



Riverina
WINEGRAPE
GROWERS CENTRE

**Riverina
Wine Grapes Marketing Board**

**Submission
to the**

**New South Wales Government
Extension of Wine Grapes Marketing Board
(Reconstitution) Act 2003**

**Legislation Review
2007**

6th August 2007

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Introduction

The following submission from the Wine Grapes Marketing Board provides details of the operation of the Act and the Board's application of it within the region and offers suggestions to possible amendments that could be incorporated to ensure its effective continued operation. The Board seeks the continuation of similar legislation and detail of an agreed position on this has been presented as a joint submission with the Riverina Winemakers Association (RWA).

This submission also responds to the key issues of the Issues Paper as developed by the NSW Department of Primary Industries for the purposes of the review.

Executive Summary

The Wine Grapes Marketing Board Reconstitution Act 2003 represents a significant milestone within the operations of the current marketing environment of wine grapes within the Riverina – Murrumbidgee Irrigation Area and surrounding districts. It works effectively to provide a formalised position within the market for sales that are not subject to a complying contract and reduces the costs to growers and wineries limiting their business risk. The Act is still largely applicable and required within the region, a position that is highlighted by the frequency of breaches (from non payment to minor infringements such as timing of reporting). It does however contain minor faults that require amendments which can largely be undertaken by the application and development of the Order each year by the Board. These tend to be immaterial to the general basis of its application within the region.

The continuation of the legislation in the region is critical to the ongoing working relationships of growers and wineries by limiting and at times preventing the need for participants to enter into litigious encounters. This type of government intervention is warranted in the industry and is still applicable in the wine industry as currently over 50% of the national production predominately in South Australia is subject to statutory terms and conditions of payment.

The issues raised in relation to the review have been responded to and also show that intervention is a necessity in this region in the current climate with growers subject to low or no market power and in relation to the wine business structures that exist in this region (predominately family owned and operated). Both grower and winery regional representative organisations agree to need for the continuation of the Act and have offered suggestions to enable better market information to be presented to growers. This is addressed in a separate joint submission and is not repeated in detail within this submission.

This submission highlights the problematic nature of the industry and purports to show the level of market power still employed by wineries in the region when dealing with growers in the current legislative environment. It is believed that without legislation in this region growers would be highly disadvantaged in the operation of their business indicating a continued market failure and a need for such measures to be in place to provide a net public benefit to the regional industry.

Current Legislation

The current legislation has been in operation since 2004. During this period the number of wineries that purchased wine grapes from growers in the region remained steady, increasing only in the 2007 vintage see *Table 1* (below). The increases in 2007 were due to greater demand arising from a national decline in production of wine grapes. These newer purchasers on average were small to medium buyers (5–100 tonnes). There is also the assumption that larger established wineries that are not based locally also did enter the market but dealt directly with locally established wineries to purchase processed wine grapes.

Table 1: Buyers and Producers

Year	Wineries	Growers Blocks
2004	19	540
2005	15	637
2006	18	564
2007	24	560

Table 1 (above) presents the number of growers that delivered across the region. Please note the grower’s block numbers shown in the table refers to the number of properties that deliveries were made against, therefore a grower that owns more than one property may be included more than once in this report. It shows that grower property numbers in the region have remained steady for the past 2 years. *Table 1* Growers blocks includes wine company owned and managed vineyards that made deliveries as well as purchased wine grapes from producers but does not include wineries that have only processed their own wine grapes (non-constituted growers). Wineries that fall into this later category have remained relatively neutral and do not impact on the market for wine grapes offered in the region.

The following, *Table 2* (page 3) shows production since 2004 in the region and the level of tonnes that are subject to a complying contract as defined in the Act. Given that the Act was designed to be a transitional mechanism for industry it is critical to show the level of complying contracts that have been entered into to determine if these have risen across the region.

Table 2 (below) indicates that the region has developed to a level and has remained relatively constant over the past 4 years. The Board believes that this is likely to remain the case in the future as wineries are reluctant to enter into more binding arrangements. They have chosen not to be tied to a grower with a set price and terms and conditions of payment preferring to have the Board manage terms and conditions of payment. The basis believed behind this preference is to ensure that new and existing entrants to the industry in this region are fully committed to purchase grapes at a set and known price (under a complying contract) or are subjected to the same terms and conditions of payment that other purchasers are. The legislation does not prevent existing or new entrants from making payments earlier and therefore more favourable terms for the growers but works to maintain a level playing field for the entire region that assists business by ensuring that no one gains an uncompetitive advantage in the market place.

The Board is aware that wineries are in agreement that statutory terms and conditions of payment are required within the region for the longer term. Therefore the Board requests that the legislative provisions are no longer interpreted as transitional but forms an agreed working position of the industry in the region to provide stability to producers and processors for the longer term.

Table 2: Grapes sold on/out of contract in Riverina 2004-2007

Vintage	Total Tonnes		Contract Status		Percentage	
	Winery Owned	Grower Owned	Non-Complying	Complying	Growers	Complying
2004	5,544	205,864	131,645	74,219	97.38%	36.05%
2005	43,216	205,219	139,886	65,333	82.60%	31.84%
2006	43,009	246,050	152,153	93,897	85.12%	38.16%
2007	29,648	188,230	124,203	64,027	86.39%	34.02%

Even with seasonal fluctuations in tonnages, growers that have entered into complying contracts have been limited, due to a number of factors. The most notable is that the contracts were offered initially when a surplus of wine grapes was present in the market and growers in the majority were offered these contracts on a take it or leave it approach. As a result of the market power imposed on growers in 2004 by one winery approximately 40,000 tonnes were subjected to a complying contract (accounting for 20% of total tonnes in 2004) and subject to payment terms that were less favourable to the producer than the Board's terms and the national industry standards.

The remaining growers that were subject to complying contracts have the Board's payment terms as part of their contracts or held fast with the industry standard of three equal payments (first payment after 30 days, second end of June and the final end of September). The industry

standard terms of payment now account for greater than 50% of all wine grapes sold within the Australian wine industry. It is important to note that these terms are known as the “industry standard” are also statutory, set under legislation by the South Australian government and remains enforceable on all production within that State.

The market power of wineries is evident by the increasing percentage of growers entering complying contracts with less favourable terms and conditions of payment as the *Table 3* (below) indicates. These levels are monitored by the Board through its ability to approve contracts and by communications with growers. It is also known that the majority of these contracts only provide a provision that interest will be applied on a late instalment if it is greater than 7 days later than the date which is set out in the contract. Growers unfortunately do not have similar concessions made to them by their financial institutions or creditors.

While the Board acknowledges that it can work to assist these growers in the event of a breach (*written advice received from Minister Ian Macdonald MLC, 2006*), it must also advise that growers on the whole that are subject to these terms of payment have needed to adjust their financial arrangements to accommodate receiving payments in a lesser percentage of the total sum owing than they previously were, i.e. 25% of value over 4 instalments.

Table 3: Complying Contracted growers with less favourable payment terms

Vintage	Complying tonnes	Percent with lesser terms
2004	74,219.08	55%
2005	65,332.72	72%
2006	93,896.53	69%
2007	64,027.10	83%

Many of these complying contracts are for a nominal 1 or 2 year term, giving the grower no real basis to plan financially over the longer term. Anecdotal evidence supplied to the Board is that some growers had not agreed to the changed terms of payment, i.e. had not entered into these contracts by signing their acceptance. Their delivery was perceived as acceptance by the grower in a case that if they were not compliant with the changed payment dates they would be looking for another buyer in following years. It is also alleged that a number of producers signed 12 months complying contracts well after the first Monday of December (as prescribed in the legislation) but that the dates of signing were back dated to ensure compliance. No grower has been willing to publicly confirm these allegations in fear that they may be ejected from the winery and not be able to find a home for their grapes at other wineries.

It is within such a context that the Board believes the region still requires a statutory mechanism for the benefit of all producers and growers. Such a mechanism is not anti-competitive by nature as wineries can still make alternative arrangements if they feel it necessary to do so. It should be noted that the original concerns of the Board and that of growers has held true in that wineries would stray from standard terms of payment and that growers would be powerless to counter such arrangements for fear of retribution by means such as non-acceptance of deliveries. It is also the case that no grower will raise this as a major concern publicly and they are unlikely to do so through a review of the legislation in case comments are fed back to the winery where it may disadvantage them. Such issues make a concerning reality in this region when operators are generally family based enterprises and business decisions tend to be dictated by personal views and perceptions.

Operation of the Act and the Order

The operation of the Reconstitution Act has been problematic in the region mainly due to wine processors inability to adhere to the basic requirements of the legislation such as the timing of reports required to be provided and the payment of statutory fees and charges.

To instil in all wineries a better understanding of the Act in 2004 the Board invited members of the RWA to an information briefing on the legislation and to advise the manner in which the Board would operate and its expectations and base level requirements of wineries. Winemakers did not wish to attend the briefing advising that they would assess and interpret the legislation each on their own. Thus each year the Board has to operate as a constant reminder to many wineries that do not operate in accordance with the base level requirements as set in the Act. The level of non-compliance is high and is listed in *Appendix 1* (page 1).

The following timeframe outlines the Board's process in managing the Act and the Order made each year. Please note that the dates used in the following are indicative of a normal year.

December (previous year): Meeting held with the RWA to discuss the dates on which payments are to be made to growers for the following harvest (terms of payment). These discussions are used to guide the Board in terms of setting the dates for the terms and conditions of payment.

January: The Board approves by motion at its January general meeting the *Wine Grapes Marketing Board Terms and Conditions of Payment Order [year]* and it is published in the NSW Gazette on or prior to 20 January (as per the requirements of the Act). Copies of the Order are

also placed on the Board's website and sent (via email and formal correspondence) to all known purchasers of wine grapes (a copy of the 2007 Order is contained in *Appendix 2 – Page 1*).

The Order sets out the dates in which payments are to be made. Since the introduction of the Act the following dates as shown in *Table 4* (below) have been used, variations in the dates from year to year are deliberate to ensure that the payments occur on a weekday and are therefore not affected by bank closures.

Table 4: Dates on which payments to growers have been set

Vintage	1 st Payment	2 nd Payment	3 rd Payment
2004	14 th May	24 th June	14 th October
2005	13 th May	24 th June	14 th October
2006	15 th May	22 nd June	12 th October
2007	14 th May	25 th June	15 th October

Known purchasers also receive (via email and formal correspondence) an information sheet that advises them of their liability under the Order and outlines the sections of the Act that relate to the timing of their obligations of reporting to the Board, price notification and the penalties that may be applied (a copy of this information is contained in *Appendix 3 – Page 1*). This Information Sheet contains an Application to Make Payments Direct to Growers, wineries are requested to complete this form and return to the Board if they wish to make payments on purchases of MIA wine grapes directly to producers instead of via the Board.

