause (s6.2); and
- industry participants should support a dispute resolution procedure (s10).

4.34 It appears that there has been uncertainty about whether the PGI Code was intended to cover winegrapes. The Code applies to 'industry participants' defined as:

> 'Those businesses involved in the production, preparation and sale of food, beverages and non-food grocery items, including (but not limited to) primary producers, manufacturers and/ or processors, wholesalers, importers and/or distributors, brokers and/ or agents and grocery retailers.'[22]

4.35 Winegrape growers were earlier told that the Ombudsman could not act in the wine industry, but this year the Ombudsman has dealt with complaints. It appears that this reflects a change of policy or interpretation about the coverage of the Code, not a change to the words of the Code itself.[23]

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20 At first it was called the Retail Grocery Industry Code of Conduct. The Code was renamed on 11 February 2005.

21 Joint Select Committee on the Retailing Sector (Hon B. Baird, Chair), *Fair Market or Market Failure - a review of Australia's retailing sector*, August 1999, p. x. Government response, *Senate Hansard,* 8 June 2000, p. 14998.

22 Produce and Grocery Industry Code of Conduct, s.4.1

23 Mr M. Stone (Murray Valley Winegrowers Inc.), *Committee Hansard,* 28 June 2005, p. 16 and Mr P. Chesworth (Department of Industry, Tourism and Resources), *Committee Hansard,* 10 August 2005, p. 10.

4.36 When the Code was reviewed in 2003, it was concluded that:

- there was a significant lack of awareness of the code;
- there was significant dissatisfaction in relationships between retailers and growers;
- coverage (ie the number of voluntary signatories) was low; and
- take up of the code has been limited and there are no sanctions for non-compliance.[24]

4.37 The review recommended a mandatory code under the Trade Practices Act. The government in its response (1 July 2004) preferred to keep the PGI Code voluntary, and promised to 'work with industry to develop a code education and promotion campaign to increase industry awareness of the Code and its dispute resolution provisions.' The government promised to review the code in three years.[25]

Draft Horticulture Code of Conduct

4.38 The government promised as a 2004 election commitment to make a mandatory horticulture code of conduct to 'give producers a fairer deal on their terms of trade and on resolving disputes with produce buyers.'[26] A draft code was released on 22 July 2005 for public comment. According to the accompanying Regulation Impact Statement the code responds to many years of concerns about how business is conducted in the wholesale fruit and vegetable market; including:

- lack of transparency about prices;
- often, lack of clarity about whether the wholesaler is buyer or an agent of the grower; and
- disputes where traders and growers have different views about the quality of produce.

4.39 The coverage of the code is open for discussion. Options include:

- full coverage of 'all persons and entities that trade in horticultural produce with growers'; or
- coverage only of market sectors where most problems exist, thus excluding supermarkets, processors, packers and exporters. [27]

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24 N. Buck, *Report of the Review of the Retail Grocery Industry Code of Conduct*, December 2003, p. 6ff

25 *Review of the Retail Grocery Industry Code of Conduct - Government Response to the Buck Report*, 1 July 2004, p. 3

26 Hon. J. Anderson, *Fruit and Vegetable Industry Code of Conduct*, Media Release, 1 October 2004.

27 Centre for International Economics, *Horticulture Code of Conduct - a regulation impact statement*, July 2005, pp. ix and xv

Possible relevance of the horticulture code to winegrape growers

4.40 The draft horticulture code applies to 'horticultural produce', defined as 'fresh, unprocessed fruit and vegetables… for human consumption' (s3). It is unclear on the face of it whether this is intended to include winegrapes. According to the regulation impact statement 'Australian Government Ministers stated that it would apply to the grower/wholesale sector of the fruit and vegetable supply chain for fresh domestic consumption.' This would appear to exclude winegrapes. On the other hand, the growers' proposal is for the code to cover 'all persons and entities that trade in horticultural produce with growers, except for consumers'. The regulation impact statement leaves open for discussion whether the code should exclude transactions with 'processors' - implying that it could include them.[28]

4.41 The Committee understands that the coverage of the code in this regard is under consideration. The following discussion assumes, with the submissions to this inquiry, that a winegrape code would be separate from a horticulture code.

4.42 Some provisions of the horticulture code which would be relevant to the problems of winegrape growers are:

- If it is a merchant relationship (as opposed to an agency relationship), the wholesaler must pay the grower a price which is agreed before delivery (s26).[29]
- There are provisions for dispute resolution, including:
  - a party may ask a 'horticultural inspector' to report on the matter of dispute. This report is not intended to be legally binding but is intended to facilitate mediation;
  - a party may request mediation; and
  - horticultural inspectors and mediators would be appointed by a Code Management Committee (s36ff).

4.43 The mediation provision, though it does not lead to any legally binding outcome, does allow an aggrieved party to cause the other party some expense in complying with the procedure. This may exert some discipline on parties to avoid dispute situations.

4.44 Some other provisions of the code answer problems which are probably not relevant in the wine industry (for example, lack of clarity about whether it is a

28 Centre for International Economics, *Horticulture Code of Conduct - a regulation impact statement*, July 2005, p.xiv,34,54.

29 'Merchant relationship': where the wholesaler buys the goods from the grower at a price agreed before sale. 'Agency relationship': where the wholesaler acts as the agent in a sale between the grower and a third party. Draft Horticulture Code, s3, definitions.

merchant or agency relationship; need for clear information about price at onsale where there is an agency relationship; growers delivering unsolicited produce).

Submissions on a possible code of conduct for the winegrape trade

4.45 Submissions supported clearer contractual relations between growers and winemakers, whether through a formal code of conduct or by other industry initiatives. Not surprisingly, grape growers were more likely to argue for a mandatory code.

