

Standing Committee on State Development

## **Wine grape market and prices**

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## Terms of reference

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

- a. Price formation, including factors affecting supply and demand
- b. The role of the Wine Grapes Marketing Board has played in facilitating the use of voluntary codes of conduct and sale contracts
- c. The potential for collective bargaining and/ or codes of conduct to contribute to an efficient market
- d. Whether there are any measures which could improve market signals which would be consistent with competition principles and law
- e. Any other related matter.<sup>1</sup>

These terms of reference were referred to the Committee by Minister Steve Whan MP, Minister for Minister for Primary Resources, Minister for Emergency Services and Minister for Rural Affairs on 5 August 2010.

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<sup>1</sup> *LC Minutes (7/09/2010) 2027, Item 16.*

## Committee membership

The Hon Tony Catanzariti MLC	<b>Australian Labor Party</b>	<i>(Chair)</i>
The Hon Rick Colless MLC	<b>The Nationals</b>	<i>(Deputy Chair)</i>
The Hon Sophie Cotsis MLC <sup>2</sup>	<b>Australian Labor Party</b>	
The Hon Matthew Mason-Cox MLC	<b>Liberal Party</b>	
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Ms Rachel Simpson, Director  
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<sup>2</sup> The Hon Sophie Cotsis MLC replaced the Hon Christine Robertson as a member on the Committee, *LC Minutes* (21/09/2010), 2061, Item 16.

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## Chair's foreword

This Inquiry was referred to the State Development Committee by the Minister for Primary Industries, the Hon. Steve Whan, on 5 August 2010.

Wine and wine tourism are vital to the New South Wales economy. However, it is widely recognised that the wine industry is going through a very difficult period. With the Australian dollar high and increasing competition from other wine-producing countries, demand for Australian wine has stabilised. At the same time, the growth of the industry during the 1990s generated an expansion in vineyard plantings and has led to oversupply in the wine-grape market. As a result, prices have fallen and some growers are now receiving prices that are lower than the cost of producing grapes, which threatens their viability.

The Committee visited Griffith and heard evidence from stakeholders in the wine industry in the Riverina. The Riverina produces over half of the state's grapes, and both winemakers and grape growers in the region have been hard hit by falling prices. However, it's not all about prices. The Committee also heard disturbing evidence about the conduct of some of the region's wineries in their business dealings with growers.

The key recommendation arising from the Inquiry is that the NSW Minister for Primary Industries pursues the introduction of mandatory Code of Conduct. The wine industry already has a voluntary Code of Conduct, but uptake has been disappointing. The Committee believes that a mandatory Code is the way forward in the wine grape industry, as it has been in the horticulture market.

A mandatory Code may not increase grape prices, but it will help to provide some consistency and stability to the industry. Wineries and growers must work together to build a better future for the industry, and the Code of Conduct provides a framework for them to do that. In order to be effective, the Code needs to be introduced nationally. If this is not possible, the Committee has recommended that the NSW government establish an independent dispute resolution body for the wine industry.

The Committee has also made a recommendation to require wineries to publish indicative prices for grapes by 30 June each year. Such a requirement was in place some years ago, and it did not prove effective. However, the Committee feels that improved price signals are essential to enable growers to make informed business decisions and that, in the right form, a requirement to publish indicative prices could assist. The Committee has also made other recommendations designed to help growers.

I would like to take this opportunity to thank all the participants in the Inquiry, including those who made written submissions and gave their time to talk to the Committee, particularly those who gave evidence *in camera*. I would also like to thank my fellow Committee members for their contribution to the Inquiry, as well as Rachel Simpson, Abigail Groves, Stewart Smith and Christine Nguyen from the Secretariat for their work in supporting the Committee.



Hon Tony Catanzariti MLC  
Committee Chair

## Executive summary

The NSW wine industry is of major significance to NSW regional economies, particularly in the Riverina and Murray-Darling, but wine and wine tourism are also important in a number of other regions, such as the Hunter Valley, Mudgee, Cowra and Orange. NSW has over 400 wineries, and according to ABS figures, 1,835 people were employed in grape-growing in 2006.

Since 2007 growth in wine exports has begun to slow down and decline. The growth in vineyard plantings since the 1990s, combined with stagnant demand, has led to oversupply in the wine grape market, with resulting downward pressure on grape prices. It is in this context that the Committee was asked to inquire into, and report on, the wine grape market and prices in NSW.

The Committee received submissions from a number of key stakeholders in the wine industry, such as Industry and Investment NSW, the Wine Grapes Marketing Board, Wine Grape Growers Australia, the NSW Wine Industry Association and the Riverina Winemakers Association. A full list of submissions is provided in Appendix 1. The Committee also received submissions from numerous individual grape growers. Most submissions came from the Riverina, which accounts for over half of the state's wine production, and the Committee travelled to Griffith to hear evidence from industry stakeholders.

### Factors affecting supply and demand

The Committee found that the primary cause of declining grape prices was oversupply. This has been widely acknowledged in the industry for some time, and the major industry stakeholders have co-operated to produce the Wine Restructuring Action Agenda, which acknowledges the oversupply problem and outlines strategies to ameliorate the problem and assist growers leaving the industry.

However, the Committee also heard significant evidence that declines in prices have not been uniform: some grape varieties have seen sharp declines in prices while others have not; similarly, demand for grapes from coastal temperate regions appears to be more resilient than demand for grapes from warm inland areas. Regions most affected by the oversupply and declining prices are the warm inland regions of the Riverina and the Murray Valley. The Committee recommended that Industry and Investment NSW fund a consultant to provide business advice to grape growers in the Riverina district.

### Impacts on growers

The Committee heard disturbing evidence about the conduct of some wineries in their business dealings with growers, and the impact of low prices on the viability of growers' businesses. Wine grape growers are referred to as price 'takers' in the market, as prices are set by the wineries purchasing grapes rather than growers who produce them. There are significant imbalances of market power between wineries and growers, and these are exacerbated in the current oversupplied market. Indeed, some Inquiry participants argued that the imbalance of power is so great that the wine grape market is in failure.

Without doubt, wineries are also under pressure in the current market environment, and the Committee heard evidence about the competitive pressures facing major wineries. Most wineries retain a professional approach to their business dealings with growers, with a small proportion that appear to be taking advantage of the oversupply to place further pressure on growers. The Committee heard evidence of wineries making unilateral variations to contracts, varying terms of payments, imposing caps on deliveries but paying very reduced prices for grapes in excess of caps, and penalising growers

for inadequacies in the colour of red wine grapes. The Committee felt that some forms of colour-testing were subjective, and recommended that the NSW government consult with stakeholders to determine the most effective scientific methodologies for analysing red wine grape colour.

Most worryingly, the Committee heard evidence from growers who were afraid to speak publicly about issues in the wine industry, for fear of losing their contracts. The Committee believes that open dialogue between all stakeholders is essential to a healthy industry.

### **Price information**

Grape growers and winemakers appear to have different needs in relation to information about prices paid by individual wineries. Growers are anxious to know what price they will be paid for their grapes as early in the season as possible, while winemakers are reluctant to commit to a specific price until grapes are purchased.

A consistent argument presented by wine grape growers during the Inquiry was that grape prices are announced too late in the season, and that many wineries tend to announce the price they will pay for grapes at the very last minute. Such late notification of price information was a major concern for growers, who were unable to make business decisions without information about what they were likely to be paid.

Wineries indicated that they are in a similar situation to grape growers, in that they are forecasting wine sales and the strength of the wine grape crop, which must be considered in the subsequent determination of wine grape prices. Hence it is difficult, from the winemakers' perspective, to provide a wine grape price until the last minute.

Some Inquiry participants felt that wineries should be required to provide indicative prices. Indicative prices are not intended to be legally binding but to provide growers with an indication of likely prices, and from the growers' perspective this should be published by 30 June each year. The Committee agreed and recommended this approach.

### **Contracts and payments**

Evidence presented to the Committee indicated that some 60 to 70 per cent of the Riverina wine growing industry has written contract arrangements in place between the grower and a winery. Some of these are a supply contract, with no guaranteed price. Some growers do not have a contract with a winery *per se*, but rather a delivery agreement. A grower's guide is incorporated into this agreement, which has the potential to change delivery details every year.

The Committee heard that growers are generally not paid in full in one payment for their grapes once delivered. Instead, the terms of payment may provide for the wineries to pay by instalment over a period of months. If a grower has a contract with a winery, the terms of payment are detailed within the contract. If a grower does not have a contract, the terms of payment are determined by the Wine Grapes Marketing Board. In this case, the Board issues a statutory Terms and Conditions of Payment Order, which usually determines payment in three equal instalments payable in May, June and October.

The varying terms of payment offered by wineries to wine grape growers can place growers at a significant disadvantage. In addition, wineries in the Riverina which enforce extended terms of payment compared to their inter-state and intra-state counterparts may enjoy a competitive advantage at growers'

expense. The Committee believes that the terms of payment offered by all wineries should be the same, regardless of whether a grower has a contract or not, and made a recommendation to this effect.

### **Code of Conduct**

Discussions about developing a national wine industry code of conduct began in 2003. In 2005 a Senate Committee recommended the introduction of a mandatory national Wine Industry Code of Conduct. The Federal government of the day did not agree with this approach, and instead supported the development of a voluntary Code. Subsequently, a voluntary commenced on 1 January 2009. The current voluntary Code is comprised of two parts: it establishes a common wine grape supply contract framework; and provides a dispute resolution system to manage disagreements which exist over price or quality assessments.

The Committee received strong evidence from wine grape growers about the need for a code of conduct. However, the Committee heard that few wineries have signed up to the voluntary Code of Conduct. The Committee recommended that the Code become mandatory.

### **Collective Bargaining**

Collective bargaining would appear to offer a possible solution to growers, as it is designed to increase their market power. The Australian Competition and Consumer Commission has previously authorised collective bargaining among wine grape growers in north-east Victoria. The Committee heard that collective bargaining had not been utilised in the Riverina, and Inquiry participants expressed some doubts about the practicalities of selling large quantities of grapes of different varieties from different growers. However, Murray Valley Winegrowers Inc has established a company that markets grapes on behalf of growers in that region. The Committee recommended that the Wine Grapes Marketing Board work with growers to develop a similar model for marketing of grapes in the Riverina (Recommendation 11).

# Summary of recommendations

## **Recommendation 1**

15

That Industry and Investment NSW and the Wine Grapes Marketing Board fund a consultant to provide targeted business advice for grape growers in the Riverina district to assist in responding to industry re-structuring.

## **Recommendation 2**

37

That the NSW Government consult with stakeholders, including other governments as appropriate, to determine the cost-effectiveness of scientific methodologies for analysing red wine grape colour.

## **Recommendation 3**

44

That the NSW Government seek an amendment to the *Wine Grapes Marketing Board (Reconstitution) Act 2003* to require wineries to publish by 30 June each year an indicative price list for wine grapes for the forthcoming season.

## **Recommendation 4**

44

That the NSW Government consult with the wine grape industry to determine the most effective safeguards to ensure that the indicative price list system provides an accurate source of information to wine grape growers.

## **Recommendation 5**

54

That the NSW Government investigate the feasibility of requiring that all wineries offer the same terms of payment for wine grapes to growers.

## **Recommendation 6**

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That in the absence of a mandated Wine Industry Code of Conduct, which includes a terms of payment schedule, the Wine Grapes Marketing Board's terms of payment function continue.

## **Recommendation 7**

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That the NSW government investigate the most appropriate methods to ensure that a winery has paid in full for the previous season's vintage before it can accept any wine grapes from the next growing season.

## **Recommendation 8**

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That the NSW Minister for Primary Industries pursue the introduction of a mandatory Code of Conduct through the Primary Industries Ministerial Council, including reviewing the effectiveness of penalties for breaches of the Code.

## **Recommendation 9**

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That if the Wine Industry Code of Conduct is mandated, the NSW Minister for Primary Industries ask the Ministerial Council to review its dispute resolution process to determine its effectiveness.

**Recommendation 10**

**65**

That if the Wine Industry Code of Conduct remains voluntary, the NSW Government investigate the utility of forming an independent dispute resolution body to monitor and investigate complaints and disputes concerning price determination and contractual disputes in the wine grape sector.

**Recommendation 11**

**70**

That the Wine Grapes Marketing Board work with growers in the Riverina to develop a model for collective marketing of grapes.

# Chapter 1 Introduction

This Chapter provides an overview of the Inquiry process and the structure of the report.

## Terms of Reference

- 1.1** The Inquiry's Terms of Reference were referred to the Committee by the Hon Steve Whan MP, Minister for Primary Industries, on 5 August 2010. The Terms of Reference require the Committee to inquire into and report on factors affecting the wine grape market and prices. In particular, the Committee was asked to inquire into price formation and factors affecting supply and demand, the role of the Wine Grapes Marketing Board, as well as factors that may contribute to an efficient market such as collective bargaining, codes of conduct and measures to improve market signals. The Terms of Reference are reproduced in full on page vi.

## Submissions

- 1.2** A media release announcing the Inquiry was distributed on 23 September 2010 and the Committee placed a call for submissions in the Sydney Morning Herald and newspapers in wine producing regions around NSW. The Committee also wrote to key stakeholders inviting them to participate in the Inquiry.
- 1.3** The Committee received 53 submissions to the Inquiry; these are listed in Appendix 1. The published submissions to the Inquiry are available on the Committee's website: [www.parliament.nsw.gov.au/statedevelopment](http://www.parliament.nsw.gov.au/statedevelopment).

## Public hearings

- 1.4** The Committee held two public hearings: one at Parliament House in Sydney and the other at the Ex-Servicemen's Club in Griffith, as it received a large number of submissions from stakeholders based in the Riverina district. The Committee heard evidence from the Department of Industry and Investment, the Wine Grape Growers Association, the Murray Valley Winegrowers Association, the Riverina Winemakers Association, the Wine Grapes Marketing Board, the Griffith Chamber of Commerce and Industry, and a researcher from the University of Southern Queensland.
- 1.5** The Committee received requests from individual grape growers that they be allowed to provide evidence to the Committee *in camera*. The Committee granted these requests and heard evidence from a number of individual grape growers in an *in camera* session following its public hearing in Griffith on 14 October 2010. The Committee also heard some evidence *in camera* from the Wine Grapes Marketing Board.
- 1.6** Because the evidence provided by grape growers was crucial in addressing the Terms of Reference, the Committee decided to publish some of this material. However, the Committee decided to suppress their names and other information that may identify individuals who gave evidence *in camera*. The Committee decided not to publish evidence provided *in camera* by the Wine Grapes Marketing Board.

## Report structure

- 1.7 Chapter 2 provides background information about the wine industry and the regulatory framework surrounding the wine grape market. It explains the respective roles of various government agencies, including the Wine Grapes Marketing Board, as well as some industry organisations.
- 1.8 Chapter 3 canvasses the current situation in relation to the supply and demand for wine grapes, and the market issues identified by Inquiry participants.
- 1.9 Chapter 4 outlines the impact of the current market environment on growers. Prices were growers' primary concern, but there were also other issues in relation to practices employed by some wineries in the oversupplied market, such as colour-testing and imposing caps on deliveries.
- 1.10 Chapter 5 discusses notification of wine grape prices, and the availability of price information. Late notification of prices was a key complaint of wine grape growers who participated in the Inquiry.
- 1.11 Chapter 6 examines the issue of wine grape supply contracts between wine grape growers and wineries. A subset of this is the terms of payment that wineries offer grape growers.
- 1.12 Chapter 7 discusses the Australian Wine Industry Code of Conduct. The Code was introduced in 2009, and aims to set minimum standards for agreements between growers and purchasers of wine grapes. However, it has not been widely adopted by winemakers to date and some participants in the Inquiry felt that it should be made mandatory.
- 1.13 Chapter 8 discusses the option of collective bargaining, which has been proposed as a means to improve the market position of wine grape growers.

## Chapter 2     The wine industry in NSW

This chapter provides background information about the wine industry in NSW, and the role of various government agencies and industry organisations that participated in the Inquiry.

### The wine industry

- 2.1**    The Australian wine industry has grown rapidly over the last two decades. Grant, Gow and Dollery, for example, argue that 'it is difficult to over-state the expansion of Australian wine industry'.<sup>3</sup> Production of wine grew from 346 million litres in 1990-91 to 1,442 million litres in 2004-05.<sup>4</sup> It declined to 955,009 million litres in 2006-07, a drought year, and in 2008-09 again reached 1,171 million litres.<sup>5</sup>
- 2.2**    With almost two thirds of the wine produced in Australia is exported, the growth of the wine industry has been driven largely by growth in exports.<sup>6</sup> The value of wine exports in 1990-91 represented just 6.5 per cent of what they reached by 2004-05.<sup>7</sup> Wine is now a major export industry, with Australia ranking as the world's fourth largest exporter of wine after Italy, France and Spain.
- 2.3**    There are approximately 2,300 wine companies operating in Australia;<sup>8</sup> 452 of these are in New South Wales and the ACT.<sup>9</sup> The industry is diverse, with producers ranging from small family winemakers that grow their own grapes to very large corporations which both grow and process large quantities of grapes. The largest 14 winemakers in Australia account for 70% of the total wine crush.<sup>10</sup> Casella Wines, for example, exports more wine to the US than France.<sup>11</sup>
- 2.4**    Similarly, the annual grape harvest has grown rapidly in the last two decades. In 1990-91 the total area of vineyards in Australia was 61,000 hectares; by 2010 it had grown to 171,000.<sup>12</sup> Australia is now ranked twelfth in the world for the area of vines planted.<sup>13</sup>

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<sup>3</sup> Submission 40, University of Southern Queensland and University of New England, p 9.

<sup>4</sup> Submission 40, p 9.

<sup>5</sup> Australian Wine and Brandy Corporation 'winefacts', Submission 14, Wine Grapes Marketing Board, Appendix 4, p 3.

<sup>6</sup> NSW Department of State and Regional Development, 'New South Wales Wine Industry Profile', <http://www.business.nsw.gov.au/industry/foodandbeverage/wine.htm>.

<sup>7</sup> Submission 40, University of Southern Queensland and University of New England, p 9.

<sup>8</sup> Submission 14, Appendix 4, p 3.

<sup>9</sup> Winemakers Federation of Australia, 'WFA Pre-budget submission 2010-2011', p 26.

<sup>10</sup> Submission 14, Wine Grapes Marketing Board, Appendix 4, p 3.

<sup>11</sup> NSW Department of State and Regional Development, 'New South Wales Wine Industry Profile', <http://www.business.nsw.gov.au/industry/foodandbeverage/wine.htm>.

<sup>12</sup> Submission 40, p 9.

<sup>13</sup> Submission 14, Appendix 4, p 3.

## New South Wales

**2.5** After South Australia, New South Wales is the second largest wine producing state, producing 26% of Australia's wine grapes and a third of its wine.<sup>14</sup> The Department of Primary Industries identifies fifteen distinct winegrowing regions in NSW:

- Riverina
- Murray-Darling
- Perricoota
- Cowra
- Orange
- Mudgee
- Hunter Valley
- Hastings River
- New England
- Shoalhaven
- Southern Highlands
- Canberra District
- Gundagai
- Hilltops
- Tumbarumba
- Western Plains.<sup>15</sup>

**2.6** The Riverina (around Griffith and Leeton) accounts for more than half of the state's wine production. The Riverina produces 54.1% of the state's grapes, followed by the Murray-Darling region which produces 29.7%.<sup>16</sup> However, there are several other important wine-growing regions, such as the Hunter Valley, Mudgee, Cowra and Orange, as well as emerging regions such as the Northern Rivers, New England and the Southern Highlands.

## Regulatory framework

**2.7** There is little legislation at either Commonwealth or state level that specifically applies to the wine grape industry. The wine grape market, like most trades, is subject to the *Trade Practices Act 1974* (Cth). The *Trade Practices Act 1974* aims to promote competition and fair trading and protect consumers. The Act is enforced by the Australian Competition and Consumer Commission (ACCC).

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<sup>14</sup> NSW Department of State and Regional Development, 'New South Wales Wine Industry Profile', <http://www.business.nsw.gov.au/industry/foodandbeverage/wine.htm>.

<sup>15</sup> <http://www.business.nsw.gov.au/industry/foodandbeverage/wine.htm> Accessed 28 October 2010.

<sup>16</sup> Submission 29, Industry and Investment NSW, p 4.

- 2.8** The *Fair Trading Act 1987* (NSW) also regulates trade, though it focuses more on providing adequate protections for consumers than regulating competition between traders. The *Fair Trading Act 1987* is administered by NSW Fair Trading, which aims to safeguard consumer rights and advise business and traders on fair and ethical practice.
- 2.9** The Department of Primary Industries, now part of Industry and Investment NSW, works with wine industry organisations to promote the NSW wine industry and provides policy advice in relation to the industry. The Department also administers the *Agricultural Industry Services Act 1998*, under which the Wine Grapes Marketing Board is constituted.

### The Horticulture Code of Conduct

- 2.10** The Horticulture Code is a mandatory industry Code of Conduct prescribed under the *Trade Practices Act (1974)*. It is enforced by the ACCC and came into effect in 2007. The purpose of the Code is to improve the clarity and transparency of transactions between growers and wholesalers of fresh fruit and vegetables. The Code sets out rights and responsibilities of both growers and agents or merchants, minimum standards for purchase agreements. It also contains a procedure for resolving disputes between parties to agreements. For the purpose of the Code, 'horticulture produce' is defined as any unprocessed fruit, vegetable, nuts, herbs and other edible plants. However, most wine grape purchases are not covered by the Code, as these purchases are made by wineries and the Code does not apply to processors.<sup>17</sup>

### The Australian Wine Industry Code of Conduct

- 2.11** The 2005 Senate Rural and Regional Affairs and Transport References Committee Inquiry into the operation of the wine-making industry recommended the introduction of a compulsory code of conduct for the wine industry.<sup>18</sup> This recommendation was not supported by the then federal government, but a voluntary Australian Wine Industry Code of Conduct was developed by the Commonwealth Department of Agriculture, Fisheries and Forestry and introduced in December 2008.
- 2.12** The Code is administered by a Code Administration Committee, which is made up of representatives from Wine Grape Growers Australia and the Australian Winemakers Federation. Its operations are also funded by industry organisations. The Code of Conduct provides minimum standards for wine grape supply contracts and a dispute resolution system for parties to contracts. The Code of Conduct is discussed in more detail in Chapter Six.

### The Wine Grapes Marketing Board

- 2.13** The Wine Grapes Marketing Board (the Board) was established in 1933, to protect grape growers in the Riverina area; it operates in the City of Griffith and the local government areas of Leeton, Carrathool and Murrumbidgee.

<sup>17</sup> Mr Brian Cassidy, Chief Executive Officer, ACCC, correspondence to Chair, 11 November 2010, p 2.

<sup>18</sup> Rural and Regional Affairs and Transport References Committee, *The operation of the wine-making industry*, October 2005, p xi.

