Riverina
Wine Grapes Marketing Board

Submission to the

ACCC Industry Issues Paper

November 2018

Introduction

The Wine Grapes Marketing Board (WGMB) is the largest representative body of independent winegrape growers in New South Wales. It represents all producers in the NSW Riverina region, centred on the City of Griffith and the Local Government Areas of Leeton, Carrathool and Murrumbidgee. The region growers produce approximately 20% of the national crush and supply winegrapes to the many wineries based in the area that process annually up to 450,000 tonnes of winegrapes (26% of the national crush).

The majority of the regions wine production is exported with an estimated value of close to $1 billion dollars FOB.

The WGMB is constituted in accordance with the *NSW Agricultural Industry Services (Regulation) 2015* and it provides industry services as prescribed within the regulation. WGMB derives the majority of its income from a service fee levied on its constituents at a current rate of $3.90 per tonne in accordance with the legislation.

This submission represents the views of the Board of the WGMB with respect to the *ACCC – A Market Study by the ACCC.*

Structure of this Submission

This submission provides requested comment on the matters the ACCC have requested feedback on.

1. The level of competition between winemakers (and other buyers) for the acquisition of wine grapes, within and across regions.

Competition as a function of the market relates to the ease in which supply can move between buyers. For wine grapes as wine this occurs quite readily among local wineries but as fresh wine grapes harvested and ready for processing the options for growers to leave a winery to take these to another purchaser are limited primarily due to supply agreements, verbal arrangements and the associated fear of being challenged legally by the winery for loss of product if an agreement is broken.

The availability of processors in the region has remained reasonably static over the past 10 years in comparison to those that chose to have their grapes processed in a sole trader exercise. The sole trader general is seeking to maximise returns by processing their own wine grapes into wine for sale on the wine market. This process has met with varying degrees of success and since changes to the Wine Equalisation Tax Rebate the peak numbers that were evident in 2013 have dropped off.

Table 1: Wineries operating in the Riverina NSW

Year	Processors	Sole traders	Total
2009	25	25	50
2010	25	20	45
2011	26	18	44
2012	29	23	52
2013	23	39	62
2014	21	34	55
2015	25	27	52
2016	20	27	47
2017	21	29	50
2018	18	23	41

2. The ability of wine grape growers to switch between winemakers or other buyers.

Entirely dependant on location and contractual status is the ability of growers to move freely between buyers in the region. In general terms growers that move each season are frowned upon by local buyers as they need an assured level of supply each season to meet their existing and developing markets. Only in the instances of wine market contraction are growers released and it generally is those with varieties not required by the winery.

(a) How far wine grapes are transported to processing facilities and how this varies between different regions and grape varieties.

In the Riverina wine grapes do not have far to travel with the longest journey from farm gate to processor being approximately 100km, i.e. Hillston to Griffith. With a high concentration of growers near wineries some journeys are only 10-15kms. Winegrape properties in the region generally have a mix of varieties so distance of varying varieties is not known to differ.

Grapes are treated as per winery specification immediately following harvest and prior to transportation with Sulphur powder to reduce the risk of the fermentation occurring prior to the grapes getting to the winery. For background: wine grapes grown have natural yeast on their skins and stems. Modern winemaking in Australia does not use wild yeast as its resultant flavour is not reliable. Instead it uses cultivated yeasts and the sulphur acts to inhibit early fermentation.

(b) The cost of transporting grapes to processing facilities and who bears this cost.

Generally, the costs are borne by the wine grape producer. Rates for carting of wine grapes can vary between harvest operators and in some instances the rate for cartage is incorporated into the total harvest operation on a per tonne basis or an hourly rate. Within the Riverina many operators use their own transport vehicles for their own harvest and then sub-contract their truck and self out to other operators to transport other growers production.

The process of transporting grapes from a vineyard generally involves more than 2 transport vehicles. Wine grapes are picked into a hydraulic tipping gondola that is towed behind a tractor and it can hold anywhere between 3 and 5 tonnes of harvested wine grapes prior to needing to be emptied.

In some harvest operations the winery will cover the costs of transportation of wine grapes to the processing facility. It is generally dealt within the terms of the written agreements that are at times entered into. Wineries in such circumstances will make all the necessary arrangements regarding time of harvest and schedule a delivery time for the wine grapes. This allows them to maximise the efficient use of their processing equipment and labour cost.

One Riverina base winery is reported to arrange and pay for the freight of externally purchased wine grapes that are transported to the region for processing. It has been reported that these growers will receive identical offer prices for similar varieties to those being purchased by the company in the Riverina. The major difference being that the Riverina growers delivering to the same winery are required to pay for the transporting costs in this region with no winery subsidy or benefit provided.

One interstate winery that is based in Victoria covers the costs of the transport and will allow the grower to either arrange transport for themselves upon which the company will cover an agreed rate per tonne for the transportation.

While growers of wine grapes are charged in the majority of instances a simple per tonne basis for the cartage or wine grapes to the processor they are generally not charged the extra costs that can be associated with a delay in unloading. Delays can be caused by overscheduling by the winery, a breakdown of processing equipment or harvest operators picking their produce in advance of scheduled timeframes. If a winery has a delay the entire harvest operation can cease as picking gondolas fill and there are no on farm storage options within the wine grape industry.

(c) The features of wine grape growing regions. This includes the range of potential buyers, and access to and reliance on domestic or export sales.

The Riverina is part of the inland regions. Production is described as representing the popular premium and commercial segments of the wine market. Our market retails predominately in the sub $15 The main features of growing regions that sets them apart is the scale of operations present, from vineyards to processing facilities.