4.46 The Winemakers' Federation of Australia (WFA) did not think there was any need for a mandatory code, but thought that there is 'considerable scope for grape growers and wineries to set best practice benchmarks and a role for the peak bodies to encourage adherence to these benchmarks':

> WFA rejects the notion of a prescriptive Code of Conduct because of concerns that it will restrict innovation and potentially undermine competitiveness. That said, WFA does strongly support minimum inclusions in contracts (eg dispute resolution clauses) and will continue to promote such initiatives amongst its members.[30]

4.47 The WFA referred to the relevant initiatives of the Wine Industry Relations Committee. The committee was established in 2001 and includes representatives of growers and winemakers:

- publication of a guidelines document *Winegrape Assessment in the Vineyard and at the Winery*;
- development of a dispute resolution clause and process;
- organisation of a list of independent experts to provide advice in disputes over price or rejection of wine grapes; and
- development of an agreed list of elements that contracts should contain.

4.48 The Wine Industry Relations Committee is also working on establishing industry standards for assessment of both sugar and colour in wine grapes. The WFA commented: 'The immediate challenge is to ensure the adoption of these initiatives.'[31]

4.49 Murray Valley Winegrowers thought that too few wineries have acted on these best practice recommendations, and a mandatory code is necessary:

> That [Wine Industry Relations] committee has endorsed the need for the inclusion of contractual provisions for things such as dispute resolution, terms of payment and the like. After four years of very good meetings, I might say, very few wineries have acted on those endorsements. In our view, therefore, it has become apparent that a mandatory code of conduct is

30 Submission 4, Winemakers' Federation of Australia, pp. 2 and 12

31 Submission 4, Winemakers' Federation of Australia, p. 12

required under which the sorts of provisions I have referred to can be included.[32]

4.50 The Riverina Wine Grapes Marketing Board urged a mandatory code including matters such as minimum terms and conditions of payment. Wine Grape Growers Australia supported a mandatory code. The Riverland Winegrape Growers Association was happy to start with a voluntary code on the understanding that it could be made mandatory if there was significant lack of compliance.[33]

4.51 The Australian Competition and Consumer Commission (ACCC) favoured a voluntary code as 'providing a structured and equitable framework for dealings between growers and processors'. The ACCC has published guidelines for voluntary industry codes and says that it 'has played a major role in developing equitable voluntary industry codes, via the authorisation process.'

> It is the ACCC's experience that a voluntary industry code of conduct can play a significant role in addressing market problems provided there is a commitment by industry participants to making the code work. The ACCC also recognises that self-regulation schemes can play an important role in encouraging competition and creating a mutually beneficial climate for efficiency and growth. Importantly, they also avoid the need for possible Government regulation, which, in this case, may provide less flexibility in industry arrangements.[34]

4.52 The ACCC did not favour a mandatory code:

> One of the issues that we have with mandatory is that it really can be a huge compliance burden on businesses, not to mention a burden on my resources.[35]

4.53 DAFF commented that 'it is not clear that a mandatory code would make any difference to prices received by grape growers.'[36]

Comment

4.54 The committee acknowledges that there are differences between the situation of winegrape growers and the fruit and vegetable growers who are affected by the draft horticulture code:

- there are many fruit and vegetable wholesalers, and growers have more options when searching for a buyer; for winegrape growers this is less so;

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32 Mr M. Stone (Murray Valley Winegrowers Inc.), *Committee Hansard,* 28 June 2005, p. 3

33 Submission 29, Riverina Wine Grapes Marketing Board, p.13; Submission 30, Wine Grape Growers Australia, p. 5 and Mr C. Byrne (Riverland Winegrape Growers Association), *Committee Hansard,* Berri, 27 June 2005, p. 4

34 Submission 11, Australian Competition and Consumer Commission, pp. 8-9

35 Mr M. Pearson (ACCC), *Committee Hansard,* 10 August 2005, p. 23

36 Submission 24, Department of Agriculture, Fisheries and Forestry, p. 9

- fruit and vegetable wholesalers' profit margins are small: their rate of return is about half that of growers; and
- for winegrapes, clear contracts appear to be more common and situations where there is no clear change of ownership are unlikely. Their situation is more comparable to that of fruit and vegetable growers who are contracted directly to supermarkets, bypassing the central markets (as is becoming more common).

4.55 However, there are also strong similarities:

- there are a large number of small growers;
- growers may lack the knowledge of market conditions to bargain well;
- their bargaining position is weakened by the fact that they grow a perishable product with a short window of opportunity to get it to market and little option to take it home again if there is a disagreement on the weighbridge;
- prices may be finalised only after the produce has left the grower's hands;
- disputes may arise over assessment of quality.

4.56 The core problem is the same in both cases: exploitation of growers as a result of their poor bargaining power because they are offering a perishable product for which there is no other use.

4.57 In the committee's view, if a code of conduct is warranted for fruit and vegetables, it is also warranted for winegrapes. Given the differences between the winegrape market and the fresh fruit and vegetable market, the committee suggests it would be most practical for this to be a freestanding code, rather than trying to roll winegrapes into the horticulture code.