The Application to Make Payments Directly to Growers is to be completed on or prior to a set date each year. For the 2007 vintage the date chosen was 24 February 2007. The date is set to allow the Board to review the applications at its March meeting and provide formal advice to wineries well in advance of the first payment date.

Wineries are also directed through the Order the manner in which payments are to be made, these are either by posting a company or bank cheque to the grower; having it available for collection prior to 12 midday on the due date; or setting up an electronic funds transfer that will place funds into the growers account the evening prior to the due date. The variations in the prescribed manner are designed to suit wineries requirements and payment systems.

Wineries that have not made application to pay growers directly and applicants that have not been approved by the Board are required to make payment to the Board in the structure prescribed in the Order (*Section 7 (2)*), i.e. 3 working days prior, to ensure that cheques clear prior to the Board making payments to growers on the prescribed dates. In many instances where a winery has not made an application they are invited to do so by the Board, late applications are accepted at the discretion of the Board.

February: All known wineries are reminded of the requirement to complete and remit applications to the Board. These applications in essence form an agreement that they will abide by the Order and the Act and remit to the Board all reports and statutory fees and charges.

March: The Board formally meets to approve Applications to Make Payments Direct to Growers. Wineries are advised by email of the Board's position on the application.

April: All purchasers are communicated to and reminded that reports detailing the identity of the consignor of each delivery the quantity and variety and in the case of a non-complying contracted delivery the price of the delivery are to be provided to the Board on deliveries received up until 14 April of that year.

In the case where payments are to be through the Board they are requested to provide the most current data on deliveries available so that the Board can commence work to ensure that the payment to be made in the first half of May actually represents one third of the value of all deliveries.

In some seasons however deliveries have been known to occur after the 14 April and in some instances after the first payment date in May. Adjustments for these are generally made on an ad-hoc basis and the Board is looking to incorporate in the Order suitable mechanisms for payments to growers on these purchases to be made. For example the Order may prescribe a system whereby deliveries after the 14 April of each year ensuring that the first payment of two thirds of the value is made to the grower coinciding with the June instalment. This example is similar in the manner to which transactions occurs under South Australian legislation.

May: All purchasers are reminded by communication to their nominated point of contact (as specified in the Application to Make Payments Directly to Growers application) of the impending payment due. In the instances where payments are made to the Board they are generally invoiced based on the formula specified in the Order. The Board utilises a Microsoft Access database for the recording of all deliveries and the printing of cheques to producers.

Coinciding with the payment to growers all wineries are expected to make payment to the Board the first instalment of the Board's fees and charges as set each year by growers at a general meeting in December. The Board also has a clause in the Order that allows wineries to make payments to the Board in full the fees and charges on or before 30 June each year. Wineries must notify the Board of their intention to make payment in this manner.

The Board's Order specifies that the wineries are to deduct the payments for fees and charges from growers' instalments. Growers pay the Board fees and charges as well as a federal levy

for research and development generally these deductions are not appropriately itemised on growers' remittance advice from wineries. Of concern to the Board is that some wineries are not providing growers with end of season statements that itemise their deliveries and the value to be paid. Wineries should provide to each grower after the harvest a listing of their deliveries and a summary or transaction report at the time of payment so that they are made fully aware of any deductions that have been made for statutory authorities and or possible grape quality bonuses or deductions that have been made. The Board is looking to include such reporting requirements in the Order so that where wineries have been directed to make payments directly they must provide a suitable report to the grower.

When the Board makes payments directly to growers it provides a delivery summary report that shows the total value of deliveries and the remittance stub of the cheque to the producer shows the gross and net values of deliveries and any payment and/or deductions made to date.

June: All purchasers are reminded by similar communication that the second payment is due prior to the payment date. The process of this is similar to that described for May each year.

Prior to the end of the month wineries are reminded that the final reports for all deliveries accepted since 14 April are due to the Board. In several instances these could not be provided due to harvest dates that would occur after this date for varieties such as Botrytis Semillon. No penalties have been applied or sought by the Board for a delayed report by a winery. However it does appear to be the single most time consuming process of the management of the legislation for without the reports being provided the Board cannot ascertain the amount of fees and charges that are owed to the Board. In some instances the Board has been required to wait until December in the current year to obtain a full and final report that is accurate.

The Board also uses the final reports to ensure that all deliveries made are entered into its Access database delivery recording system so that Rate Notices (see *Appendix 4 – Page 1*) are provided to growers at the earliest convenience. It also assists the Board in making any relevant operating budget amendments for approval by growers at the Annual General Meeting. A copy of the Rates Notice is sent to growers with a copy of the delivery summary report itemising the company that the grower delivered to, the variety, tonnes and in the case of a delivery not subject to a complying contract the value of the delivery.

October: At the beginning of October reminders are sent again to all wineries that the final payments are due (on the prescribed date).

Remaining statutory fees and charges are also due at this time. If a delay has been made in the payment of statutory fees and charges the Board is generally more interested in ensuring compliance of the legislation (that growers' payments are made) than pursuing interest for itself. However the ability to charge interest under the Act is a valuable and required asset to the Board as it provides a non-litigious tool to prevent wineries from withholding growers' funds.

Structure of Payments and Breach Procedures

The structure of payments made to growers has been kept similar in the region for many years and both growers and wineries now in general are not inclined to adopt major alterations.

Table 5: Structure of Payments in Order (below) sets out the structure of payments employed in the region.

Table 5: Structure of Payments in Order

1st Payment	2nd Payment	3rd Payment
1/3 total delivery value (33.33%)	1/3 total delivery value (33.33%)	1/3 total delivery value (33.34%) including all bonus payments

If a winery is aware that they will breach the structure of payments they are requested to communicate to the Board immediately. Invariably this does not occur and the Board is often informed by a number of aggrieved growers that were expecting payment. It then confirms the breach by direct communication with the winery and initially requests that they advise all their growers of the matter. The Board has in the past written directly to the affected growers advising them of the situation and the Board's course of action.

The Board actively encourages wineries to be fully open and transparent with producers when a payment has not been made by the due date. It does this in its written correspondence and through verbal communications with staff of wineries. The basis underlying the communication necessity is that it is hoped that through this direct communication the winery can provide a level of assurance to the grower that payment will be forthcoming. If the Board is required to communicate directly it works to provide the assurance that interest will be applicable.

Dependant on the date and timing of the breach the Board may revoke any application that the winery has made to pay growers directly and direct that the funds be paid through the Board. The Board will use existing reports and supplied winery payment data to calculate the amounts owed to each grower including interest applicable at the statutory rate. The winery is in most instances required to provide the gross funds for the payment to the Board. Instances where the winery will be able to continue to make payments directly generally occur when the breach was of a technical nature, i.e. the winery payments system did not function correctly at the time.

Breaches of the Act since 2004

To date there have been many technical breaches of the legislation that fortunately on the majority have not impacted negatively on growers, only the operation of the Act. The following *Table 6* summaries the recorded breaches under the current legislation as shown in greater detail in *Appendix 1 – Page 1*.

Table 6: Recorded Breaches of the Act since 2004

	Item in Breach	No.
A	Fees and Charges not paid by due dates as specified	33
B	Information not provided to Board on consignments received by due dates	28
C	Price List not published or provided to the Board by due date	9
D	Information not furnished to grower upon delivery of wine grapes	1
E	Applications to pay growers directly not made to the Board	2
F	Terms and Conditions Payment dates breached	10
	Total	83

In the absence of formal reminders from the Board on required items in the Order the numbers of breaches recorded would be estimated to be treble the numbers recorded in the above table especially in the areas (A-C). These are considered to form technical breaches of the Act and to date the Board has not entered into any legal proceedings under the Act to pursue penalties. The following discussion forms the basis of why these breaches have occurred.

A - Fees and Charges not paid by due dates as specified

Since the introduction of the Act the Board has on many occasions had to send reminders and invoice wineries for the fees and charges due. Almost 45% of all wineries have failed over the past 4 years to make a payment of fees and charges by the due date as specified in the Order. Without continuation of the legislative provisions that wineries are required to deduct and forward growers statutory fees and charges the Board envisages its expenses in this area to increase as it is forced to take a legal position with wineries to collect these funds. The ability to set and enforce term and conditions of payment is integral to the Board's collection of fees and charges. In the event of a non-payment to the Board the Board may direct that the payments be made through the Board thus enabling it to deduct these from the payment.

The Board monitors the costs of the management of all services to growers in the region through the financial management of its strategic operations plan. This has allowed the Board to determine the costs of managing sections of the Act as well as standard approved industry services such as research and development. The following *Table 7* (below) shows the costs to

the Board of the management of key provisions of the Act in reference to the management of fees and charges intake, monitoring of payments to growers and the setting and enforcement of terms and conditions of payment.

Table 7: Costs to Board of Managing Key Provisions of the Act

<i>Provision of the legislation</i>	<i>2006 Exp. \$</i>	<i>Percent of total expenses</i>	<i>2007 Expenditure (\$ to 30 June)</i>	<i>Percent of total expenses to date</i>
Manage fees and charges intake	\$22,834.70	3.27%	\$5,362.20	1.62%
Monitor payments to growers	\$2,574.33	0.37%	\$1,046.02	0.32%
Set & enforce terms & conditions	\$15,255.78	2.19%	\$5,281.48	1.60%

Table 7 shows that the cost of managing the payment of fees and charges is slightly higher than enforcement of the payment provisions to growers. These figures coincide with the incidences of breaches of the Act shown in Table 6 (Page 10).

To date, only one winery has been charged statutory interest on the late payment of fees and charges. This was in the case where the payments were being made through the Board. In the majority of tardy payments, these have occurred with wineries that have applied to make payments directly to growers. The non-payment of fees and charges has not led the Board to revoke an application to make payments directly to growers and in many instances where the payment was late to the Board as the funds owed to growers had already been paid to directly the grower there was no opportunity for the Board to direct that the payments be made through the Board to allow it to deduct fees and charges.

B - Information not provided to Board on consignments received by due dates

For the majority of wineries providing reports on consignments received is a simple matter. A report is printed from a program that interfaces with the deliveries and payment system of the winery and is generally forwarded to the Board electronically as a spreadsheet or in pdf format. For normal commercial business this is an easy process and allows the Board to enter this data relatively simply into its own system.

The Board notes that it is the smaller sized wineries in the region that have the greatest difficulty complying with this Section in the Act. It is likely that they possess less capital to invest in a suitable program to monitor and report on deliveries. The current legislative requirement that reports be provided in two parts has created some difficulty for the industry in complying as noted previously in this submission and the need for reminders is an issue faced by the Board.