- 2.14 The current Board is a New South Wales statutory authority legislated under the *Wine Grapes Marketing Board (Reconstitution) Act 2003*. The Board operates under the *Agricultural Industry Services Act 1998*. The Act and its regulations confer on the Board a specific range of services that it provides to all independent wine grape producers in the City of Griffith and the Local Government Areas of Leeton, Carrathool and Murrumbidgee.
- 2.15 Until July 2000 the Board had the power to determine the minimum market price to be paid for varieties of wine grapes. This power, through vesting, was provided by the then *New South Wales Marketing of Primary Products Act 1983*. After 2000 the Board's ability to determine prices was removed, following an extensive review in accordance with competition policy guidelines. The Board has retained the power to set and enforce terms and conditions of payments for wine grapes that are not subject to a complying contract as prescribed in the current Act.<sup>19</sup>
- 2.16 The Board is primarily funded by independent growers by placing a levy on all production at a rate of \$3.90 per tonne. This amount is approved by growers each year in accordance with the provisions of the Act. The latest audited accounts show that in 2008, the Board had a total income of \$832,706, of which \$610,099 was from fees and charges on growers.<sup>20</sup>
- 2.17 To support the functions of the Board it employs four permanent staff:
- Chief Executive Officer
  - Industry Development Officer
  - Technical Officer
  - Office Manager.<sup>21</sup>

### Current role of the Board

- 2.18 The role of the Board is limited by its enabling legislation. The regulations of the *Agricultural Industry Services Act 1998* limits the functions of the Board as follows:

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

- (a) the development of a code of conduct for contract negotiations between wine grape growers and wineries,
- (b) the development of draft contract provisions with respect to the sale of MIA [Murrumbidgee Irrigation Area] wine grapes to wineries, including provisions with respect to:
  - (i) the prices to be paid by wineries, and
  - (ii) the terms and conditions of payment to be observed by wineries,

in relation to MIA wine grapes delivered to them by wine grape growers,

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<sup>19</sup> Submission No 14, p 1.

<sup>20</sup> Wine Grapes Marketing Board, *Annual Report 2008*, p 19.

<sup>21</sup> Wine Grapes Marketing Board, *Annual Report 2008*, p 19.

- (c) the promotion of private contracts for the sale of MIA wine grapes to wineries by wine grape growers,
- (d) the collection and dissemination of market and industry information, including the production and publication of indicator prices for MIA wine grapes grown in the Board's area of operations,
- (e) the conduct of research and development into plant health in relation to wine grapes,
- (f) the provision of education and training in relation to wine grape production and marketing,
- (g) the promotion (in association with organisations representing wineries) of wine made from MIA wine grapes,
- (h) the promotion of regional industry, including regional wine-making, within the Board's area of operations,
- (i) the representation of the wine grape industry in relation to the matters referred to in paragraphs (a)–(h).<sup>22</sup>

**2.19** The Board presents a Strategic Plan for approval from wine grape growers. The industry services that the Board proposes for 2011 are as follows:

- development of a Code of Conduct for contract negotiations and draft contract provisions
- information collection, dissemination and transfer
- price information and communication to and from wineries
- research, development and extension in vine health and environment matters
- regional promotion of Riverina wines
- regional representation of wine grape growers and industry
- operational management of the Board.<sup>23</sup>

**2.20** The Board itself acknowledges its limited role that it can play in the wine grape market. For instance, in regard to its role in facilitating the use of the Wine Industry Code of Conduct, it stated: 'The role of the Board is extremely limited in a regional sense, the Board can and has educated the growers ... but the introduction of the Code has been limited.'<sup>24</sup>

**2.21** In the opinion of the Riverina Winemakers Association, the Board has not been proactive in the promotion of the things such as the Code of Conduct:

It is the RWA's experience that instead of being proactive, the WGMB has tended to be retaliatory when wineries are perceived to be operating outside of the Boards

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<sup>22</sup> Agricultural Services Industry Act Regulation 2009, Part 2 – Wine Grapes Marketing Board.

<sup>23</sup> Riverina Wine Grapes Marketing Board, *Strategic Operations Plan, 2011-2015*, p 2.

<sup>24</sup> Submission 14, p 7.

powers. In other grape growing regions where grower bodies don't have statutory powers they seem to be much more proactive in promoting such codes of conduct.<sup>25</sup>

### The Australian Wine and Brandy Corporation

- 2.22 The Australian Wine and Brandy Corporation is a federal government statutory authority that regulates wine exports and provides strategic support to the industry; it is also funded through levies on the wine industry. Similarly, the Grape and Wine Research and Development Corporation is a federal government authority that funds and manages research into winemaking and viticulture issues.

### Representative organisations

- 2.23 At a national level, the Winemakers Federation of Australia represents wine makers, while Wine Grape Growers Australia represents growers. The NSW Wine Industry Association represents winemakers at a state level, and there are also regional associations of winemakers in most winemaking regions. Similarly, there are associations of grape growers in most winemaking regions, though there is no NSW peak organisation that represents growers.

### The 2005 Senate Inquiry into the operation of the wine-making industry

- 2.24 The Senate Rural and Regional Affairs and Transport References Committee conducted an Inquiry into the operation of the wine-making industry in 2005. The Committee's focus was on the viability of wine grape growers and complaints from growers about their business relations with winemakers.<sup>26</sup> The Committee made four recommendations:

- That the Department of Agriculture, Fisheries and Forestry consult with state authorities and peak bodies with a view to establishing a national register of vines;
- That the Government give priority to amending the *Trade Practices Act 1974* to add 'unilateral variation' clauses in contracts to the list of matters that a could may have regard to in deciding whether conduct is unconscionable;
- That the Government, in consultation with representative organisations for winegrape growers and winemakers, should make a mandatory code of conduct under the *Trade Practices Act 1974* to regulate sale of winegrapes; and,
- That any national wine industry body should be separate from a winemakers' representative body.<sup>27</sup>

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<sup>25</sup> Submission 41, p 3.

<sup>26</sup> Senate Rural and Regional Affairs and Transport References Committee, '*The operation of the wine-making industry*', October 2005, p ix.

<sup>27</sup> '*The operation of the wine-making industry*', October 2005, pp x-xii.

## Chapter 3 Factors affecting wine grape prices

It is widely acknowledged that the Australian wine industry is going through a difficult period, with growth in wine sales declining and grapes in oversupply. These conditions formed the background to this Inquiry. This Chapter discusses the formation of grape prices and factors affecting supply and demand.

### Supply and demand

- 3.1** Prices for wine grapes are not regulated by government but are driven by the laws of supply and demand. Industry and Investment NSW observed that prices are driven primarily by demand but are also influenced by differences in quality:

Like all markets exposed to competition between multiple buyers and sellers, supply and demand for wine grapes greatly influences the average clearing price and price trends through time, although price spreads may be influenced by other factors, such as quality differentials.<sup>28</sup>

- 3.2** While the wine industry grew rapidly through the 1990s – driven primarily by growth in exports - it has stabilised over the last ten years. The Wine Grapes Marketing Board (the Board) explained that growth in the production of wine had slowed since 2000, while demand has fluctuated:

The Australian Wine and Brandy Corporation (AWBC) statistics ...show that the industry has relatively remained stable in terms of wine production since 2000-2001. The last formally recorded season 2008-2009 producing only 10% more wine than the 2000-2001 production year. While these figures show minor change to production the markets for Australian wine have fluctuated immensely leading to uncomfortable levels of surplus stocks across many varieties and wine quality levels.<sup>29</sup>

- 3.3** Industry and Investment NSW observed that demand for Australian wine exports (and therefore wine grapes) has stabilised since 2007, due to the rising value of the Australian dollar and increased competition from other wine-exporting countries:

[B]oth domestic and export sales volumes peaked in 2007 and have since stabilised. While export volumes have steadied, the value of export sales has decreased with the rising value of the \$AUD and with increasing competition in the main UK and US markets and from wines of other New World producers.<sup>30</sup>

- 3.4** The Winemakers' Federation of Australia noted that exports of wine have actually declined in recent years while, at the same time, imports have increased:

Australia's wine exports have fallen by 8 million cases and 21% in value since their peak in October 2007. The decline has been greatest for higher value exports, and where there has been growth at lower price points it frequently has been unprofitable

<sup>28</sup> Submission 29, Industry and Investment NSW, p 3.

<sup>29</sup> Submission 14, Wine Grapes Marketing Board, p 5.

<sup>30</sup> Submission 29, p 4.

and thus unsustainable. Over the same period domestic sales of Australian wine have fallen, while sales of imported wine have increased.<sup>31</sup>

- 3.5** Inquiry participants cited several factors which may have contributed to stagnant or declining demand for Australian wine. These factors include the rising value of the Australian dollar, increased competition from other wine-exporting countries, changes in consumption trends and increased wine imports, particularly from New Zealand.<sup>32</sup> Mr Stuart McGrath-Kerr, Secretary of the Riverina Winemakers Association, explained that increased competition and unfavourable exchange rates are leading to reduced demand for Australian wine overseas:

There are a number of factors with the industry now being two-thirds overseas sales. The returns to exporters are very heavily dependent on world prices, particularly with the large volume of wine sold at low end values. Something like 80 per cent of all wine is sold at less than \$45 a case freight on board [FOB], which is less than \$4 a bottle, so you can see there is not much in it for anyone once you take packaging, freight and all the rest of it out of the equation. Of course, there is competition from other New World producers, particularly Chile and South Africa, which we understand have much lower costs of production than Australia as well. That is one factor. The second factor is exchange rates. As you are all aware, we are heading towards parity with the US dollar.<sup>33</sup>

- 3.6** Increased pressure from retailers within Australia was also cited as a factor contributing to downward pressure on both wine and grape prices, as major supermarkets have increased their share of the market.<sup>34</sup> For example, Mr Brian Simpson, Chief Executive Officer of the Wine Grapes Marketing Board, expressed the view that Coles and Woolworths were driving down prices:

The behaviour of major retailers in Australia is a major factor in that the way they treat the wine processors in their marketing and negotiations in getting shelf space impact on their bottom line and that is pushed back through to the grower...the market dominance we have in this country of the major retailers—principally Coles and Woolworths, through their various outlets—has forced rock bottom prices into the industry.<sup>35</sup>

## Oversupply

- 3.7** Stagnant demand for wine, combined with the rapid growth of vineyard plantings, has given rise to concerns about oversupply of wine grapes. These concerns have existed for several years. For example, the Board predicted in 1998 that there would be oversupply in the Riverina district.<sup>36</sup> In 2005 the Senate Rural and Regional Affairs and Transport Reference Committee conducted an inquiry into the operation of the wine-making industry and

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<sup>31</sup> Winemakers Federation of Australia, 'Wine industry must confront the reality of oversupply', p 1.

<sup>32</sup> Submission 41, Riverina Winemakers Association, p 2, Submission 40, University of Southern Queensland and University of New England, p 4.

<sup>33</sup> Mr Stuart McGrath-Kerr, Secretary, Riverina Winemakers Association, Evidence, 14 October 2010, p 21.

<sup>34</sup> Submission 13, Mr Terrence Murphy, p 2, Mr Les Worland, President, Riverina Winemakers Association, Evidence, 14 October 2010, p 27, Mr Paul Pierotti, Member, Griffith Chamber of Commerce and Industry, Evidence, 14 October 2010, p 38.

<sup>35</sup> Mr Brian Simpson, Chief Executive Officer, Wine Grapes Marketing Board, Evidence, 14 October 2010, p 4.

<sup>36</sup> Submission 46, Mr Phillip Alvaro, p 3.

acknowledged that there was oversupply. The Board observed that the growth in grape production was not matched by sales:

As a follow on to the early marketing success and the large area of new plantings across Australia that was evident there was the sudden realisation that the industry would be literally awash with wine.<sup>37</sup>

- 3.8** The problem of oversupply was widely acknowledged by Inquiry participants, with the Wine Grapes Marketing Board, for example, stating that, 'it is well documented that the Australian Wine Industry is currently in oversupply'.<sup>38</sup> The Riverina Winemakers Association also acknowledged that 'the Australian Wine Industry has been experiencing a prolonged period of oversupply'.<sup>39</sup> Mr McGrath-Kerr explained that the current oversupply has its origins in the boom years of the 1990s:

It goes back probably to the 1990s, when exports just started to take off in the late 1980s and early 1990s, and we went from a country that produced only for the domestic market, produced 400,000 tonnes of grapes, and the Chardonnay boom started...In the wine and citrus industry high prices were being paid for grapes in the 1990s, virtually all the way through—massive returns, supernormal profits for any growers to encourage planting and tax breaks for doing it.<sup>40</sup>

By 2002 the industry was starting to head into oversupply—that was the message—and steadily went more and more into oversupply until 2007 when the drought hit. We had a short year and a lot of the stock went out of the system, so things tightened up momentarily but the fundamental production base had grown from 500,000 tonnes to two million tonnes of grapes and the markets, by the time you got to the mid-2000s, and as we get towards the end of this decade the exchange rate started cutting again and we started to lose returns. The demand for Australian wines started to plateau and we had picked all the easy fruit, as they say. Exports started to plateau off and all of a sudden we are into a period after 2007 of declining sales. As sales declined what happens, too, that reduces your need for stocks.<sup>41</sup>

- 3.9** Some Inquiry participants referred to the Wine Restructuring Action Agenda, which called for the wine industry to 'confront the reality of oversupply'.<sup>42</sup> This Agenda, along with a supporting report, was jointly issued by the Winemakers Federation of Australia, Wine Grape Growers Australia, the Australian Wine and Brandy Corporation and the Grape and Wine Research and Development Corporation, in November 2009.
- 3.10** The Wine Restructuring Action Agenda argues that oversupply 'is having a debilitating impact on Australian wine businesses and restructuring the supply base is both essential and

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<sup>37</sup> Submission 14, p 5.

<sup>38</sup> Submission 14, p 4.

<sup>39</sup> Submission 41, p 1.

<sup>40</sup> Mr McGrath-Kerr, Evidence, 14 October 2010, p 24.

<sup>41</sup> Mr McGrath-Kerr, Evidence, 14 October 2010, p 24.

<sup>42</sup> Submission 41, p 2, Submission 47, Murray Valley Winegrowers Inc, p 2, Submission 42, Wine Grape Growers Australia, p 2, Submission 14, p 5.

inevitable.<sup>43</sup> It estimates that at least 20% of vines currently planted around Australia are surplus to requirements and that 17% of vineyard capacity is uneconomic.<sup>44</sup>

- 3.11** Rising supply and stagnating demand have exerted downward pressure on grape prices.<sup>45</sup> Mr Scott Davenport, Chief Economist, Industry and Investment NSW, remarked that 'the present difficulties experienced in the wine grape market appear to relate primarily to high levels of grape production in the face of steady wine demand.'<sup>46</sup> Prices peaked in the late 1990s and have declined significantly since.
- 3.12** Several Inquiry participants observed that prices paid for grapes have been declining for some years. For instance, Murray Valley Winegrowers Inc said that prices had been falling for five years:

Average wine grape prices paid to growers in the Murray Valley have been in steady decline over the last 5 years – and particularly over the last 2 vintages. With the exception of the 2008 vintage which saw an upward spike in prices in response to drought concerns over the capacity of growers to produce commercial scale crops if they were not able to purchase temporary water, the average wine grape price trend has been in rapid decline.<sup>47</sup>

- 3.13** Several wine grape growers commented that the prices they received for recent crops were below the cost of production. For example, Murray Valley Winegrowers Inc observed that:

The current average benchmark cost of production per tonne of wine grapes in the Murray Valley is \$376. The average wine grape prices for both red and white wine grapes for the 2010 vintage were well below this benchmark cost – at \$311 for reds and \$283 for whites.<sup>48</sup>

- 3.14** The Wine Restructuring Action Agenda states that 'Australia has significant problems in terms of vineyard viability'.<sup>49</sup> Some wine grape growers reported that prices were below the cost of production:

The price received in the last couple of years has been well below the cost of production. Those prices are not sustainable and I fear for the future of the industry if things don't improve.<sup>50</sup>

- 3.15** Another grower expressed his fears for the future if the market environment does not improve:

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<sup>43</sup> Winemakers' Federation of Australia, 'Wine industry must confront the reality of oversupply', p 7, accessed 11 November 2010, <<http://www.wfa.org.au/WRAA.aspx>>,

<sup>44</sup> Winemakers' Federation of Australia, 'Wine industry must confront the reality of oversupply', p 1, accessed 11 November 2010, <<http://www.wfa.org.au/WRAA.aspx>>

<sup>45</sup> Submission 41, p 2, Submission 40, p 4.

<sup>46</sup> Mr Scott Davenport, Chief Economist, Industry and Investment NSW, Evidence, 13 October 2010, p 22.

<sup>47</sup> Submission 47, p 3.

<sup>48</sup> Submission 47, p 3.

<sup>49</sup> Winemakers' Federation of Australia, 'Wine Restructuring Action Agenda Supporting Report', p 7, accessed 11 November 2010 <<http://www.wfa.org.au/WRAA.aspx>>

<sup>50</sup> Submission 5, Name suppressed, p 2.

We love the land and what we grow on it we do not need to be rich, what we are asking for is to be able to make a reasonable living. With the price given and the cost of production going up such as chemicals, fuel, rates and water charges just to mention a few there is not much of a future if things don't change.<sup>51</sup>

- 3.16** Low prices have already led to growers leaving the industry or 'de-commissioning' vines to move into other areas. Mr Bligh Grant, Associate Lecturer in the Faculty of Business, University of Southern Queensland, expressed the view that structural adjustment in the wine industry was inevitable:

The industry has to adjust one way. If some people have to get out of the industry, that is what they have to do. It is the same with anything, whether it is people growing grapes, or people making wine, or whatever. That is just the way it is. As I mentioned earlier, we have seen some natural market adjustment in the New England where it is not as if we are looking at a straight curve going up. There have been people getting out of the industry precisely because some businesses are unviable, precisely because people have realised that it is just not worth it.<sup>52</sup>

- 3.17** Wine Grape Growers Australia, which helped to develop the Wine Restructuring Action Agenda, noted that there is some adjustment already occurring in the industry (meaning that growers were leaving the industry). This adjustment is disproportionately evident in warm inland regions rather than coastal temperate regions.<sup>53</sup>

- 3.18** Indeed, Murray Valley Winegrowers Inc reported that 500 growers from the Murray Valley region (which also crosses the border into Victoria) had left the industry over the last five years.<sup>54</sup> Mr Mark McKenzie, Chief Executive Officer, Murray Valley Winegrowers Inc, indicated that the number of growers leaving the industry was so great that it already constitutes an 'overcorrection' of supply:

Decommissioned vineyards now total between 12,000 and 14,000 hectares against the lower target of 20,000 hectares of removals, but with the prospect of the decommissioning this calendar year of a further 1000 hectares of vineyard in the Murray Valley regions alone, it is now clear that there will be an overcorrection in vineyard decommissioning in the Murray Valley, and across the warm inland production zones generally.<sup>55</sup>

### **Wine managed investment schemes**

- 3.19** It has also been argued that a contributing factor to the current wine grape oversupply is wine managed investment schemes. In a managed investment scheme, money is pooled together from a number of investors to buy shares or some other kind of asset, in this case wine grapes. In almost all cases, instead of shares an investor receives units in the scheme. The number of units an investor receives depends on how much is invested in the scheme. A

<sup>51</sup> Submission 8, Name suppressed, p 2.

<sup>52</sup> Mr Bligh Grant, Associate Lecturer, Faculty of Business, University of Southern Queensland, Evidence, 13 October 2010, p 32.

<sup>53</sup> Submission 42, p 3.

<sup>54</sup> Mr Mark McKenzie, Chief Executive Officer, Murray Valley Winegrowers Inc, Evidence, 13 October 2010, p 13.

<sup>55</sup> Submission 47, pp 2-3.

professional investment manager operates the scheme, and the individual investor does not have day to day control over the operation of the scheme.<sup>56</sup>

- 3.20** Wine managed investment schemes were popular in the 1990s due to the upfront tax deductions an investor could get through the scheme. This contributed to an increase in grape vine plantings of approximately 16,000 hectares, as explained by Mr Worland, President, Riverina Winemakers Association:

It is estimated that 16,000 hectares were planted under these managed investment schemes that should never have gone in, which amounts to 200,000 tonnes, and it is still there.

They [the Commonwealth Government] gave the incentive. Normally as soon as the grapes go in the ground you had to wait for four years before they grew, before you got any tax deduction. They gave it straight away.<sup>57</sup>

### **Wine Equalisation Tax**

- 3.21** Some participants cited the Wine Equalisation Tax rebate as an incentive for growers to remain in the industry, particularly among coastal temperate producers, as growers who process their own wine can claim a rebate on the Wine Equalisation Tax.<sup>58</sup> Mr Simpson suggested that the tax rebate was a barrier to structural adjustment in the wine grape market:

Under the new licensing regulations, a lot of the growers are turning to wine processing themselves and having the fruit processed into wine, and then reclaiming the wine equalisation tax [WET] rebate that is available under Federal taxation law, and surviving that way. But that is continuing the oversupply situation that we are seeing in the industry, and continuing to drive down retail prices and therefore farm gate prices.<sup>59</sup>

#### ***Committee comment***

- 3.22** The Committee recognises that the wine grape industry is in oversupply relative to demand, and that this is the primary cause of current low prices. Continuing low prices, particularly in warm inland regions, present a real threat to the viability growers. The impact of low prices on growers is discussed further in Chapter Four.

- 3.23** The Committee acknowledges the work of major wine industry organisations in developing the Wine Restructuring Action Agenda, and encourages Industry and Investment NSW and the Wine Grapes Marketing Board to fund a consultant to provide targeted business advice to grape growers in the Riverina district to assist in responding to industry re-structuring.

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<sup>56</sup> Australian Securities Investment Commission, 'Why invest in a managed investment scheme?', [www.fido.asic.gov.au](http://www.fido.asic.gov.au).

<sup>57</sup> Mr Leslie Worland, President, Riverina Winemakers Association, Evidence, 14 October 2010, p 24.

<sup>58</sup> Submission 42, p 3.

<sup>59</sup> Mr Simpson, Evidence, 14 October 2010, p 8.

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### **Recommendation 1**

That Industry and Investment NSW and the Wine Grapes Marketing Board fund a consultant to provide targeted business advice for grape growers in the Riverina district to assist in responding to industry re-structuring.

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### **Variations in demand**

- 3.24** While oversupply was seen as the principal reason for depressed wine grape prices, it is important to note that prices are not uniformly low. Mr Grant explained that the wine industry is subject to changing consumer preferences, which generate fluctuating demand for particular grape varieties:

With these wine trends, it is very difficult to pick winners... The people who grow grapes that I know are getting the highest per tonnage price now for things like Würtz traminer, which is essentially a sweet riesling. Five years ago, let alone 10 years ago, if you said that there would be a really, really big trend towards a sweeter style riesling in Australian wine consumption trends, people would just say, "That is just ridiculous. There is just no way that will happen." But it has in fact occurred that people are getting \$1,600 a tonne for cool climate Würtz traminer. It is a very fickle, fashion-driven market.<sup>60</sup>

- 3.25** In a similar vein, Mr McKenzie explained that Muscat Gordo grapes are currently in high demand: 'There is feeding frenzy going on for gordo at the moment. Thank goodness, we have one funny old variety leading the charge.'<sup>61</sup>

- 3.26** The fickle nature of consumer preferences means that some grape varieties may be in high demand as they become fashionable. Mr Phillip Alvaro, Solicitor, acknowledged that winemakers are essentially unable to predict market trends:

[T]he wineries do not always know which way the wind is going to blow in three years time. Wine can be fashionable, like anything else. Red can be in, some other variety can be out. It is difficult.<sup>62</sup>

- 3.27** This view was echoed by winemakers, who try to predict market trends. Mr Worland explained that shortages of particular grape varieties are exacerbated by the lengthy period which it takes for vines to produce fruit in commercial quantities:

It is the fashion. We have four years to grow grapes to anything like a commercial tonnage, so we are looking to see. We have looked at Chardonnay and we thought that Sauvignon Blanc was going to be the next. We thought maybe Riesling was going to go. So when the public decides that is it, it will go very quickly and start within a year or so. If you do have those plantings, because everybody wants it, that is good if you have some in.<sup>63</sup>

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<sup>60</sup> Mr Grant, Evidence, 13 October 2010, p 33.