4.58 As to whether a code should be voluntary or mandatory, the committee notes:

- the limited success of the voluntary Produce and Grocery Industry Code, as noted in the 2003 review (see paragraph 4.36);
- the evidence of exploitative behaviour and poor relations between some winemakers and grapegrowers (see Chapter 3); and

- the evidence that there has been poor uptake of the initiatives of the Wine Industry Relations Committee. This was claimed by growers and it appears that it is accepted in part by the Winemakers' Federation.[37]

4.59 The committee is not convinced by the ACCC's concern about compliance costs of mandatory as opposed to voluntary codes (see paragraph 4.52). Neither the review of the Produce and Grocery Industry Code nor the Regulation Impact Statement for the draft Horticulture Code saw compliance costs as a major problem. The review of the voluntary Produce and Grocery Industry Code, proposing that it should become mandatory, argued that 'those who operated as fair traders in this market would have little difficulty in complying at relatively small cost. For those who did not currently trade fairly the cost would be greater.' The Horticulture Code of Conduct Regulation Impact Statement expects that compliance costs would be 'not negligible'; on the other hand, 'additional record keeping is likely to equate with better business management practice and after an initial implementation period should be a positive benefit.'[38]

4.60 Compliance costs would presumably be smaller in the winegrape market because the winegrape market, compared with the fruit and vegetable market, consists of a smaller number of higher value transactions, many of which are already governed by detailed written contracts.

4.61 The committee is not persuaded by the concerns of the Winemakers' Federation that a mandatory code could 'restrict innovation and potentially undermine competitiveness'.[39] A code of conduct would merely prescribe certain subject matters that must be mentioned in contracts (for example: timing of payments; dispute resolution procedures). They are matters which the industry has been promoting in any case, through the Wine Industry Relations Committee. A code would not dictate the actual contract conditions on these matters. The committee does not see how this would restrict innovation in the wine industry.

4.62 The only possible inefficiency of a mandatory code, compared with a voluntary one, is that it might draw in situations where in fact there is no problem, thereby imposing unnecessary compliance costs. The Horticulture Code regulation

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37 Submission 4, WFA, p.12: 'The immediate challenge is to ensure the adoption of these initiatives.' On the other hand, the WFA rejected complaints that wineries have not adopted dispute resolution clauses in contracts: 'For example, the Hardy Wine Company has dispute resolution clauses in all its cool area contracts, and over half of its warm inland area grape supply. McGuigan Simeon has clauses in all of its contracts, and these were used effectively by growers in 2005 to dispute the price offered. Orlando Wyndham also has a dispute resolution clause which has been used in all contracts since 2003.' WFA, Additional Information, 23 August 2005. See also paragraphs 3.45-6.

38 N. Buck, *Report of the Review of the Retail Grocery Industry Code of Conduct*, December 2003. Centre for International Economics, *Horticulture Code of Conduct - a regulation impact statement*, July 2005, p. 67 and 78.

39 Submission 4, Winemakers' Federation of Australia, p. 13

impact statement acknowledges this, and opens for discussion whether there should be any exceptions to the code's coverage 'so it includes only those parts of the market where the problems of transparency, clarity and delivery of unsolicited fruit exist'.[40] A winegrape code could do the same.

4.63 The committee thinks it is unlikely that a voluntary code would be enough to protect growers with weak bargaining power. The more ethical winemakers would presumably follow the code; the less ethical would not. Given the strong evidence of poor business relations and exploitation of growers by some winemakers, the committee thinks that a mandatory code is justified.

4.64 Whether this should apply only to transactions under written contract, or should include trades on the spot market in some way, was not raised in evidence. That would be a matter for further consideration.

4.65 Whether a code should include any actual mandatory conditions, with no allowance for contracting out (for example, 'payment for the year's vintage must be completed by such-and-such date') would also be a matter for further consideration. The discussion above implies that it probably would not, but the committee has no firm view on the point. How much interference in freedom of contract is justified is a matter of judgement having regard to how serious is the mischief which the code aims to counteract.

4.66 Representing the growers' position in negotiating a code would be an obvious role for a national peak body for growers.

Recommendation 3

4.67 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.

4.68 However, it is important to realise the limitations of a code of conduct, even a mandatory one. A code of conduct regulating contracts cannot prevent buyers from turning to the spot market instead, if that suits them better. It is natural that at times of shortage buyers will try to assure future supplies through multi-year contracts, while at times of surplus they will be content to source more through the spot market. Buyers cannot be forced to offer contracts or renew contracts.[41]

4.69 Where a code dictates subject matters that must be addressed in a contract, without dictating the actual detailed conditions on those matters, it cannot prevent the

40 Centre for International Economics, *Horticulture Code of Conduct - a regulation impact statement*, July 2005, p. xv

41 Subject of course to whatever conditions an existing contract may set about renewal.

party with more bargaining power from holding out for conditions more to its advantage.

4.70 A code of conduct mandating dispute resolution provisions is unlikely to answer the concern that growers may hesitate to use these provisions for fear of being blackballed at contract renewal time. It can only be hoped that more transparent quality assessment of grapes, and more collective bargaining by growers, may prevent disputes from arising.

4.71 Furthermore, a code of conduct cannot solve the underlying problem of low prices caused by the imbalance of supply and demand. However it may help improve relations between growers and winemakers, which is surely needed to ensure the future prosperity of the industry as a whole.

4.72 A mandatory code should not be regarded as replacing or superseding cooperative action by industry groups. The committee supports the work of the Wine Industry Relations Committee on best practice guidelines, and hopes that this will continue. This work goes to promoting industry standard conditions and practices at a level of detail which a code cannot approach. To minimise disputes it is essential to promote a shared culture of how the industry should operate, and to have industry standards which both growers and winemakers have contributed to and are committed to.

A national winegrape growers' body

4.73 Submissions to the inquiry argued strongly that there should be a national body for winegrape growers. At present growers are represented by regional bodies.