C - Price List not published or provided to the Board by due date

When a price list is not received on the due date the Board makes verbal contact with the winery directly. This is after they have already received prior advice of the due date and a reminder.

One of the mechanical failures of the Act is that if a winery does not submit a price on or before the due date they may be forced to pay the arithmetic mean of the prices paid for wine grapes delivered in the region on the day they accept the delivery. In reality under the current system the price schedules tend to list the bare minimum price that wineries are prepared to offer. They do not provide sufficient detail to provide a basis for calculating an arithmetic mean of the prices that are paid on any day with any accuracy that it reflects true market figures. The mean value cannot be calculated from the information provided by wineries under the Act as these show only gross deliveries and value, not indicating a date of delivery.

The timing of submitting a price list is also problematic for new buyers. In the past 4 years a number of these new purchasers from out of the region make purchasing decisions well after the statutory date for submitting price schedules. *Clause 9* of the Act does not appropriately cater for these transactions as the Board cannot accurately ascertain the greater price of any late offer price or the arithmetic mean of the price schedules.

D - Information not furnished to grower upon delivery of wine grapes

This type of breach has fortunately only occurred once to the Board's knowledge in the past 4 years.

Upon notification that the winery had accepted a delivery of wine grapes for which they did not have listed on their price schedule the Board investigated the winery for the alleged breach. The winery alleged that the delivery was made without management's knowledge and that the staff operating at the time of delivery believed that the grapes were of a different variety. The different variety was recorded on the delivery docket by a casual staff member of the winery. Upon investigation by the Board it was found that the winery management had knowledge of the variety but was not prepared to pay a higher price at the time. Under the Act the Board was able to secure the grower a price for the delivery, an extra \$2,500 for the load.

This one incident highlights the market power of a winery as the grower could secure no other home for the product and initially felt that they were forced to accept the lower price. The grower was disgruntled over the arrangement and their treatment by the winery and contacted the Board. The winery were using makeshift delivery dockets consisting of blank A4 paper upon

which the net weight of the delivery, the variety, date and value per tonne was written by hand. A photocopy of this delivery document was provided to the grower. No letter head to confirm with whom the transaction had occurred was evident on the document. The winery has since introduced a better management system for receipt of deliveries. This shows the importance of maintaining legislative provisions in this region requiring that delivery documentation to be provided in relation to all deliveries including contract processing.

What the Board and growers would ideally like to see is the development of purchase orders for the industry. Through such arrangements wineries would commit to a price prior to delivery, generally at the time a delivery is arranged, i.e. prior to harvest. It would then provide non-contracted growers the opportunity to negotiate price or the opportunity to discuss potential business with buyers.

E - Applications to pay growers directly not made to the Board

This is a technical matter and used by the Board to get a written and signed document that outlines the purchaser's correspondence and phone details and the preferred point of contact within the organisation that the Board can communicate with in regard to payment issues.

The Board introduced the application system 2 years prior to the current Acts introduction in a bid to develop better business practices and it is now integral in enabling the Board a firm position from the purchaser that they understand the Order and will make payments to growers and deduct fees and charges and remit these to the Board. It works to provide a good reference point for the Board in terms of the numbers of purchasers in the region and their changing contact persons and business names, thus allowing the Board to maintain accurate details on a yearly basis.

F - Terms and Conditions of Payment dates breached

There have been a number of breaches over the past 4 years that the Board has dealt with and charged interest on the outstanding payments. Ten breaches (itemised in *Appendix 1 – Page 1*) highlights that there are continuing problems in the region that without the Act may have resulted in no payment occurring. These breaches account for 12% of all recorded breaches (see *Table 6 – Page 10*). Late payments impact negatively on producers in the region as their inability to make payments to their own creditors and can also make them extremely vulnerable to penalties with financial institutions. Anecdotal evidence indicates that the occurrence of breaches of this nature continues to occur regularly with some wineries but growers are not inclined to advise the Board for fear that it will damage the business relationship with the winery.

Even in the instances of known breaches under complying contracts there has not been a recorded case of legal proceedings to recoup the debt.

Only on one of the recorded breaches did a winery communicate with the Board and growers prior to it occurring. This winery signalled to the industry well in advance that it was for its own financial reporting that it required to make the later payment and that it would do so with the statutory interest. The payment affected 64 growers and as interest was paid the company was permitted by the Board to continue to make the payments directly to the growers.

Of the remaining 9 breaches affecting 112 growers, the Board charged interest. The costs of managing this process were minimal to the Board in terms of the costs that would have been associated with the individual producers seeking interest on their own behalf.

A number of wineries that were directed to pay interest within the following payment stated that if they wished to know which of the growers had advised the Board of the late payment. They advised that if they had knowledge of the “whistle blower” they, the grower, would be looking for another home for their produce in future years. This blatant threat to the security of a business relationship forms a real problem for growers. It is a constant reality faced by producers in the region it is little wonder that no individual grower has taken legal action against a winery and the continued need for an independent body such as the Board to act on behalf of the majority.

Key Issues of the 2007 Review

The following responds to the seven key issues raised in the 2007 Review Issues Paper.

Issue 1: What ‘market failure’ or public benefit’ grounds are there to support the continuation of the Board’s transitional powers?

The main issue confronting the industry is the lack of complying contracts that are being offered to growers on a longer term basis. Many of the existing complying contracts are 1-2 years in duration only. There has been an ongoing failure of the market to work collectively and pursue binding contracts. This is much to do with the current status of the industry over the past 4 years of looming surpluses and declining prices. It has only been in the last few months that the industry appears to be changing due to dryer growing conditions and continuing increases in export sales of wine. A national decline in production of approximately 30% from the previous vintage high of 1.9 million tonne (25% decline in the Riverina MIA) has worked to bring stocks levels in the industry toward a more comfortable position.

Future forecasts of continuing low national crushes and the industry returning to a balance in 2009 or 2010 is working in favour of growers over the short term with a high possibility of more buoyant prices and increasing discussions being held with wineries on contracts with terms and prices that growers are currently exploring. However, most of these discussions are presently in limbo while the industry eagerly awaits the water allocation announcement for the region. The region has turned, in less than 12 months from looking to mothball vineyards in the region (due to surplus wine grapes) to business as usual as growers look to produce a full crop with high tonnages to take advantage of the lower 2007 crush.

Under the supply and demand imbalance nationally most wineries in this region over the past 4 years have preferred only to enter into supply agreements that are either written or verbal (spot), binding the grower to supply product to the winery but in doing so do not nominate a price to be paid upon delivery, giving only a disclosure prior to harvest. Growers are forced to wait in order to make decisions about supply and if they have made a written or verbal agreement on supply they are legally bound to supply to the winery at the price disclosed, no process of offer and acceptance occurs and it is heavily reliant on faith. However in the event of a grower or group of growers not accepting the price being offered there is no form of dispute resolution process written in these supply agreements and they are forced to accept the price or face potential litigious action by the winery.

As this is the most common manner in which business transactions take place in the region. It easily explains why wineries are reluctant to move away from a position of absolute power of the price they will pay to one where they are required to nominate a minimum price in writing for a set period of time. In the majority of complying contracts the lowest price that the winery is prepared to pay as specified in most contracts does not even cover the costs of production. It may well be argued that these are not commercial contracts as they do not offer a viable position from the outset. In fact, these have become known as “claytons” contracts in that they satisfy the legislative terms only to allow the purchaser to opt out of the statutory terms and conditions of payment. Would growers argue the point legally?

Growers cannot simply pick and chose their buyers and while they may have the right not to accept such offerings the past four years of uncertainty in prices and excess grape supply has meant that for the majority of growers they had two choices. One was to accept the winery on faith that they would pay a price higher than that specified in the contract or seek another home for their produce which was not likely to eventuate given the market conditions. The image of a grower negotiating a price and/or the terms of payment is a false hood even if all growers were

suitably skilled in this area they as individuals lack the critical mass to carry off such negotiations and could potentially be forced out of the industry if they took an aggressive business stance as their position would be readily communicated to other wineries in the region as has occurred in the past. In the end the producer would become a price taker if they could stay in the industry at all.

There are instances where growers have had to court new buyers in the region just to sell their produce as they have been too vocal in the industry regarding the prices received or their treatment by wineries. There are a number of instances where wineries have advised that growers who question winery offer prices are likely to be looking for another home. The Board plays at times a significant role in communicating with growers and liaising with wineries about the market conditions as growers fear real retribution by a winery if they make a stand on these issues themselves.

To give an example, in 2006 a group of growers met with the Board to relay their concerns about low price offers of one major buyer in the region. It was agreed that representatives of the Board would communicate these views with winery management. Many of these growers as individuals had previously talked to the winery staff about the issues, so in the first instance they had tried and got nowhere. One of these growers had this contractual relationship threatened by the winery and senior management of the winery asked the Board CEO to advise the names of the growers involved in the matter so they could review their position with the winery. Matters such as these do occur in this region and at times growers are not dealing with rational business operators but rather with individuals that let their own views cloud their judgement. What the Board has commenced is the breaking down of these barriers by encouraging wineries to be more transparent with growers and hold regular meetings so that matters can be discussed in an open forum and without fear of retribution. This region has a long way to go in this area but it is critical for the further development of the business relationship between the two sectors of the industry.

Therefore the Board's current role in setting and enforcing payment terms and conditions provides a net public benefit to many growers by acting as the agent and enforcer if payment problems arise. For without the Board's involvement it is safe to say that the vast majority of producers not subject to a complying contract would not act appropriately if there was a breach of payment for fear that the following season they would have their supply agreement not renewed or would be advised that their fruit is not welcome. Wineries have long stated that they like getting rid of trouble makers and have even been known to keep files (little black books) on

growers of other wineries so that they will not get into a position where they undertake business with them.

Wineries in general detest being questioned or criticised about their operations by growers even if it forms a constructive basis. For example in 2007 a large regional winery prior to vintage and the publishing of prices the winery advised many growers that if they were to produce greater than an arbitrary set tonnage per acre they would receive a lower price or not have their fruit purchased at all. Growers were later advised verbally that they could take their fruit elsewhere if they could find another buyer. The winery also asked that growers advise the company of their fruit movements, although this last point was allegedly not understood or heard by growers that attended the meeting. During the vintage the winery determined that regional tonnages were sufficiently lower than expected and deemed that the prices per tonne should rise. It even lifted the tonnage caps of growers' blocks.