The region also relies heavily on the sale of bulk wine to other countries and regions within Australia. It is a major exporter of Australian wines in all formats, bulk, bottled and casks.

Each region within Australia differs in its value proposition. While other regions of higher value wines have elaborate cellar doors that fully cater to the wine cognisor the Riverina has a number of small cellar doors and several large one. None of these have food generally available to the public.

Visitor numbers to the Riverina wineries are generally low in comparison to other regions that are geographically closer to capital cities. The Riverina is not seen as a destination wine market and the lack of development at wineries to cater for tourism is currently being surveyed through part of the federal government $50 million funding that has been provided to Wine Australia.

The major potential buyers of the regions wine are international and national liquor retail companies. While most wineries operate domestic sales teams for the smaller liquor retailers, restaurant trades and local market many of the regions wineries are heavily geared toward the major retailers of Coles and Woolworths and export markets.

Access to all these markets is readily easy as transport to market from the Riverina is straight forward as it is centrally located in the middle of major capital city markets. The region can access major export ports of Melbourne and Sydney by both rail and truck with relative ease and cost effectiveness.

(d) The extent to which winemakers and other buyers of grapes monitor and match each other's prices and terms.

The process of price matching in the Riverina region is quite common. Price disclosure while often occurring later than desired (and in some instances after the commencement of harvest) means that many of the region's growers seek to utilise this information to discuss price matching with their contracted buyer.

Regional wineries also seek out other winery price lists regularly to check how their prices are being positioned in the market.

Many of the smaller regional wineries' other do not publish a list of prices each year. These wineries use a major winery as a pricing point and when asked by their grower base what the price of wine grapes are they advise that will be paying the same as winery X.

The Wine Grapes Marketing Board often collects and collates the price lists from regional wineries. Some of these are provided directly to it by regional wineries and others are provided from growers. Most growers are reluctant to share this information due to fear that the winery will find out that they have made such a disclosure. One winery in the region has for many years provided to growers the price lists for individual growers, i.e. if the grower only growers three varieties the price list will reflect this. Therefore, if they share the list and copies are circulated the winery can trace the source. It also allows the winery to offer different prices for grapes to different growers.

Payment terms in the Riverina have been adulterated since the Wine Grapes Marketing Board's legislation under the *NSW Marketing of Primary Products Act*. Under the legislation that replaced this *Wine Grapes Marketing Board (Reconstitution) Act 2003*, wineries were able to offer alternative payment terms to growers if they were subject to a *"complying contract"* as defined in the Act *(see Figure 1 below)* which stipulated the price to be paid or the mechanism for which the price would be calculated.

The new legislation allowed wineries to contract out of the Wine Grapes Marketing Board industry standard terms and condition of payment which were set by the Board after having regard to representations made by region wineries. *Section 5* of the *Reconstitution Act* stipulated that the Board could make an order which established the terms and conditions of grapes delivered "otherwise than pursuant to a complying contract".

Figure 1: Definition of Complying Contract *Wine Grapes Marketing Board (Reconstitution) Act 2003 Definitions*

"complying contract" means:

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

For grape growers not subject to a complying contract it meant that they could have the reliability of the Wine Grapes Marketing Board managing the Order and therefore their payments which enabled it to collect its statutory fee each year and charge interest on delayed payments that arose from time to time by wineries, see *Section 5 Subsection 3-4 of the Wine Grapes Marketing Board (Reconstitution) Act 2003*.

The current market within the Riverina operates where wineries can pay what they like and when they like. Growers when not paid on time are reluctant to take any form of litigation to pursue funds as they can be branded a troublemaker and future years quality assessments of their fruit could be held in doubt.

In 2010 the Wine Grapes Marketing Board, prior to the lapse of its regulations that enabled it to act on behalf of growers subject to a non-complying contact it was instrumental in obtaining a NSW Upper House inquiry into the wine grape market and prices[1]. The outcomes of this enquiry supported the Board's affirmation that regulation was required in the wine grape industry in particularly the Riverina where instances of market abuse of power via the withholding of pricing information and payments to growers was common place.

The recommendations of this state wide inquiry focused particularly on the Riverina region. Of the 11 recommendation from the Inquiry 4 named the Wine Grapes Marketing Board (Recommendations 1, 3, 6 & 11). Other recommendations focused on the

[1] https://www.parliament.nsw.gov.au/lcdocs/inquiries/2002/101130%20Final%20report.pdf

ineffectiveness of the Wine Industry Code of Conduct and terms and conditions of payment in the Riverina including the use of colour testing within industry.

(e) The factors influencing why growers choose to supply certain buyers.

Buyers are chosen by many factors, location and proximity to the vineyard, family relationships or friends, varietal mix suiting the winery. Some growers used to spread their risk and deliver wine grapes to a number of buyers and invariably if a certain variety was being paid a higher price by one of these wineries it would likely receive a higher percentage of the crop produced of that variety.

Some growers may seek to avoid wineries that they have had past negative dealings with, alternatively the same is applicable to wineries in dealing with grower suppliers.

From the situation where growers would deliver fruit to many wineries the market has tightened and many growers are sole suppliers to certain wineries. This ensures supply to the winery in that they can plan and budget for a set amount of fruit each season being delivered. Under this arrangement the grower is contracted to deliver all their fruit to the one winery.

Many producers seek information from the Wine Grapes Marketing Board about wineries. They wish to have knowledge of past payment problems and practices. How wineries undertake quality measurements of fruit. For example, a grower that does not trust the process of sampling and measurement of colour in red wine grapes would seek to deliver fruit to a winery that doesn't use colour as a pricing factor.