4.74 A former peak winegrape growers' body, the Wine Grape Growers Council of Australia, was wound up in 2004 because of concerns that it did not effectively represent the interests of growers outside the warm inland regions. However, there was wide consensus that an alternative national organisation should be formed. The three inland regions then incorporated Wine Grape Growers Australia Inc. (WGGA), with the aim of promoting a new national body. With assistance from DAFF's Industry Partnerships Program, WGGA has conducted workshops for growers around the country and drafted a business plan for the proposed national body, tentatively called the Australian Winegrape Growers' Council (AWGC).[42]

4.75 A national workshop on 30 May 2005 agreed to form a national growers' body, with individual membership open to all growers, funded 'primarily through voluntary membership fees'.[43] The proposed functions of the new body are:

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42 Submission 7, Murray Valley Winegrowers Inc, p. 3; Submission 24, Department of Agriculture, Fisheries and Forestry, p. 8; and Centre for International Economics, *A national wine grape growers' organisation - a discussion paper*, December 2004, p. 4.

43 Submission 24, Department of Agriculture, Fisheries and Forestry, p. 8

- to represent growers to government: for example, to influence policy, to be represented on government committees or bodies and to gain access to government program funding;
- to represent growers in dealing with other sectors of the wine industry: for example, to be involved in industry planning, to improve relations between growers and winemakers by means such as codes of practice and best practice recommendations; and
- to provide services to members, such as market information, professional development, and advice on their rights under contracts.[44]

4.76 The business plan for the proposed AWGC suggests that it ‘cannot get involved in individual commercial arrangements but does have a role in the establishment of a code of conduct for trading relationships between winemakers and growers.’[45]

4.77 Submissions to this inquiry echoed the points made in the report of growers’ workshops. Suggested roles for the growers’ body include:

- to maintain a national register of vineyards;[46]
- to negotiate a code of conduct; [47]
- to disseminate market information to improve growers’ bargaining position;[48]
- to act on behalf of a grower in grievance situation to maintain the grower’s anonymity; and[49]
- to suggest research priorities.[50]

4.78 The Winemakers’ Federation supported a national growers’ body, providing membership is voluntary and it ‘does not address commercial matters’. The WFA also supported establishing a single national body for grape growers and winemakers.[51]

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44 Centre for International Economics, *Draft business plan for a national winegrape growers’ organisation - and establishment of Wine Industry Australia*, May 2005, p. 5ff

45 Centre for International Economics, *Draft business plan for a national winegrape growers’ organisation - and establishment of Wine Industry Australia*, May 2005, p. 5ff

46 Submission 29, Riverina Wine Grapes Marketing Board, p. 13

47 Submission 29, Riverina Wine Grapes Marketing Board, p. 13

48 Mr J. Caddy (CCW Cooperative Ltd), *Committee Hansard,* 28 June 2005, p. 33

49 Submission 29, Riverina Wine Grapes Marketing Board, p. 9. Note that this would be inconsistent with the proposal that the national growers’ body would ‘not get involved in individual commercial arrangements’ - see paragraph 4.76.

50 Centre for International Economics, *Draft business plan for a national winegrape growers’ organisation - and establishment of Wine Industry Australia*, May 2005, p. 29

51 Submission 4, Winemakers’ Federation of Australia, p. 14

Funding of a national growers' body

4.79 It is proposed that the national growers' body be funded by voluntary subscription. The business plan notes that in the warm inland areas fees could easily be collected by grower groups in conjunction with already existing levies under state law. In other regions, collecting membership fees may be 'more challenging'.[52]

4.80 Submissions to this inquiry included varying opinions about whether a body should be funded by voluntary subscription or by compulsory levy. Some thought that voluntary subscription would not be enough and there should be a compulsory levy.[53] Most agreed with voluntary subscription and opposed a compulsory levy. For example, the Wine Industry Association WA argued that all current representative bodies operate by subscription, 'which ensures they are answerable to their membership'. It was also argued that:

> Wine producers who grow grapes as well would not accept a levy raised on the grape crop for a growers organisation.[54]

4.81 DAFF advised that 'the Government's levy guidelines prevent statutory levies from being used to fund agri-political organisations'.

> However, the Grape and Wine Research and Development Corporation and the AWBC could provide funding to a grape grower body for activities consistent with their legislated objectives.[55]

Relationship of a growers' body with an umbrella wine industry body

4.82 It is also proposed to establish 'Wine Industry Australia' (WIA) as an umbrella peak body for both growers and winemakers. A discussion paper prepared by the Centre for International Economics argues that this 'would force all stakeholders to focus on delivering outcomes for the betterment of the industry as a whole.' The draft business plan for the proposed body notes that 'without exception growers who attended the meetings in January and February expressed strong support for WIA as a united peak body representing the whole wine industry.'[56]

4.83 On the other hand, there were differing views about how it should be structured, and 'some strong views were expressed in several workshops about the

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52 Centre for International Economics, *Draft business plan for a national winegrape growers' organisation - and establishment of Wine Industry Australia*, May 2005, p. 9

53 For example, Submission 2, Yarra Valley Winegrowers Association; Submission 20, King Valley Vignerons, p. 3 and Submission 29, Riverina Wine Grapes Marketing Board, p. 14

54 Submission 9, Wine Industry Association Western Australia (Inc.), p. 2

55 Submission 24, Department of Agriculture, Fisheries and Forestry, p. 8

56 Centre for International Economics, *A national wine grape growers' organisation - a discussion paper*, December 2004, p. 5 and *Draft business plan for a national winegrape growers' organisation - and establishment of Wine Industry Australia*, May 2005, p. 27.

need for AWGC to be independent and to have the ability to make independent public statements despite being part of WIA.'[57]

4.84 The obvious concern is that the voice of growers should not be drowned out on matters where their interests differ from winemakers. Submissions to this inquiry voiced this concern:

> The issue to be addressed is development of a mechanism that facilitates more effective lobbying by grape growers regarding matters where their interests diverge from the interests of winemakers.[58]
>
> A united national body is not effective in handling growers' issues that relate to commercial arrangements.[59]

Comment

4.85 The committee supports the current moves to establish a national winegrape growers' body.

4.86 The committee also supports moves to establish a national wine industry body, with both growers and winemakers, to progress matters where they have shared interests. However the different roles of the two bodies must be clear. The umbrella wine industry body cannot speak for growers on matters where growers and winemakers have different interests. It cannot even speak for the industry as a whole on matters where growers and winemakers have different interests. Its role should be to progress matters where there is consensus, not to put forward the appearance of consensus where it does not exist. This implies a need to identify different interests clearly and ensure that the umbrella body does not represent one side's position on them.