Throughout the season seven amended price lists were provided to the Board by this winery, increasing grower returns across the board. However many growers had made decisions to take their grapes elsewhere, some with the knowledge of the winery and a written release but many without as there was little thought that what they were doing was counter to that which was instructed of them at the grower meeting. During this period of mass abandonment of the winery, winery staff made verbal comment to several growers that they were in breach of their supply agreement and that the winery would be taking legal action against these growers. In one incidence the CEO of the Board acted as a mediator to prevent threatened legal action against a grower from occurring.

With regard to price schedules there is the need to review this requirement as wineries are on the whole in their disclosures to the Board are setting out only the minimum prices that will be paid and any factor, condition or circumstance that may operate to reduce any price offered and the way in which such reduction will be calculated. If the price schedules could advise growers of the way in which any bonus payments would be calculated it would have better value to the industry and afford growers to some certainty that a higher price is achievable. It would provide to the industry a public benefit if prices were known across the industry and allow competition to occur more openly. Secret price per tonne deals and false price lists are not conducive to the effective operation of the market in the Riverina. Through the current legislation the industry is seeing a false minimum price.

In some instances wineries have indicated a price range and has not itemised what is being paid. If the legislation seeks to ensure that deductions are known then the same should be

applicable to increases from the base price. The legislation needs to be more precise in its wording. To provide an example in 2004 a company published a price they were to pay for Shiraz. This minimum provided growers with no understanding of how they could obtain a higher price. When questioned about how the pricing mechanism would operate the response from the Company Production Director was *“We have complied with the legislation by notifying our minimum price for Shiraz and any penalties that apply. Payments above this will be determined when we have more information regarding colour parameters and when we see fit.”* It could be argued that the minimum was in fact the lowest that the price could go and that the deductions actually formed part of the price increases, i.e. \$500 is the high price and deductions for disease, colour etc could see it fall to \$200. The attitude displayed by the winery representative in this situation is similar to other wineries when questioned as to how they calculate prices for growers, some are based on as much as whom the growers are and not on the product produced. In verbal communications with some wineries it appears more about dealing with the average return per hectare across the vineyard than the actual quality of the wine grapes.

There are serious market failure issues within the industry as it does not conform to simple models for supply and demand. The high level of commentary within the industry is possibly a deterrent to the correct and adequate functioning of the market. Another factor that requires the continuation of market intervention by the Board is that the industry within the Riverina and those of the other inland production regions (Murray Valley NSW/VIC and Riverland SA) are similar in characteristics of market behaviour but based on different business models of wineries, i.e. more corporate thinking in the other regions than the family owned business strategy locally. The inland regions behave differently to the other regions across Australia in terms of the supply and demand. The industry cannot simply be pigeon holed and have broad supply and demand predictions made about its future prosperity as made in *Quotation 1* (below).

Quotation 1: Industry instability a continued concern

Wine grape growers reject price predictions

Wine grape growers say predictions of a 5.5 per cent increase in prices this season are misleading. This week's Australian Bureau of Agricultural and Resource Economics' Outlook Conference heard prices would jump to \$650 a tonne this season because of a 30 per cent drop in production. But Mike Stone from the Murray Valley Winegrowers says in inland areas wineries are refusing to offer any significantly better prices than prices last year, when the industry was in serious over-supply. "It's very misleading, it leads to a false impression of the way the industry is travelling," he said. "The industry still is in dire straits, the industry is possibly confronting market failure – these prices just cannot continue or more and more growers will be going out of business."

Reference: ABC Online 9 March 2007

So poor are the majority of the business relations and dealings within this industry that a federal Senate Inquiry was conducted in 2005 to address these issues nationally and to make recommendations to assist the industry. Unfortunately two years later none of the issues raised have been properly taken up by industry as it continues to be plagued by supply based issues. The issues raised by the inquiry are consistent with the matters of concern facing the regional producers of the Riverina and are detailed in *Quotation 2* (below).

Quotation 2: National problems in relationships within the industry

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:

1. contracts offered on a .take it or leave it. basis, with no genuine negotiation;
2. contracts not being renewed, often after growers have been encouraged by winemakers to invest in improvements;
3. prices notified late in the season, leaving growers little chance of negotiating alternative buyers;
4. lack of objective, transparent standards for assessing the quality of grapes; and
5. 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.

Reference: Rural and Regional Affairs and Transport References Committee, The operation of the wine industry, October 2005 p. x

The item underlined in the above *Quotation 2* relates specifically to *Issue 7* of this review in that many issues fall short of unconscionable conduct within the meaning of the Trade Practices Act.

Issue 2: Have the Board's transitional powers enhanced the marketing skills of growers and allowed contract sales to develop in a manner comparable with other wine growing regions?

The Board's loss of vesting has worked to enhance the marketing skills of growers in selling their produce, however on price negotiating skills and terms of payment growers are powerless to negotiate terms and prices with individual wineries. The market has also worked to limit growers' ability to negotiate. It is now becoming more evident that larger producers will play an increasing role in negotiating prices with wineries. The percentage of these producers is slowly increasing through new developments and via the consolidation of existing vineyard ownership in the region.

The following *Table 8* (below) has been included for its relevance in showing the transition that is occurring within the region. It details the number and percentage of growers with their production groupings indicating that the region is changing with production shifting more toward higher tonnage producing growers. Producers of tonnes greater than 1,500 tonnes per farming enterprise now accounting almost 33% of total production, double that of seven years ago.

Table 8: Comparison of year 2000 to 2007 production of growers

2000 Data (Grower Trading Names)					2007 Data (Grower Trading Names)				
Size of grower (tonnes)	Number of growers	Percentage of total number of growers	Tonnes produced by growers	Percentage of total tonnes produced	Size of grower (tonnes)	Number of growers	Percentage of total number of growers	Tonnes produced by growers	Percentage of total tonnes produced
<100	191	33.63%	9,623	6.51%	<100	146	27.76%	3,414	1.83%
101-200	142	25.00%	20,873	14.12%	101-200	154	29.28%	19,785	10.58%
201-300	89	15.67%	21,931	14.83%	201-300	74	14.07%	18,499	9.90%
301-400	49	8.63%	17,146	11.60%	301-400	35	6.65%	12,185	6.52%
401-500	30	5.28%	13,158	8.90%	401-500	18	3.42%	8,101	4.33%
501-600	24	4.23%	13,218	8.94%	501-600	12	2.28%	6,475	3.46%
601-700	8	1.41%	5,288	3.58%	601-700	15	2.85%	9,499	5.08%
701-800	3	0.53%	2,352	1.59%	701-800	10	1.90%	7,576	4.05%
801-900	5	0.88%	4,162	2.81%	801-900	14	2.66%	11,788	6.31%
901-1000	7	1.23%	6,519	4.41%	901-1000	10	1.90%	9,501	5.08%
1001-1100	0	0.00%	0	0.00%	1001-1100	3	0.57%	3,153	1.69%
1101-1200	4	0.70%	4,591	3.11%	1101-1200	7	1.33%	8,113	4.34%
1201-1300	2	0.35%	2,485	1.68%	1201-1300	2	0.38%	2,513	1.34%
1301-1400	2	0.35%	2,716	1.84%	1301-1400	2	0.38%	2,726	1.46%
1401-1500	1	0.18%	1,433	0.97%	1401-1500	2	0.38%	2,858	1.53%
>1500	11	1.94%	22,359	15.12%	>1500	22	4.18%	60,736	32.49%
Total	568		147,859		Total	526		186,922	

The most notable change has been the decline in vineyards that produce less than 100 tonnes per annum, the numbers have declined by almost 25% and the tonnes being produced have dropped by 65% which is explained by farms with other commodities changing crop types, sales to other growers (consolidations) and farms being sold to life style farmers, i.e. producers with off-farm income streams – weekend farmers. In 2000 when the data was originally collated for the first competition policy review of the Wine Grapes Marketing Board, growers that produced greater than 500 tonnes in the region accounted for less than 12% of the entire population and 44% of the production, they now accounts for 20% of the population of growers and they are producing 67% of total grower production.

An argument that is often cited is with a large number of small producers an imbalance in a market may occur. This region shows that across both data sets there remains an imbalance. In 2000 and 2007 in *Table 8* (Page 20) based on the figures from the year 2000 show that 83% of all producers accounted for production of 47% (many small producers), whereas in 2007, 81% of the producers account for only 33% of the production (still a high percentage of smaller growers). While this indicates that the market has fractionally shifted in the region it has not significantly altered the balance sufficiently to state that growers are no longer in the need of continued countervailing powers.

Allowing contracts to develop in this region has been previously described as difficult as a seller has little to no power of negotiation. Contracts can form a part of good business practice however in the absence of such offers growers have not been able to consider them. Over the past 4 years the Board is aware of growers that have sought homes with wineries and once the issue of a written contractual arrangement was raised the winery declined any further business and visa versa. It seems that wineries and growers in general are not inclined to be bound to purchase their entire required intake/supply. This forms a high risk in today's business environment with many wineries satisfied to only have a portion of around 50% of total intake contracted so that adjustments can occur readily in the event of a declining market. In fact share market commentary within the industry has often pointed to a listed company's levels of exposure to written contracts as being a negative position. This industry wide matter is quite common within the Riverina and other inland producing regions.

On a matter of relevance in 2005 McGuigan Simeon Wines suspended approximately 150 growers from their contracts citing a clause that allowed suspension in the event of market disruption. This clause and the fallout have caused significant hardship for many growers in the Riverland (SA) and Murray Valley (NSW/VIC) as they came to terms with the application of the

clause. Such incidents have not been conducive to the development of contracts nationally as these problems tend to assure growers that contracts hold little value.

The Board has been active in this region trying to promote contracts as viable options for producers to consider. To enable growers to see the advantages of contracts it produced a report in 2005 (*Vintage 2005 edition of Vine Chat*) that showed that in the region the level of contracted fruit versus non-contracted and the price advantage in that season of having a contract meant to growers in average prices per tonne. The article below (*Quotation 3: Contracts proved to provide higher returns*) is extracted from that Vine Chat newsletter.

Quotation 3: Contracts proved to provide higher returns

CONTRACTS DO PAY MORE IN THE RIVERINA?

This question is often raised by growers in the industry when looking at their future within the industry. The following data obtained by the Board can now for the first time show if winegrapes under contract are achieving a greater return for growers. Does it pay to seek a contract or is the spot market the place to operate?

The data shown below indicates the total tonnes of each variety purchased by wineries and the tonnes and percentage of these winegrapes that were purchased under contract. This data is only now available under the Board's new legislation where wineries that have a contract that specifies the minimum price that they will pay to growers are not required to provide the Board with pricing information. However, while the Board does not record the value of contract winegrapes it does maintain a database on all uncontracted and contracted winegrapes, this is to ensure that the levies the Board receives are accurate.