Other growers that produce varietal wine grapes, i.e. those that are bottled as a labelled variety eg Chardonnay, Shiraz would look to deliver fruit to winery that would place this into a bottle and therefore seek to receive a higher return. Alternatively, growers with neutral varieties such as Semillon, Colombard would seek to secure a buyer that would either use these for blending into a bottled product or have the fruit go to a processor that manufactures dry white wine that sold in a cask. Cask wine offers consumers better value for money but anecdotally returns a lower value return to wineries and growers.

(f) Any cultural, contractual or structural barriers that affect a grower's ability to switch winemakers, including the use of exclusive supply terms and bonus or penalty clauses in contracts.

If a grower is under contract they will not leave the winery as they would be in breach of the contract. Growers that have been courted by other wineries to breach contracts have at times received notifications in writing that legal action will be taken should they break the contract terms or supply agreements.

The Wine Grapes Marketing Board is not aware of any bonus clauses applicable in grower contracts that have been in operation in the region. It is acknowledged that growers invariably are required to sign up an entire property to a winery so that the winery can monitor production more easily. It also assists with product traceability.

If a grower is not signed up to a winery they are free to offer their wine grapes to any winery however this undertaking is limited if the grower annually shops around. Wineries prefer that suitable growers continue to supply than have to seek extra fruit from other producers.

(g) How winemakers plan ahead for supply arrangements with customers, given the long lead time for wine production.

From a wine grape grower perspective there is a lot of risk taken on. Getting growers to plant the grape on the basis of an agreement to purchase for a price that is below the cost of production, i.e. base price, reduces the overall risk to the winery. Historically plantings tend to be based on market aspirations and general more vines are planted than the market is capable of taking at profitable returns.

Wineries will use information from national bodies such as Wine Australia and the Winemakers Federation of Australia that looks at marketing activities and forward estimates of growth potential. Wineries then surmise that they will aim to take a percentage of that growth amount and so on. If all wineries forecasted growth in sales then they will signal planting to occur usually at a rate that is too fast as has occurred in previous years.

Market forecasting is not an ideal way to manage the supply dynamic with the risk mostly with the grape grower. The winery could cannibalise each other's market resulting in no net gain of wine sales.

i. How winemakers manage oversupply and undersupply.

Wineries have the ability to sell the finished wine as bulk into the domestic or export market or package it for sale (in various formats). Oversupply generally impacts on the price offered to the vineyard owner, although wineries returns in such a market will be diminished. Historically there have been numerous incidences of wineries needing to write down the value of their stock holdings. If a market has too much fruit wineries will look to purchase this at a lower price so they reduce the financial risk of taking on more stock that they may require.

In extreme times wineries will offer to take the fruit and process it for the grower. The agreements that have been touted in past years seek to get the grower to carry the entire market risk, growing the fruit and having to wait until the fruit (as wine) is sold before getting a return. The processing and storage costs would be deducted by the winery and residual payment made to the grower.

During time of undersupply the price for wine grapes goes up and wineries try to reduce this occurrence by ensuring that more grapes are in the ground.

The winery is such circumstance uses this arrangement to reduce their per litre overhead costs by maximising the processing efforts of the winery.

If the matter of oversupply is in red wine varieties, wineries are known to add red wine grape skins to white wine and colour it up. This is more making a non-varietal dry red wine. The inverse can also occur with red wine being run through a carbon filter to take out the red wine pigments. Again this is for manufacturing of non-specific varieties. The costs in doing this are consider not prohibitive.

ii. How winemakers respond to fluctuations in demand.

Winemakers change their attitude and treatment of growers depending on which part of the supply and demand cycle the industry is in.

iii. How winemakers manage inventory costs.

This is a question that wineries should respond to.

iv. The timing of wholesale price determination.

This is a question that wineries should respond to.

(h) Winemaker and grower profit margins. This includes information on costs of production for growers and winemakers.

There have been a number of studies done by ABARE[2] [3] [4] and industry bodies such as the Murray Valley Winegrowers[5] and within the wine industry relating to grower costs of production. These are still relevant today.

Wine Australia also has an online tool called the Ready Reckoner[6] that allows industry participants, i.e. growers and wineries to input data about the purchase price per tonne, the destination market for the resultant wine and the other factors involving marketing, shipping and wine additives. The program can even take into account the size and scale of the winery and is based on actual analysis undertaken by Deloitte and was development as part of the Directions to 2025 project funded by Wine Australia and coordinated by the Winemakers Federation of Australia and Wine Australia.

This tool shows the margins available for domestic and most export markets. Many wineries are making a sound profit margin in the industry whereas not all wine grape producers can claim that.

(i) The capacity of winemakers' processing facilities and the factors affecting their operations.

Capacity of storage and capacity of processing equipment are two entirely different matters. Storage tanks can be used for fermentation purposes as well

---

[2] A Survey of wine grape producers in the McLaren Vale and New South Wales Riverina http://www.agriculture.gov.au/abares/publications/display?url=http://143.188.17.20/anrdl/DAFFService/display.php?fid=pe_abare99001314_11b.xml

[3] A Survey of wine grape producers in the South Australian Riverland http://www.agriculture.gov.au/abares/publications/display?url=http://143.188.17.20/anrdl/DAFFService/display.php?fid=pe_abare99001387_11b.xml

[4] A Survey of wine grape producers in the Clare and Victorian Murray Valley regions 2002-03 http://www.agriculture.gov.au/abares/publications/display?url=http://143.188.17.20/anrdl/DAFFService/display.php?fid=pe_abarebrs99001117.xml

[5] Updating Vineyard Cost of Production Datahttp://www.mvwi.com.au/items/388/Murray%20Valley%20Winegrowers%20Inc%20Benchmarking%20the%20Cost%20Of%20Production%20June%202010.pdf

[6] Wine Australia: Wine benchmark calculator http://rr.wineaustralia.com/

storing of finished wine storage, having a dual purpose for some equipment is essential when there is a lot of capital invested.