<sup>61</sup> Mr McKenzie, Evidence, 13 October 2010, p 17.

<sup>62</sup> Mr Phillip Alvaro, Solicitor, Evidence, 14 October 2010, p 15.

<sup>63</sup> Mr Les Worland, President, Riverina Winemakers Association, Evidence, 14 October 2010, p 24.

- 3.28** The flip side of changing preferences for particular grape varieties is that grapes may be in oversupply once they fall out of favour with consumers. Mr Worland explained that the demand for Chardonnay – one of the most common varieties - has declined:

Chardonnay is in huge oversupply but that was not always the case. It was the flavour of the month everybody pulled out orange trees and put in grapes because grapes were the crop that was going at the time, particularly one or two varieties that were the flavour of the month. Now with the New Zealand wine, chardonnay is not the flavour of the month and we are stuck with it.

- 3.29** However, Mr McKenzie insisted that Chardonnay grapes were now in demand, at least in the Murray Valley:

We know we are desperately short of chardonnay. The managing directors of Foster's, David Dearie, told me so himself. Their grape liaison officers have told growers that. In their new contract arrangements the only patches of grapes that they have contracted so far are chardonnay.<sup>64</sup>

### **Regional differences in demand**

- 3.30** This apparently contradictory evidence in relation to demand for Chardonnay grapes points to another important factor influencing grape prices, which is regional demand. Wine grapes are generally processed close to where they are harvested and, as a result, the market is strongly regional. Mr Lawrie Stanford, Executive Director, Wine Grape Growers Australia, explained that regional varieties further complicate the wine market:

Varieties and regions are a problem that our industry deals with in particular. Wine is a highly differentiated product and in the marketplace consumers will pursue wine possibly but more often a particular variety or region, so demand is split. When you slice and dice demand by variety and region you get a very multiple-faced product that creates at any one time things that are in demand and out of demand.<sup>65</sup>

- 3.31** For example, Mr Grant said that grape growers in the New England region received prices that are considerably higher than those paid in regions such as the Riverina:

I have spoken to several winemakers in cool climate regions in the last 48 hours. For example, one person yesterday estimated that wines in the New England were selling for \$1,000 a tonne.<sup>66</sup>

- 3.32** Several participants in the Inquiry referred to the distinction between 'cool climate' regions – such as New England - and 'warm inland' or 'irrigated inland' regions such as the Riverina or the Murray Valley. Falling grape prices appear to have had a disproportionate impact in these 'warm inland' regions, which produce large quantities of bulk wine and do not have a strong regional 'brand'.<sup>67</sup>

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<sup>64</sup> Mr McKenzie, Evidence, 13 October 2010, p 17.

<sup>65</sup> Mr Lawrie Stanford, Executive Director, Wine Grape Growers Australia, Evidence, 13 October 2010, p 4.

<sup>66</sup> Mr Grant, Evidence, 13 October 2010, p 32.

<sup>67</sup> Mr Worland, Evidence, 14 October 2010, p 28, Mr Pierotti, Evidence, 14 October 2010, p 38.

- 3.33** For example, the Board argued that the growth of new vineyards in the 'cool climate' regions had led to the current oversupply of grapes across the state:

Many industry pundits and the WRAA [Wine Restructuring Action Agenda] itself point toward the increased development of wine grape plantings in cool temperate regions that have led to the oversupply being so marked. These wine grapes generally have higher input costs and land values but without markets for the wine the production from these vineyards is being sold at low prices that is impacting on the grape prices of major production regions such as the Riverina and the warm inland regions of the South Australian Riverland and the Victorian and New South Wales Murray Valley.<sup>68</sup>

- 3.34** Mr Stanford concurred with the view that grapes from 'coastal temperate' regions were in oversupply, and that this was affecting the market for grapes in warm inland regions:

It is easily demonstrated that coastal temperate production—and, just for definition, coastal temperate is by definition anything outside of warm inland—is well in oversupply compared to warm inland. In fact during all of the last 10 years when people talk about oversupply in the Australian wine industry, they are effectively talking about coastal temperate oversupply and for many of those years warm inland production was under-supplied. That was a nuance that probably was not understood widely. What was happening was that coastal temperate producers were selling their fruit down into the shortage that existed in the warm inland areas, but in order for their grapes to go into what is traditionally warm inland product, which sells at lower prices, we have always thought they could not be doing that sustainably.<sup>69</sup>

- 3.35** Some Inquiry participants described coastal-temperate growers as 'lifestyle' producers, who grow grapes on a part-time basis or as a hobby. For example, Mr Worland suggested that this was based on a romanticised view of the industry:

They have planted in the wrong spot, got the wrong varieties, and I think they have to realise the quicker they do that and realise they want to get out of it the better. It has been the romantic view of a lot of people, particularly a lot of professional people, that they would like to have a little winery and a little restaurant, and things like this, and there are over 2,000 wineries now in Australia, and many of them—probably the great majority—crush less than 100 tonnes of grapes. They are finding now they have to work seven days a week and it is not working out.<sup>70</sup>

- 3.36** However, Mr Stanford described the market for coastal temperate grapes as 'sticky', meaning that these producers remain in the industry despite low grape prices.<sup>71</sup> He suggested that these growers are able to do so because they have other sources of income:

[I]n a sense the lifestylers in coastal temperate areas have a similar problem to a lot of the people in warm inland areas. Warm inland areas are typically independent grape growers and they have small holdings, which in a competitive market tend to be uneconomic. So they have that in common, but a significant difference is that the

<sup>68</sup> Submission 14, p 5.

<sup>69</sup> Mr Stanford, Evidence, 13 October 2010, p 4.

<sup>70</sup> Mr Worland, Evidence, 14 October 2010, p 26.

<sup>71</sup> Mr Stanford, Evidence, 13 October 2010, p 4.

lifestylers have alternate sources of income or are willing to pay the cost of low returns to pay for their lifestyle.<sup>72</sup>

- 3.37 Mr Jim Moulardellis, in the 'Australian & New Zealand Grapegrower and Winemaker' journal, argued that grapes from cool climate areas were preferred in times of oversupply because of their superior quality:

Inland-irrigated grapes are more prone to be left unpicked in times of oversupply. Does this mean that the market for wine from these regions has collapsed? No. When grapes are cheap, inland-irrigated grapes are cheaper still (but not that much cheaper) than grapes from dryland areas. In times of oversupply, the quality difference becomes greater than the price difference, and so inland-irrigated grapes become less attractive to buyers.<sup>73</sup>

- 3.38 However, Mr Grant rejected the view that cool climate regions were responsible for oversupply in the grape market and argued instead that the market should be viewed in regional terms:

My answer to the suggestion that these cool climate regions are oversupplied with wine is: Look at the prices they are getting for their product. If they are getting \$1,000 a tonne average, as opposed to \$150 a tonne, I would say they are not overproducing. The arguments we have heard this morning are looking at the industry as a whole. Our argument ...is that they need to be looked at at a regional level, because the prices are being determined at that level.<sup>74</sup>

## The Riverina

- 3.39 The majority of submissions received by the Committee came from organisations and grape growers based in the Riverina district, which is the largest wine-making region in NSW.<sup>75</sup> As such, the Riverina warrants separate discussion here.
- 3.40 The Riverina produces 54.1% of the grapes grown in NSW, with a total harvest of 289,274 tonnes in 2008-09.<sup>76</sup> The most common varieties grown are Shiraz, Chardonnay, Semillon, Cabernet Sauvignon and Merlot.
- 3.41 There are over 450 individual grape growers in the Riverina<sup>77</sup>, and the area is also home to some of Australia's biggest wineries, including Casella Wines, Pernod Ricard (formerly Orlando), De Bortoli Wines, McWilliams Wines and Warburn Estate. Mr Paul Pierotti, from the Griffith Chamber of Commerce and Industry, explained the importance of the wine industry to the local economy:

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<sup>72</sup> Mr Stanford, Evidence, 13 October 2010, p 4.

<sup>73</sup> Mr Jim Moulardellis, '2010 post-vintage bulk wine review', *The Australian & New Zealand Grape Grower and Winemaker*, Submission 41 - Appendix A, p 69.

<sup>74</sup> Mr Grant, Evidence, 13 October 2010, p 32.

<sup>75</sup> Submission 29, p 4.

<sup>76</sup> Submission 29, p 4.

<sup>77</sup> Submission 29, p 4.

The wine industry is one of the biggest employers of people in Griffith. On top of that, the grower base is a fundamental customer base. Irrigators in general, wine grapes, is the biggest crop in the area.<sup>78</sup>

- 3.42** Grape prices in the Riverina have declined over several years. Mr Grant, for example, noted that in the Riverina ‘there has been lots and lots of downward pressure on prices’.<sup>79</sup> Industry and Investment NSW observed that prices for the most common grape varieties are about half of what they were in 1999:

The recent trends of rising supply and steady demand have had the expected effect on prices offered by Riverina wineries. 65 per cent of the red grapes crushed in the Riverina are Cabernet Sauvignon and Shiraz and 65 per cent of the white grapes are Chardonnay and Semillon. The average nominal price paid for these varieties is now around half the price that was paid in 1999.<sup>80</sup>

- 3.43** Some Inquiry participants also observed that the growth of the wine industry in the 1990s encouraged new growers to enter the market and existing growers to increase their plantings.<sup>81</sup> This growth in vineyard plantings has exacerbated oversupply and thus downward pressure on prices.

- 3.44** In the last two years, the lowest prices paid for the main grape varieties in the Riverina were under \$200 a tonne. Industry and Investment NSW observed that this was below the cost of production for growers:

Given the nature of the Riverina wine grape market, and with \$200 per tonne considered to be the minimum return needed to cover harvest costs (mechanical picking), some growers have, and will, find it cost effective to leave grapes on the vine rather than incur harvest expenses. It is in this business environment that growers are attempting to negotiate prices with wineries.<sup>82</sup>

- 3.45** As discussed in Chapter Two, until 2000 the Wine Grapes Marketing Board had powers to ‘vest’ the wine grape crop in the Riverina, and the grapes became property of the Board. This gave the Board the power to effectively set minimum prices. Vesting was removed in 2000, in accordance with national competition policy principles.

- 3.46** Some growers felt that government intervention to set prices would be desirable.<sup>83</sup> However, Mr Stewart Webster, Manager, Industry Policy, Industry and Investment NSW, explained that ‘direct intervention in pricing would not be consistent with the competition principles agreement’.<sup>84</sup> For this reason, the Inquiry did not address the possibility of government intervention to regulate prices.

<sup>78</sup> Mr Pierotti, Evidence, 14 October 2010, p 35.

<sup>79</sup> Mr Grant, Evidence, 13 October 2010, p 32.

<sup>80</sup> Submission 29, p 6.

<sup>81</sup> Submission 29, p 6.

<sup>82</sup> Submission 29, p 7.

<sup>83</sup> Witness H, Evidence, 14 October 2010, p 20, Submission 1, Name Suppressed, p 2, Submission 11, Name suppressed, p 2, Submission 38, Name suppressed, p 2.

<sup>84</sup> Mr Stewart Webster, Manager, Industry Policy, Industry and Investment NSW, Evidence, 13 October 2010, p 28.

***Committee comment***

- 3.47** The Committee did not pursue options for direct intervention in the wine grape market to regulate prices. The Committee considered that government intervention to regulate prices is not consistent with competition policy principles and therefore outside the Terms of Reference.

**Market power**

- 3.48** The difficult business environment facing growers was a principal concern for many Inquiry participants. The Board, for example, said that in the current market there was little room for growers to negotiate better prices with wineries:

Prices are generally offered to growers in a take it or leave it manner by wineries. Many growers have reported being told that if you do not like the prices don't deliver your grapes. Others have been told that if you complain your contract will not be renewed when it expires leaving them absolutely powerless to discuss the matter effectively in a business like manner.<sup>85</sup>

- 3.49** The grape market in the Riverina also has particular structural characteristics that appear to exacerbate the imbalance of market power between growers and winemakers. The Riverina is characterised a large number of relatively small growers. Mr Simpson explained that this was due to the region's history as a soldier settlement district:

Fifteen per cent of our production is owned by winemakers and the majority, 85 per cent, is independently grown by grapegrowers, and lots of them. Being a soldier settler area there used to be 1,100 grapegrowers in this district, and those farmers would have had other crops and commodities on their small blocks. That has been rationalised and growers have focused on just one crop and not diversified... If you drive around here you will see no fences on farms. They have maximised their cropping capacity on those blocks. Many of the rows actually form part of the boundary. They are heavily reliant on monoculture that is either grape or citrus and some have diversified into other commodities such as prunes, which is more predominant in this area.<sup>86</sup>

- 3.50** Grape growers in the Riverina typically grow grapes for sale to local wineries. Industry and Investment NSW pointed out that this business model makes growers particularly reliant on the prices paid by wineries:

The vast majority grow grapes for sale to wineries with very few having their own grapes processed for sale into their own wine, as is common in the Hunter and upland wine regions of NSW. Consequently, growers rely directly on the prices paid by wineries for their farm income.<sup>87</sup>

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<sup>85</sup> Submission 14, p 2.

<sup>86</sup> Mr Simpson, Evidence, 14 October 2010, p 11.

<sup>87</sup> Submission 29, p 4.

- 3.51** Mr Grant observed that this business model is not necessarily typical of the wine industry in other parts of the state:

For example, in the New England and also in Mudgee, growers will grow their grapes, pay a winemaker to make the wine for them, then bring the wine back into their cellar door facility and sell it on, or look for wholesale markets... people have other sources of income. They will grow grapes, pay a winemaker to make it into wine, and then bring it back to a cellar door facility. That is just one example of selling the product. It is value-added, it is horizontally and vertically integrated, as well as selling grapes on. It is a very, very different scenario.<sup>88</sup>

- 3.52** Mr Grant also pointed out that in other regions 'there is not a split between grapegrowers on the one hand and winemakers on the other.'<sup>89</sup> Mr Simpson suggested that the prominence of large family-owned wineries such as De Bortoli Wines and Casella Wines in the Riverina contributed to the division between grape growers and winemakers:

Orlando Wines is the only overseas company that was physically based here. The Riverina is a different industry in terms of the Australian industry. It is different particularly because of the prevalence of family-owned wineries here that started out many years ago. Because the operators, directors and general managers live among us, I think there is a level of friction.<sup>90</sup>

- 3.53** Not all growers had negative experience of wineries. For example, Mr Stephen Violi, of the Griffith Chamber of Commerce and Industry, said that his family business enjoyed a positive relationship with the winery it works with:

We have never had any problems with the winery in our case because we deal at a business level with a good business partnership. I think we are a perfect example of the grower and winery working together to achieve good outcomes. So, it is possible. ...We never had a problem with them. They always looked after us and we looked after them. We did the best we could in the capacity of growing. They did not take advantage of market forces or offered us less than what they should have. It was a fantastic relationship.<sup>91</sup>

- 3.54** Mr Paul Pierotti, also an Executive Member of the Griffith Chamber of Commerce and Industry, emphasised the importance of growers and wineries working together for the benefit of the industry:

I see this industry, growers and wineries, to be one industry and I think there are a lot of pressures on the industry. The last thing they need is division within. So I think they need to find that common ground and that unity. There needs to be probably a better process in communication so they can find common ground and gain that mutual respect.<sup>92</sup>

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<sup>88</sup> Mr Grant, Evidence, 13 October 2010, p 31.

<sup>89</sup> Mr Grant, Evidence, 13 October 2010, p 31.

<sup>90</sup> Mr Simpson, Evidence, 14 October 2010, p 7.

<sup>91</sup> Mr Stephen Violi, Executive Member, Griffith Chamber of Commerce and Industry, Evidence, 14 October 2010, p 35.

<sup>92</sup> Mr Paul Pierotti, Executive Member, Griffith Chamber of Commerce and Industry, Evidence, 14 October 2010, p 36.

## Market failure?

- 3.55 'Market failure' refers to a market's failure to allocate resources efficiently in the absence of government regulation.<sup>93</sup> The term is important because national competition policy principles indicate that government intervention in a market may be justified if the market is failing to operate efficiently by itself. Mr Webster explained that national competition policy principles require governments to assess the costs and benefits of intervening in a market where there is market failure:

Competition principles agreements are pretty clear. Governments have a responsibility to first determine if the market failure is great enough to warrant intervention because all intervention has cost associated and, as it says, the costs have to be outweighed by the benefits. Secondly, just because you think that there is a market failure that you could do something about and in doing so derive a benefit for the community, it does not follow that you can pick the most powerful intervention off the shelf. You should pick the one that will deal with the market failure with the least cost associated with it.<sup>94</sup>

- 3.56 Several Inquiry participants argued that the grape market was in 'market failure', in the context of arguing for government intervention.<sup>95</sup> For example, the Board explicitly argued that the market was in failure and warranted legislative intervention:

The industry's market is flawed and requires legislative instruments to be introduced to remedy many of the problems that are being faced by wine grape growers that are not typical of a market with current structural supply and demand problems.<sup>96</sup>

- 3.57 Inquiry participants identified several different factors which may be contributing to failure in the grape market. For example, the Board expressed the view that the practice of purchasing excess grapes at very low prices was distorting supply and demand:

There is an anecdotal comment by wineries that their tanks are full when the price is X, but that at Y, which is lower than the cost of production, they can fit everything in. The supply and demand tends to be distorted, and that is where I believe the market failure is in this instance.<sup>97</sup>

- 3.58 Mr McKenzie expressed the view that market failure was caused by disproportionate power being held by wineries, as opposed to growers:

[W]e have not just market failure but we quite clearly have disproportionate market power that is quite clearly being exercised by wineries and, unfortunately, in some cases in an exploitative manner.<sup>98</sup>

- 3.59 Similarly, Mr Stanford felt that wineries held disproportionate power in the market. However, he also identified the lack of information about prices available to growers as a cause of market failure:

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<sup>93</sup> Better Regulation Office, NSW Department of Premier and Cabinet (2009) *Guide to Better Regulation*, p 29.

<sup>94</sup> Mr Webster, Evidence, 13 October 2010, p 27.

<sup>95</sup> Mr Simpson, Evidence, 14 October 2010, p 6, Mr Stanford, Evidence, 13 October 2010, p 10.

<sup>96</sup> Submission 14, p 1.

<sup>97</sup> Mr Simpson, Evidence, 14 October 2010, p 6.

<sup>98</sup> Mr McKenzie, Evidence, 13 October 2010, p 18.

Our concern at the moment is that the wine grape market within New South Wales and nationally is in failure. There is very much a lack of clear market signals to growers around prices, volumes, and the intention of wineries in terms of contract arrangements going forward. Effectively what we are seeing here is a reinforcement of the dominant market power in the hands of wineries, with very limited, if any, market power in the hands of growers.<sup>99</sup>

**3.60** The access of parties to information in business transactions is a factor in determining whether conduct is acceptable under the *Trade Practices Act 1974* (Cth). The issue of price information and notification is discussed in more detail in Chapter Five.

**3.61** According to Mr Webster, access of parties to information and market power are both legitimate factors for governments to consider when assessing whether or not a market is in failure:

The reason that we have AIS [Agricultural Industry Services] committees in New South Wales is because there has been market failure—and there are about half a dozen of them identified, and those committees are seen as the least competition restricting way of dealing with those market failures. The kind of markets you might be interested in here—there are two of them—is what they call imperfect competition, which is your market power discrepancy and there is also possibly an information asymmetry market failure, which is where one side of a deal knows more than the other side.<sup>100</sup>

### **Alleged unethical conduct**

**3.62** Several Inquiry participants complained that the behavior of wineries was predatory,<sup>101</sup> opportunistic,<sup>102</sup> unfair<sup>103</sup> or unethical:<sup>104</sup>

Not all wineries are taking advantage of the so called over supply and are paying fair prices. But the majority of companies are using the over supply as a means to screw the growers to the hilt.<sup>105</sup>

**3.63** However, other participants suggested that practices which may be seen as unethical are to be expected in a market where supply exceeds demand. For example, Mr Scott Davenport, Chief Economist, Industry and Investment NSW, told the Committee that it is important to distinguish between low prices generated by market conditions and unconscionable conduct on the part of wineries:

we need to be mindful of whether we are talking about just price declines due to those international market conditions or we are talking about unconscionable conduct. That is a very key distinct point to try to look at to see what evidence there is of unconscionable conduct as opposed to wineries just normally meeting, as was said in

<sup>99</sup> Mr Stanford, Evidence, 13 October 2010, p 10.

<sup>100</sup> Mr Webster, Evidence, 13 October 2010, p 27.

<sup>101</sup> Submission 3, Name suppressed, p 2.

<sup>102</sup> Submission 16, Name suppressed, p 2.

<sup>103</sup> Submission 36, Name suppressed, p 2.

<sup>104</sup> Mr McKenzie, Evidence, 13 October 2010, p 10.

<sup>105</sup> Submission 8, p 2.

our submission, capacity constraints. I think we can all understand they are not going to take in an endless supply of grapes in the current circumstances. They are going to develop preferred suppliers and so forth.<sup>106</sup>

- 3.64 Mr Stanford expressed the view that it is up to governments to define ethical behavior and regulate the market if necessary:

What is unethical? If you can screw down price and make higher profits, at the end of the day that is the market working unless people like yourselves say that these are not the sort of social conditions we want. In effect, yourselves through organisations like the Australian Competition and Consumer Commission will define what is ethical and what is unethical, but through a voluntary code we make an attempt to say what we think is good commercial behaviour and we try to set standards for that.<sup>107</sup>

- 3.65 At present, Section 51 of the *Trade Practices Act 1974* prohibits businesses from engaging in unconscionable conduct. A number of factors are taken into consideration in determining whether conduct is unconscionable: these include the relative strengths of the parties involved, any undue pressure or unfair tactics exercised in negotiations, adequate disclosure, and the extent to which each party acted in good faith.

- 3.66 Some Inquiry participants believed that the behaviour of wineries in the Riverina and Murray Valley regions could, in some situations, constitute unconscionable conduct.<sup>108</sup> However, Mr Alvaro observed that there is no fixed definition of unconscionable conduct that applies to all circumstances:

Unconscionability is such a wide term. There are no fixed criteria. That is what makes it difficult to litigate, because it lacks precision. Everybody has a different point of view as to what is unconscionable and not unconscionable.<sup>109</sup>

- 3.67 In response to questions arising from evidence received during the Inquiry, the Australian Competition and Consumer Commission (ACCC) advised that it had investigated two complaints of unconscionable conduct by wineries in the Riverina district. In the first case, the ACCC's investigation was discontinued after the winery in question changed its practices, while in the second case the ACCC found that the claim of unconscionable behavior was not supported.<sup>110</sup> Mr Alvaro also indicated that he was aware of cases of possible unconscionable conduct in the wine grape industry, but that growers chose not to litigate because of the expense involved.<sup>111</sup>

#### ***Committee comment***

- 3.68 The Committee considers that cooperation is in the interests of all wine industry stakeholders, and encourages winemakers and growers to work together to resolve problems in the industry.

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<sup>106</sup> Mr Davenport, Evidence, 13 October 2010, p 24.

<sup>107</sup> Mr Stanford, Evidence, 13 October 2010, p 5.