4.87 This still allows a role for the wine industry body to improve communication between the sides on matters of disagreement, as DAFF suggested.[60] Sometimes conflict might become consensus after discussion. The point is that the wine industry body should not take a position if consensus is not reached.

4.88 It appears that this approach already exists at regional level. Some regional wine industry development bodies, formed of growers and winemakers, told the committee that they would not make submissions to this inquiry because they realised

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57 Centre for International Economics, *A national wine grape growers' organisation - a discussion paper*, December 2004, p. 5; *Draft business plan for a national winegrape growers' organisation - and establishment of Wine Industry Australia*, May 2005, p. 27 and *Business plan for a national wine grape growers' organisation - report on grower workshops*, February 2005, p. 2

58 Submission 3, South Australian Farmers Federation, p. 10

59 Mr M. Stone (Murray Valley Winegrowers) *Committee Hansard,* 28 June 2005, p. 17

60 Submission 24, Department of Agriculture, Fisheries and Forestry, p. 9

that growers and winemakers would have different positions. They preferred to leave the argument to growers and winemakers, and allow them to speak for themselves.

4.89 Accordingly, the committee is concerned by the apparent assumption that the umbrella wine industry body would simultaneously be the winemakers' body:

> One option is that a new Wine Industry Association (WIA) could be formed comprising the current WFA and the new AWGC.[61]
>
> [The AWGC] will be the peak industry body representing the interests of all wine grape growers in Australia. Part of the proposal involves this body being an electoral college of a new wine industry organisation called Wine Industry Australia (WIA). Three other electoral colleges would represent the interests of small, medium and large wine makers.[62]

4.90 This immediately creates an asymmetric situation: there is a wine industry body, a growers' body, but no winemakers' body. It invites the suspicion that winemakers would have favoured status within the wine industry body. It could lead to conflicts of interest.

4.91 The committee does not think that this concern is answered by proposing voting arrangements that would effectively force consensus. This has been suggested:

> Decisions in the WFA require 80 per cent majority to get through. This forces the groups, where views differ, to caucus the issues and finally arrive at a common position…. [with this arrangement] within WIA, the AWGC would be a key linchpin, as decisions on policy would not get through without the support of AWGC.[63]

4.92 That would work on consensus issues. But the problem remains, that if there is no separate winemakers' representative body, and growers have a power of veto in the wine industry body, who would speak for winemakers on matters of disagreement?

4.93 The committee does not think this would be a satisfactory situation. The three different interests involved - winemakers', growers' and mutual interests - must be clearly distinguished and separately represented.

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61 Centre for International Economics, *A national wine grape growers' organisation - a discussion paper*, December 2004, p. 20

62 Centre for International Economics, *Business plan for a national wine grape growers' organisation - report on grower workshops*, February 2005, p. 1

63 Centre for International Economics, *Draft business plan for a national winegrape growers' organisation - and establishment of Wine Industry Australia*, May 2005, p. 16

Recommendation 4

4.94 The committee recommends that any national wine industry body should be separate from a winemakers' representative body.

Senator Andrew Murray
Chair

Appendix 1

List of Submissions

1. Globe Wines Pty Ltd

2. Yarra Valley Winegrowers' Association

3. South Australian Farmers' Federation

4. Winemakers' Federation of Australia

5. Grape and Wine Research and Development Corporation

6. Cooperative Research Centre for Viticulture

7. Murray Valley Winegrowers' Inc

8. Submissions of similar wording

9. Wine Industry Association WA (Inc.)

10. McGuigan Simeon Wines Ltd

11. Australian Competition and Consumer Commission

12. Ashridge Vineyards

13. CONFIDENTIAL

14. Hon Peter Lewis, MP

15. Neilpo Heights Vineyard

16. Mr Joe Gropler, JP

17. Australian Wine and Brandy Corporation

18. Creeks Edge Vineyard and Winery Pty Ltd

19. Great Southern Plantations

20. King Valley Vignerons

21. Mr T.J. Murphy

22. Riverland Wine Industry Development Council Inc.

23a. Submissions of similar wording

23b. Submissions of similar wording with additional information

24. Australian Government Department of Agriculture, Fisheries and Forestry

25. Alpine Valley Vignerons Inc.

26. Mudgee Wine Grape Growers Association Inc.

27. Hunter Valley Vineyard Association Inc.

28. Weeks Consulting Pty Ltd

29. Riverina – Wine Grapes Marketing Board

30. Wine Grape Growers Australia Inc.

Appendix 2

Witnesses who appeared before the Committee at the Public Hearings

Monday, 27 June 2005
Old Chambers Conference Room, Level 1
Parliament House, North Terrace
ADELAIDE

Winemakers Federation of Australia
Mr Stephen Strachan, Chief Executive Officer
Mr Douglas Young, Policy Director
Mr Antony Clarke, Policy Analyst
Mr Victor Patrick, Director, Viticulture, Fosters Wine Estates

Department of Primary Industries and Resources, South Australia
Ms Kris Roberts, Acting Director, Grape and Wine
Mr Michael Shillabeer, Executive Officer, South Australian Wine Industry Council

South Australian Farmers Federation
Mr Leo Pech, Vice Chairman, Winegrape Section

Clare Region Grapegrowers Association
Mr Tren Vine, President
Mr Tracy Sandow

Grape and Wine research and Development Corporation
Dr Jim Fortune, Executive Director