Variety	Total tonnes by growers	Un-contracted (t)	Contracted (t)	%age con-tracted	Avg. Value un-contracted	Weighted Avg. Price 2004	Est. Avg. Contract Price \$	\$ diff. between types
Chardonnay	30,271	14,365	15,906	52.5%	\$872	\$882	\$890	\$18
Colombard	13,391	9,212	4,179	31.2%	\$375	\$378	\$385	\$10
Sauvignon Blanc	3,000	1,795	1,205	40.2%	\$466	\$498	\$545	\$79
Semillon	35,743	26,143	9,600	26.9%	\$408	\$411	\$420	\$12
Cabernet Sauvignon	18,246	9,829	8,417	46.1%	\$367	\$425	\$492	\$125
Merlot	11,365	5,172	6,193	54.5%	\$361	\$422	\$472	\$111
Ruby Cabernet	10,836	6,098	4,738	43.7%	\$316	\$358	\$412	\$96
Shiraz	55,403	30,824	24,579	44.4%	\$444	\$457	\$473	\$29
Totals (all winegrapes)	219,641	131,915	87,726	39.9%	\$434	\$482	\$554	\$120

The data shown the far right column above shows that on average the value of a contracted winegrape sale within this region is greater than those uncontracted. The **Estimated Average Contract Price \$** in the right hand column has been calculated using overall figures to provide an insight into what the prices on average are under a contract.

To determine this the overall tonnes of each variety were multiplied by the Weighted Average Price for 2004, thus giving gross dollars. From this figure the uncontracted tonnes (multiplied by the Average Value uncontracted) was deducted to leave the gross dollars that are attributable to the contracted fruit only. This final sum was then divided by the known number of contracted tonnes.

Through the use of the Vine Chat newsletter growers are also regularly updated on the most important factors to address when considering a contract. The contract checklist was adapted from information discussed and agreed upon at the national committee the Wine Industry Liaison Committee now known as the Wine Industry Relations Committee (WIRC). This information has been provided to growers 3 times over the past 4 years as well as being available to growers at the Board's premises, at meetings and on farm functions.

The level of consultative effort of Board staff and its members has increased significantly over the past 4 years in relation to contract information. All contracts offered within the region are provided by growers to the Board CEO and then onto the Board solicitor if required. Through this consultative process growers are more aware of what their rights and responsibilities under the contracts are and similarly the Board has the opportunity to provide advice and offer its interpretation on how specific clauses of the contract may be reworded. More recently wineries have been providing the Board with the opportunity to have direct input into contracts prior to their consideration by growers. The Board is also considering developing a draft contract for growers to consider and discuss with their winery, one that could be used as a spot market agreement for one year that binds the producer and buyer to specific conditions. Such a process would involve a series of training sessions for growers to assist them in articulating their specific requirements and needs with existing or new buyers.

The Board concludes that its transitional powers are assisting growers but the current climate regionally and nationally has not been conducive to the development of a higher uptake of contracts in the region. It is hoped as the market changes that its continued role in this area will provide further knowledge and grounding for the growers as they look to secure a home.

Issue 3: What has been the trend in contract & non-contract sales over the last 5-10 years?

The levels of contracts have varied in terms of a standard definition of a contract. Ten years ago there were no contracts that would be compliant with the current definition of a contract, whereas the same could be stated for approximately five years ago. The contracts that did exist enabled the grower to sell their fruit at a price which would be equal to or greater than the district weighted average price (WAP), these were with 2 medium sized wineries in the region that have since been sold or have not continued operations in the region. The WAP calculation is reported after the completion of the vintage. An even smaller percentage of the contracts contained fixed prices that were impacted on by CPI as long as these did not vary negatively on the producer, in that a CPI rise would move the price up but an annual drop would not force the price paid down. These contracts were entered into openly and when the market shifted to surplus the winery that held these contracts was paying far higher than the market price. These contracts have almost all ended after the 2007 vintage and are unlikely to be offered again.

The fact that a contract bound both parties and worked for a short period to the detriment of the buyer is likely to have caused further concern among regional wineries in the offering of contracts that do not provide a suitable level of flexibility. Needless to say these contracts when first entered into had growers receiving a price that was at the time well below the current market price. So that in the initial period of the contract many growers thought that being bound to a winery and not able to take advantage of the market was disadvantageous. Whereas as the market shifted wineries saw the contract from a negative perspective. It could be the case that these contracts have influenced the perception of the value of a contract by growers and wineries.

As the data contained in the issues paper shows the level of contracts that are complying in accordance with the Act the following *Table 9* (below) shows the level of contracted tonnes (by percentage of total crop) that were in operation from 1998 to 2003 that would also be considered compliant by definition under the current Act. It is important to note that a stagnant level that existed in the region over this period and the data from 2004 to 2007 showing that the level is now again steady around 30-40% it is true to say that the level of complying contracted growers in the region would have remained at the low 10% level if it were not for one winery in the region solely responsible for placing their production under a contract.

Table 9: Complying Contract (by % of tonnes harvested) 1998-2003

<i>Vintage</i>	1998	1999	2000	2001	2002	2003
% Contracted Tonnes	8%	10%	11%	10%	11%	10%

While other regions it was common that they had a higher level of contracts this position is changing. The production area nationally has increased and many wineries are still holding stock at levels undesirable to their current market position as they may have been obliged to take fruit under whole of farm contracts or purchased more grapes than required as the price was acceptable to them, further compounding the levels of excess in the industry. As the industry presently stands there are fewer contracts nationally than there has been in the past 10 years of the industry. Many wineries complain of paying too much for the fruit and now the market that was in surplus and remains quite volatile many are more comfortable operating on an annual basis to secure supply.

As the majority of production comes from South Australia a contract was not able to contract out of the States legislated terms and conditions of payment. Therefore there existed no financial incentive to contract fruit other than to fix a price whereas now the market allows them to more or less pick and choose the varieties they want and at the price they are prepared to pay. It

would be safe to say the industry has moved three steps backward in terms of the level of contracts although if predictions of a shortage of grapes occur it is extremely likely that wineries will seek to lock growers in for the short term (2-5 years).

Issue 4: What has been the trend in the number of contract sales that remain subject to the Board's default terms and conditions of payment?

The trend as shown in *Table 2* (Page 3) of this submission has remained steady with wineries in the majority continuing to engage in verbal (handshake) arrangements or written supply agreements that are subject to the Board's legislated terms and conditions of payment. The level of acceptance of the Board's terms and conditions of payment in the region forms the basis of the ability of industry to develop a joint submission. Wineries also agree that any purchaser that breaches the Act should be subjected to consistent action by the Board.

Many of the current supply agreements that were written pre and post the introduction of the Act refer to the Wine Grapes Marketing Board as the authority that sets the dates on which payment for grape purchases will occur, in the absence of the Act these would have no known terms of payment would be required to be renegotiated.

The Board will endeavour to remain consistent in its management of the Act in relation to defaulted terms and conditions of payment. While the level of breaches in the past four years has been considerably less than the previous four years it is still a base level requirement of growers and purchasers in this region to maintain statutory terms and conditions of payment.

Issue 5: Is there evidence to suggest that the Board's transitional powers have decreased conflicts between growers and winemakers arising from spot sales?

Disputes over the breached terms and conditions of payment have been managed by the Board on behalf of growers and there has been no evidence of any legal action being taken between growers and winemakers in relation to this area. Growers are not forced to resort to legal conflict with their winery over a delay in payment and would still be reluctant to undertake such action.

It would be fair to say that any action undertaken by a grower to recoup a non payment on a breach of terms and conditions in the absence of the Act would force the grower to seek an alternative career or alternative buyers from other regions. Wineries ask that growers bear with them when they are experiencing financial difficulties and a legalistic position by an individual

would increase conflict. The level of conflict between growers and winemakers in relation to spot sales is likely not to have changed and could be considered to have remained neutral through the presence of the Act and the provisions the region had previously under the *Marketing of Primary Products Act 1983*.

Issue 6: What is the nature and significance of compliance costs and red-tape associated with the Board's transitional powers?

If a winery complies with the reporting requirements and completes an Application to Make Payments Directly to Growers as provided by the Board the costs of compliance are negligible in that they would not be required to undertake any extra expenditure than is normal in the operation of their business. The generation of reports is completed for growers and a copy provided to the Board is satisfactory compliance for the Board and costs only time and printing. The payment of statutory fees and charges can be done electronically or via cheque, involving 3 cheques per year.

The costs to the Board is addressed in more detail in *Table 7* (Page 11) and indicates that they increase when a breach occurs and in the management of the Act. However regarding the collection costs to the industry of the statutory fees and charges this is less than 4% of the total annual expenditure it could be accepted that the costs are minimal in relation to industry norm of around 15%.

Issue 7: Would the Australian Government's Trade Practices Act now provide growers with sufficient protection against market power abuse by wineries?

No – the current format of the Trade Practices Act does not readily allow growers any protection other than via standard breach of contract which is difficult for a grower to fund and limiting in terms of their future within the industry.

The current moves to develop a national code of conduct are beneficial, however the Board feels the likelihood of wineries in the region adopting the code is minimal whilst it is voluntary.

The Federal Senate Inquiry into the industry found a similar position in relation to the conduct of wineries by the ACCC and believed that their actions fell short of being covered by key part of the Trade Practice Act, see *Quotation 2* (Page 19).