<sup>108</sup> Mr Alvaro, Evidence, 14 October 2010, p 15.

<sup>109</sup> Mr Alvaro, Evidence, 14 October 2010, p 19.

<sup>110</sup> Mr Brian Cassidy, Chief Executive Officer, Australian Competition and Consumer Commission, Correspondence to Chair, 11 November 2010, p 2.

<sup>111</sup> Mr Alvaro, Evidence, 14 October 2010, p 15.

- 3.69** The Committee also recognises that there are significant imbalances of market power between grape growers and wineries. The Committee notes the findings of the 2005 Senate Rural and Regional Affairs and Transport References Committee Inquiry into the operation of the wine-making industry, which acknowledged the weak bargaining position of growers. The Senate report recommended the introduction of a mandatory code of conduct to the wine grape industry, along the lines of the Horticulture Code of Conduct.
- 3.70** While it may not affect prices, the Committee considers that the Australian Wine Industry Code of Conduct may assist in providing some consistency in business practices and expectations in the wine grape market. The Code of Conduct is discussed in more detail in Chapter Six.
- 3.71** The Committee is deeply concerned by allegations of unethical or unconscionable conduct by some wineries in dealings with growers. The current situation of oversupply does not justify exploitative business practices.
- 3.72** The Committee recognises that allegations of unconscionable conduct can only be tested in court, and encourages growers to seek legal remedies to unethical conduct. The Committee also encourages the ACCC to investigate any further allegations that it receives from grape growers.



## Chapter 4 Impacts on growers

The Committee heard evidence about the impact of falling grape prices from a number of growers and grower organisations; most of this evidence came from the growers in the warm inland areas of the Riverina and Murray Valley. This Chapter outlines evidence from growers about the impact of falling prices, as well as other practices employed by wineries in the oversupplied market, such as colour-testing and imposing caps on deliveries.

### Oversupply – the growers' perspective

- 4.1** Wine grape growers agreed that the market was in oversupply, but felt that they were not the cause of the problem. For example, one grower wrote that growers who planted vines were responding to demand from wineries:

Yes there is an over supply of wine grapes on the market, but it is not the growers that have caused this problem, it is the wineries that have encouraged growers to plant more and more acres and varieties to suit their needs.<sup>112</sup>

- 4.2** As vines take some years to bear fruit, demand must be maintained in order for a grower to recoup his investment. This theme of growers being encouraged to plant vine by wineries was echoed by another grower:

With a lot of the growers whose contracts are coming out, a lot of the wineries told them to plant. But once their contract runs out, they have nowhere to go. Wineries should be accountable. It is not like a grain crop, where you can plant this year and forget about it next year. With grapes, you cannot chop and change.<sup>113</sup>

- 4.3** Some growers who invested considerable amounts of time and money in planting vines in response to demand from wineries faced a loss of that investment in the current oversupplied market.<sup>114</sup> For example, one grower reported that he had increased his plantings and made other investments:

In the late nineties we were offered supply contracts by the winery and encouraged to plant all our property with vines. In the last few years we were also encouraged to invest in infrastructure, such as drip irrigation in order to produce a better quality product. Also to purchase a harvester, so the crop could be harvested when the winery requested, without having to wait for the contractors. Then 3 years ago the contract was not renewed.<sup>115</sup>

- 4.4** Wineries are not compelled to purchase grapes unless this is specified in a contract, and most contracts in use do not specify prices. Another grower reported that he had made considerable investments:

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<sup>112</sup> Submission 7, Name suppressed, p 2.

<sup>113</sup> Witness M, Evidence, 14 October 2010, p 35.

<sup>114</sup> Submission 17, Name suppressed, p 2, Submission 7, Name suppressed, p 2, Witness A, Evidence, 14 October 2010, p 1.

<sup>115</sup> Submission 17, Name suppressed, p 2.

We have had a well know winery ask us to plant...acres of Chardonnay. We spent close to \$500,000 on the vineyard with planting, training and drip irrigation, only to be told a few years later that they didn't need us anymore. We now have [omitted at the request of the author] acres of grapes that gets dumped on the ground every year as no other winery wants it. Where is there any control over this industry?<sup>116</sup>

- 4.5 Mr Phillip Alvaro, Solicitor, said that he was aware of such cases of growers being encouraged to plant vines only to find that wineries did not wish to purchase the grapes when they matured. He suggested that this practice could be considered unconscionable conduct:

I personally feel it is very tough on growers for them to be told to plant chardonnay and then in three years time when the fruit comes into production to be told, "We don't want it anymore." I find that to be very tough. The winery would say, "We don't need it when we haven't got a market for it. Why should we buy a product we can't sell?" Some might have a different view as to whether that is unconscionable or not. I personally feel that it is a little bit tough.<sup>117</sup>

## Falling prices

- 4.6 Falling grape prices most directly affect grape growers. Prices are set by the wineries who purchase grapes, rather than the producers who grow them. The NSW Farmers' Association commented that: 'grape growers are price takers in the market.'<sup>118</sup> Mr Lawrie Stanford, Executive Director, Wine Grape Growers Australia, agreed that growers are at the 'bottom of the pecking order' in the wine grape market:

In terms of price formation and the role of supply and demand...the primary source of grief in the industry at the moment is the supply and demand situation. The industry is significantly oversupplied and in a free market situation that creates a very unfavourable environment for which wine grape growers are at the bottom of the pecking order.<sup>119</sup>

- 4.7 Inquiry participants acknowledged that prices for each vintage are set by wineries purchasing grapes. Mr Simpson explained that wineries determine prices based on a number of factors, such as forecast demand, levels of existing wine stocks, and prices offered by their competitors:

It is understood that wineries base their price offers to growers on current and forecast market conditions for the sale of wine and the amount of available wine on the bulk market. Some regional wineries simply base their prices on what other wineries are paying and therefore have to wait until they obtain that information.<sup>120</sup>

- 4.8 As discussed in Chapter Three, prices paid for grapes have at times been lower than the cost of production. Such low grape prices threaten the viability wine grape growers' businesses. The Committee heard evidence from a number of grape growers who felt that their businesses would not survive if prices remained at their current low levels. For example, one grower

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<sup>116</sup> Submission 7, Name suppressed, p 2.

<sup>117</sup> Mr Phillip Alvaro, Solicitor, Evidence, 14 October 2010, p 19.

<sup>118</sup> Submission 43, NSW Farmers' Association, p 5.

<sup>119</sup> Mr Lawrie Stanford, Executive Director, Wine Grape Growers Australia, Evidence, 13 October 2010, p 2.

<sup>120</sup> Submission 14, Wine Grapes Marketing Board, p 2.

wrote that 'with the current industry pricing we cannot survive and continue to supply the industry.'<sup>121</sup> Another said that:

Every year the winery has had an excuse why they cannot pay any more money – they are putting in infrastructure, the Australian dollar is rising, and the wine tax is going to be implemented. This year we know it is going to be the strong Australian dollar. Truly, I do not know how we are going to continue to farm with the prices being paid.<sup>122</sup>

- 4.9** Grape growing in the Riverina has a strong history of soldier-settlement blocks, many of which remain family farms. For these growers, threats to the viability of grape growing meant potential loss of the family business:

Our company has been in the wine industry for over 30 years and the variations of contracts and pricing has been disastrous to our industry. We have built our business up with the hope of carrying on with our children, but in the past few years the wineries have had all the control over our industry and we are at their mercy as no-one has any control over them. As wine grape growers we have all tried to adjust with the good years and bad years but it has gotten to the point of give in or give up completely.<sup>123</sup>

- 4.10** Another wrote that his sons were unlikely to enter the industry because of low grape prices:

My sons will not carry on after me as they have good jobs and have no interest in carrying on the family farm just because of the low prices that winery's are paying and that does not cover the cost of production.<sup>124</sup>

- 4.11** The Young Irrigators Network, which represents farmers in irrigation areas, concurred with this view that young people were reluctant to enter the industry because of low prices:

They see their fathers delivering grapes for less than the cost of production...this is not a way of life that is attractive or desirable to new and enthusiastic farmers.<sup>125</sup>

### Negotiating prices

- 4.12** Growers were primarily concerned with low prices offered for grapes, but these also combined with other factors such as late notification of prices, increasing quality requirements and caps on grape deliveries, which have a combined effect. Moreover, growers reported that they were unable to negotiate prices or other requirements. For example, one grower reported a combination of factors that converged in the most recent vintage:

The 2010 vintage in the Murrumbidgee Irrigation Area was a very traumatic year. We received extremely low prices and had very high quality parameters imposed onto us...We had no foreknowledge of impending prices until they were "over the weighbridge". We had no options available as our produce was a perishable product

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<sup>121</sup> Submission 36, Name suppressed, p 2.

<sup>122</sup> Witness L, Evidence, 14 October 2010, p 31.

<sup>123</sup> Submission 7, Name suppressed, p 2.

<sup>124</sup> Submission 18, Mr R. Gulloni, p 2.

<sup>125</sup> Submission 24, Young Irrigators Network, p 2.

and had absolute no other options. We had yield quotas imposed onto us with a \$1 per tonne price paid on every gram over the quota. We had no bargaining powers and no opportunity to query any decisions. Any question asked would immediately be met with open hostility and anger.<sup>126</sup>

- 4.13** This inability to negotiate prices was exacerbated by the highly perishable nature of the wine grapes. Grapes must be processed within a few days of harvest, which leaves growers little time to seek alternative buyers. For example, one grower wrote:

The sheer fact that grapes are an extremely perishable product gives the wineries the upper hand in dictating many factors and conditions. There would not be a grower that has not been told "if you don't like the terms and conditions, try & sell your grapes elsewhere".<sup>127</sup>

- 4.14** Numerous growers complained that they were powerless to negotiate with wineries.<sup>128</sup> One grower said that growers were essentially unable to negotiate prices:

We are not farmers, we are business people and when you come to sell your produce you should be able to negotiate a price for things. We do not have that right because as soon as we open our mouths they say take it somewhere else. We cannot take it anywhere else.<sup>129</sup>

- 4.15** Some growers expressed the view that wineries used the perishable nature of the crop to place pressure on grape growers to accept low prices. For example, one grower asked:

is it that some wineries are taking advantage of the oversupply and the fact that unlike wheat or wool we cannot store our produce and wait for a better offer? I think that it is to their advantage to keep the industry in over supply.<sup>130</sup>

### Fears of retribution

- 4.16** During the Inquiry, wine grape growers complained that they were unable to negotiate increased prices for their grapes and moreover, that they felt intimidated if they attempted to do so. A number of grape growers referred to threats that their contracts would not be renewed if they complained about prices. For example, one wine grape grower objected to 'standover tactics used by some wineries by threatening not to take growers fruit in future when complaints are made about price or business practices.'<sup>131</sup>
- 4.17** Growers also feared being considered a 'troublemaker' and that this may result in similar retribution from wineries. Another grower said that:

My...point of concern is the negotiation process. There is none, full stop. If a farmer chooses to negotiate prices he walks into a situation with the real threat to being

<sup>126</sup> Submission 52, Name suppressed, p 3.

<sup>127</sup> Submission 9, Name suppressed, p 2.

<sup>128</sup> Submission 11, Name suppressed, p 2, Submission 39, Name suppressed, p 2, Submission 48, Name suppressed, p 2, Submission 52, Name suppressed, p 3, Witness H, Evidence, 14 October 2010, p 16.

<sup>129</sup> Witness J, Evidence, 14 October 2010, p 22.

<sup>130</sup> Submission 5, Name suppressed, p 3.

<sup>131</sup> Submission 11, Name suppressed, p 2.

perceived as a trouble maker and can soon find himself on the unwanted list for that particular winery.<sup>132</sup>

- 4.18** The Committee also heard reports of Riverina wineries maintaining 'blacklists' of troublesome growers. Mr Brian Simpson, Chief Executive Officer, Wine Grapes Marketing Board, for example, maintained that, 'the existence of black-booking in the region is real.'<sup>133</sup>
- 4.19** Murray Valley Winegrowers Inc said that blacklisting also existed in the Murray Valley region and that its existence had been acknowledged by the Wine Industry Relations Committee, which is a joint committee of the Winemakers Federation of Australia and Wine Grape Growers Australia.<sup>134</sup>
- 4.20** Mr Stewart Webster, Manager, Industry Policy, Industry and Investment NSW confirmed that the Department was also aware of allegations that wineries blacklisted growers in the industry, although it had no firm evidence of the practice:

No firm evidence but we have been told by people on the growing side of the industry over numerous years that there are things like black lists, troublemaking growers will not be dealt with by wineries, that sort of thing.<sup>135</sup>

- 4.21** Mr Les Worland, President of the Riverina Winemakers Association, denied that wineries engaged in blacklisting. However, he did acknowledge that some wineries may choose not to renew contracts with growers who complained:

They might have been renegotiating a contract and it might have been a guy who was sitting on the fence and saying, "You can have my grapes but I want whatever", and not happy and whingeing all the time, and the winery might say that when his contract comes up they might look at it and not replace the contract.<sup>136</sup>

- 4.22** Mr Simpson alleged that wineries colluded to ensure that no winery purchased grapes from blacklisted growers:

I know of wineries that have had black books and have joked about it over dinner that that grower or this grower—I would prefer not to name names, if that is okay—that they have those growers on the list. We compare lists, to make sure that that grower, who is an opportunistic grower...that they make sure no-one takes his grapes from him. So there is collusive behaviour at times.<sup>137</sup>

- 4.23** However, Mr Stuart McGrath-Kerr, Secretary, Riverina Winemakers Association, rejected allegations that wineries engage in such collusion, saying that: '[N]o winery will take the grower's fruit? So all wineries collude to say we will not take his fruit? That is rubbish. Name them.'<sup>138</sup>

<sup>132</sup> Submission 39, Name suppressed, p 2.

<sup>133</sup> Mr Brian Simpson, Chief Executive Officer, Wine Grapes Marketing Board, Evidence, 14 October 2010, p 2.

<sup>134</sup> Submission 47, Murray Valley Winegrowers Inc, p 6.

<sup>135</sup> Mr Stewart Webster, Manager, Industry Policy, Industry and Investment NSW, Evidence, 13 October 2010, p 25.

<sup>136</sup> Mr Les Worland, President, Riverina Winemakers Association, Evidence, 14 October 2010, p 31.

<sup>137</sup> Mr Brian Simpson, Chief Executive Officer, Wine Grapes Marketing Board, Evidence, 14 October 2010, p 6.

<sup>138</sup> Mr Stuart McGrath-Kerr, Secretary, Riverina Winemakers Association, Evidence, 14 October 2010, p 31.

***Committee comment***

- 4.24 The Committee considers that constructive working relationships between grape growers and winemakers are essential to the future of the wine industry in NSW, and that both growers and wineries have an important role to play in building relationships.
- 4.25 The Committee also considers that open dialogue between growers and winemakers is beneficial to the industry as a whole and encourages the Board to provide consultative forums in which all industry stakeholders can participate.
- 4.26 The 2005 Senate Inquiry into the operation of the wine-making industry expressed the view that increased regulation of the wine grape market, through the introduction of a mandatory Code of Conduct with defined procedures for the resolution of disputes, may improve relations between wineries and growers. The Committee is sympathetic to this view, and the Code of Conduct is discussed in more detail in Chapter Six.
- 4.27 The Committee is extremely concerned by repeated allegations that some wineries in the Riverina district engage in black-listing of growers. This practice is unacceptable. The Committee encourages the ACCC to fully investigate any complaints of victimisation in the grape growing industry.

**Variations in grape prices**

- 4.28 There is considerable variation in prices paid by wineries in the region, which was observed by numerous Inquiry participants.<sup>139</sup> The Board reported that such variations in prices are frustrating for grape growers:

Growers now find it difficult to understand or rationalise a price per tonne when the offer can vary from winery to winery by as much as 200% for the same quality of grape and the wine produced is destined for the same market and approximately the same retail price. Such discrepancies are a major cause for concern within the industry.<sup>140</sup>

- 4.29 For example, one grower observed that prices paid by different wineries can vary by up to 200 per cent:

The prices we received for our grapes last year were as low as \$100.00 per tonne to \$250.00 per tonne. Other growers in the region were getting a minimum of \$250.00 per tonne, so how can the price between wineries be so different to such an extent?<sup>141</sup>

- 4.30 Industry and Investment NSW expressed the view that variations in prices can be largely explained by differences in the quality of grapes supplied:

Importantly, with increasing wine grape supply relative to demand, intra-varietal price differentials based on quality attributes have also widened over the past 10

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<sup>139</sup> Submission 1, Name suppressed, p 2, Submission 2, Name suppressed, p 2, Submission 11, Name suppressed, p 2, Submission 20, Mr Tom Brighenti, p 2, Submission 23, Name suppressed, p 2, Submission 27, Name suppressed, p 2, Submission 39, Name suppressed, p 3, Submission 37, Name suppressed, p 2.

<sup>140</sup> Submission 14, Wine Grapes Marketing Board, p 3.

<sup>141</sup> Submission 7, Name suppressed, p 2.

years...Much of the intra-varietal price variation can be explained by quality differentials.

- 4.31** However, some growers rejected the view that quality differentials were the reason for price differences. For example, one grower said that different prices may be paid for the same grapes:

A grower supplying two wineries with a variety of grapes from the same block and therefore the same quality and winery number one pays \$150 per tonne and winery number two pays \$300 per tonne. Why, there is no rational explanation provided for this.<sup>142</sup>

- 4.32** Mr McGrath-Kerr explained that price variations emerged because individual wineries target different markets and differ in their capacity to pay:

Another factor is there is quite a diversity of sales structures among wineries in the area...There are different sales mixes and different price points that they sell into and each has a different need and a different capacity to pay higher or lower prices, depending on whether they have got strong brands or they are basically price takers at the commodity end, say, the cask end.<sup>143</sup>

- 4.33** Industry and Investment NSW believed that there were also other factors influencing prices, such as the level of stocks held by individual wineries:

even where variable prices have been paid for grapes of the same quality, feasible explanations include inter-winery differences in the levels of stocks on hand or different marketing opportunities. Intra-winery price differentials can also be explained by a willingness to support preferred growers in order to maintain minimum levels of future supplies of preferred grape varieties and qualities.<sup>144</sup>

### Caps on grape deliveries

- 4.34** 'Caps' or limits placed on grape purchases by wineries were also an issue for growers. Several growers reported that wineries imposed caps on the amount of grapes that they would purchase from individual growers.<sup>145</sup> According to Mr Worland, caps have emerged because of the declining demand:

what has been happening lately is that the tonnages have been capped. Normally in the past, in the good years, we would ask for a budget and a guy would say I am going to bring 100 tonnes of a particular variety. We would say it then, if it was a good year or whatever, and he brought in 120 tonnes, we will take the extra 20. For the last couple of years it has been capped so when the other 20 tonnes came in, we say sorry, you are up to 100 tonnes and that is what has been happening with it. Rather we would take it, but then again early in the piece, when wineries still had some demand, they would sell that 20 tonnes somewhere else.<sup>146</sup>

<sup>142</sup> Submission 8, Name suppressed, p 2.

<sup>143</sup> Mr Stuart McGrath-Kerr, Secretary, Riverina Winemakers Association, Evidence, 14 October 2010, p 22.

<sup>144</sup> Submission 29, Industry and Investment NSW, p 6.

<sup>145</sup> Submission 5, Name suppressed, p 3, Submission 36, Name suppressed, p 2, Witness E, Evidence, 14 October 2010, p 7, Submission 2, Yenda Grape Growers Association, p 2.

<sup>146</sup> Mr Worland, Evidence, 14 October 2010, p 25.

**4.35** However, growers observed that some wineries continued to purchase fruit which was excess to caps, leading growers to question whether the oversupply was real. For example, one grower observed that: 'if one is oversupplied with the commodity, then a logical consequence of that would be to not purchase any more fruit and further exacerbate the over supply problem.'<sup>147</sup>

Wineries claim they are full, yet for the right price they seem to be able to fit more fruit in. This lack of transparency makes the grower sceptical of winery honesty in other matters.<sup>148</sup>

**4.36** Moreover, growers reported that wineries offered reduced prices for fruit delivered in excess of caps, which effectively reduced the price they received for their harvest as a whole. Growers felt that this practice contributed to the general downward pressure on prices. Mr Simpson expressed the view that this practice was distorting supply and demand:

We have seen low, low prices being offered for excess to contract grapes, and that is by opportunistic winegrowers in general and winemakers that are trying to take advantage of the situation, and buy at a low price to process. There is an anecdotal comment by wineries that their tanks are full when the price is X, but that at Y, which is lower than the cost of production, they can fit everything in. The supply and demand tends to be distorted, and that is where I believe the market failure is in this instance.<sup>149</sup>

**4.37** Growers reported being offered reduced prices for excess grapes, even where the grapes came from the same vines.<sup>150</sup> For example, one grower reported that he had been paid different prices for wine from the same load:

One winery paid a dollar per tonne for grapes exceeding the cap...In my case when I delivered ...over the cap to my winery I was given a separate docket for grapes in the same truck. I was given a separate docket for \$80 a tonne for those ... They still took the fruit in the truck. If you get to the end of the block and you turn up at the winery and your truck holds 12 tonnes and you have only eight tonnes left under the cap, you will get \$80 a tonne for the four tonnes over the cap instead of the other price... Same truck, same grade and goes into the same bottle of wine.<sup>151</sup>

### Colour-testing

**4.38** Wineries grade red wine grapes not only on their maturity or sugar content but also according to their colour. Mr Simpson explained that most red wine grapes are analysed for their colour, while white wine grapes are analysed for sugar content only:

In red wine grapes 70% of the region's production is priced based on the analysis of the colour of the fresh grape White grapes are normally based on maturity which is

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<sup>147</sup> Submission 3, Name suppressed, p 2.

<sup>148</sup> Submission 23, Name suppressed, p 2.

<sup>149</sup> Mr Simpson, Evidence, 14 October 2010, p 6.

<sup>150</sup> Submission 5, Name suppressed, p 3.

<sup>151</sup> Witness E, Evidence, 14 October 2010, p 7.

derived generally as a function of the amount of sugar content within the grapes, measured in Brix and/or Baume.<sup>152</sup>

- 4.39** Mr Worland explained that colour is a key factor in marketing red wines:

The grapes are tested...for colour, because colour, depending on the anthocyanins or the pigments in the skin, is what we need to sell wine at a particular price point. If they do not come up to a colour standard—and again this might vary with wineries because people like De Bortoli and McWilliams are big cask and bulk people and we are not, so we might ask for a higher colour standard than somebody else for a particular variety. You need to have that pigmentation or ripeness in the skin so we get the colour we want and the consumer demands for a particular variety, otherwise it gets downgraded and if we take it we do so at a lesser price.<sup>153</sup>

- 4.40** The Liaison Committee of the Wine Grape Growers Council of Australia and the Winemakers Federation has published a best practice guide to wine grape assessment. The guide notes that seasonal conditions and management practices influence colour development of red wine grapes. The colour compounds, known as anthocyanins, have an optimum temperature range of 17 to 26 degrees Celsius for their formation. This means that intense colour tends to be more difficult to achieve in extremely hot and extremely cold regions. Excessive exposure as well as too much shading may also affect the rate and uniformity of colour formation. Excessive irrigation, excess nitrogen, calcium deficiency and botrytis are some factors that have been associated with poor colour.<sup>154</sup>

- 4.41** The best practice guide notes that colour measurement of grapes can be assessed either visually or by analytical equipment. The visual assessment is described as subjective, but the alternative use of specialised equipment remains expensive:

Colour compounds (anthocyanins) form part of the phenolic make-up of wines and are predominantly found in the skins. In the vineyard, visual assessment of colour can be made using a colour chart alongside a macerated sample of grapes. Although quick and inexpensive, this method is subjective.