Mr Robert Hesketh Private capacity

The Hon Peter Lewis, Private capacity

Monday, 27 June 2005
Riverview Lounge, Berri Resort Hotel
BERRI

Riverland Winegrape Growers Association
Mr Richard Dolan, Chairman
Mr Drazen Baric, Vice-Chairman
Mr Christopher Byrne, Executive Officer
Riverland Winemakers Association
Mr Bill Moularadellis, President

Australian Wine Research Institute
Dr Robert Dambergs, Senior Research Chemist

Tuesday, 28 June 2005
Mildura Grand Hotel
MILDURA

Murray Valley Winegrowers Inc.
Mr Michael De Palma, Chairman
Mr Mike Stone, CEO

Mildura Region Winegrowers Association
Mr Leonard Schliefert, Chairman

Swan Hill Wine Region Grape Growers Association
Mr Colin Free, Chairman

Robinvale Wine Grape Growers Association
Mr Phillip Englefield

Cooperative Research Centre for Viticulture
Dr William Hardie, Chief Executive Officer

CCW Cooperative Ltd
Mr Jim Caddy, Chairman of Directors

Murray Valley Wine Growers Industry Development Committee
Mr John Ward, Chairman

Mr Robin Gebert, Private capacity

Mr Frank Carli, Private capacity

Wednesday, 10 August 2005
Parliament House
CANBERRA

Department of Agriculture, Fisheries and Forestry
Mr David Mortimer, Executive Manager, Food and Agriculture Division
Mr Michael Ryan, Manager, Wine Policy

Australian Bureau of Agricultural and Resource Economics
Mr Andrew Dickson, Manager, Commodity Outlook Branch

Department of Industry, Tourism and Resources
Ms Susan Weston, Head of Division, Office of Small Business
Mr Peter Chesworth, General Manager, Office of Small Business

Australian Competition and Consumer Commission
Mr Mark Pearson, Executive General Manager, Enforcement and Compliance Division
Mr Nigel Ridgway, General Manager, Compliance Strategies Branch
Ms Rose Webb, General Manager, Enforcement and Coordination Branch
Mr Scott Gregson, General Manager, Adjudication

Appendix 3

Additional information

Additional information accepted as public evidence of the inquiry:

A. Answers to questions put by the committee
C. Miscellaneous comment
H. Submitted during hearings, except items logged as submissions (see Appendix 1)

Date	Type	From	Topic [Hansard Page Reference]
8/6/05	C	CSIRO	Background Information
21/6/05	C	Australian Wine Research Institute	Background Information
27/6/05	H	Winemakers' Federation of Australia	15 Powerpoint Slides
27/6/05	H	Department of Primary Industries and Resources (South Australia)	*A Report on the Impact of Current Grape-Pricing Trends on the Riverland Region*, April 2005, South Australian Wine Industry Council: *Wine - a Partnership 2005-2010*, February 2005
27/6/05	H	Riverland Wine Grape Growers Association	• RWGA Constitution • Organisation Chart • Outcomes statement • *A Report on the Impact of Current Grape-Pricing Trends on the Riverland Region*, April 2005 • Rural Solutions SA, *Winegrape Future Options Workshop Report*, June 2005 • Centre for International Economics, *Business plan for a national winegrape growers' organisation*, June 2005 • South Australian Regions 2004 Crush Statistics • W. Allan, *Winegrape Assessment in the Vineyard and at the Winery*
5/8/05	A	Murray Valley Winegrowers Inc.	Answers to Questions
22/8/05	A	Department of Industry, Tourism and Resources	Answers to Questions
23/8/05	A	ACCC	Answers to Questions
23/8/05	C	Winemakers' Federation of Australia	Comment on Retail Wine Price Break-up; Dispute Resolution
9/9/05	C	ABARE	Time Series on Grape Prices and Export Wine

			Prices
9/9/05	A	Department of Agriculture, Fisheries and Forestry	Answers to Questions
13/9/05	C	Murray Valley Winegrowers Inc.	Dispute Resolution
22/9/05	C	Winemakers' Federation of Australia	Figures Supporting Slides Submitted 27/6/05

Appendix 4

Sample comments by growers

Extracts of comments submitted with form letters by winegrape growers of the Riverina and Murray Valley regions:

'The wineries are simply taking advantage of a good supply of grapes. The discount prices are certainly not reflective of declining sales figures. It's not good business or fair to act this way.'

'Earlier indication of colour score, should not have to wait until June to have an idea of how much we are getting paid for our grapes.'

'The winery keep moving the goalposts. This harvest they raised the sugar level on the Gordo's. The colour also varies from truckload to truckload.'

'When they start paying growers $200-300 for premium grapes, Shiraz, Chardonnay etc, they at the very least should be made to pay cash for goods or within 30 days.'

'Winery grape price in Jan '05 for $600 per tonne. Then in June receive a fax change in price to $450 contracted fruit. Because they can pick up uncontracted fruit for between $150-$200 per tonne. What have we got contracts for?'

'I think the biggest cause of overproduction of specific varieties is that there is no control on the numbers of vines which will make up the short fall of each variety which is needed to plant. Everybody goes in planting with no restriction.'

'Uncontracted growers seem to be the most affected by pricing reductions - prices as low as $100/t being offered, which is not sustainable. Contracts should be offered to growers in present/existing irrigation areas before larger corporate bodies plant areas currently outside of existing irrigation supplies.'

'We growers must unite into a strong union if we are to survive.'

'To control the planting in future so not to have an oversupply of grapes.'

'No-one should get $150-200 per tonne. Some contracts are probably too high. Everyone, and not just reds and chardonnay, should bring $500-700 per tonne and we could survive.'