Appendix 1

Breaches of the Wine Grapes Marketing Board Reconstitution Act 2003

**THIS APPENDIX CONTAINS
CONFIDENTIAL INFORMATION
ON THE OPERATIONS OF THE ACT AND
ITS APPLICATION IN THE RIVERINA**

CONFIDENTIAL MATERIAL CONTAINED IN TABLE

Operational Report (inclusive of Breaches) of Wine Grapes Marketing Board (Reconstitution) Act 2003

Winery	Date	Operational/Breach, legislation	Remedy	Growers
21 st Century Wines	2004	Failure to remit levies on due date. s.10; failure to provide Board with certain information by due date. s.12	Levies and all information were received following a letter sent by Board solicitor to their registered offices.	2
Alepat Taylor	2004	Failure to remit complete statutory fees and charges on due date, s.10.	Fees and charges paid late, no interest applied.	3
Beelgara Estate	2004	Failure to provide Board with certain information by due date. s.12; Failure to remit statutory fees and charges on due date, s.10.	Information was obtained after advice that the Board would look to revoke application to make direct payments. Fees and charges paid late, no interest applied.	51
Bimbadgen Estate	2004	Failure to remit statutory fees and charges on due date, s.10.	Fees and charges paid late, no interest applied.	1
Casella Wines	2004	Failure to provide Board with certain information by due date. s.12.	Information was provided 7 days late, no action taken by the Board	110
Nugan Quality Foods	2004	Failure to remit statutory fees and charges on due date, s.10.	Fees and charges paid late, no interest applied.	4
Orlando Wyndham	2004	Failure to remit complete statutory fees and charges on due date, s.10.	Winery paid in the following year.	81
Piromit Wines	2004	Failure to provide a price list by due date. s.4; Failure to provide information. s.12, Failure to remit statutory fees and charges on due date (May), s.10.	Winery was chased up by the Board and the price list and the report was provided. Payment of fees and charges occurred in parts, final payment made 2005.	3
Riverina Estate	2004	Failure to provide information on time, s.12.	Winery was chased up and the report provided.	18
Southern Highland Wines	2004	Failure to provide a price list. s.4; Failure to apply to make payments to growers directly, s.10; Failure to remit complete statutory fees and charges on due date, s.10.	The Board advised that it would monitor the payments to growers for the year. Fees and charges paid late, no interest applied.	2
Terrel Estate	2004	Failure to provide Board with certain information by due date, s.12	Information was obtained after advice that the Board would look to revoke application to make direct payments.	2
Toorak Wines	2004	Failure to provide a price list by due date, s.4.	Winery was chased up by the Board and the price schedule received.	12
Vico Wines	2004	Failure to remit statutory fees and charges on due date, s.10.	Payment of fees and charges made late, no interest charged.	1
Alepat Taylor	2005	Failure to remit statutory fees and charges on due date, s.10.	Payment of fees and charges made late, no interest charged.	5
Beelgara Estate	2005	Failure to make payments according to Order. s.10	Directed that the winery make final payment through the Board, interest applied. (Int. \$6,615). Growers were given the option of receiving payment in full on the due date or deferred payment with interest (to support the winery).	49
Beringer Blass Wine Estates	2005	Failure to provide Board with certain information by due date. s.12	Winery was chased up by the Board and the report was provided.	2
Evans & Tate	2005	Failure to pay growers according to the Order. s.10; failure to provide Board with certain information by due date, s.12.	The winery had its application to pay growers directly revoked and June & October payments were made through the Board including interest applicable. The reports were provided to assist the Board make the payments.	2
Hardy Wines	2005	Failure to provide Board with certain information by due date. s.12	Winery was chased up by the Board and the report was provided.	1
Southern Highland Wines	2005	Failure to provide a price list. s.4; Failure to apply to make payments to growers directly, s.10; Failure to furnish Board with certain information, s.12.	Winery makes payments to growers via the Board payment system.	2
Terrel Estate	2005	Failure to furnish grower with certain documentation on delivery. s.8; Failure to furnish the Board with information. s.12	System error at winery, winery paid the corrected price on the variety purchased including interest for the difference. Error/fraud in the reports provided, all	6

			payments instructed to be made via the Board. Winery instructed on new delivery docket system.	
Warburn Estate	2005	Failure to remit statutory fees and charges on due date, s.10.	Fees and charges paid late, no interest applied.	18
Westend Estate	2005	Failure to pay growers according to the Order. s.10.	System error within winery causing delay to EFT payments to some growers. Winery paid interest at statutory rate on the 3 day delay.	15
Zappacosta Estate	2005	Failure to furnish the Board with information by the due date. s.12	Report received late, no penalty as fruit was contract processed for other winery.	0
Australian Old Vine Wine	2006	Failure to remit statutory fees and charges on due date, s.10.	Fees and charges paid late and in full, no interest applied.	1
Casella Wines	2006	Failure to provide information by the due date. s.12.	Reported received 1 day late, no penalty applied.	139
Dal Broi Wines	2006	Failure to remit statutory fees and charges on due date, s.10.	Fees and charges paid late, no interest applied.	12
Berton Vineyards	2006	Failure to provide accurate information. s.12. Failure to remit statutory fees and charges on due date, s.10.	Winery was chased up by the Board and the report corrected. Fees and charges paid late, no interest applied.	1
Evans & Tate	2006	Failure to provide information. s.12; Failure to pay growers according to the Order. s.10.	The winery did not apply to pay growers directly as application not accepted and all payments were made through the Board Winery eventually paid in 6 instalments (Int. \$122).	1
McGuigan Simeon Wines	2006	Failure to remit statutory fees and charges on due date, s.10; Failure to provide full and accurate information, s.12; Failure to pay growers according to the Order. s.10.	Fees and charges paid late, no interest applied. The growers received their first payment with interest on the delay. (Int. \$15.66)	21
McWilliams Wines	2006	Failure to remit statutory fees and charges on due date, s.10.	Fees and charges paid late, no interest applied.	50
Nugan Estate	2006	Failure to provide information by the due date. s.12; Failure to remit statutory fees and charges on due date, s.10.	Winery was chased up by the Board and the report and fees and charges were provided.	3
Nugan Quality Foods	2006	Failure to provide information by the due date. s.12. Failure to remit statutory fees and charges on due date, s.10.	Winery was chased up by the Board and the report and fees and charges were provided.	2
Orlando Wyndham	2006	Failure to remit statutory fees and charges on due date, s.10.	Fees and charges paid late, no interest applied.	63
Piromit Wines	2006	Failure to provide a price list by due date. s.4; Failure to provide information (by due date). s.12; Failure to remit statutory fees and charges on due dates, s.10	Winery was chased up by the Board and the price list and the report was provided. Fees and charges paid late, no interest applied.	13
Southern Highland Wines	2006	Failure to provide a price list. s.4; Failure to make payment to the Board, s.10, Failure to provide information. s.12; Failure to pay growers according to the Order. s.10.	Application to make payments directly to growers not accepted by Board. Winery invoiced for funds owed to growers. Failed to make payments by the due date interest applied at the statutory rate. (Int. \$433.07)	3
Terrel Estate	2006	Application to make payments direct to growers revoked based on prior issues.	Winery makes payments to growers via the Board payment system.	1
Warburn Estate	2006	Failure to submit price valid schedule. s.4. Failure to remit statutory fees and charges on due date, s.10.	Technical error at Winery found to be the cause, no individual grower took action as they were knowledgeable of the varied price received at delivery. Fees and charges paid late, no interest applied.	10
Westend Estate	2006	Failure to remit statutory fees and charges on due date, s.10.	Fees and charges paid late, no interest applied.	29
21 st Century Wines	2007	Failure to remit fees and charges on due date. s.10; failure to provide Board with certain information by due date. s.12	The Board is still dealing with this issue.	7
Beelgara Estate	2007	No application to make payments received, s.10;	Application received late and accepted by the Board	23
Cleanskins	2007	Failure to remit fees and charges on due	The Board is still dealing with this issue.	1

Wines		date. s.10; failure to provide Board with certain information by due date. s.12		
Dal Broi Wines	2007	No application to make payments received, s.10, Failure to provide information. s.12, Failure to remit statutory fees and charges on due date, s.10.	Winery purchased fruit from a director, Board received information via the processor and is still waiting on confirmation report by winery and fees and charges.	1
Foster Group	2007	Contract Approval sought, s.13.	Approval provided to the winery for the contract.	9
McGuigan Simeon	2007	Failure to remit statutory fees and charges on due date, s.10. Failure to provide Board with accurate information by due date. s.12.	Fees and charges paid late, no interest applied. Report finalised by end of June 2006	49
McWilliams Wines	2007	Application to make payments directly received late, s.10	Winery was asked to make application and this was approved	46
Mitchelton Wines	2007	Failure to remit fees and charges on due date. s.10; Failure to provide Board with certain information by due date. s.12	The Board is still dealing with this issue.	2
Nugan Estate	2007	Failure to remit statutory fees and charges on due date, s.10.	Fees and charges paid late, no interest applied.	5
Nugan Quality Foods	2007	Failure to remit statutory fees and charges on due date, s.10.	Fees and charges paid late, no interest applied.	2
Orlando Wyndham	2007	Applied to breach Order dates, s.10 (financial request of parent company)	The Board allowed the revised date inclusive of interest being paid to the growers. Winery was allowed to make the payment direct to growers.	64
Pinical Estate	2007	Failure to remit statutory fees and charges on due date, s.10.	Fees and charges paid late, no interest applied.	1
Piromit Wines	2007	Failure to provide a price list by due date. s.4; Failure to provide information. s.12	Winery was chased up by the Board and the price list and the report was provided.	10
Southern Highland Wines	2007	Failure to remit statutory fees and charges on due date, s.10.	Fees and charges paid late, no interest applied.	2
Terrel Estate	2007	Application to make payments direct to growers revoked based on prior issues.	Board monitors payments by sighting grower cheques prior to their distribution to growers.	12
Two Brothers	2007	Failure to remit fees and charges on due date. s.10; failure to provide Board with certain information by due date. s.12 Failure to provide price schedule. s. 4.	The Board is still dealing with this issue.	1
Warburn Estate	2007	Failure to remit statutory fees and charges on due date, s.10. Failure to pay growers according to the Order. s.10.	Board pursuing fees and charges. Board revoked application to make payment directly to growers, final payment including interest to be paid through the Board. (Est. int. \$1,200)	16
Westend Estate	2007	Failure to remit statutory fees and charges on due date, s.10.	Fees and charges paid late, no interest applied.	39
				1029

Appendix 2

Wine Grapes Marketing Board Terms and Conditions of Payment Order 2007

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

Dated, the 15th day of January 2007.

**WINE GRAPES MARKETING BOARD
(TERMS AND CONDITIONS OF PAYMENT) ORDER 2007**

under the Wine Grapes Marketing Board (Reconstitution) Act 2003

1. Name of Order

Wine Grapes Marketing Board (Terms and Conditions of Payment) Order 2007.

2. Commencement

This Order commences on 15th January 2007, by motion of the Wine Grapes Marketing Board.

3. Duration

This Order has effect for the 2007 calendar year only.

4. Validity of Order

(1) The making of this Order by the Wine Grapes Marketing Board under Section 5 of the *Wine Grapes Marketing Board (Reconstitution) Act 2003* is specifically authorised for the purposes of section 51 of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

(2) The making of this Order does not limit or remove any obligations parties to this Order may have under the *Wine Grapes Marketing Board (Reconstitution) Act 2003*.

5. Definitions

In this Order:

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

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

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

complying contract means:

(a) a contract that fixes:

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

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

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

(b) a contract that fixes:

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

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

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

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

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

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

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

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

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

EFT means electronic funds transfer.