Colour may be measured by the following techniques: a) Near Infra-Red Spectroscopy (NIRS) b) Spectrophotometry.

Colour measurements are usually expressed as milligrams of anthocyanins per gram berry weight. NIRS is a correlative technique that enables rapid analytical results. Assuming an NIRS calibration is available, routine testing is simple and can be performed in less than a minute. Representative sampling is crucial for accuracy of results and it has become evident that NIRS calibrations need to be specific to a grape variety within its region, considering vintage variations. Currently a laboratory colour reference is essential for calibration backup. The NIRS equipment is available as a bench-top tool, but remains expensive.<sup>155</sup>

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<sup>152</sup> Submission 14, Wine Grapes Marketing Board, p 2.

<sup>153</sup> Mr Worland, President, Evidence, 14 October 2010, pp 22-23.

<sup>154</sup> Wine Grape Growers Council of Australia and the Winemakers Federation of Australia Liaison Committee, *Winegrape Assessment, in the Vineyard and at the Winery*.

<sup>155</sup> Wine Grape Growers Council of Australia and the Winemakers Federation of Australia Liaison Committee, *Winegrape Assessment, in the Vineyard and at the Winery*. p 6.

- 4.42** The best practice guide notes that obtaining a representative sample of whole berries from loads for a colour test can be difficult. It is also crucial to understand vineyard variability prior to sampling, and that colour sampling shows a greater variability than sampling for maturity.<sup>156</sup>
- 4.43** Submissions to the Inquiry by growers reflected some of the difficulties in determining colour, and the subjective nature of testing depending on analysis technique. Some Inquiry participants expressed the view that the process of colour-testing grapes is subjective and that the outcomes are therefore unreliable. For example, Mr Alvaro commented that 'the real difficulty has been with colour. That is very subjective.'<sup>157</sup>
- 4.44** Growers pointed out that there is no standardised test for colour, with one grower telling the Committee: 'We find each winery has a different system. There is no national standard for colour testing.'<sup>158</sup> Mr Worland explained that the assessment of grape colour at Casella Wines, for example, is based on a combination of visual and laboratory testing.<sup>159</sup>
- 4.45** Some growers pointed out that not all wineries conduct colour testing or include colour as a criterion in grape pricing. For example, one asked, 'if colour was so important why are all the wineries not using it? One winery we deliver to, where we deliver pretty much all our reds, they don't worry about colour.'<sup>160</sup> Another grower reported that colour tests produce considerable variation:

two or three of the majors do not use colour testing because there is too much variation in it. For argument's sake, let us say they come and take a colour test at my place. I am one of the lucky ones. My [omitted by resolution of the Committee] wineries do not do colour testing but with the previous winery if there was a dispute they would come and take two tests. They will do their own test and an independent will do the other one. You get up to 0.4 difference and the same bloke picked the two tests.

- 4.46** Other participants felt that laboratory colour tests are also open to manipulation, as wineries choose which grapes they will test.<sup>161</sup>
- 4.47** Several growers expressed the view that colour testing of red wine grapes could also be used to exert downward pressure on prices, as wineries control the process of colour-testing grapes and pay reduced prices for grapes with poorer colour. For example, one grower observed a growing trend among wineries to 'penalise' growers for deficiencies in colour, saying: 'we used to get bonuses for colour, we used to get bonuses for Baume', it used to go up, but now it is all down, down, down<sup>162</sup>

#### ***Committee comment***

- 4.48** The Committee is concerned that the visual assessment of colour of red wine grapes is subjective and potentially unreliable. The Committee does not consider this an adequate

<sup>156</sup> Wine Grape Growers Council of Australia and the Winemakers Federation of Australia Liaison Committee, *Winegrape Assessment, in the Vineyard and at the Winery*. p 6.

<sup>157</sup> Mr Alvaro, Evidence, 14 October 2010, p 16.

<sup>158</sup> Witness E, Evidence, 14 October 2010, p 7.

<sup>159</sup> Mr Worland, President, Evidence, 14 October 2010, pp 22-23.

<sup>160</sup> Witness C, Evidence, 14 October 2010, p 12.

<sup>161</sup> Submission 34, Name suppressed, p 2, Witness L, Evidence, 14 October 2010, p 31.

<sup>162</sup> Witness E, Evidence, 14 October 2010, p 11.

technique for a winery to justify rejecting grapes, or reduce the price paid for them. The Committee believes that the NSW government should consult with other stakeholders to determine the effectiveness of scientific methodologies for analysing red wine grape colour should be included in the Wine Industry Code of Conduct.

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**Recommendation 2**

That the NSW Government consult with stakeholders, including other governments as appropriate, to determine the cost-effectiveness of scientific methodologies for analysing red wine grape colour.

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## Chapter 5 Price information

This Chapter discusses the issue of market information, principally in relation to information about grape prices. Inquiry participants – particularly growers – were very concerned about the availability of information about prospective grape prices, and felt that information was not available early enough. This Chapter outlines these concerns and discusses possible solutions.

As discussed in the previous chapter, grape prices are set by individual wineries rather than growers. Prices paid vary with each vintage (or season), according to the needs of wineries and the availability of grapes. Wineries may also take other factors such as quality and colour into consideration in determining prices.

### Grape growers and winemakers needs

- 5.1** Grape growers and winemakers appear to have different needs in relation to information about prices paid by individual wineries. Growers are anxious to know what price they will be paid for their grapes as early in the season as possible, while winemakers are reluctant to commit to a specific price until grapes are purchased.

### Grape growers' perspective

- 5.2** Mr Pascal Guertin, Chairman, Yenda Grape Growers Association, informed the Committee that grape prices are announced too late in the season, and that many wineries tend to announce the price they will pay for grapes at the very last minute. Mr Guertin notes that under the Code of Conduct, prices would have to be announced much earlier, providing growers with a clearer outlook to make proper business decisions:

Prices are announced too late; many wineries tend to announce the price they will pay for grapes at the very last minute or once the fruit is in the winery. This results in many growers delivering fruit to wineries without knowing what they will receive. Grapes being a perishable product, growers can't store them like grain or fruit or processed food in a hope prices will improve! Few wineries if any in the region have signed up to the Australian Wine Industry Code of Conduct, as it is voluntary at the moment. With the Code of Conduct the wineries would have to announce their prices much earlier giving growers the much needed tool as to what to do and make proper business decision.<sup>163</sup>

- 5.3** Wineries appear to have different practices in place in regard to advising growers of prices. A number of growers indicated that they were not advised of prices until they delivered their grapes to wineries after harvest. A number of growers reported being advised of prices 'on the weighbridge' as they delivered their fruit to a winery.<sup>164</sup> For example, one grower from the Riverina observed that:

[T]he price is always announced too late. It has happened a lot of times when we have delivered grapes to the weighbridge not knowing what we are going to get because the

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<sup>163</sup> Submission 2, Mr Pascal Guertin, Chairman, Yenda Grape Growers Association, p 1.

<sup>164</sup> Witness F, Evidence, 14 October 2010, p 16, Witness L, Evidence, 14 October 2010, p 32, Witness M, Evidence, 14 October 2010, p 35, Submission 43, NSW Farmers Association, p 6.

price was not announced. I think we have all done that. In the last couple of years they have announced the prices for a certain variety the night before. It is not soon enough.<sup>165</sup>

- 5.4** The frustration for growers about lack of grape price notification is apparent from the following wine grape grower, with some 25 years experience:

As growers, we are well aware that due to industry over-supply, prices are low. However, we are unable to understand why wineries are unable to give growers a projection or indication of price for produce months prior to harvest. All businesses need to have an indication of what their produce will sell for prior to outlaying monies in either growing or manufacturing the end product. Why is it that farmers are expected to outlay money well in advance (often up to 8 mths) prior to delivery of produce? Then, following delivery, they are advised of price and then still have to wait a further length of time (up to 10 mths) for full payment of produce?<sup>166</sup>

- 5.5** Such late notification of price information was a major concern for growers, who were unable to make business decisions without information about what they were likely to be paid.<sup>167</sup> As this grower suggests:

You do not have time to decide. When chardonnay was \$130 a tonne, if most people had known that in July or August they would not have bothered pruning or irrigating them.<sup>168</sup>

- 5.6** The NSW Farmers' Association explained that growers need price information in order to make decisions about their business. For example, growers may decide not to grow a crop at all if prices are likely to be lower than the cost of production:

Growers will be able to plan their business operations more effectively if they receive early price notification. If growers are notified of a true base price early enough in a season then they can match input costs to expected returns or cease production for the season if losses will be unacceptable.<sup>169</sup>

- 5.7** Growers felt that because they bear the costs associated with growing grapes, they needed information as early as possible. Mr Lawrie Stanford, Executive Director, Wine Grape Growers Australia, explained that in periods where prices are low, late notification of prices places growers in a risky situation:

Unfortunately, for wine grape growers...they take all the risk. Clearly to grow a crop and to find out only at the end of that growing period, having spent money to grow it, what your prices are means that you absorb all of the risk and we would support any move to announce prices by the companies much earlier in the season before they

<sup>165</sup> Witness E, Evidence, 14 October 2010, p 7.

<sup>166</sup> Submission 9, Name suppressed, p 2.

<sup>167</sup> Submission 1, Name suppressed, p 2, Submission 2, Yenda Grape Growers Association, pp 2-3, Submission 4, Mr Rodney Raccanello, p 2, Submission 20, Mr Tom Brighenti, p 2, Submission 23, Name suppressed, p 2, Submission 28, Name suppressed, pp 2-3, Submission 30, Name suppressed, p 1, Submission 34, Name suppressed, p 2, Submission 39, Name suppressed, p 2.

<sup>168</sup> Witness E, Evidence, 14 October 2010, p 7.

<sup>169</sup> Submission 43, NSW Farmers' Association, p 6.

make management decisions for their vineyards. It leads to a very high-risk factor for growers.<sup>170</sup>

- 5.8** The Wine Grapes Marketing Board (the Board) observed that misinformation about possible prices is common, and that it is in wineries' interests to "talk down" prices:<sup>171</sup>

Misinformation is common practice in the wine industry and market signals are often corrupted by rumour and media statements of impending problems within the industry. Winery staff members have in the past been known to talk the price down for forthcoming seasons prior to any formal announcement being made by the winery. Such actions are extremely disappointing.<sup>172</sup>

- 5.9** Mr Stanford suggested that competition between major wine companies formed an inherent disincentive to releasing information about prices, as doing so may provide competitors with an advantage:

Each year in price discovery an important process is played out whereby those four majors are the main price setters in the market, and they of course will be reluctant to reveal to their competitors what their pricing situation is, so the price discovery process means that there is an incentive to announce prices very late in the process.<sup>173</sup>

- 5.10** Mr Mark McKenzie, Chief Executive Officer, Murray Valley Wine Growers Inc, expressed the view that failure to advise growers of likely prices could amount to unconscionable conduct on the part of wineries, who restricted access to market information:

The problem for us is that the market currently is being distorted because the information flow to growers is clearly being held up to some extent by the timing of indicative prices and final prices that are delivered to growers. Ultimately, the problem for us is that we believe it is untenable—indeed, it could be unconscionable—for wineries who know they have in the last year taken grapes at well below the cash costs of production to continue to allow growers to put input costs in, 80 per cent of which they put into growing a crop before they even harvest it, full well knowing that they are not going to get anywhere near paying cash or floating costs again in the current vintage.<sup>174</sup>

### **Winemakers' perspective**

- 5.11** Mr Les Worland, President, Riverina Winemakers Association, explained to the Committee that winemakers are in a similar situation to grape growers, in that they are forecasting wine sales and the strength of the wine grape crop, which must be considered in the subsequent determination of wine grape prices. Hence it is difficult, from the winemakers' perspective, to provide a wine grape price until the last minute:

We are in the same situation [as grape growers]. ...We are looking at forecasting sales to see how much we will need. We might say we expect to get a certain amount from

<sup>170</sup> Mr Stanford, Evidence, 13 October 2010, p 3.

<sup>171</sup> Submission 14, Wine Grapes Marketing Board, p 15.

<sup>172</sup> Submission 14, p 15.

<sup>173</sup> Mr Stanford, Evidence, 13 October 2010, p 3.

<sup>174</sup> Mr Mark McKenzie, Chief Executive Officer, Murray Valley Winegrowers Inc, 13 October 2010, p 11.

growers in a normal vintage but we are going to be short of chardonnay so we had better buy some more. ...[growers] have to look at their grapes and until they start flowering it is very difficult to see whether it is going to be good or bad. Then there is hot weather and everything that comes in and they get caught in a situation where they might say, "I was a bit conservative but now I've got more", or less, and we're banking on that. It is difficult to give an indicative price until you are right on the hammer.<sup>175</sup>

- 5.12 Mr Stuart McGrath-Kerr, Secretary of the Riverina Winemakers Association, noted that wineries hold 18 months of sales in their tanks. In determining wine grape prices each year, a winery must forecast how much wine they are going to sell, and balance this with their current stock to determine what tonnage of grapes they will buy and at what price. He concluded that all these factors make it very difficult to provide an early indication of wine grape prices:

At 30 June each year, which is three or four months after vintage, wineries are holding one and a half years of sales in their tanks, which is enough to get them through to June and Christmas of the following year. They really have to make a judgement on whether they are going to sell all that wine in the next 12 months and six months beyond and whether they will continue to want it in a fairly competitive world market where two-thirds of those sales are overseas. It would be very difficult [to give an early indication of price offered to wine grape growers].<sup>176</sup>

- 5.13 In regard to growers not knowing what price their grapes will get until they arrive at weighbridge, Mr Worland expressed the view that it was unlikely that wineries would advise growers of prices so late in the season, saying: 'I would very much doubt that a grapegrower would bring his load of grapes in and look to see what he was going to get for it at the time.'<sup>177</sup>

### Indicative price legislation

- 5.14 Some Inquiry participants felt that wineries should be required to provide indicative prices. Indicative prices are not intended to be legally binding but to provide growers with an indication of likely prices. For example, the Wine Grapes Marketing Board suggested that indicative, minimum prices should be published in July:

I think July, for a winery to call out a minimum price that they ideally would not shift from. Growers are putting in 70 per cent of their input costs before they harvest the grapes. Their first costs come in the cooler months when they start pruning, and pruning can be quite intensive or the crop can be minimally pruned. So you can vary your costs from the very outset. We can often use the winter months to even "mothball" vineyards that are non-desirable varieties. So they can hibernate them, so to speak, with minimal inputs in terms of fertilisers and chemicals from that point in time. But growers really need a better idea of budgeting.<sup>178</sup>

- 5.15 Mr McKenzie explained to the Committee that wineries should be able to give an indicative wine grape price by 30 June each year, and that this would allow time for growers to make a decision about whether they will grow a crop or not:

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<sup>175</sup> Mr Worland, Evidence, 14 October 2010, p 32.

<sup>176</sup> Mr Stuart McGrath-Kerr, Secretary, Riverina Winemakers Association, Evidence, 14 October 2010, p 32.

<sup>177</sup> Mr Worland, Evidence, 14 October 2010, p 32.

<sup>178</sup> Mr Brian Simpson, Evidence, 14 October 2010, p 6.

[O]ur view is that there needs to be regulation of advice of indicative prices by 30 June every year. The reason for that is, firstly, all major wine companies have their budgets for wine grape purchases in the following vintage done in May. There is no reason, within a few thousand tonnes, why they will not know exactly how many tonnes for which they have provided a budget for purchase, and they can break that down into variety by variety. ... The reason for 30 June is that it sits firmly in the middle of the pruning season between June and July. Pruning must be completed by the end of July in most districts, certainly in the Murray Valley, before we get the beginning of bud burst and the beginning of the next season.

Our view is that indicative prices at that time would allow a grower to make a clear commercial decision about whether they will grow the crop or not, and in the current environment we believe they need the information to be able to do that. So we would like to see regulation and advice by wineries of indicative prices by 30 June, fully knowing that indicative prices are not binding on wineries, and we are not suggesting a final price position, because it is too far out from the vintage to be able to give a final price position, but an indicative price would at least give the grower the ability to make a fairly well informed decision about whether to produce or not.<sup>179</sup>

- 5.16** The *Wine Grapes Marketing Board (Reconstitution) Act 2003* required wineries to provide a schedule of indicative prices to the Board by 30 January each year. This requirement was intended to provide improved price information to growers. However, it proved unworkable in practice as wineries provided very low minimum prices which did not reflect real market conditions. Mr Simpson explained why the requirement to publish indicative prices was not workable:

The wording of the Act allowed for the system to be readily manipulated by wineries for their own purposes resulting in the regulation interfering with market signals. Wineries used the Act to publish absolute minimum prices that in many instances were not indicative of the actual minimum price that they would be paying for wine grapes but allowed them to operate in accordance with the legislation.<sup>180</sup>

- 5.17** The requirement to provide indicative prices was removed when the Act was amended in 2007, and this decision was supported by both the Wine Grapes Marketing Board and wineries in the Riverina.<sup>181</sup>
- 5.18** The Wine Grapes Marketing Board proposed that a requirement to provide the Board with indicative prices be re-introduced, with a further requirement that final prices must not decline from the indicative price by more than five per cent.<sup>182</sup> This would provide an incentive for wineries to provide accurate indicative prices.

### The Code of Conduct

- 5.19** The Wine Industry Code of Conduct is fully discussed in Chapter Six. It is sufficient to say here that the Code requires wineries to provide indicative regional prices by December 15 each year. As grapes are usually harvested in February or March, this provides growers with

<sup>179</sup> Mr McKenzie, Evidence, 13 October 2010, p 11.

<sup>180</sup> Submission 14, p 14.

<sup>181</sup> NSWPD (Legislative Council), 29 November 2007, p 4681.

<sup>182</sup> Submission 14, p 6.

some opportunity to consider whether they will harvest grapes. Mr Stanford reported that this requirement was the result of a compromise between the growers and winemakers who developed the Code:

When we negotiated the code with the major wineries we argued for as early as possible. We started with June—no, can't do that. We then went to September—no. October—no. We eventually got agreement, as a compromise, around 15 December. This is the way they have always operated. They sit there and wait for somebody to break from the pack to advise an indicative price or a market price for a variety and then they all fall in line. Generally they line up pretty much with the major companies.<sup>183</sup>

- 5.20 While only six wineries have adopted the Code of Conduct to date, one Inquiry participant did report being advised of prices in mid-December according to the requirements of the Code.<sup>184</sup>

#### ***Committee comment***

- 5.21 The overwhelming evidence presented to the Committee was that wine grape growers are offered prices by wineries far too late in the cropping cycle. This late notification of prices provides limited to no opportunity for grape growers to adjust their cropping regime in response to price signals. To provide an opportunity for growers to respond to price signals, it is evident to the Committee that the most appropriate time for wineries to publish an indicative price list is June 30 each year. This would provide a considerably more useful price signal to growers than that provided in the Code of Conduct, which is mid-December.
- 5.22 The Committee is aware that indicative price lists were a statutory requirement until 2007. The Committee believes that now is an appropriate time to reintroduce such a requirement, with sufficient safeguards so that the process forms an effective information source for wine grape growers.

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#### **Recommendation 3**

That the NSW Government seek an amendment to the *Wine Grapes Marketing Board (Reconstitution) Act 2003* to require wineries to publish by 30 June each year an indicative price list for wine grapes for the forthcoming season.

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#### **Recommendation 4**

That the NSW Government consult with the wine grape industry to determine the most effective safeguards to ensure that the indicative price list system provides an accurate source of information to wine grape growers.

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<sup>183</sup> Mr McKenzie, Evidence, 13 October 2010, p 19.

<sup>184</sup> Witness F, Evidence, 14 October 2010, p 15.

## Chapter 6 Contracts and payments

This Chapter examines the issue of wine grape supply contracts between wine grape growers and wineries. A subset of this is the terms of payment that wineries offer grape growers. The Wine Industry Code of Conduct provides a model contract framework, including terms of payment, and this is further explored in Chapter Seven.

### Wine grape supply contracts

- 6.1** Some 60 to 70 per cent of the Riverina wine growing industry has written contract arrangements in place between the grower and a winery. Some of these are a supply contract, with no guaranteed price, as explained to the Committee by Mr Brian Simpson, Chief Executive Officer of the Wine Grapes Marketing Board (the Board):

...currently probably 60 to 70 per cent of our industry has written arrangements in place. Some of them are just supply contracts that say you will deliver your grapes for the duration of the contract and then it will roll into another year, but there is generally not a minimum price. There are contracts that name a minimum, but that is a third of the cost of production. They are for the distillation price, so at worst case the grower would get a consolation and cover his harvesting costs if the winery was to go backwards.<sup>185</sup>

- 6.2** Mr Mark McKenzie, Chief Executive Officer, Murray Valley Wine Growers Inc, noted that not all contracts are in writing, but believed that they should be:

Firstly, as amazing as it seems, not all contracts are in writing; there are a lot of handshake agreements or verbal agreements around annual purchases as well as longer-term contracts. We believe that at a minimum three things from the code of conduct should form the basis of regulations within a Wine Grape Industry Act. They would be that all agreements be in writing, that a final price be in writing and delivered to the grower before harvest or before delivery of the grapes.<sup>186</sup>

- 6.3** The Perricoota Grape Growers Association reported that contracts in that region typically do not specify a price, referring instead to a 'market price' which may be lower than the cost of production.<sup>187</sup> Similarly, Mr McKenzie observed that contracts which do not specify a price are also common in the Murray Valley region:

Many wineries – including many of the major wineries – have adopted "zero price" contract that do not specify either a fixed or minimum price, but rely on the determination of final price according to the winery estimation of the "market price" for the grapes.<sup>188</sup>

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<sup>185</sup> Mr Brian Simpson, Chief Executive Officer, Wine Grapes Marketing Board, Evidence, 14 October 2010, p 10.

<sup>186</sup> Mr Mark McKenzie, Chief Executive Officer, Murray Valley Wine Growers Inc, Evidence, 13 October 2010, p 11.

<sup>187</sup> Submission 25, Perricoota Grape Growers Association, p 3.

<sup>188</sup> Submission 47, Murray Valley Winegrowers Inc, p 12.