Intake capacity at harvest can impact the volumes of fruit taken within a processing facility. For example, larger wineries need larger scale processing facilities. If a winery has only one crushing pit then loaded trucks will have to wait until there is room available. Also, if a different variety is being delivered immediately after another variety the pit will need to be emptied and lines flushed.

It is normal for large scale wineries to have a number of delivery pits to accept wine grapes. This way a number of varieties can be brought into the winery at the same time.

Factors that may affect processing include breakdowns and delays which can occur during the harvest period causing subsequent flow on effects in the winery and vineyard. Delays are common and logistically wineries tend to manage this process well to ensure that the wine grapes are brought in steadily, however delays in the intake process can have a cumulative impact on maturing fruit being picked at optimum levels.

Grapes delivered with material that is undesirables “Matter Other than Grapes” (MOG) at a level too high for quality provisions can damage equipment and potentially cause delays. MOG grading can impact on the returns received by growers.

(j) Barriers to entry and expansion for winemaking including any examples of recent entry or expansion of processing capacity.

Costs and land availability would be the most limiting barrier of setting up a new facility to process wine grapes within the Riverina. There are no examples that can be provided for this submission as many of the wineries in the region have been in operation for many years.

Expansion is occurring all the time within the industry as markets develop and Australian exports increase. Wineries expand their processing capabilities and storage facilities. Such developments are generally staged based on affordability and market growth. A winery ideally should match their storage facility with their intake but in the Riverina excess wine can be moved to offsite storage facilities.

Effluent discharge is a limiting factor in terms of site location. Current provisions impacting on winery effluent discharge and management are stringent.

(k) The impact of any consolidation or vertical integration in the industry.

In the Riverina the number of wineries with operating processing facilities has declined. Miranda Wines in Griffith (previously owned by Australian Vintage and Dal Broi Family Wines) is now owned by Casella Family Brands and the site has been closed to processing for many years. Also the McWilliam's Wines facility at Yenda has been closed and is also owned by Casella Family Brands.

During the significant downturn in grape prices across the country many growers turned to paying to have their wine grapes processed by regional wineries. This in part allowed them to try and take advantage of the Wine Equalisation Tax (WET) rebate on wine that was worth up to $500,000 per annum. This allowed a form of integration that saw the grower as the wine seller in the market. While much of the sales were based on opportunistic sales or discounting of wines (returning value only via the WET rebate) a number of growers ventured into owning processing facilities, eg. Dee Vine Wine purchased Beelgara Estate that was previously operational as Rossetto Wines in Bilbul near Griffith.

The most integration noticeable is an increase in winery own production of wine grapes in the Riverina. Wineries traditionally grew approximately 25% of the regions winegrapes, in 2018 this increased to 33%[7]. Much of the growth has been through vineyard acquisitions as growers retire from the industry wineries have purchased their properties.

(i) Factors that influence winemakers' decisions to own vineyards rather than acquire wine grapes from growers; whether there is an optimal mix of purchased versus own grown grapes.

Cost of production is a factor as well as availability of supply of key varieties. During the long period of oversupply many growers could not financially afford to plant wine grapes and a number of regional wineries assisted them by providing

[7] Wine Grapes Marketing Board database

funding for the purchase of plants or infrastructure such as vineyard posts and wire.

Also, for a winery to grow their own wine grapes they can actually try and tailor the grape parameters more acutely if they are wanting to suit a specific market or undertake a research trial.

It is acknowledged that the costs of production on a winery owned vineyards are generally higher than those owned by a grower. Winery staff receive award wages whereas growers generally take a modest drawing for living expenses.

(m) The extent of trading or swapping of wine grapes or wine between winemakers.

There is some evidence of this occurring in the Riverina region in relation to wine grapes. Details of these transactions are confidential as they have been provided to the Board under its legislation. It is not a widespread activity and does not involve large volumes of wine grapes.

The movement of wine would need to be raised with wineries but it understood that this does occur.

(n) Concerns about anti-competitive conduct.

The Wine Grapes Marketing Board supports a functioning market. There is no place for anti-competitive conduct. Grapes should be sold at a price to maximise the returns to the producer. Wineries should be required to compete in the market based on the price that they are prepared to pay for the grapes not when they are prepared to pay.

3. The different types of supply contracts used across the supply chain, for different varieties and in certain regions.

Contacts vary from winery to winery. In the Riverina there are a number of contract types:

Written Contracts: These vary in length and structure, all contain specified terms and conditions of payment. Title and risk are explained. Some have a base level amount nominated as financial consideration (minimum price) or the wine grapes to be purchased however final price disclosure for white wine grape varieties can be as late as 31st of January each season well after harvest has commenced.

Final prices for red wine grapes when the quality measurement used for pricing is colour can be well after the completion of harvest.

These contracts specify the quality measurements that the final price will be measured against. **Note:** It is important to note that in many contracts the use of colour parameters may vary annually regardless of the duration of the contract.