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

6. Application of sections

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

7. Terms and Conditions of Payment for the year 2007

- (1) The purchase price for MIA wine grapes purchased prior to 5th May 2007 shall be paid by consignees to the Board or as directed by the Board on the dates as noted in the timetables in this section and in accordance with the Manner and Timing specified in *Section 9* of this order.
 - (i) For all deliveries of MIA wine grapes to consignees made after 4th May 2007 the payment of 66.66% of the purchase price is to be paid to the Board on 21st June 2007 or as directed by the Board to consignors on or before 25th June 2007.
- (2) Payments made by consignees directly to the Board pertaining to deliveries of MIA wine grapes delivered to consignees by consignors.

Table 1: Payments made to the Board by Consignees

Timetable	Structure
10 th May 2007	1/3 total delivery value (33.33%)
21 st June 2007	1/3 total delivery value (33.33%)
11 th October 2007	1/3 total delivery value (33.34%) including all bonus payments

- (3) The Board may direct payments for MIA wine grapes to be made directly to consignors by consignees only upon completion in full of an "*Application to Make Payment Directly to Growers*" made and received by the Board on or prior to 24th February 2007.
 - (i) Applications are available from the Board.
 - a. No fees or charges for processing of applications will apply.
 - b. Notification of Board direction will be made 23rd March 2007.

- (ii) Failure to comply with any or all conditions of the application made in accordance with this Order may result in the revocation of any direction made by the Board pursuant to the application.
- (4) Payments made directly to consignors by consignees excluding all applicable levies for MIA wine grapes delivered to consignees by consignors under direction by the Board.
- (i) All payments made to the Board by consignees on MIA wine grapes delivered by consignors will be paid to growers in accordance with *Table 2* of this Section.
 - (ii) Payments made to growers by consignees upon the direction of the Board are to be made on or before the dates set in *Table 2* of this Section.

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

Timetable	Structure
14 th May 2007	1/3 total delivery value (33.33%)
25 th June 2007	1/3 total delivery value (33.33%)
15 th October 2007	1/3 total delivery value (33.34%) including all bonus payments

8. Default payments for deliveries of MIA wine grapes

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

9. Manner and timing in which payments are to be made

- (1) Notwithstanding any previous section in this Order this clause applies to payment by all consignees accepting deliveries of MIA wine grapes from consignors otherwise than pursuant to a direction by the Board. Payments are to be:
 - (i) Paid as a valid bank cheque made out to the Wine Grapes Marketing Board and received by the Board by 12 midday of the due date, or
 - (ii) Transferred to the Board's nominated banking account by EFT so as to cause all funds to be cleared by the due date. A confirmation of the transaction must be forwarded by facsimile to the Board on the same day.
- (2) Notwithstanding any previous section in this Order this clause applies to all payments made to consignors by consignees accepting deliveries of MIA wine grapes from consignors pursuant to a direction under the Act by the Board:
 - (i) Made available as a cheque made out to the consignor for pickup by consignors by 12 midday on the due dates, or
 - (ii) Transferred by EFT to consignor's nominated banking account so that funds are cleared by the due dates. A confirmation of the transaction must be forwarded to the grower on the same day, or
 - (iii) Sent as a cheque made out of the consignor via Australia Post to consignors post marked on the date directed.

- (3) No payments made available for consignor pickup are to be retained by the consignee for greater than 24 hours, these shall be posted to the consignor.
- (4) Revocation of a Board direction may result from non-compliance of the manner within this Order.

10. Calculation and payment of Wine Grapes Marketing Board fees and charges

- (1) Fees and Charges are applicable on deliveries of MIA wine grapes on all constituted growers.
- (2) The rate for 2007 is \$3.90 per tonne (fresh weight) of winegrapes.
- (3) In the case of a consignee receiving Board direction to make payments to consignors directly the Fees and Charges amount shall be deducted by the consignee from the payment for deliveries of MIA wine grapes and then remitted to the Board in the following timetables and structure.

Table 3: Payments of Fees and Charges to the Board

Timetable	Structure
14 th May 2007	\$1.30 per tonne delivered
25 th June 2007	\$1.30 per tonne delivered
15 th October 2007	\$1.30 per tonne delivered

Table 4: Alternate Payments of Fees and Charges to the Board

Timetable	Structure
29 th June 2007	\$3.90 per tonne delivered

- (4) Payments of Fees and Charges by consignees in accordance with *Table 4: Alternate Payments of Levies to the Board* are required to advise the Board in writing by 19th April 2007. No penalty or discount will be provided to the consignee for payments made in this manner.
- (5) Failure to remit Fees and Charges to the Board within the timetable, structure and the approved manner may cause a revocation of a Board direction made in accordance with this Order.
- (6) All Fees and Charges payable to the Board in accordance with the timetables in Subsection 3 of this Section are to be paid to the Board in the following manner:
- (i) To the Board's nominated banking account by EFT on the due dates, including a confirmation of the transaction sent by facsimile to the Board on the same day, or
 - (ii) Sent as a business cheque made out to the Wine Grapes Marketing Board via Australia Post postmarked on the due dates.
 - (iii) Delivered to the registered offices of the Board on the due dates.

All enquiries in relation to this Order should be directed to:

Mr Brian Simpson
Chief Executive Officer
Riverina - Wine Grapes Marketing Board
182 Yambil Street Griffith NSW 2680
PO Box 385 Griffith NSW 2680
Phone: 02-6962 3944 Fax: 02-6962 6103
Mobile: 0438 388 828 Email: bsimpson@wgmb.net.au

Copies of this Order can be downloaded from the Board's website in PDF format:

<http://www.wgmb.net.au>

Appendix 3

Terms and Conditions of Payment Notice to Wineries 2007

WINE GRAPES MARKETING BOARD NOTICE TO ALL RIVERINA MIA WINE GRAPE PURCHASERS FOR THE 2007 VINTAGE

PURSUANT TO THE WINE GRAPES MARKETING BOARD (RECONSTITUTION) ACT 2003 No. 100

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION IN RELATION TO THE ESTABLISHMENT OF PRICES AND THE STATUTORY TERMS AND CONDITIONS OF PAYMENT FOR THE 2007 VINTAGE

- 15 January 2007 -

The publication of this notice does not release the purchaser of MIA winegrapes from their obligations set in the **Wine Grapes Marketing Board (Terms and Conditions of Payment) Order 2007** as Gazetted and all relevant sections within the Wine Grapes Marketing Board (Reconstitution) Act 2003.

More detailed information can be obtained by reading the entire Order and Act relating to MIA Wine Grapes.

PRICE SCHEDULES AND DELIVERY DOCKETS TO BE PROVIDED

- A person must not accept delivery of a consignment of MIA wine grapes unless a price schedule applicable to those winegrapes has been provided to the Board – on or before the 30 January 2007.
Maximum penalty: 20 penalty units (in the case of a corporation), 10 penalty units (in any other case)
- Any organisation or person may provide the Board with a price schedule for MIA wine grapes – in a form approved by the Board (**approved format below**).
- Price schedules may be varied by notice in writing to the Board, variations are for price changes to wine grapes for which the schedule already applies or additional varieties that the schedule does not apply.
- Copies of price schedules and variations of these provided to the Board are to be made available to prospective MIA wine grape growers on request.
- Prices reductions in schedules are not valid until notice is provided to the Board:
 - 48 hours (for changes before the 30 January 2007)
 - 24 hours (for changes on or after 30 January 2007)

FORMAT OF PRICE SCHEDULES, MUST:

- Include the date on which the price schedule is effective from,
- Set out the minimum prices that will be paid per tonne for MIA wine grapes,
- Set out any factor, condition or circumstance that may operate to reduce any price offered for a consignment of MIA wine grapes, and
- Set out the way in which any reduction in price will be calculated.
- For MIA wine grapes purchased other than a duly contracted delivery and without an approved price schedule the price to be paid for these will be the greater of the price offered or the average price of a particular variety and grade¹.
- Wineries on acceptance of a delivery of MIA wine grapes must provide the following documentation that sets out:
 - The date of the delivery, and
 - The quantity and variety of the wine grapes in the delivery, and
 - Items applicable to any provision of the price schedule, and
 - Any factor, conditions of circumstance that operates to reduce the price payable for the wine grapes and the amount of any such reduction.

Maximum penalty: 20 penalty units (in the case of a corporation), 10 penalty units (in any other case)

¹ The average price for winegrapes of a particular variety and grade delivered on a particular day is the arithmetic mean of the prices for the winegrapes of that variety and grade, delivered on that day, set out in the price schedules provided to the Board (Section 9 (2)).

TERMS AND CONDITIONS OF PAYMENT

- The following has been established for MIA wine grapes delivered otherwise than pursuant to a complying contract².
- The purchase price for all MIA wine grapes purchased shall be paid to the Board or as directed by the Board in accordance with the provisions of the Wine Grapes Marketing Board (Terms and Conditions of Payment) Order 2007.
- Purchasers wishing to make payments directly to wine grape growers must complete the application form: “*Application to Make Direct Payments*” (a copy of the form is attached and forms part of this notice document).
- The Board’s timetables for payments (*below*) will indicate when payments are to be made to the Board and when payments are to be made to the grower by the Board.
- Payments made directly to growers by direction of the Board and solely on approval of a completed application are to be made in conjunction with the payments made by the Board to the grower.
- Interest shall apply on all late payments made for purchased MIA wine grapes and shall be paid in accordance with instruction of the Board.
 - The rate at which interest is to accrue will be the rate prescribed under section 95 (1) of the *Supreme Court Act 1970* for payment of interest on a judgement debt, plus 5 per cent. **Note:** Any money due to the Board (including any money that becomes payable as a consequence of the revocation of a direction under *Section 10*) may be recovered as a debt.

STRUCTURE, DATES AND TIMING OF PAYMENT FOR 2007

- The following timetables for payments applies to all MIA wine grapes delivered otherwise than pursuant to a complying contract².
- Payments are to be made to the Board, unless otherwise directed in the following structure or earlier than the following dates by notice to the Board:

Date Paid	Structure
10 th May 2007	1/3 total delivery value (33.33%) – including Fees and Charges
21 st June 2007	1/3 total delivery value (33.33%) – including Fees and Charges – less Federal levy
11 th October 2007	1/3 total delivery value (33.34%) including all bonus payments & Fees and Charges

- Where directed payments to growers are to be made in the following structure:

Date Paid	Structure
14 th May 2007	1/3 total delivery value (33.33%) – less Board Fees and Charges
25 th June 2007	1/3 total delivery value (33.33%) – less Board Fees and Charges, applicable levies
15 th October 2007	1/3 total delivery value (33.34%) inc. all bonus payments – less Fees and Charges

- Manner and timing in which payments are to be made to the Board and to growers:
 - To the Board as a bank cheque no later than 12 midday on the due dates.
 - To the Board by EFT so that funds are cleared on the due dates.
 - Made available for pickup by growers by 12 midday on the dates.
 - EFT to growers so that funds are cleared by the due dates.
 - Sent via Australia Post to growers by no later than 3 pm on the due dates.