- 6.4 Mr Phillip Alvaro, Solicitor, expressed the view that contracts without prices favour wineries, as a grower is obliged to deliver fruit without knowing what he or she will be paid:

Most contracts do not clearly specify a fixed price. The contracts at best use phrases like "market prices" ... This means that the grower has no idea what will be the return except that he is obliged to deliver fruit at less than cost.<sup>189</sup>

- 6.5 One grower explained to the Committee that he did not have a contract with the winery per se, but rather a delivery agreement. A grower's guide is incorporated into this agreement, which has the potential to change delivery details every year:

All our winery has is a delivery agreement. There is no price, no nothing. The growers' guide, which we get every season about October or November, forms part of our contract, and that changes every year. You sign a contract and it changes all the time and you do not have a say. If you do not sign the contract you cannot deliver. If you sign the contract you know things within the contract are going to change because the growers' guide, which changes every year, forms part of the contract. It is very difficult.<sup>190</sup>

### Contract time frames

- 6.6 Mr Les Worland, President, Riverina Winemakers Association, noted that whilst some growers would get longer contracts than others, generally contracts last about three years: 'Some good growers would get longer than others but generally it is about three years. Again, varieties change and consumer demand changes.'<sup>191</sup>
- 6.7 Mr Lawrie Stanford, Executive Director, Wine Grape Growers Australia, informed the Committee that the best economic outcome for a wine grape grower is a contract for about five years, and that anything less than this time would be difficult to recoup costs:

...the best economic outcome for contracting is to get a contract for about five years. Given the lead time for wine grape production, sale and profitability of new plantings, it would be doubtful you could recoup your return on wine grapes in that time.<sup>192</sup>

### The education of growers on contract development

- 6.8 The Committee heard that the Wine Grapes Marketing Board does communicate with grape growers on a regular basis, to help educate and inform them on contract writing and negotiation. However, Mr Simpson noted that contracts are individual to the grower, and that they contain confidential information that growers are reluctant to share with others:

... we try to communicate with them on a regular basis, and I have examples in my evidence here regarding how newsletters and the number of times we have set out items and articles about contracts, about what to look for in contracts, how to negotiate with wineries in terms of what to look for, how to get your point across

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<sup>189</sup> Submission 46, Mr Phillip Alvaro, p 2.

<sup>190</sup> Witness E, Evidence, 14 October 2010, p 8.

<sup>191</sup> Mr Worland, Evidence, 14 October 2010, p 32.

<sup>192</sup> Mr Lawrie Stanford, Executive Director, Wine Grape Growers Australia, Evidence, 13 October 2010, p 2.

about your business structure. We have developed our own contract and some growers have tried to use that at wineries but it is a one-way street, the winery offers the contract.

...Contracts are individual to the grower. I would say 30 per cent of my time during pre-vintage is taken up in discussions, one-on-one, with growers as opposed with getting them together. Contracts are very personal instruments that growers do not want their neighbour to know that they have, perhaps, a better return. So it is a lot of one-on-one. We have explored contractual meetings, having meetings to discuss business skills and the Department of Primary Industries has offered in the past, but growers are less inclined to turn up for those things.<sup>193</sup>

- 6.9** Mr Stanford noted that education of growers is important, and that Wine Grape Growers Australia runs education programs to help them manage their business affairs:

Therefore, beyond even the ideal situation where you have a five-year contract that is ideal, growers need to be capable of managing their own business affairs and that education capacity is important and it is something that Wine Grape Growers Australia has an involvement in through programs like Vinebiz.<sup>194</sup>

### **Unilateral changes to contracts**

- 6.10** A number of Inquiry participants identified unilateral variations to contracts by wineries as problematic. For example, one grower who had a written contract which included a price said that the contract was varied by the winery involved:

Last year we were promised about \$150 with a written contract, and when we started delivering they changed back to \$100 a tonne, so we had no choice but to deliver at \$100 a tonne.<sup>195</sup>

- 6.11** The Committee heard from Mr Simpson about wineries that have unilaterally changed contracts – in particular the purchase price of wine grapes, with no negotiation or consideration of the grower:

The opportunity for wineries in this region to unilaterally vary contracts—by that I mean the grower signs an agreement to supply, for example, a three-year rolling period each year, and the terms of those contracts are altered by the winery with no negotiation with or consideration of the grower. They are simply handed out—these are the new terms. Other wineries ... have gone out into the market and contracted with fixed prices and fixed tonnes per hectare only to alter those when it comes to harvest. The growers who challenged those have been told, "If you do challenge them you will not have a home when the contract expires." They are basically powerless because their whole infrastructure is geared up for wine grape production.<sup>196</sup>

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<sup>193</sup> Mr Simpson, Evidence, 14 October 2010, p 12.

<sup>194</sup> Mr Stanford, Evidence, 13 October 2010, p 2.

<sup>195</sup> Witness M, Evidence, 14 October 2010, p 35.

<sup>196</sup> Mr Simpson, Evidence, 14 October 2010, p 4.

- 6.12** Several growers were sceptical of the value of having a written contract. This is because some wineries changed them at will, and that contracts are based not on monetary value, but on the grape tonnage delivered. In this case, wineries have the ability to delay delivery dates:

What is the piece of paper worth because there have been cases of contracts being properly drawn up by solicitors on both sides and at the end of the day when it comes time to harvest the winery says, "We haven't got tank space at the moment" or "We can't process it quick enough, you'll just have to wait." Being a perishable product it can only sit out in the paddock for a certain amount of time. By the time they say to take it in you have either lost half the crop or it has rained and you have lost it all. What is the contract worth? It is not a contract whereby they have to pay you the monetary value of the crop, it is a contract to pay you for what you deliver, but they have ways of delaying so you do not end up delivering. Even the contracts are not worth the paper they are written on.<sup>197</sup>

- 6.13** While growers may be able to sue for breaches of contract, in practice this is rare.<sup>198</sup> According to Mr Alvaro, there are significant barriers facing growers who attempt to take legal action for breach of contract:

[F]rom my experience, growers are reluctant to take action. Growers can be "out costed" by the winery in litigation, even if there is a reasonable case. More pervasive is the reluctance by a grower who wishes to find a "home" for his grapes in the years to come with that winery or other wineries. The grower knows that by exercising such rights, the chances of finding a home for future crops diminishes.<sup>199</sup>

- 6.14** Mr Simpson concluded that to deal with this sort of behaviour, an independent authority that allows growers to anonymously deal with these issues is needed, and that the Board would be an appropriate body to do this:

I think there needs to be an independent authority that allows growers anonymously to deal with these issues, and a wine industry code of conduct would appropriately deal with that. Organisations such as the Wine Grapes Marketing Board would become a mouthpiece for taking certain action against wineries where they behaved in that way.<sup>200</sup>

#### ***Committee comment***

- 6.15** The Committee is concerned about evidence of unilateral changes to contracts. This behaviour is clearly unacceptable, and the Committee encourages grape growers to seek legal redress where breaches of contract occur. The Committee also believes that the provisions of the Wine Industry Code of Conduct, as discussed in Chapter Seven, can help reduce the number of incidences of unilateral changes to contracts.

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<sup>197</sup> Witness C, Evidence, 14 October 2010, p 8.

<sup>198</sup> Mr Phillip Alvaro, Solicitor, Evidence, 14 October 2010, p 14.

<sup>199</sup> Submission 46, Mr Phillip Alvaro, p 3.

<sup>200</sup> Mr Simpson, Evidence, 14 October 2010, p 10.

## Terms of payment

**6.16** Growers are generally not paid in full in one payment for their grapes once delivered. Instead, the terms of payment may provide for the wineries to pay by instalment over a period of months. If a grower has a contract with a winery, the terms of payment are detailed within the contract. If a grower does not have a contract, the terms of payment are determined by the Board. In this case, the Board issues a statutory Terms and Conditions of Payment Order, which usually determines payment in three equal instalments payable in May, June and October.<sup>201</sup>

**6.17** The Committee heard evidence that the Board's ability to determine the terms of payment is highly valued by grape growers. For example, the Young Irrigation Network noted that the Board's terms of payment are desirable, and provide a certainty of cash flow:

The existing terms of payment are highly desirable and they need to remain for the certainty of cash flow of future farmers. If these terms were removed, the retail suppliers and other providers would be less likely to service the industry as grape growers would not have certainty of a reliable payment framework.<sup>202</sup>

**6.18** One grower of 25 years standing explained that the Board's regular payment schedule has been effective, and that wineries have been known to stretch out payments over a ten month period:

The current terms of payment held by and enforced by the Wine Grapes Marketing Board have proven to be effective in regulating wineries to at least make regular payments within an allotted time – following February/March harvest - 33% May, 33% June & 33% October. There have been cases whereby wineries make the payment schedule stretch out to a 10 month period of nine payments with no interest to the farmer or penalty imposed on the winery. In so saying, farmers that are forced under contract are not protected by these terms of payment.<sup>203</sup>

**6.19** Witness E told the Committee that the Board's terms of payment are crucial to growers who do not have a contract with their winery:

[T]he first issue is the terms of payment. We feel the board needs to retain that sort of legislative power because a lot of wineries take advantage of growers by not paying on time, or not paying at all. I do not know if you are familiar with the terms of payment but the board sets three dates on which the wineries have to pay. Normally it is in May, June and October. If you have a contract then that arrangement takes over the terms of payment. I am not too familiar with individual contracts but some contracts might pay at the end of 30 days or there might be 10 different payments, but that is part of the contract and therefore the terms of payment do not apply. A lot of wineries around here only have delivery agreements, so they do not really have contracts. The terms of payment are crucial to the growers who do not have firm contracts with their wineries.<sup>204</sup>

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<sup>201</sup> See for example the 2010 Terms and Conditions of Payment Order at the Board's website: [http://www.wgmb.net.au/uploads/media/Terms\\_and\\_Conditions\\_of\\_Payment\\_Order\\_2010\\_01.pdf](http://www.wgmb.net.au/uploads/media/Terms_and_Conditions_of_Payment_Order_2010_01.pdf).

<sup>202</sup> Submission 24, Young Irrigation Network, p 2.

<sup>203</sup> Submission 9, Name suppressed, p 2.

<sup>204</sup> Witness E, Partially Confidential Evidence, 14 October 2010, p 6.

- 6.20** Mr Simpson explained that some wineries have included in their contracts terms of payment spread over eight or nine months:

I have had examples over the years of eight or nine instalments. One winery used to pay its growers once a month, and trickle it. Growers can set up their businesses for those sorts of mechanisms, but I go back to the competition aspect and I think that wineries should compete on the price they pay for the product and the markets into which they are selling the wine.<sup>205</sup>

- 6.21** Mr McKenzie noted that the 'drip feed' of payments by wineries means that growers are not only subsidising the operation of the winery, but also exposes growers to not being paid at all if the winery goes out of business:

We believe there are significant instances in New South Wales and elsewhere of other schedules being used which are a direct disadvantage to growers because effectively the drip-feed of payments to growers, and in some cases no payment until the wines are sold, can mean that growers not only are effectively subsidising the operation of those wineries through taking much lower payments but it means they may well expose themselves to a situation where they are not being paid for a following vintage at all, should that winery get into financial difficulties and fall over. In the Murray Valley alone, since 2002 we have had four major wine groups fail financially, at a cost of some \$20 million to growers.<sup>206</sup>

- 6.22** Mr Raccanello, wine grape grower, noted that wineries can and do change payment schedules without providing notice to growers, which has ramifications for growers managing staff and other business dealings. He warned that without some form of guarantee that growers will be paid on a defined time line, wine grape growing will become unviable:

The wine grape industry desperately needs the voluntary code of conduct to become mandatory because wineries can change at no notice when they will pay growers. Although they may inform you of the terms of payment, there are the unscrupulous few that will not make the payments as previously agreed upon. This then has ramifications for grape growers, large and small, to negotiate with banks, farm suppliers, leasing arrangement, workers pay, holidays, super etc.

This behaviour of some wineries to delay payment to growers without notice makes it difficult for honest wineries to compete in the marketplace. The Wine Grape Marketing Board can fight for late payment but the government continuously is weakening its powers. Unless there is some guarantee when we are going to get paid, wine grape growing will become totally unviable for growers.<sup>207</sup>

- 6.23** Mr Simpson explained that about 90 per cent of Australia's wine grapes are sold under the payment conditions similar to those determined by the South Australian *Wine Grapes Industry Act 1991*. Under these terms, payment for all wine grapes, whether part of a contract of supply or not, must be made in three instalments: 33.3 percent due at the end of the month following the month in which the grapes are delivered; 50 percent of remaining balance by 30 June; and

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<sup>205</sup> Mr Simpson, Evidence, 14 October 2010, p 10.

<sup>206</sup> Mr McKenzie, Evidence, 13 October 2010, p 11.

<sup>207</sup> Submission 12, Mr Peter Raccanello, p 2.

balance by 30 September.<sup>208</sup> Mr Simpson concluded that if all wineries paid on the same time frame, growers could structure their businesses much more effectively:

Under the South Australian legislative terms the payments are a bit closer. The first payment is after 30 days, the second payment is at the end of June to coincide with the end of the financial year, and the final payment is on 30 September. Pretty much 90 per cent of Australia's wine grapes are sold under those payment conditions. ... but I go back to the competition aspect and I think that wineries should compete on the price they pay for the product and the markets into which they are selling the wine. If they all paid on the same time frame growers could structure their business, the transactions costs and litigation in this industry would be a lot less and growers would know where they stood on a year-by-year basis, regardless of the price they were paid.<sup>209</sup>

**6.24** As discussed in Chapter Six, the voluntary Australian Wine Industry Code of Conduct includes provisions for terms of payment. Under the Code, terms of payment are as follows:

- The terms of payment are to be clearly stated and, unless otherwise agreed by the parties to the Agreement, shall be consistent with the industry standard of:
- 1/3 at the end of the month following the month of delivery;
- 1/3 at the end of June; and
- balance at the end of September of the year that the first payment commenced.

**6.25** Mr Stuart McGrath-Kerr, Secretary of the Riverina Winemakers Association, noted the cash flow pressures facing a winery, and the long time between receiving grapes and selling the final wine product. From the winemakers' perspective, the longer they can delay payment the better:

A lot of the wineries are working on 180-day terms now. With export, they are not getting paid for 90 days after they export. The wineries have to process the stuff in January-February, pay for a processing agent, and wages and all the rest of it, before they can get any income from it. It basically sits in stock for a year to a year and a half, because that is the stock holding period that exists. There are a lot of pent-up cash flows in the system, and that is the thing that kills the wineries more than anything else, particularly in exports. From a winery's point of view, the longer they can put off any payment and the shorter the time in which they can get payment from their customers, the better.<sup>210</sup>

**6.26** Evidence was presented to the Committee that wineries that included extended terms of payment in their contracts may enjoy a competitive advantage over those who don't. Mr Simpson explained that wineries in the Riverina have a competitive advantage over those in South Australia, because they have a terms of payment regime which is more advantageous to them compared to the South Australians:

[W]hen I talk to big companies in Adelaide about the terms of payment, they say, "Why is Casella Wines doing so well?" I say, "He is paying his growers in four

<sup>208</sup> *South Australian Government Gazette*, Wine Grapes Industry Act 1991, Order by Minister, Terms and Conditions of Payment, 18 March 2004, p 819.

<sup>209</sup> Mr Simpson, Evidence, 14 October 2010, p 10.

<sup>210</sup> Mr Stuart McGrath-Kerr, Secretary, Riverina Winemakers Association, Evidence, 14 October 2010, p 30.

instalments and you are having to pay three, so his cash flow immediately has a competitive advantage." National competition policy was to try to prevent people having a competitive advantage over others.<sup>211</sup>

- 6.27 Similarly, Mr McGrath-Kerr advised the Committee of the possible dangers of making wineries in the Riverina pay more rapidly than those inter-state:

If you bring in a system that makes a winery in this area pay more rapidly than, say, a winery in Victoria or South Australia, then wineries here would have to sell more rapidly at lower prices to offload the product. That would obviously drive down returns and reduce the capacity of the industry to pay reasonable returns compared to growers in other areas. It is a very delicate situation.<sup>212</sup>

- 6.28 Another feature of the South Australian legislation is that no purchaser can purchase grapes again in the following year until the previous vintage's purchases have been paid for in full.<sup>213</sup> Mr McKenzie expressed the view that this provision should be included in New South Wales legislation:

Part of the issue for us is to institute the second major component of the South Australian regulations, and that is that no purchaser can purchase again in the following vintage until the previous vintage's purchases have been paid for in full. What we are asking the Committee to consider and to recommend to the State Government would be the introduction of a similar Wine Grape Industry Act that would put those two provisions in place.<sup>214</sup>

- 6.29 Prior to competition policy reforms, the Board did have the statutory power to determine terms of payment for all wineries and grape growers in New South Wales. Mr Simpson explained that during the competition policy review, the Board provided evidence that statutory term of conditions provided a net public benefit. However, this was not accepted by the government:

[W]ith regard to the board's legislation in the year 2000, the Wine Grapes Marketing Board was subject to a New South Wales Government-run competition policy review. The board in its submission to this review funded a study by Associate Professor Bill Richards of the University of Sydney that conclusively showed that the provision of statutory terms and conditions of payment provided a net public benefit, plus meeting the requirements of competition principles as prescribed by the National Competition Commission.

Statutory terms and conditions of payment reduced transaction costs for the industry and delivered savings to all sectors of the industry whilst assisting to maintain a balanced, across-the-board approach to terms of payment. New South Wales governmental staff disagreed with the findings, as the wine processing sector also disagreed with the findings. Therefore, we have lost the full powers. It was obvious from the outset that agreement would not be achieved with wineries that fundamentally wanted to remove the board and its so-called interference with their varying business practice.<sup>215</sup>

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<sup>211</sup> Mr Simpson, Evidence, 14 October 2010, p 12.

<sup>212</sup> Mr McGrath-Kerr, Evidence, 14 October 2010, p 30.

<sup>213</sup> *Wine Grapes Industry Act 1991 (SA)*, s 9

<sup>214</sup> Mr McKenzie, Evidence, 13 October 2010, p 11.

<sup>215</sup> Mr Simpson, Evidence, 14 October 2010, p 3.

- 6.30** The *Wine Grapes Marketing Board (Reconstitution) Act 2003* contains a sunset clause, which automatically repeals the Act on 1 January 2012. The Act was originally drafted to sunset on 1 January 2008, and was first extended to 1 January 2010. In 2009 Parliament passed another amendment to the Act to extend it to 2012. The intent of the original Act was to help growers transition to an open market after the vesting powers of the Board ceased.
- 6.31** Speaking to the Bill to extend the *Wine Grapes Marketing Board (Reconstitution) Act 2003* in 2009, Parliamentary Secretary the Hon Henry Tsang told Parliament the Act was extended to enable a voluntary code of conduct to be developed between growers and wineries. Mr Tsang expected the code to be in use by most growers and wineries by the end of the 2011 vintage, hence the sunset clause of 1 December 2012:

The main purpose of the bill is to extend the power of the board to set default terms and conditions of payment for wine grape sales that are not the subject of contracts operating for two or more vintages. These sales are commonly referred to as spot market sales. ... The Act was originally drafted to sunset on 1 January 2008. In 2007 this Parliament agreed to extend the Act until 1 January 2010. The Act was extended to enable a voluntary code of conduct to be developed between growers and wineries.

... The code took effect from 1 January 2009. Unfortunately, by this time most growers in the region had already entered into arrangements for the sale of their 2009 vintage grapes. As such, the code will only become fully operational for the 2010 vintage. I am advised that two wineries are now operating under the new national code. This accounts for 45 growers or 20,280 tonnes of wine grapes. It is, however, anticipated that the code will be in use by most growers and wineries in the region by the end of the 2011 vintage.

The board's powers to set default terms and conditions of payment will provide transitional protection for those growers who have not yet done so to consider and develop sales by contracts. ... Extending the board's powers in the circumstances I have set out will ultimately increase competition in the market. It will give growers another two years to develop their marketing and negotiation skills, ensuring a smooth transition to an unregulated market.<sup>216</sup>

- 6.32** As discussed in the next chapter, the Wine Industry Code of Conduct has still not been widely implemented.

#### ***Committee comment***

- 6.33** It is evident to the Committee that the varying terms of payment offered by wineries to wine grape growers can place growers at a significant disadvantage. In addition, wineries in the Riverina who enforce extended terms of payment compared to their inter-state and intra-state counterparts may enjoy a competitive advantage at growers' expense. The Committee believes that the terms of payment offered by all wineries should be the same, regardless of whether a grower has a contract or not, and that the Government should investigate the feasibility of requiring this.
- 6.34** The Committee is also aware that the non-contract terms of payment, as mandated by the Board, will expire on 1 January 2012. The Terms of Reference for this Inquiry did not specifically include a review of the Board and its sunset clause. Nevertheless, the Committee is

<sup>216</sup> NSWPD (Legislative Council), 29 October 2009, p 18982.

aware of growers' support of the Board's mandated terms of payment, and in the absence of a mandated Code of Conduct, strongly believes that this function should continue.

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**Recommendation 5**

That the NSW Government investigate the feasibility of requiring that all wineries offer the same terms of payment for wine grapes to growers.

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**Recommendation 6**

That in the absence of a mandated Wine Industry Code of Conduct, which includes a terms of payment schedule, the Wine Grapes Marketing Board's terms of payment function continue.

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- 6.35** The Committee agrees with the Murray Valley Wine Growers Inc that a winery should have to pay for the previous vintage grapes in full before it can accept any grapes for the next season, as is currently the case in South Australia.
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**Recommendation 7**

That the NSW government investigate the most appropriate methods to ensure that a winery has paid in full for the previous season's vintage before it can accept any wine grapes from the next growing season.

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# Chapter 7     The Wine Industry Code of Conduct

Many of the issues canvassed in previous chapters, such as price information, terms of payment and contracts are included in the Wine Industry Code of Conduct. This Chapter looks at the development and implementation of the Code, and discusses how successful it has been to date.

## Development of the Code

- 7.1 Discussions about developing an industry code of conduct began in 2003. At that time the Wine Grapes Marketing Board (the Board) joined the national Wine Industry Relations Committee. This committee developed and published the 'Wine Grape Assessment – in the Vineyard and at the Winery' document. This document noted that it was imperative that both growers and wineries observe standards of ethical and fair behaviour, and that the development of a 'behaviour' protocol was a priority.<sup>217</sup>
- 7.2 However, the Board told the Committee that it was not until the 2005 Senate Inquiry into the wine industry that a code of conduct was discussed in earnest.
- 7.3 The Senate Rural and Regional Affairs and Transport References Committee inquired into the wine-making industry in 2005. The Senate Committee discussed at length the concept of a code of conduct for the wine grape trade, and thought it unlikely a voluntary code would be enough to protect growers with weak bargaining power. The Committee concluded that given the strong evidence of poor business relations and exploitation of growers by some winemakers, a mandatory code of conduct was justified. The Senate Committee therefore recommended:

[T]hat the Government, in consultation with representative organisations for wine grape growers and winemakers, should make a mandatory code of conduct under the Trade Practices Act to regulate sale of wine grapes.<sup>218</sup>

- 7.4 However, the Australian Government did not support this recommendation, and considered that a voluntary code of conduct was the preferred approach.<sup>219</sup> The subsequent voluntary Wine Industry Code of Conduct took three years to develop and introduce.<sup>220</sup>

## The need for the Code of Conduct

- 7.5 The Committee received extensive evidence from wine grape growers about the need for a code of conduct. For example, a grape grower shared his concerns about the relationship between grape growers and wineries. In this case, a winery asked the grower to plant

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<sup>217</sup> Submission 14, Wine Grapes Marketing Board, Appendix 2, 'Wine grape Assessment – in the Vineyard and at the Winery', pp A2-3.

<sup>218</sup> Senate Rural and Regional Affairs and Transport References Committee, '*The operation of the wine-making industry*', October 2005, Recommendation 3, p 58.

<sup>219</sup> Minister for Agriculture, Fisheries and Forestry, *Australian Government Response to the report on The operation of the wine-making industry by the Rural and Regional Affairs and Transport References Committee*.

<sup>220</sup> Submission 14, p 8.

Chardonnay grapes, but then refused to purchase them several years later. The grower suggested a need for a Code of Conduct to help protect growers from such behaviour:

We have had a well known winery ask us to plant [*omitted at the request of the author*] acres of Chardonnay. We spent close to \$500,000.00 on the vineyard with planting, training and drip irrigation, only to be told a few years later that they didn't need us anymore. We now have [*omitted at the request of the author*] acres of grapes that gets dumped on the ground every year as no other winery wants it. Where is there any control over this industry? How far do we as grape growers need to go to survive?