Supply Agreements: These have a set duration (term), explain title and risk, do not generally have a base level of minimum price for the consideration. More than often these agreements do not explain the quality measurements for the wine grapes other than to say "of sound purity and condition". The actual parameters are set each year by the winery along with the price to be paid for deliveries. There are no formal or informal mechanisms to dispute the price offer. Price disclosure occurs prior to the harvest and in some instances only varieties that are being harvested will have a price listed.

Verbal Agreements: Spoken agreement that the grower will deliver for an assumed or agreed price subject to any penalties for any quality measurements that the winery may apply such as sticks in the load, disease levels or fruit damage. These types of agreements are often accompanied with a handshake.

Spot Agreements: Generally, a fixed price and payment terms subject to any quality measurements. These are written agreements between the parties.

4. Concerns about unfair trading practices, including unfair contract terms.

There are no formal ability to negotiate or dispute any of the price offers. In one contract sighted by the Board the grower was able to dispute the price and if the winery and grower did not come to any formal agreement then the grower would receive the price paid for the prior year and the winery had the rights under the contract the extinguish the entire contract prior to the following year.

Growers at times suffer from poor cash flows and when a winery does not make payments on time there is little recourse available to growers other than commence litigation. Interest on delayed payments should become an industry standard to ensure that growers are not worse off when a winery does default.

The use of Colour measurement in red wine grapes is unfair to many growers. The sample size used by wineries and the "wet chemistry" process is not reliable enough to make informed decisions about pricing. In accordance with the *National Measurement Act 1960* and the *National Trade Measurement Regulations 2009* the Australian wine industry in parts is in breach[8]. None of the equipment is standardised nor is it formally verified.

Wineries in general terms acknowledge that their processes are illegal but there is little opportunity for growers to dispute this process for fear of retribution.

(a) Imbalances in bargaining power in contract negotiation and how this is reflected in contract terms.

Unilateral variations to contracts occur annually in the Riverina. Whether it be the price paid for certain colour parameters, the level and severity of disease or damage to the wine grapes of the level of Baume (sugar) in the wine grapes.

Growers are also at times subjected to delays in the payments made to them by wineries. Most agreements allow the winery to delay payments without breach of contract for up to 4 weeks without interest compensation to the grower.

(b) The risks faced by each party in the supply chain and how these are allocated according to supply agreements.

The production risk is entirely the growers until the wine grapes are accepted past the weighbridge and into the crushing pit at the winery.

The wine making process risk is generally all taken by the winery although some contracts will acknowledge that growers can obtain a post fermentation quality bonus, i.e. if the resultant wine is good then the price paid will be increased from the base price noted upon delivery.

In the event that the grower produces greater tonnes than specified in the contract, this excess fruit generally offered to the winery in the first instance (mostly) at a lower price point. Growers may be released with excess fruit to seek alternative buyers if they are not accepting of the price offer of the contracted winery. If grapes produced are less than the specified tonnes wineries do not hold growers

[8] National Measurement Act 1960, Section 18(GA) http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/nma1960222/s18ga.html

to seek these extra tonnes in the market place (as is evident in other commodity markets). The risk of receiving less fruit through natural causes is carried by the winery, although in this instance the grower is also exposed to a high level of risk.

Wineries specify quality measurements and parameters. How these are carried out and assessed has been agreed by industry and the details have been compiled by the industry through the *Winegrape Growers' Council of Australia and the Winemakers Federation of Australia* in the publication titled ***Winegrape Assessment in the Vineyard and at the Winery*[9]*.*** The publication highlights the best practice in wine grape assessment in the Australian industry.

The document is a benchmark that when published was meant to evolve over time, dealing with the winery and grower expectations in the assessments of wine grapes. Its parameters help form the basis of sound contracting practice.

(c) Practices surrounding the entering and renewal of contracts, including the nature of negotiations and timing relative to key points in the season (e.g. watering, picking, supply).

Contract offers and renewals occur through the offseason and preharvest. Wineries contact their growers and hold meetings with them to discuss the previous season and forthcoming market conditions around pruning time (May-July). This process is widely different in the Riverina from winery to winery. Some hold large meetings to inform growers of their market positions, some host elaborate functions as a way to give thanks and build relationships. Others will have what is termed as a one on one meeting, which generally involves the grower sitting in an offer with 2 or more winery staff talking about the market and the industry prospects.

Contracts are offered in person or mailed out to growers with a covering letter requesting that the grower review the contract and call the winery to discuss.

There are no timing relationships that can be drawn from contract negotiations and normal viticultural practices. Unfortunately growers have to prune, water and

[9] Winegrape Assessment in the Vineyard and at the Winery http://www.wineindustrycode.org/Winegrape_Assessment.pdf

spray their wine grapes if they do not they may not be able to produce a crop or find a buyer, regardless of the marketing and or seasonal conditions.

(d) Payment practices, including the timing of payments and factors that impact when winemakers pay growers.

In the Riverina payment practices vary from many instalments to a single payment for grapes purchases. There are no formal or informal systems within the region. In situations where growers are required to wait for their payments longer than others they have become by default the financiers of the wine companies.

The factors that impact wineries paying growers in better terms are hard to determine as each would be different as they manufacture and sell into different markets. Some wineries purchase large volumes of fruit each year and this input when worked out in to its value per bottle may be considered small its cumulative cost to the winery is high.

(e) How growers manage risks around exposure to changes in market conditions.