² **Part 1 Section 3 (a) to (c) Complying contract** means:

- (a) a contract that fixes:
 - (i) the prices to be paid for consignments of MIA wine grapes delivered during the current calendar year only, or the manner in which those prices are to be calculated, and
 - (ii) the date or dates by which those prices, or the various instalments of those prices, will be paid, being a contract entered into before the first Monday in December of the previous calendar year, or
- (b) a contract that fixes:
 - (i) the prices to be paid for consignments of MIA wine grapes delivered during both the current calendar year and one or more future calendar years, or the manner in which those prices are to be calculated, and
 - (ii) the date or dates by which those prices, or the various instalments of those prices, will be paid, being a contract entered into at any time before the first delivery of winegrapes under the contract, or
- (c) a contract the subject of an approval in force under section 13.

- o No payments are to be retained by the purchaser for greater than 24 hours these must be posted to the relevant grower.

CALCULATION AND PAYMENT OF WINE GRAPES MARKETING BOARD FEES AND CHARGES

- All constituted growers within the Board's area of operations who, during the previous calendar year, harvested more than 20 tonnes of MIA wine grapes are chargeable, but does not include:
 - o In the case of a corporation: a grower that is also a winery or a grower in which a winery has a controlling interest, or
 - o In the case of an individual: a grower who is also a winery, or a grower who is a director of a corporation that is a winery and who (as a grower) supplies the winery with all of the MIA wine grapes that he or she harvests.
- Rates are charged and payable to the Board under the *Agricultural Industry Services Act 1998*, in relation to deliveries of MIA winegrapes whether pursuant to a complying contract or not.
- The rate for 2007 is \$3.90 per tonne (as approved by growers at meeting of the Wine Grapes Marketing Board held 13th December 2006) convened for the purposes of setting the levy and budget approval for 2007.
- Payments of the Federal Research & Development levy are payable by the winery to the Levies Management Unit (not the Board). These are also deducted from the purchase price paid to the grower (generally coinciding with the June payment). The rate for the 2007 Vintage remains at \$2.00 per tonne and applies to all wine grapes crushed.
- Board fees and charges are paid by all constituted growers and in the case of a purchaser making direct payments to growers the amount should be deducted by the purchaser from the payment and then remitted to the Board.
- All payments are to be made on the following dates and in the following structure:

Standard Dates	Structure	or	Alternate Date	Structure
14 th May 2007	\$1.30 per tonne delivered		29 th June 2007	\$3.90 per tonne
25 th June 2007	\$1.30 per tonne delivered		Intention to remit fees and charges on above date <u>must</u> advise Board by 19 th April 2007.	
15 th October 2007	\$1.30 per tonne delivered			

- Where payments are made to the Board the Board shall deduct the Board fees and charges by instalments prior to making payment to the grower.
- Manner and timing in which all payments of Board fees and charges are to be made to the Board:
 - o By EFT (with faxed or emailed confirmation) to the Board on the due dates.
 - o Via Australia Post postmarked on the due dates.
 - o Delivered to the registered offices of the Board on the due dates.

INFORMATION TO BE FURNISHED ON ALL DELIVERIES

- On or before the 1st May 2007 purchasers must furnish a report to the Board with respect to all the MIA wine grapes that have been delivered during the period 1st July 2006 to the 14th April 2007.
- On or before the 30th June 2007 purchasers must furnish a supplementary report to the Board with respect to the any deliveries since 14th April 2007.
- Reports must include the following details in relation to each delivery:
 - o The identity of the consignor of the delivery, (including Farm and Address details)
 - o The quantity and variety of the wine grapes in the delivery, and
 - o The price of the wine grapes in the delivery, except in the case of a duly contracted delivery.
- A purchaser must not fail or refuse to comply with the above.

Maximum penalty: 20 penalty units (in the case of a corporation), 10 penalty units (in any other case)

MAKING PRE-PAYMENTS TO MIA WINE GRAPE GROWERS

-
- Applies to all MIA wine grapes that are not subject to a complying contract.
 - Pre-payments, *i.e. any payments made to MIA wine grape growers prior to scheduled payment dates*, are allowable only by purchasers that have been directed by the Board to make payments directly to growers.
 - All pre-payments to MIA wine grape growers by purchasers that have not made an approved application to pay wine grape growers directly or have been directed by the Board to make payments through the Board must be made through the Board.
 - All allowable pre-payments for MIA wine grapes other than those pursuant to a complying contract should be notified to the Board 2 weeks prior to the payment dates.

POST WEIGHBRIDGE PRICE VARIATIONS

- Applies to all MIA wine grapes that are not subject to a complying contract.
- Post weighbridge and/or post fermentation bonuses are to be paid in accordance with the date as set out in the timetable and structure.
- Purchasers must furnish information relating to any post weighbridge and/or post fermentation bonus to the Board 2 weeks prior to the payment being made.

DOCUMENTATION TO BE PROVIDED TO MIA WINE GRAPE GROWERS

- Applies to all MIA wine grapes that are not subject to a complying contract.
- Purchasers accepting a delivery of MIA wine grapes must provide to the MIA wine grape grower (*or agent of*) documentation that sets out:
 - the date of the delivery, and
 - the quantity and variety of the wine grapes in the consignment, and
 - the relevant provisions of the price schedule applicable to the consignment,
 - any factor, condition or circumstance that operates to reduce the price payable for the consignment and the amount of any such reduction.

Maximum penalty: 20 penalty units (in the case of a corporation), 10 penalty units (in any other case)

THE BOARD MAY APPROVE CERTAIN CONTRACTS

- The Board may approve a contract entered into on or after the first Monday in December of the previous year, being a contract that fixes:
 - The prices to be paid for consignments of MIA wine grapes delivered during the current calendar year, or the manner in which those prices are to be calculation, and the date or dates by which those prices, or the various instalments of those prices, will be paid.
 - Applications for the Board's approval must be made in writing to the Board addressed to: "**Contract Approval Officer**" PO Box 385 Griffith NSW 2680
 - Approval to a contract is taken to have been given if, at the expiry of 14 days after such an application has been made, the Board's decision on the application has not been given to the applicant.
 - Applicants may apply to the Administrative Decisions Tribunal for a review of its decision to refuse to give an approval.

All enquiries regarding this information and the Terms and Conditions of Payment Order for 2007 should be directed to:

Mr Brian Simpson
Chief Executive Officer
Wine Grapes Marketing Board
Phone: 02-6962 3944
Fax: 02-6962 6103
Mobile: 0438 388 828
Email: bsimpson@wgmb.net.au

Copies of this information on the Wine Grapes Marketing Board (Reconstitution) Act 2003 and copies of the Order made by the Wine Grapes Marketing Board for the 2007 Vintage can be downloaded free of charge from the Board's website: <http://www.wgmb.net.au>

WINE GRAPES MARKETING BOARD - 2007 APPLICATION TO MAKE PAYMENT DIRECTLY TO GROWERS

FAX BACK: 02 6962 6103

MAIL TO: PO BOX 385 GRIFFITH NSW 2680

In accordance with the Wine Grapes Marketing Board (Reconstitution) Act 2003, No. 100, and the Wine Grapes Marketing Board (Terms and Conditions of Payment) Order 2007 purchasers of MIA winegrapes delivered during the year 2007 that are not subject to a complying contract are to make payments to the Board. Purchasers that wish to make payments directly to MIA wine grape growers must complete this application in full and return it to the Wine Grapes Marketing Board for consideration and approval.

Note: This application must be completed in full by the applicant and signed by a witness and returned to the Wine Grapes Marketing Board **prior to 24th February 2007.**

Please print in **BLOCK** letters (all sections must be completed before application is considered)

COMPANY NAME

ADDRESS

POSTAL ADDRESS

CONTACT PERSON
(for all payment issues)

PHONE

FAX

EMAIL

By completing this application the above MIA winegrape purchaser agrees to comply fully with the following conditions for the 2007 Vintage:

1. Comply fully with the Terms and Conditions of Payment as notified to the applicant and make payments to growers in accordance with the timetable and structure made by Order of the Wine Grapes Marketing Board.
2. Provide in accordance with the Wine Grapes Marketing Board (Reconstitution) Act 2003 information pertaining to all deliveries received whether purchased or received on consignment.
3. Ensure that all details of bonus payments based on any post weighbridge or post fermentation measurement are sent to the Board 1 weeks prior to the payment being made as per the Order.
4. On approval of completed application the applicant must advise the Board 1 week prior to each payment date of any pre-payments made to winegrape growers.
5. Make payment of all Wine Grapes Marketing Board fees and charges applicable to the Board in accordance with the schedule for levies made by Order of the Wine Grapes Marketing Board.

Please Note: Failure to comply with any or all of the above conditions may result in the revocation of any direction made pursuant to this application.

(COMPANY DIRECTOR) PRINT FULL NAME

(WITNESS) PRINT FULL NAME

SIGNATURE

SIGNATURE

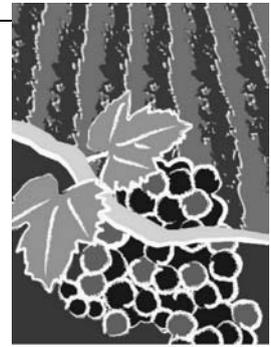
DATE

DATE

Appendix 4

Rate Notice Provided to Growers Annually

Wine Grapes Marketing Board Delivery Summary Report 2007



Riverina
WINEGRAPE GROWERS

The details contained in this report have been compiled from regional wineries delivery information. Please contact the Board if incorrect.

Example Grower

Owner: Example Grower
Farm No: Example

		<i>Tonnes</i>
Example Wines	Variety	7.25
	<i>Totals for Example Wines</i>	7.25
	<i>Totals for Example Grower</i>	7.25



RATE NOTICE

Wine Grapes Marketing Board

ABN: 72 739 514 203
Address: (PO Box 385) 182 Yambil Street Griffith NSW 2680
Phone: 02 6962 3944
Fax: 02 6962 6103
Email: board@wgmb.net.au

Riverina
WINEGRAPE GROWERS

Rates Levied for 2007 Vintage

Rates for statutory services:

Owner: Example grower
Trading Example Address
PO Box XXX
EXAMPLE 2680

Farm Example

**PAYMENT IS NOT REQUIRED ON THIS NOTICE
FOR TAXATION AND INFORMATION PURPOSES ONLY**

<i>Description:</i>	<i>Tonnes</i>	<i>Amount GST</i>
Charges on deliveries to Example Wines	7.25	\$28.27 Exempt
Total Statutory Service Charge - \$3.90 / tonne	7.25	\$28.27 Exempt