We as growers need to have a Wine industry code of conduct put in place and managed by a committee so that we can address these problems. Someone who can represent us and work towards a better industry for all concerned is needed.<sup>221</sup>

- 7.6** One family, which has been growing wine grapes in the Riverina region for over 40 years told the Committee that if wineries and growers are accountable to the Code of Conduct, this would go a long way to improve the future of the industry:

My submission is on behalf of my family who have produced wine grapes in the Riverina for over 40 years. The Board has minimal power to help growers in areas such as pricing and winery behaviour.

If wineries and growers are accountable to the Code of Conduct set by the Board this would then go a long way to improve our industry in the future. If no action is taken now we are one of many farmers that will be forced out of the wine grape growing industry.<sup>222</sup>

- 7.7** A third generation farmer and grape grower explained to the Committee that for the vintage of 2007-08, after having paid bills and costs, for a 40 hour week he earned \$4.73 per hour. The producer suggested that an industry code of conduct needs to be in place:

As a grower we need to have an industry code of practice in place and an industry body (maybe the wine grapes marketing board) to be our voice for the farmers for a better future, fairer pricing and a better industry for generations to come. We need it now before it is too late and that farmers including myself walk away from farming forever.<sup>223</sup>

- 7.8** The wine industry occurs across several States. If one jurisdiction was to introduce a wine industry code of conduct alone, this may favour the industry in one State over another. To be effective and operate efficiently, a code of conduct needs to be implemented nationally.

## The Australian Wine Industry Code of Conduct

- 7.9** The voluntary Australian Wine Industry Code of Conduct was officially launched on December 19, 2008, and took effect from 1 January 2009. The aim of the Code is two fold:

- establish a common Australian wine grape supply contract framework

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<sup>221</sup> Submission 7, Name suppressed, p 1.

<sup>222</sup> Submission 38, Name suppressed, p 1.

<sup>223</sup> Submission 37, Name suppressed, p 1.

- provide a dispute resolution system to manage disagreements which exist over price or quality assessments.

**7.10** The contract framework found in the Code contains the following elements:

**Table 1 Main elements of the contract framework in the Code of Conduct**

Element	Summary
<b>Pricing methods</b>	All Agreements must contain a fixed price and/or a clear statement as to how the final price payable will be determined.
<b>Price Notification</b>	Where the Agreement requires a price offer or a negotiation as part of the calculation of the price for the wine grapes, the wine grape purchaser must, unless prevented due to unforeseen and extraordinary reasons: <ul style="list-style-type: none"> <li>• by 15 December each year - provide to its wine grape growers in the Hunter Valley, Riverina, Murray Darling/Swan Hill and Riverland regions Indicative Regional Prices for each variety of wine grape.</li> <li>• By 15 January each year – use its best reasonable endeavours to provide to its wine grape growers in all other regions Indicative Regional Prices for each variety of wine grape.</li> </ul> If an Agreement does not exist on the relevant date but is subsequently entered into prior to the vintage period (for example, an Agreement entered into in February), then the wine grape purchaser must provide the Indicative Regional Prices referred to above to the wine grape grower at the time the Agreement is entered into, unless the actual price offer is made at that time. In all regions where the relevant Agreement requires the price to be agreed between the parties, any wine grape price offer required under the Agreement must be made: <ol style="list-style-type: none"> <li>(a) if the wine grape purchaser undertakes a pre-vintage vineyard inspection prior to making a final wine grape price offer - as soon as practicable and, at the latest, prior to the anticipated harvest date for those wine grapes; and</li> <li>(b) in all other cases – at least 10 Business Days prior to the anticipated harvest date for those wine grapes.</li> </ol>
<b>Price adjustment</b>	Any provision for price adjustment must be clearly spelt out and specify in a transparent manner any bonuses or penalties and the mechanism(s) used to determine bonuses/penalties.
<b>Terms of payment</b>	The terms of payment are to be clearly stated and, unless otherwise agreed by the parties to the Agreement, shall be consistent with the industry standard of: <ul style="list-style-type: none"> <li>• 1/3 at the end of the month following the month of delivery;</li> <li>• 1 /3 at the end of June; and</li> <li>• balance at the end of September of the year that the first payment commenced.</li> </ul>
<b>Tonnage and vineyard details</b>	The Agreement must state whether the amount of wine grapes to be purchased is “area-based” or “specified tonnes” and must stipulate the area and/or the tonnes as the case may be. The Agreement must clearly describe the wine grapes to be purchased. Where relevant, the Agreement must specify the vineyard details such as patch/block number identification, identification of clones and rootstocks

	when required, or a vineyard map showing vineyard details for the vines to which the Agreement pertains.
<b>Wine grape standards, assessment and harvest</b>	The Agreement must state any quality standards which apply to the wine grapes being purchased, including specifying any minimum requirements for maturity, purity and condition, relevant to the region and variety. The Agreement must describe any assessment method for vineyard or weighbridge wine grape assessment which will apply under the terms of that Agreement if that method is directly inconsistent with the methods described in "Wine grape Assessment in the Vineyard and the Winery" (as amended from time to time and endorsed by WGGA and WFA).  The Agreement must specify the process for determining the harvest time(s) for the wine grapes.
<b>Delivery and freight</b>	The Agreement must state the delivery point for the wine grapes and identify which party bears the costs and associated risks of freight.
<b>Title in wine grapes</b>	The Agreement must state when title in the wine grapes passes from the wine grape grower to the wine grape purchaser. The Agreement must also specify the point at which the wine grape purchaser accepts or rejects the wine grapes.
<b>Force majeure</b>	If there is a force majeure clause in the Agreement, it must be clearly specified.
<b>Assignment and sale of vineyard</b>	The Agreement must clearly specify any restrictions imposed by the wine grape purchaser on the rights to transfer possession or ownership of the relevant vineyard. The Agreement must clearly specify any obligations on the wine grape grower upon the sale or disposal of possession of the relevant vineyard.
<b>Professional advice</b>	An Agreement must contain a prominent statement that the wine grape grower signing the Agreement should seek independent legal, financial and taxation advice.
<b>Dispute resolution clause</b>	The Agreement must include a Dispute resolution clause that is consistent with Part 3 of this Code.
<b>Variations</b>	<p>It is recognised that variations to Agreements from time to time may need to be negotiated. Any variation to an Agreement must be:</p> <ul style="list-style-type: none"> <li>• clearly specified, and</li> <li>• agreed, confirmed in writing and signed by all parties to the Agreement.</li> </ul> <p>Agreements must not contain a provision which allows one party to unilaterally amend the Agreement without the other parties' written consent to the specific amendment.</p>

*Australian Wine Industry, Code of Conduct, December 2008*

- 7.11** The Code is managed by a Code Administration Committee, which is comprised of independent members jointly appointed by the Winemakers' Federation of Australia and Wine Grape Growers Australia.<sup>224</sup>

<sup>224</sup> The Australian Wine Industry Code of Conduct, December 2008.

## Dispute Resolution under the Code of Conduct

- 7.12 The Code of Conduct outlines a dispute resolution procedure for three different types of dispute:
- disputes over wine grape price
  - disputes over downgrades and rejections in the vineyard – where a grower disagrees with the assessment of a purchaser that the wine grapes have failed to meet agreed specifications and a financial penalty is imposed, or some or all of the wine grapes are rejected
  - disputes over downgrades and rejections at the weighbridge.<sup>225</sup>
- 7.13 Part 3 of the Code provides a model dispute resolution procedure. The Code makes provision for the appointment of an Independent Expert, who may be appointed by either the parties to the dispute or, if they cannot agree on a suitable person, by the Code Administration Committee.
- 7.14 The Code requires both the wine maker and grower to participate in the dispute resolution procedure and to assist the Independent Expert by providing any information requested. Any party who invokes the dispute resolution process agrees to be bound by the Code in relation to the conduct of the dispute, in particular, the clauses relating to defamation and to cost recovery.<sup>226</sup>
- 7.15 The appointed Independent Expert will determine the dispute by applying the terms of the Agreement which exists between the wine grape grower and the signatory for the supply of the grapes. Subject to compliance with the Code, the decision of the Independent Expert is final and binding on all parties and cannot be appealed or challenged except in the case of a manifest error or proven misconduct. Failure by a Signatory to comply with the determination of the Independent Expert will amount to a breach of the Code and the matter may be referred to the Code Administration Committee for disciplinary action.
- 7.16 The case study provides a detailed outline of the provisions for a dispute over wine grape price found in the Code of Conduct.

### Case study - Code of Conduct provisions for a dispute over wine grape price

The dispute resolution process can be summarised as follows:

- In regards to a dispute over a price offer made by a purchaser, within 7 business days the grower will file a Notice of Dispute, which outlines the background to the dispute, the issue in dispute and the outcome desired. This is to be filed to both the purchaser and the Code Administration Committee.
- Within 7 days the other party will respond in writing, indicating whether the desired outcome is agreed, and, if it is not, whether that party wishes to offer another outcome, and inform the Committee in writing that a response has been provided.

<sup>225</sup> The Australian Wine Industry Code of Conduct, December 2008, p 14.

<sup>226</sup> The Australian Wine Industry Code of Conduct, Part 3 – Dispute Resolution, p 14.

- The disputing party and the wine grape purchaser have 14 business days from the issue of the Notice of Dispute to negotiate a mutually agreed outcome. If these parties have not resolved the dispute within this 14 business day period, they must jointly appoint an Independent Expert to make a determination of price.
- If the disputing party and the wine grape purchaser cannot agree on the selection of an Independent Expert within 21 business days of the issue of the Notice of Dispute, the Presiding Member of the Committee will appoint an appropriate Independent Expert from a panel of experts endorsed by the Committee.
- The appointed Independent Expert will deliver a determination within 14 business days of the date of their appointment or, if the matter requires extensive research, submissions from the parties and/or investigation, will provide a reasonable timeframe in which to complete the task.
- The disputing party and the wine grape purchaser agree to be bound by the determination of the Independent Expert in the absence of manifest error or misconduct and to share costs equally.

**7.17** The Code Administration Committee acknowledged that the Code does not have the power to influence international factors nor can it deal effectively with issues such as over production. However, it can bring some equity and fair play into the supply and purchase of wine grapes and provide a proper framework for business to be done:

The code does not have the power to influence international factors nor can it alone deal effectively with issues such as over production. At present the whole industry is going through a difficult time with the growers having the worst of it. What the code can do is to bring some equity and fair play into the supply and purchase of wine grapes and provide a proper framework for business to be done. It also provides an inexpensive way to deal with disputes quickly by independent experts.<sup>227</sup>

### **Implementation of the Code of Conduct**

**7.18** Currently there are only six wineries which are signatories to the Code, representing 37% of the total wine grape crush. The Code Administration Committee told the Committee that it is concerned about the poor uptake of the code by wineries, and the apparent ignorance or fear of using it by growers:

The Committee is concerned at the low uptake of the code by winemakers and the apparent ignorance or fear of using it among growers. The Committee believes that it is critical to the code's success for both the WFA and the WGGA to redouble its efforts to engage signatories and to promote the importance and benefits of the code with growers.<sup>228</sup>

**7.19** The Board informed the Committee that wineries in the Riverina have been very slow to adopt the Code, and that some in fact have indicated that they never will:

<sup>227</sup> Submission 53, Code Administration Committee, p 12.

<sup>228</sup> Submission 53, p 7.

... the Board can and has educated the growers in relation to the Wine Industry Code of Conduct that has been developed ... but the introduction of the code has been limited. Regional wineries are slow to adopt the code and many have advised they will never sign on the code. In part they will not be coerced by growers due to growers' inability to negotiate the code's terms into existing supply and contractual arrangements. The only signatory to the Code in the Riverina region (Orlando Wines) purchases approximately 15% of regional production.<sup>229</sup>

- 7.20** Despite the low uptake of the Code, Mr Terrence Murphy explained to the Committee that the Board has been very active in bringing stakeholders together to accept the Code of Conduct:

The Wine Grapes Marketing Board has been very active in bringing stakeholders to accept the Code of Conduct and fairness in Grape Supply Agreements in spite of considerable criticism from growers and wine makers. Their efforts for years were frustrated by the lack of standards and binding agreements. The board and executive have taken a forthright approach to these issues and brought about a level of accountability with the industry.<sup>230</sup>

- 7.21** Murray Valley Winegrowers Inc is the peak regional body representing the interests of wine grape growers in the Murray–Darling and Swan Hill wine regions in the Murray Valley zone of NSW and Victoria. The Association states that the adoption and implementation of the Code of Conduct has been a failure, and that the solution is to introduce legislation to protect growers' rights:

Murray Valley Winegrowers contends that by any measure the adoption and the implementation of the Code by the wine production sector has been a failure and as such, this represents a damning indictment on a very large number of Australian wine companies. Further, given the continued existence and widespread use by wineries of the exploitative commercial behaviour such as 'black listing', coercive tactics around contracts, and unilateral variation of contract terms, as reported to the 2005 Senate Inquiry – it is Murray Valley Winegrowers' contention that the lack of adoption of the Code is, in truth, because many wine companies do not wish to change a commercial culture that gives them all the market power and growers none.

The failure of the Code to bring any significant improvements in the fairness, openness and transparency of business dealings between wineries and growers ultimately leads to the conclusion that the current structure of grape supply arrangements in the wine industry allows exploitative commercial behaviour towards growers to persist, and because voluntary measures to bring about change in the commercial culture of the Australian wine industry have failed, Governments must now introduce legislative measures to protect growers' rights.<sup>231</sup>

- 7.22** Mr Simpson provided an example to the Committee of one winery's new wine grape purchasing contract, which refers to the Code of Conduct, but only to the extent that the contract does not comply with the Code and any inference that it does is denied. Mr Simpson noted that a winery, which is a signatory to the Code, has been reluctant to inform growers on how to use its dispute resolution mechanisms:

<sup>229</sup> Submission 14, p 7.

<sup>230</sup> Submission 13, Mr Terrence Murphy, p 2.

<sup>231</sup> Submission 47, Murray Valley Winegrowers Inc, p 9.

Casella Wines' new contract refers to the code of conduct in saying that the contract does not comply with the code of conduct and any inference that it does is denied. Orlando Wines, which still has contracted growers in this region, is a signatory to the code of conduct, but they have been very reluctant to advise growers how to use the code of conduct when disputing prices or quality provisions at the weighbridge. We are trying to educate all wineries and their staff on how to use it so they know to advise growers of the processes under the code.<sup>232</sup>

- 7.23 The Code of Conduct is costing the industry \$66,000 a year to operate, which funds an independent secretariat based in Sydney. Mr Simpson noted that growers are still nervous about using the Code:

It is funded in part by the Winemakers Federation of Australia and Wine Grape Growers Australia. It is costing the industry \$66,000 a year to run it through an independent secretariat based in Sydney. It is similar to the way the retail industry ombudsman system works. They receive a complaint or you lodge a complaint and then they take action. The cost of that, we have worked out, is \$33,000 for one complaint last year. We received one. The growers are still nervous about the code because it is a voluntary instrument, there is no opportunity for wineries to be penalised for their actions and that is why we are seeking for it to be mandated.<sup>233</sup>

- 7.24 Mr Worland, President of the Riverina Winemakers Association, noted that it was up to individual wineries to sign on to the Code of Conduct. However, he told the Committee that the industry has an 'unspoken code of conduct', something which all grape growers should be conversant with:

[The Code of Conduct] ... is something for individual wineries. We have an unspoken code of conduct, which most of our customers would know depending on which winery they supply. It is something we could adopt if they wanted to do something across the board and get it in place but at the moment most of the wineries have a good relationship with their vigneron, the people who grow the grapes, and they would be well aware of what they can do and cannot do, whether they should spray or not, and all those things. They are issued with spray diaries and they get visits from grower liaison people all the time to inform them, whereas in the old days grapes would come in and be rejected. Very few of them are rejected now because if they are not good enough they do not leave the vineyard. I am sure they are all very conversant with that.<sup>234</sup>

### The 2010 Wine Code Review

- 7.25 A formal review of the Code was carried out during the last two months of the 2009-10 financial year, and the final report was presented to the Code Administration Committee on 30 June 2010. The review, (the Buck Report), made some significant recommendations in relation to the structure of the Code, its membership, its promotion and its method of operation.<sup>235</sup>

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<sup>232</sup> Mr Simpson, Evidence, 14 October 2010, p 10.

<sup>233</sup> Mr Simpson, Evidence, 14 October 2010, p 4.

<sup>234</sup> Mr Worland, President, Riverina Winemakers Association, Evidence, 14 October 2010, p 22.

<sup>235</sup> Submission 53, Attachment: Buck, N. *Report of a Review of the Wine Industry Code of Conduct*, June 2010.

**7.26** The Code Administration Committee expressed the view that one of the most important recommendations that came out of the review concerned the basic structure of the code. It recommended that the code should be restructured so that winemakers were not the only signatories to the code but that growers should also signatories. The primary obligation of the code should be that growers and winemakers should treat each other on a fair and equitable basis.<sup>236</sup>

**7.27** The Buck Report also recommended a new measure to determine the success or not of the Code. It recommended that a reasonable uptake target would be 50 per cent of winemakers who crush over 100 tonnes of grapes – which would be 350 winemakers out of a total of 700. If this target was not met by the end of the 2012 season, the Report recommended that the Code Administration Committee resign and advise the government that the Code is not likely to be successful:

I suggest a reasonable target should be 50% of all winemakers who crush over 100 tons which on my calculation would be around 350 of 700. I would also suggest that the Committee set a performance target of this number by the end of season 2012 and 25% by end of season 2011. Were the Committee to find that at the end of 12 months there was not a significant increase in signups I would recommend that they resign and advise the government that this Code is not likely to be successful and that they should try a different approach to regulating the industry. In my view it is unreasonable to create expectations that a voluntary Code of Conduct will effectively manage issues in an industry and then have only a very small number of participants signed up compared to the number of participants in the industry.<sup>237</sup>

**7.28** The Code Administration Committee advised the Committee that while there was general agreement about most of the Buck Report recommendations, the Wine Federation Australia and the Wine Grapes Growers Australia will take the recommendations back to their respective bodies to seek their views and reconvene later this year. It was also agreed that any major promotional and educational campaign should be delayed until the proposed changes to the Code have been ratified.

**7.29** The Code Administration Committee concluded that it is committed to the successful implementation of the Code, and that a voluntary code based on fairness and equity is the best chance for harmonious relations in the industry:

This Committee does not intend to stand idly by and let the code disappear. It intends to pursue the recommendations which are approved by the major organisations and muster whatever resources are available. The original code was achieved after prolonged discussion between winemakers and growers. After a short stint in operation, a review has highlighted some shortcomings and these are in the course of being remedied. The Administration Committee believes that a voluntary code with wide uptake and recognition in the industry – and based on fairness and equity – is the best chance for harmonious and productive relations in the industry.<sup>238</sup>

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<sup>236</sup> Submission 53, p 10.

<sup>237</sup> Submission 53, Attachment: Buck, N. *Report of a Review of the Wine Industry Code of Conduct*, June 2010, p 5.

<sup>238</sup> Submission 53, p 15.

- 7.30 Mr Lawrie Stanford, Executive Director, Wine Grape Growers Australia, also told the Committee that it was not considering a mandatory code at this stage, but that if the voluntary code does not become successful soon then it will promote a mandatory approach:

We are not considering a mandatory code at this stage. We are working on it being a voluntary code that works. Whilst there are quite a few examples of voluntary codes that have in the end moved to mandatory codes because they have not worked, we have also had related to us as a management committee for our code, instances where they have worked. We are still working on it being a voluntary code that works; ... the Winemakers' Federation has supported the code and it therefore is a conundrum that only six of its members have signed up to it. But in the next steps the Winemakers' Federation is considering a review and modification of the code to make it more acceptable and they have undertaken to promote it to their members in a more active way.

However, I make the point in my submission that basically a resourcing formula that I work on is that we have very modest funds available to us to represent our members. To run an office takes up a very large part—something like 80 per cent—of the funds we have and, of the remaining 20 per cent, about 15 per cent is taken up in administering this code that is basically not working at the moment. Of my discretionary funds I have very few funds left after the code and if it does not become more successful very soon we will simply be moving to the idea that we should have a mandatory code.<sup>239</sup>

***Committee comment***

- 7.31 The Committee is particularly concerned about the very low level of uptake of the Code of Conduct. The Committee acknowledges the arguments of the Wine Code Administration Committee, that it should be provided the opportunity to re-invigorate the voluntary Code and try and make it work.
- 7.32 However, the Committee is aware that it took the industry some three years to develop and formalise the voluntary Code. This, and its very low subsequent uptake, indicates to the Committee that the industry is, at best, ambivalent about the Code.
- 7.33 The Committee strongly agrees with the conclusion of the Senate Committee that the Code should be mandatory. The Committee believes that the adoption of the Code by all participants in the wine grape market will go a long way to restoring some harmony in the industry.
- 7.34 The Committee notes the dispute resolution process contained within the Code. It also notes that to date, growers have been reluctant to use the process, partly from fear of retribution from wineries in subsequent vintages. It is the hope of the Committee that the implementation of a mandatory Code will go some way to reducing the number of disputes. If the Code is mandated, the Committee believes that the dispute resolution process contained within it should be reviewed after 12 months to determine its effectiveness.
- 7.35 If the Code continues to remain voluntary, the Committee believes that the Government should immediately investigate the utility of forming an independent dispute resolution body to monitor and investigate complaints and disputes concerning price determination and

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<sup>239</sup> Mr Lawrie Stanford, Executive Director, Wine Grape Growers Australia, Evidence, 13 October 2010, p 2.

contractual disputes in the wine grape sector. If effective, such a dispute resolution mechanism could be utilised by other industries.

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**Recommendation 8**

That the NSW Minister for Primary Industries pursue the introduction of a mandatory Code of Conduct through the Primary Industries Ministerial Council, including reviewing the effectiveness of penalties for breaches of the Code.

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**Recommendation 9**

That if the Wine Industry Code of Conduct is mandated, the NSW Minister for Primary Industries ask the Ministerial Council to review its dispute resolution process to determine its effectiveness.

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**Recommendation 10**

That if the Wine Industry Code of Conduct remains voluntary, the NSW Government investigate the utility of forming an independent dispute resolution body to monitor and investigate complaints and disputes concerning price determination and contractual disputes in the wine grape sector.

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## Chapter 8 Collective bargaining

This chapter addresses the possibility of collective bargaining arrangements for wine grape growers, and whether this could contribute to an effective market.