'We understand we are in a world market and as growers we are prepared to ride the highs and lows that it will bring. Unfortunately we do not believe the large corporate wineries are prepared to ride the same wave as the growers. ***It is extremely easy for wineries to cut growers' prices than it is to become more efficient within the industry.*** If this trend continues a large number of growers will be going to Centrelink for unemployment benefits.'

‘Due to extreme drop in prices (eg Chardonnay from $825 per tonne in 2004 to $450 per tonne in 2005 and possible $250 per tonne in 2006) before harvest 2006 we will be facing a bankrupt situation. Mental and financial doom.’

‘A localised arbitration board must sit in on negotiations to set the prices. Arbitration means both parties must agree on a price that sustains viability in the industry for both wineries and growers. Otherwise too many growers will fall out, wineries will not meet their production figures, investors will not confidently go into the wine business leaving all parties looking a bit stupid.’

‘We feel it is long overdue to introduce a mandatory code of conduct to stop ‘scavenger’ wineries from undermining the whole wine industry using various underhanded methods of purchasing winegrapes from financially desperate growers and in so doing undermining the ‘good’ wineries in the market place with unsustainably low prices.’

‘Prices are dictated and any grower that dares to comment is victimized.’

‘We made the change to winegrapes after business plans encouraged us to do so, by way of the Kickstart Sunraysia, an initiative of Sunrise 21 in October 1997…. Some people get contracted to grow fruit that other people have to drop on the ground. This is not fair!’

‘Every year we are told that there is a surplus, yet after harvest every year wineries take more fruit than what they said pre-harvest was required. This is just a mechanism to lower fruit prices.’

‘We are fortunate to be with one of the better wineries and under contract however our production costs and winery revenue are about on par. I feel for growers that are uncontracted and are being paid $1500 per acre for grapes that are costing $2800 per acre to grow (not including interest on loan).’

‘Dispute resolution clauses aren’t the only answer. As this year I was warned if I used that clause in my contract it won’t be renewed in two years time.’

‘It is ridiculous that wineries can pay $750 for chardonnay, $600 shiraz, $500 for merlot, and the scabs pay $120 to $200 for the same fruit.’

‘The individual grower has no hope of disputing prices, or they run a huge risk of losing their contract altogether.’

‘The unscrupulous practices of some wineries leaves a lot to be desired. For those growers striving for quality they need the traceability of their fruit indicated in accordance with payments.’

‘Payment in full should be made after 30-60 days after delivery.’

‘We have to be able to go to an independent body when being paid on quality.’

‘Collective bargaining for a fair price for all growers is urgently required.’

‘No other business or industry has to wait six months for final payment.’

‘There should be a restriction on plantings until supply and demand are back into balance.’

‘Wineries are taking advantage by coming to uncontracted growers late in the season when growers have no choice and offering as little as $100 a tonne which does not cover picking and watering for the year.’

‘Colour payments for red grapes are not fair as readings vary dramatically from sample to sample. eg 1.52 for one load and 1.40 for another load of shiraz (same patch, same night’s harvest).’

‘My first payment for this year’s vintage was 17th June (not 31st May as originally in the contract) with the following payments on 31st July and 30th September. At $225/tonne surely the winery could fast track these payments if a mandatory code of conduct was in place.’

‘I am a grower for a very large winery who have no scientifically objective way of measuring winegrape quality. Assessments are done “in the field”, “in the tank” and later as “made product”. I also independently have my grapes tested for wine grape colour, taste compounds and canopy architecture by a well respected independent viticulturalist. The latter consistently scores my grapes in the top 20% sometimes in the top 5% of grapes grown in the district. As the wine grape glut has increased, my grades at the winery have steadily diminished… Other industries in this country are subjected to regulation through empirical quality control. Please bring the winery corporates into line.’

‘In the early 2000s we were told grow quality and you will be paid extra. What a joke. Growers exceeded all expectations in the quality field only to be screwed even harder by wineries.’

‘As a current chardonnay grower, with plummeting prices we will not survive – even though we were advised by the winery and contracted to plant more chardonnay only two years ago.’

‘The government is partly to blame for the current oversupply by having encouraged outside interests to invest in winegrape production. While the “investors” can walk away at any time they choose, the genuine growers suffer the consequences.’

‘There is no third party to check quality of crush, we just take the winery’s word. The last few years the winery has become very arrogant and they make you wait until the grapes have become dehydrated that much, that they are only buying the quality in the berry (sugar and colour) and the weight is approx 20% less than it would if they were picked at the correct time.’

'Future plantings of wine grapes should proceed only if permitted by M.V.W. Inc. and pursuant to demand.'

'One particular winery insists on assessing and grading fruit by the particular "bottle" that the fruit ends up in. This method is totally non-transparent as the grower has no control as to what happens to the fruit once over the weighbridge. The fruit can be mixed with other fruit. The winemaker may make mistakes…. In other words the grower becomes the winery's risk management service - the winery stuffs up, the grower pays for it. On many occasions I have had fruit delivered of same quality only to be paid different rates because of its "end use".'

'Ten years ago these same wineries encouraged growers to spend huge amounts on property development and even advised on varieties to plant. When tax incentives were introduced they then went ahead and planted the same varieties thus shutting many growers out.'

'One of the major reasons the wine industry is in the difficult situation at present is primarily because of "investor money" going into the industry and subsequent planting of thousands of hectares of vineyards. Most of this money is for speculative investment and taxation reasons. The casualty of this will always be the smaller traditional grower.'

'The co-operation and mutual goodwill between growers and wineries has been shafted by the attitude of the wineries. We all have made investments, many at the behest and persuasion of the wineries we supply, to be told "Too bad!".'

'Quality should be determined by wineries in consultation with the grower before harvesting.'