Many growers produce more that one variety of grapes to reduce their risk, generally a white and red varietal are common place. A grower will look to plant consistent performing varieties such as Chardonnay and Shiraz. It will depend on what they are comfortable with, discussions held with wineries or other producers, soil type etc. Some varieties are less susceptible to weather events or may yield greater. Other varieties may be readily machine pruned with little difficulty once fully trained as opposed to needing hand pruning for yield.

The market for wine grapes has been constantly moving. Growers tend to plant what they have either been asked to plant or make an educated guess what the market will be doing by having discussions with the winemakers. Growers can graft vines across to other varieties (depending on compatibility of material) to follow a market direction, however history has often shown that such expensive actions are not always the most rewarding.

(f) ***The nature of winemakers' trading arrangements with retailers, exporters and other customers and how these influence with the terms of the agreements or arrangements winemakers have in place with growers.***

No comment.

(g) ***The methods used by winemakers to determine or forecast demand and how long winemakers can hold onto inventory in period of decreased demand.***

No comment

(h) ***The effectiveness of any existing collective bargaining arrangements and the level of awareness of and industry support for collective bargaining.***

Current collective bargaining does not force the purchaser to negotiate prices. Growers acknowledge that it is available but have shown no interest (as recorded through a Wine Grapes Marketing Board grower survey).

Unless a winery is required by law to enter into bargaining arrangements growers will not be comfortable in using collective bargaining as a marketing tool. The perishability of the grape crop and the multitude of differences among grower production offerings makes it difficult to see how this would operate effectively.

5. Views on the effectiveness or shortcomings of the Code.

The Code is not mandatory. Without this being overseen by the regulator it will not be adopted in the Riverina region.

Notification of indicator pricing needs to be reviewed and more transparent and be provided earlier to growers to be of any value. If it is not entered into according to the spirit of the notification then it should be completely removed.

The Code should stipulate the industry terms and conditions of payment. If this was national growers would have comfort that dates of payment are an enforceable action within the market. Grapes could therefore move more freely.

There needs to be a regulator that can hear complaints and act to pursue default payments on behalf of growers inclusive of interest applicable. A reasonable payment structure could be adopted (along the lines of the *SA Wine Industry Act*) and it would have economic benefits to regional economies.

6. *Examples from growers and winemakers of the impact of the Code.*

As there are no current signatories to the Code in the Riverina the only examples that can be offered is that of a winery that is a signatory but no longer purchases winegrapes directly from the region.

As a signatory it would inform its Riverina grower base upon the release of indicator pricing that if they have any concerns or problems the grower should speak with the company. The staff with the company actually discouraged growers from formal dispute provisions under the code advising them it was expensive and unnecessary and that it would review the price to be paid and invariably it would.

Perhaps if the growers were able to instigate a code dispute the they may have received a higher price for their wine grapes. Unfortunately, the required wine grape assessors regarding quality and price under the Code are non-existent in the Riverina (those listed have since retired from the industry). In the event of the industry Code becoming more widespread or mandatory consideration will need to be given to the geographical location and availability of suitable persons to assess grape quality parameters and review regional pricing data.

(a) Examples of times when the Code's requirements have assisted or failed to assist growers resolve disputes with winemakers.

None.

(b) How growers' and winemakers' operations are impacted by the Code's requirements.

No comment.

(c) Any factors that prevent the Code from being an effective industry led regulatory instrument.

Lack of adoption in the industry. The industry is not mature enough to self-regulate, it requires formal regulation and oversight. Even in the event of a regulated market growers may find it difficult to raise disputes in the event that retaliatory action is taken.

(d) ***Any factors preventing winemakers from becoming signatories to the Code.***

It has been regularly reported that wineries do not like being told what to do, i.e. the use of a third-party arbitrator to make a call on either the price to be paid or the quality of the wine grapes.

(e) ***Views on whether the Code's indicative pricing and timing of payment requirements assist growers make informed business decisions and manage cash-flow.***

There is a fall-back position relating to terms or payment in the Code but the Code allows for wineries to have different terms just so long as they are written into the agreement.

For example a grower moving from winery to winery has little influence on terms of payment and therefore the ability to manage cash flows. In one season the grower may receive payment in full in a single instalment and the following season this is reduced to 4 equal payments spread across the year.

7. ***The timing, clarity and reliability of pricing information winemakers provide to growers.***

Depending on the season a number of wineries will provide indicative pricing in the Riverina to secure their grower base for the forthcoming season. There are no specific timeframes adhered to in the Riverina relating to price disclosure, it is more predicated on the winery requirement for extra fruit, i.e. growers, it will announce a price to draw uncontracted fruit to it.

Pricing indications tend to be base amounts that the winery is prepared to pay and not the final amount. Final minimum prices (subject to deductions) are firmed closer to harvest and even during the harvest based on actual volumes of fruit being harvested. In a short season prices can move upward during the season. Instances of indicator prices moving down are rare occurrences.

(a) ***How movements in price impact growers' viticulture practices.***

No change to viticultural practices occurs at price disclosure time. As these are generally occurring as vineyards are approaching their chemical withholding periods, nearing maturity there is little that the grower can do to reduce input costs.

In a demand cycle wineries will communicate this early but not always with prices attached. Growers may be able to increase yields in white varieties. Increasing yields in reds may impact on the colour scores achieved. In an over supplied market with low prices growers may either increase their inputs to maximise yields but they run the risk of not attaining the correct sugar levels.

(b) Factors that impact the degree and timing of pricing information or methodologies that winemakers provide to growers.

International bulk wine prices and domestic to stocks to sales ratios are used to inform the market. Wineries must retain a level of stock each season to ensure that they can maintain supply to their buyers.

Stock holding in white wines is a shorter period whereas red wines take longer to mature for release and wineries need to hold back this stock for almost double that of white wine.

(c) How winemakers determine the price that they will pay to wine grape growers.

No comment.

(d) Growers' views on whether pricing information is easy to understand and reliable.

Pricing information is relatively easy to understand. It is the factors that influence the price, i.e. quality measures that reduce the price to be paid.

Wineries in general terms only have deductions in the price to be paid. Previously growers were rewarded from producing wine grapes with higher levels of sugar (baume).

(e) Price information sources outside of your buyer that you can access which provides insight into market price.

The only information available are the Wine Australia price information. The Wine Grapes Marketing Board publishes this annually[10].

[10] Wine Grapes Marketing Board website publishes pricing information http://www.wgmb.net.au/index.php/products/utilisation-price-surveys

The Wine Grapes Marketing Board also compiles the pricing lists from other regions and within the Riverina and makes these available to growers upon request.

(f) ***The extent growers can manage or mitigate against risks of price movements.***

Growers do not have the ability to manage the risk of pricing movement. Over time growers may be able to work to increase yields or reduce their inputs and trade off some extra water but they are in general terms price takers.

8. ***How and when grape quality assessment occurs, and whether growers participate in the process.***

This varies from winery to winery. Generally prior to harvest an assessment will occur in the vineyard to assess the fruit and other viticultural items such as the canopy and condition of the vine. Wine grapes will be checked for signs of damage and or disease throughout the growing season.

Growers generally do not participate in the assessment process unless it is requested and the timing is suitable.

Generally growers are the first to take a sample for testing into the winery or a simple sugar test is done on farm. Once a trigger sugar level is reach (which differs for varieties) the block will be scheduled for harvest. The last test undertake from the vineyard will from the winery representative ideally taking a representative sample from the vineyard and then take it back to their laboratory for testing or the pH and titratable acid. Other tests can be performed to determine if there is any latent infection present in the wine grapes that has not formally presented itself in the bunch.

Prior to harvest the grapes are again sampled, in the case of red wine grapes a sample is taken to determine the level of anthocyanins per berry present. This process is laborious and from the experience of the Board is difficult to maintain accuracy.

The final vineyard sample will look for disease presence, damaged fruit or sunburned skins on the berries. Each factor can have a cumulative effect on the price deduction and could lead to rejection of the entire block of grapes.

Once the wine grapes are harvested and arrive and the winery they are again tested for sugar to ensure that they meet the targets set and align with the sample taken by the winery from the vineyard. If the sugar sample from the transport vehicle is less than the intake minimum a price deduction occurs. Alternatively if the sugar is too high a price deduction can also occur. Other factors that can be assessed is the amount of leaves, sticks and twigs in the load and other foreign matter. All of these reduce the paid to be paid.

9. How the conduct of quality assessment impacts the final price paid to growers. When providing feedback, you may wish to comment on:

(a) What measures are used to assess the quality of grapes and how this varies between regions and varieties?

Most quality measurement are standardised across the wine industry. The industry has the Winegrape Assessment in the Vineyard and at the Winery document as a guide but it does not prescribe the amount of financial penalties that will be applied. Each winery has their own views, limits and penalties.

Since this document was published a number of wineries have commenced using colour as a means of quantifying the “quality” of red wine grapes (varietals only).

Taste is also used for grading purposes by wineries and winemakers will go through key vineyards and sample berries prior to harvest to apply grades.

i. Which of these measures are objective/subjective?

All measures in the industry guide (noted above) are objective. The use of colour is not standardised but wineries believe it is objective. Anecdotally research into the link between colour of red wine grapes and quality has not provide unequivocally that they are linked.

Taste is subjective and growers must place faith in the wine maker that if their fruit has the flavour profile they are seeking the grower will be graded accordingly.

ii. Can they be verified/scrutinised by the grower/representative?

In part all objective measures can by scrutinised. Disputes will likely result in delays to the harvest of these grapes. If a contract allows for dispute provisions getting a third party independent persons to assess the fruit is difficult in such short time frames, especially within the Riverina. The results of any dispute may not even be binding on the winery or grower. As these take time growers may be left waiting with their crop reducing is yield and quality. Time constraints exist.

Best practice would involve all assessments being conducted with the winery representative and grower being present, however this does not occur in the majority of circumstances due to the timing and fast pace of each vintage.

iii. Are these measures reliable quality indicators?

In general terms yes, these are if they are done appropriately. Sampling techniques need to be adhered to and common sense must occur. For example a single row may be subject to a complete wipe out by birds. This row could represent 5% of the entire crop, therefore at 5% bird damage the fruit may be downgraded or rejected. However if the winery decided to allow the grower to pick all the remaining rows and leave this damaged row the fruit could be 100% non-damaged. Common sense often prevails in the industry but there are many stories from growers where it does not.

Without objective measure the industry may turn and focus on subjective measures as a means to assess quality. Wineries desire 100% purity and condition of fruit to craft wines but this is not possible as grapes are subject to environmental conditions that do impact on their appearance but not the actual quality and flavour.

It is important to note that many quality parameters are disregarded by wineries when grapes are in short supply. Transversely when there is an oversupply these parameters are used to reduce the price offered and in extreme cases reject the fruit.

One winery's rejected fruit can become another's wine. There have been many recent examples of wine grapes being rejected for having a percentage of disease. The growers where then released and approached another winery and the fruit was purchased and processed accordingly.