'The wineries are a pack of mongrels who want it all their own way. It is not a game it is people's lives they are dealing with.'

'Very few, if any, agreements for the sale of winegrapes in the Murray Valley contain provisions for penalties in the event that the terms of payment are not adhered to.'

'We are contracted. Our 2005 prices: Chardonnay $400, Cab Sav $270, Merlot $270, Petit Verdot $275, Shiraz $400. Our latest costings to produce a ton of grapes is $340 not including any bank interest, which should really be counted…I am 53 and worked on viticulture since I was 15. We own 70 acres and can't make a living eg at these prices next year we will be bankrupt. We have already started to sell some assets (no cash flow).'

'Growers under contract requested to plant varieties of vines, then four seasons later told no longer required or overproduction of same, therefore no longer required by winery.'

'We are with a winery who has a dispute resolution clause. In 2004 the winery offered a price of $800 for chardonnay and sent a document for growers to sign. We actually wanted to take the next step to an expert determining a fair price. We had sultana grapes in a truck heading to the winery, we were told if we didn't accept the $800 the trucks would be turned back at the winery gates. We had no choice in a blackmail situation.'

'As growers we strive for greater grape quality, adopt new technologies and management practices at some expense, only to wait until one month before harvest to be told by wineries that the quality parameters have changed again, so they can justify lowering grape prices.'

'The greatest debacle is winery contracts, when the industry was in rapid expansion mode wineries were handing out contracts freely and pushing growers to plant, now wineries are phasing out contracts, thereby forcing growers to sell on the spot market at greatly reduced prices, but the irony to this is that these same wineries are appointing agents to purchase these grapes at greatly reduced prices.'

'I have sent grapes to the same winery for some 15 years. Accepting the demands of market forces, and confident with the established relationship, I negotiated vineyard replantings with the winery. Contracts for supply exchanged. Immediately prior to this year's vintage and before the vines had achieved production the winery advised that it was invoking a two year termination clause. This was to apply to all contracted growers over the next two years. An outlay of $300,000 by a family enterprise without a market has been devastating.'

'Wineries should give grape prices to growers earlier and not just weeks before picking. This harvest just gone our grapes were picked and crushed before were advised of our price…Cost of production should be included in price determination of all grape varieties.'

'To produce a superior quality product as our buyers require, carefully grow it and look after it until harvested, to then be kicked in the guts by wineries (buyers) offering pathetic prices is putting extreme pressure on our family's lifestyle, health, viability, to mention a few. Which in turn put pressure on communities, health system, environment, Centrelink and other social services.'

'In 1999 I objected to over $8000 in deductions and penalties imposed by the winery. The winery refused any negotiation or consideration. The following year they advised my contract would not be renewed. It is common knowledge that most wineries blacklist any grower who disputes their rulings.'

'Some wineries treat growers reasonably, others act like Nazis. Government needs to provide a negotiation structure that provides some balance between buyer and seller. Governments should provide funding to assist growers to form co-operatives.'

'Increased volume of wine due to increased plantings out of control. Restrictions to be placed on new plantings of grape vines - e.g. rice farms are being converted to viticulture mainly due to low water allocations and low returns to the producer. This is also placing a strain on our water resources, permanent plantings have been exempted from low allocations.'

'Wineries are making contracted local growers hold grapes too long, while they bring cheap grapes from SA and Vic filling their tanks. I would have lost 20% for this reason. The prices that we are receiving are well below cost of production.'

Australian Wine Industry
CODE OF CONDUCT

December 2008

Winemakers' Federation of Australia
For the Industry by the Industry

WGGA
Wine Grape Growers' Australia

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

wfa Winemakers' Federation of Australia
For the Industry by the Industry

WGGA
Wine Grape Growers' Australia

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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

The Accord Group, Level 2, 370 Pitt Street, Sydney NSW 2000
Telephone: 02 9264 9506 Facsimile: 02 9264 8268
Email: codedisputes@accordgroup.com.au

Contents

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

Retention of Title Clause:

1. It has especially agreed and declared that the title of the fruit shall not pass to the Buyer/Winery until payment in full of the purchase price. The Buyer/Winery shall in the meantime take custody of the fruit and retain as the fiduciary agent and bailee of the grower.

2. The Buyer/Winery may resell but only as a fiduciary agent of the grower, however, the Buyer/Winery must not sell the sell the goods except in the ordinary course of the Buyer/Winery's business. Any right to bind the grower to any liability to any third party by contract or otherwise however is expressly negatived. Any such resale is to be at arms length and on market terms and pending resale or utilisation in any manufacturing or construction process is to be kept separate from its own properties, properly stored, protected and insured.

3. The Buyer/Winery holds and agrees to hold the proceeds of any sale of the fruit on trust for the grower in a separate account in to which no other money shall be paid, however failure to deposit the proceeds of sale into a separate account or to keep those monies separate will not affect the Buyer/Winery's obligation to deal with the proceeds as trustee of the proceeds for the grower. The proceeds of the sale of fruit supplied will be held on trust for the grower until actual payment of the proceeds is made to the grower.

4. The grower is to have power to appropriate payments to such goods and accounts as it thinks fit notwithstanding any appropriation by the Buyer/Winery to the contrary.

5. The grower may without notice, enter any premises where it suspects the goods may be located and remove them without committing a trespass, notwithstanding that they may have been attached to other or stored in vats, containers or stored on land not the property of the grower, and for this purpose the Buyer/ Winery irrevocably licences the grower to enter such premises and also indemnifies the grower from and against all costs, claims, demands or actions by any party arising such action.

6. In the event that the Buyer/Winery uses the fruit in some process of its own or some third party, then the Buyer/Winery shall hold such part of the proceeds of such process as relates to the fruit in trust for the grower.