Anecdotally it may cost a winery more to process a disease impacted wine grapes in terms of ensuring that any residual potential taints are removed or filtered out.

iv. ***For any measures considered subjective, how significantly do they influence the price paid?***

This is entirely dependant on the contract. Some will impose a percentage scale of reductions. For example most penalties start at 5% of the purchase price. For all factors such as leaves and matter other than grapes in the load there is a sliding scale that goes to full rejection.

Downgrading or rejection could occur if loads are contaminated, mixed varieties present, diluted with water, fauna in the load (snails, caterpillars etc), smoke taint, fruit fly, heat damaged fruit.

Infections detected in berries above 2% could lead to rejection. Sunburn greater than 10% will also be rejected,

One recent contract sighted by the Wine Grapes Marketing Board gives the wineries the right to downgrade fruit if it has levels of Bird, Insect, Hail, Weather, defoliation or infected foliage.

(b) How winemakers work out harvesting/delivery schedules, including factors that may prevent growers from being able to pick and deliver grapes according to their optimum harvest times.

Processing capacity predicates the volumes of fruit that can be taken each day at a winery. Seasonal conditions may impact on harvest times but as wine grapes tend to mature at a constant rate the impact of a heatwave or cold spell may alter schedules.

There have been many seasons when several varieties of wine grapes are mature and ready for harvest at the same time. These vintage pose logistical challenges for wineries and the growers. The term compressed vintage was coined to described the maturation of wine grapes occurring simultaneously. This will lead to grapes being picked past optimal maturity and reductions in yield for growers and returns per hectare.

(c) ***The visibility that growers have over the assessment and grading of wine grapes.***

Grading is not generally visible to growers, some wineries use varying parameters such as canopy, row direction (North-South, etc) and yield to assess grades. When a winery has received its full allocation of a high grade wine grape the remaining fruit is generally graded lower so that the winery is not paying for product that it doesn't have a market for.

As a grower striving for a higher quality product to maximise returns does not always mean that they will receive the higher price.

(d) ***The extent to which growers get feedback from winemakers about improving quality of wine grapes or grading quotas that may apply.***

Most wineries hold one on one meetings with their grower base (which reportedly can be intimidating). Feedback on what the growers vineyard is capable of achieving should occur at this time. This would ideally allow the grower to focus on maximise returns in the particular grade category the winery sees that fruit going into.

(e) ***Any examples within Australia or overseas of solely objective measures being used to assess wine grapes.***

Note aware of any winery that only uses objective measure. Finished wine cannot be solely objectively measured. The many wine shows that occur in Australia are a testament to this. Flavour assessment can vary from individual tastes. Someone's preference for a taste or style may be at opposite ends from another person's.

Wine tastes are mostly subjective and at times suggestive.

(f) The ability of growers to dispute grading results, including the cost and time involved in dispute resolution.

There is not the ability for growers in the Riverina to dispute grading results.

Some wineries may advise the grower that if the resulting wine is of quality the price may be altered. The winery may purchase the fruit at a lower price point and wait until it is a finished product and reward the grower financially if it is of sound quality.

If growers could dispute the pre harvest grading of wine grapes it would require a massive undertaking of external professionals to access the grapes 7 days per week. If the post harvest assessment was to be disputed someone would need to be positioned at the winery when it receives the fruit to confirm the quality and sample the wine grapes.

In Conclusion

Within the wine industry there exists an imbalance of market power between the growers and the wineries. Growers dealing with a perishable commodity (winegrapes) are in most cases price takers and are required to accept the price offer as nominated by the winery. There is an industry code of conduct but it is currently voluntary and does not have sufficient uptake by wineries across the region. Almost 100% of winegrapes grown in the WGMB's area of operations by independent growers are not subject to the industry's code as our wineries choose not to participate in the code that would assist their own grower base to have a degree of fairness and equity.

This region would appreciate the assistance and consideration of the federal government in mandating the current industry code of conduct. The refusal of regional wineries to sign onto the code provides sufficient evidence that they are not interested in working fairly and transparently with the grower base. Many growers report not knowing the price of their product until after it has been delivered and in extreme cases growers are not even communicated to by their winery from season to season except for when the fruit is ready to be harvested.

As an industry we look toward government to provide solutions when unfair market pressure is being applied. Introducing legislative provisions to assist growers in overcoming the imbalance of market power is critical but this also needs to be able to protect the relationship. As many growers are small market players within the industry there needs to be mechanisms that will shelter them and protect them from reprisals when parts of the code act to protect them. No existing code or contract within the winegrape industry provides an equitable amount of fairness within it.

When discussing grape pricing with wineries a consistent message that the major retailers are impacting on winery returns is evident. The two major retailers Coles and Woolworths and their liquor outlets continue to expand across the country taking market share and reducing competition. There needs to be a system of regulated transactions that limits the margin that the retailers are able to keep on the sale of finished wines. This would ensure that the processor winery can return more value back through the supply chain to the grower.

The government should review the market power of the major retailers and investigate the growing market power of foreign owned supermarkets such as Costco and Aldi. The possible consumer benefit in reduced costs of good needs to be weighed against the impacts to Australian farmers. It is not healthy economic policy to allow the major retailers in this country to own such a significant percentage of the market and perhaps the Government needs to investigate how it may work to dismantle these structures before more market damage occurs. Investigation should occur to confirm that foreign product that is being sold is not actually being sold at below cost of production in the country of origin.

Approved by the

Wine Grapes Marketing Board
182 Yambil Street
GRIFFITH NSW 2680
board@wgmb.net.au
p: 02 6962 3944