- 8.1** Collective bargaining arrangements can be authorised under the *Trade Practices Act 1974* (Cth); this authorisation is provided by the Australian Competition and Consumer Commission (ACCC). The ACCC advised that collective bargaining arrangements may be permissible because they assist small businesses in negotiations with large businesses:

It has been recognised that small business are more likely to be heard on terms and conditions if they join with other small businesses to collectively negotiate with larger businesses, rather than one on one.<sup>240</sup>

- 8.2** The ACCC advised that there are two mechanisms through which collective bargaining arrangements may be authorised under the *Trade Practices Act 1974*. The first method is notification, which is suitable when members of a group can be identified and membership is not likely to change significantly over time. The second mechanism is authorisation, which is suitable when members of the group are likely to change. Both mechanisms are subject to a public interest test.<sup>241</sup>

- 8.3** Authorisation has been used by other groups of agricultural producers, such as dairy farmers and chicken meat growers.<sup>242</sup> The ACCC also advised that it has previously authorised collective bargaining arrangements involving wine grape growers in north eastern Victoria.<sup>243</sup>

- 8.4** In his review of the Australian Wine Industry Code of Conduct, Mr Neill Buck noted that collective bargaining was unusual in the wine grape market. Mr Buck expressed his surprise that growers 'had not taken more advantage of the collective negotiation authorisation facilities under the Trade Practices Act'.<sup>244</sup>

- 8.5** However, the wine grape industry in NSW does not have a strong history of collective bargaining among growers. This may be partly explained by the history of the Riverina region, which was explained by the Wine Grapes Marketing Board (the Board):

Traditionally growers do not form tight business bonds in this region in terms of working together for a common purpose other than family units with relatives, this is partially why the Board was formed in 1933 to act on behalf of wine grape producers of the region.<sup>245</sup>

- 8.6** The Board was initially established with the aim of providing a counterbalance to the power of the major wineries. From its establishment in 1933 until 2000, the Board had powers to vest the region's grape crop and set minimum prices; collective bargaining may have been

<sup>240</sup> Mr Brian Cassidy, Chief Executive Officer, ACCC, correspondence to Chair, 11 November 2010, p 5.

<sup>241</sup> Mr Cassidy, Correspondence to Chair, 11 November 2010, pp 4-5.

<sup>242</sup> Submission 29, Industry and Investment NSW, p 8.

<sup>243</sup> Mr Cassidy, Correspondence to Chair, 11 November 2010, p 4.

<sup>244</sup> Submission 53, Code Administration Committee, Australian Wine Industry Code of Conduct, Appendix E, p 17.

<sup>245</sup> Submission 14, Wine Grapes Marketing Board, p 12.

considered unnecessary during this period.<sup>246</sup> The NSW Farmers' Association expressed the view that 'the potential for collective bargaining is restricted because growers historically have not worked together closely on common issues.'<sup>247</sup>

8.7 Some growers believed that collective bargaining was unlawful. For example, one grower said, 'We were told it is the legislation. You cannot collective bargain. That is what we have been led to believe.'<sup>248</sup>

8.8 However, several Inquiry participants expressed the view that collective bargaining had the potential to assist growers to balance the market power of wineries.<sup>249</sup> For example, one grower said that he would like to see growers bargain together:

I would like to see a way the farmers could bargain collectively and have something set up so we could sell our fruit. For argument's sake, us three, or 20 people or 100 people could bargain collectively and sell our fruit to a winery instead of going there as an individual and having no negotiating power.<sup>250</sup>

8.9 Despite this enthusiasm for collective bargaining, Inquiry participants cited several obstacles in the industry. One of these was the nature of the grape market, which involved a large number of growers who produce different crops. For example, the NSW Farmers' Association pointed out that 'collective bargaining is difficult for non-homogenous products such as grapes. There are multiple varieties of grapes and within each variety there is a range of quality.'<sup>251</sup>

8.10 Another grower alluded to the practical difficulties that this diversity presents for collective bargaining with wineries:

one entire parcel of fruit offered by the group, is still made up of many individual blocks and each need visual and quality assessments either by the wine grape processor or a independent source on behalf of the collective group, to ensure the entire parcel will meet the winery processing specifications.<sup>252</sup>

8.11 Wineries were seen as the principal barrier to collective bargaining. Inquiry participants indicated that wineries were currently hostile to collective bargaining arrangements. For example, one grower reported that wineries do not allow collective bargaining:

Collective Bargaining is an important option for the farming industry as a whole, and would be a vital component in the ability of farmers to obtain a fair and reasonable outcome. At the moment, our wineries do not allow collective bargaining and prefer to deal with growers on a one to one basis. This has the effect of standing over small farmers who have little negotiating skills, and feel intimidated by the tactics of educated accountants, who only seek the bottom line. There is no code of conduct or the provisions to allow a representative to act on their behalf, as there is in the Fair

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<sup>246</sup> Submission 14, p 1.

<sup>247</sup> Submission 43, NSW Farmers' Association, p 5.

<sup>248</sup> Witness G, Evidence, 14 October 2010, p 18.

<sup>249</sup> Submission 8, Name suppressed, p 2, Submission 4, Mr Rodney Raccanello, p 2, Submission 13, Mr Terrence Murphy, p 3, Submission 52, Name suppressed, p 4.

<sup>250</sup> Witness H, Evidence, 14 October 2010, p 18.

<sup>251</sup> Submission 43, p 5.

<sup>252</sup> Submission 28, Name suppressed, pp 2-3.

Work Australia Act 2010. In this act, a worker may seek the services of another person or union official to engage on their behalf. In the grape industry, its “do as I say or there is the door!”<sup>253</sup>

- 8.12** Other participants suggested that collective bargaining may not be viable because it would be difficult to maintain cohesion among a collective of growers in negotiations with wineries. For example, the Wine Grapes Marketing Board expressed the view that collectives are only as strong as their weakest link:

Collective bargaining that is approved in accordance with the Trade Practices Act is only as strong as the weakest link in terms of the growers remaining united. Collective bargaining does not enforce that the winery must negotiate with the collective and when working with a perishable crop time becomes a critical factor.<sup>254</sup>

- 8.13** This view was echoed by one grower who pointed out that growers may undercut each other if this was seen to be in their interest:

Wine companies have not been very accepting, of collective bargaining arrangements... not all wine grapes growers act in unity and at times can undercut competitors due to the perishable nature of the product. This process undermines the collective bargaining process and its success in the wine grape industry.<sup>255</sup>

## Co-operatives

- 8.14** The Committee received little evidence in regard to the viability of co-operative arrangements among growers. Mr Brian Simpson, Chief Executive Officer, Wine Grapes Marketing Board, said that growers in the Riverina district were not enthusiastic about the idea of forming a co-operative:

As far as growers forming a cooperative is concerned, I think given the history of this region in terms of co-ops forming and then closing disastrously, having the effect that growers lose money, a co-op does not carry very good favour amongst our grower community – sadly, because it could work.<sup>256</sup>

## Australian Vintage Traders – marketing of wine grapes in the Murray Valley

- 8.15** Vintage Traders Australia markets grapes on behalf of growers in the Murray Valley district.<sup>257</sup> Growers who do not have contracts with wineries can vest their crop with the company, which then seeks buyers among wineries. This arrangement is similar in some respects to the way the former Board operated in the Riverina region. However, there are also important differences: it does not have statutory authority from government (as the Board did), participation from growers is purely voluntary, and sales are not guaranteed.

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<sup>253</sup> Submission 52, Name suppressed, p 4.

<sup>254</sup> Submission 14, p 12.

<sup>255</sup> Submission 28, pp 2-3.

<sup>256</sup> Mr Brian Simpson, Chief Executive Officer, Wine Grapes Marketing Board, Evidence, 14 October 2010, p 8.

<sup>257</sup> Mr Mark McKenzie, Chief Executive Officer, Murray Valley Winegrowers Inc, Evidence, 13 October 2010, p 14.

- 8.16** Vintage Traders Australia seeks to sell as many grapes as possible, with a focus on negotiating large placements of grapes with purchasers. Murray Valley Winegrowers Inc noted that the company had placed over 15,000 tonnes with purchasers over recent vintages. However, large quantities of grapes vested with the company had also remained unsold.<sup>258</sup>
- 8.17** Vintage Traders Australia was established by Murray Valley Winegrowers Inc. However, there is no equivalent industry association of growers in the Riverina district. Representing growers in the Riverina has historically been performed in large part by the Board.

***Committee comment***

- 8.18** The Committee considers that collective bargaining and co-operative arrangements have the potential to improve the market position of small growers. The Committee is encouraged by the model of collective marketing developed by Vintage Traders Australia, and encourages the Wine Grapes Marketing Board to work with growers in the Riverina to investigate development of a similar model.

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**Recommendation 11**

That the Wine Grapes Marketing Board work with growers in the Riverina to develop a model for collective marketing of grapes.

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<sup>258</sup> Mr Mark McKenzie, Chief Executive Officer, Murray Valley Winegrowers Inc, Evidence, 13 October 2010, p 14, answers to questions on notice, pp 1-2.

## Appendix 1 Submissions

No	Author
1	Name suppressed
2	Yenda Grape Growers Association
3	Name suppressed
4	Mr Rodney Raccanello
5	Name suppressed
6	Confidential
7	Name suppressed
8	Name suppressed
9	Name suppressed
10	Confidential
11	Name suppressed
12	Mr Peter Raccanello
13	Me Terence Murphy
14	Wine Grapes Marketing Board
15	High Security Irrigators – Murrumbidgee
16	Name suppressed
17	Name suppressed
18	Mr R Gulloni
19	Mr John Ward
20	Mr Tom Brighenti
21	Confidential
22	Confidential
23	Name suppressed
24	Young Irrigators Network
25	Perricoota Grape Growers Association
26	NSW Wine Industry Association
27	Name suppressed
28	Name suppressed
29	Industry and Investment NSW, NSW Government
30	Name suppressed
31	Confidential
32	Name suppressed

No	Author
33	Name suppressed
34	Name suppressed
35	Name suppressed
36	Name suppressed
37	Name suppressed
38	Name suppressed
39	Name suppressed
40	University of Southern Queensland and University of New England
41	Riverina Winemakers Association
42	Wine Grape Growers Australia
43	NSW Farmers' Association
44	Mr Mark Hancock
45	Confidential
46	Mr Phillip Alvaro
47	Murray Valley Winegrowers Inc
48	Name suppressed
49	Mr Oliver Bugno
50	Name suppressed
51	Name suppressed
52	Name suppressed
53	Code Administration Committee, Australian Wine Industry Code of Conduct

## Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
<b>Wednesday 13 October 2010</b>	Mr Lawrie Stanford	Executive Director, Wine Grape Growers Australia
<b>Waratah Room</b>		
<b>Parliament House, Sydney</b>	Mr Mark McKenzie	Chief Executive Officer, Murray Valley Winegrowers' Association
	Mr Scott Davenport	Chief Economist, Industry and Investment NSW
	Mr Stewart Webster	Manager, Industry Policy, Industry and Investment NSW
	Mr Bligh Grant	Associate Lecturer, Faculty of Business, University of Southern Queensland
<b>Thursday 14 October 2010</b>	Mr Brian Simpson	Chief Executive Officer, Riverina Wine Grape Marketing Board
<b>Mirrool Room One</b>		
<b>Ex-Servicemen's Club, Griffith</b>	Mr Phillip Alvaro	Solicitor
	Mr Les Worland	President, Riverina Winemakers' Association
	Mr Stuart McGrath-Kerr	Secretary, Riverina Winemakers' Association
	Mr Paul Pierotti	Executive member, Griffith Chamber of Commerce and Industry
	Mr Stephen Violi	Executive member, Griffith Chamber of Commerce and Industry
	Witness A	Wine grape grower
	Witness B	Wine grape grower
	Witness C	Wine grape grower
	Witness D	Wine grape grower
	Witness E	Wine grape grower
	Witness F	Wine grape grower
	Witness G	Wine grape grower
	Witness H	Wine grape grower
	Witness I	Wine grape grower
	Witness J	Wine grape grower
	Witness K	Wine grape grower
	Witness L	Wine grape grower
	Witness M	Wine grape grower

## Appendix 3 Minutes

### Minutes No 38

Wednesday, 1 September 2010

Members' Lounge, Parliament House at 1.00 pm

#### 1. Members present

Mr Catanzariti (*Chair*)

Mr Colless (*Deputy Chair*)

Rev Nile

Ms Robertson

Mr Mason-Cox

Mr Veitch

#### 2. Confirmation of previous minutes

Resolved, on the motion of Mr Veitch: that Draft Minutes No 37 be confirmed.

#### 3. Correspondence

The Committee noted the following items of correspondence received:

- 19 January 2010 – Email from Ms Carol O'Donnell providing a response to the NSW Planning Framework report.
- 10 June 2010 – Letter from the Attorney General to Clerk of the Parliaments in regard to the government response to the Committee's report into *NSW Planning Framework*
- 5 August 2010 – Letter from Minister for Primary Industries, the Hon Steve Whan MP to Chair referring a new inquiry terms of reference for the Committee to look into the Riverina grape wine market and prices.

#### 4. Consideration of terms of reference

The Chair tabled the following terms of reference referred from the Hon Steve Whan, Minister for Primary Industries:

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

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

Mr Colless moved: That the Committee reject the Terms of Reference

Question put.

The Committee divided.

Ayes: Mr Colless, Mr Mason-Cox

Noes: Mr Catanzariti, Rev Nile, Ms Robertson, Mr Veitch

Question resolved in the negative.

Rev Nile moved: That the Committee seek the concurrence of the Minister for Primary Industries to amend the terms of reference by omitting the word 'Riverina', and adopt the terms of reference as amended.

Question put.

Ayes: Mr Catanzariti, Rev Nile, Ms Robertson, Mr Veitch

Noes: Mr Colless, Mr Mason-Cox

Question resolved in the affirmative.

Resolved, on the motion of Rev Nile: That the Inquiry and call for submissions be advertised in Sydney metropolitan newspapers and newspapers in all wine-making regions in New South Wales.

## **5. Adjournment**

The meeting adjourned at 1.30 pm.

Rachel Simpson

**Clerk to the Committee**

## **Minutes No 39**

Thursday, 23 September 2010

Members' Lounge, Parliament House at 1.00 pm

### **1. Members present**

Mr Catanzariti (*Chair*)

Mr Colless (*Deputy Chair*)

Rev Nile

Ms Cotsis

Mr Mason-Cox

Mr Veitch

### **2. Committee membership**

The Chair welcomed Ms Cotsis to the Committee. The Chair also thanked Ms Robertson for her contribution to the Committee.

### **3. Previous minutes**

Resolved, on the motion of Rev Nile: that the Draft Minutes No 38 be confirmed.

Resolved, on the motion of Mr Mason-Cox: that the Committee note the reasons for his and Mr Colless' opposition to commencing the current inquiry, specifically the jurisdiction of the Australian Competition and Consumer Commission and the relevance of wine grape market and prices to the whole of NSW.

### **4. Correspondence**

The Committee noted the following item of correspondence received:

- 2 September 2010 – Letter from Minister for Primary Industries, the Hon Steve Whan MP to Chair advising of his concurrence with the amended terms of reference for the Inquiry into the wine grape market and prices.

**5. \*\*\***

**6. Inquiry into the wine grape market and prices**

Resolved, on the motion of Mr Veitch: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of Submission Nos 2, 4, 12, 13, 14, 15, 18.

Resolved, on the motion of Rev Nile: that, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the partial publication of Submission Nos 1, 3, 5, 7, 8, 9, 11, 16, 17 with names and identifying information suppressed.

Resolved, on the motion of Mr Mason-Cox: that the Committee accept but keep confidential at the request of the authors Submissions Nos 6 and 10.

Resolved, on the motion of Rev Nile: that the Committee conduct a hearing in Sydney on Wednesday 13 October 2010, from 10.00am to 1.00pm.

Resolved, on the motion of Mr Veitch: that the Committee visit Griffith to conduct a public hearing on Thursday 14 October 2010.

Resolved, on the motion of Rev Nile: that the Committee invite the following witnesses to give evidence at the hearings on 13 and 14 October:

- Mr Brian Cassidy, Chief Executive Officer, Australian Competition and Consumer Commission
- Mr Andrew Cheesman, Chief Executive Officer, Australian Wine and Brandy Corporation
- Mr Stephen Strachan, Chief Executive Officer, Winemakers Federation of Australia
- Mr Brian Simpson, Chief Executive Officer, Riverina Wine Grape Marketing Board
- Mr John Casella, Casella Wines, Chief Executive Officer, Casella Wines
- Mr Bill Calabria, Chief Executive Officer, West End Winery
- Griffith Chamber of Commerce
- Mr Stuart McGrath-Kerr, Chief Executive Officer, NSW Wine Industry Association
- Mr Lawrie Stanford, Chief Executive Officer, Wine Grape Growers Australia
- Panel of grape growers drawn from submissions.

**7. Adjournment**

The Committee adjourned at 1.25 pm, until 10.00 am, Wednesday 13 October, Waratah Room, Parliament House (public hearing).

Rachel Simpson  
**Clerk to the Committee**

**Minutes No 40**

Wednesday 13 October 2010  
Waratah Room, Parliament House at 9.45 am

**1. Members present**

Mr Catanzariti (*Chair*)  
Mr Colless (*Deputy Chair*)  
Rev Nile

Ms Cotsis  
Mr Veitch

## **2. Apologies**

Mr Mason-Cox

## **3. Previous minutes**

Resolved, on the motion of Rev Nile: that the Draft Minutes No 39 be confirmed.

## **4. Correspondence**

The Committee noted the following correspondence received:

- 12 October 2010 – From Mr Mark Pearson, A/Chief Executive Officer, Australian Competition and Consumer Commission to Chair, advising the Commission would not be making a submission to the inquiry.

## **5. Submissions**

Resolved, on the motion of Mr Colless: that, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of Submission Nos 19, 20, 24-26, 29, 40-44, 46, 47 and 49..

Resolved, on the motion of Mr Veitch: that, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the partial publication of Submission Nos 23, 27, 30, 32, 33, 34, 36, 3, 39, 49, 50, 51 and 52 with names suppressed.

Resolved, on the motion of Mr Colless: that, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the partial publication of Submission Nos 28, 35 and 37 with names and identifying information suppressed.

Resolved, on the motion of Rev Nile: that the Committee accept but keep confidential at the request of the authors Submissions Nos 21, 22, 31 and 45.

## **6. Public hearing**

The witness, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness from Wine Grape Growers Australia was sworn and examined:

- Mr Lawrie Stanford, Executive Director

The evidence concluded and the witnesses withdrew.

The following witness from the Murray Valley Winegrowers' Association was sworn and examined:

- Mr Mark Mackenzie, Chief Executive Officer.

The evidence concluded and the witness withdrew.

The following witnesses from the Department of Industry and Investment were sworn and examined:

- Mr Scott Davenport, Chief Economist
- Mr Stewart Webster, Manager, Industry Policy.

The following witness from the University of Southern Queensland was sworn and examined:

- Mr Bligh Grant, Associate Lecturer, Faculty of Business

The evidence concluded and the witness withdrew.

The public hearing concluded and the public and the media withdrew.

**7. Further questions on notice**

Resolved, on the motion of Mr Veitch: That for the duration of the Inquiry Committee members forward any further questions on notice to the Secretariat within three working days after the hearings.

**8. Regional hearing – Griffith**

Resolved, on the motion of Mr Colless: that the Committee conduct an in camera hearing from 4.00 pm to 6.30 pm on Thursday, 14 October in Griffith.

Resolved, on the motion of Mr Veitch: that the Committee invite an additional witness from 4.00 pm to 4.15 pm.

**9. Adjournment**

The Committee adjourned at 5.00 pm, until 10am, Thursday 14 October (Griffith hearing).

Rachel Simpson

**Clerk to the Committee**

**Minutes No 41**

Thursday 14 October 2010

Mirrool Room, Griffith Ex-Servicemen's Club, Griffith at 10.00 am

**1. Members present**

Mr Catanzariti (*Chair*)

Mr Colless (*Deputy Chair*)

Rev Nile

Mr Veitch

**2. Apologies**

Mr Mason-Cox

Ms Cotsis

**3. Public hearing**

The witness, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness from the Wine Grapes Marketing Board was sworn and examined:

- Mr Brian Simpson, Chief Executive Officer

Resolved, on the motion of Mr Veitch: that the Committee proceed to take evidence from Mr Simpson *in camera*.

The public and the media withdrew.

The Committee proceeded to take *in camera* evidence.

Persons present other than the Committee: Rachel Simpson, Abigail Groves, Christine Nguyen, Hansard Reporters

Resolved, on the motion of Mr Colless: That the hearing resume in public.

The media and the public were re-admitted.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Phillip Alvaro, Solicitor.

The evidence concluded and the witness withdrew.

The following witnesses from the Riverina Winemakers Association were sworn and examined:

- Mr Les Worland, President
- Mr Stuart McGrath-Kerr, Secretary.

The evidence concluded and the witness withdrew.

The following witness from the Griffith Chamber of Commerce and Industry was sworn and examined:

- Mr Paul Pierotti, Executive member
- Mr Stephen Violi, Executive member.

The evidence concluded and the witness withdrew.

Resolved, on the motion of Mr Colless: that the Committee proceed to take evidence *in camera*.

The public hearing concluded and the public and the media withdrew.

The Committee proceeded to take *in camera* evidence.

Persons present other than the Committee: Rachel Simpson, Abigail Groves, Christine Nguyen, Hansard Reporters

The evidence concluded and the witness withdrew.

#### **4. Adjournment**

The Committee adjourned at 6.45pm, *sine die*.

Rachel Simpson  
**Clerk to the Committee**

#### **Minutes No 42**

Wednesday 27 October 2010, at 6.30 pm  
Room 1102, Parliament House

##### **1. Members present**

Mr Catanzariti (*Chair*)

Mr Colless (*Deputy Chair*)

Rev Nile

Mr Veitch

Mr Mason-Cox

**2. Apologies**

Ms Cotsis

**3. Previous minutes**

Resolved, on the motion of Rev Nile: that the Draft Minutes Nos 40 & 41 be confirmed.

**4. Correspondence**

The Committee noted the following correspondence received:

- 26 October 2010 – Documents forwarded by Mr Brian Simpson, providing answers to questions on notice

**5. Submissions**

Resolved, on the motion of Mr Veitch: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of Submission No 53.

**6. Answers to Questions on Notice**

Resolved, on the motion of Mr Mason-Cox: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of the answers to questions on notice from Mr Brian Simpson, Chief Executive Officer, Wine Grapes Marketing Board, with the contracts in use by wine companies suppressed.

**7. Publication of transcript of *in camera* hearing, Thursday 14 October**

- In camera evidence from grape growers, Thursday 14 October.

Resolved, on the motion of Mr Colless: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of transcript of in camera evidence from grape growers , with names and identifying information suppressed.

- In camera evidence from Mr Brian Simpson, Chief Executive Officer, Wine Grapes Marketing Board, Thursday 14 October.

Resolved, on the motion of Mr Colless: That the transcript of in camera evidence from the Wine Grapes Marketing Board be kept confidential.

**8. Issues raised in hearings for Inquiry into Wine Grape Industry and Prices**

Resolved, on the resolution of Mr Veitch: That the Chair write to the Australian Competition and Consumer Commission to seek advice regarding issues raised in the Inquiry.

**9. Report deliberative**

The Committee will meet on Monday 29 November at 10.00 am to consider the Chair's draft report.

**10. Adjournment**

The Committee adjourned at 7.00pm *sine die*.

Rachel Simpson

**Clerk to the Committee**

**Draft Minutes No. 42**

Monday 29 November 2010, at 10:00am  
Room 1102, Parliament House

**1. Members present**

Mr Catanzariti (Chair)  
Mr Colless (Deputy Chair)  
Rev Nile  
Mr Veitch  
Ms Cotsis  
Mr Mason-Cox

**2. Previous minutes**

Resolved, on the motion of Mr Veitch: that the Draft Minutes No 42 be confirmed.

**3. Correspondence**

The Committee noted the following correspondence:

*Sent*

- 29 October 2010 – Letter from Chair to Mr Mark Pearson, Acting CEO of the Australian Competition and Consumer Commission seeking advice to questions raised regarding trading practises and pricing issues in the wine industry.

*Received*

- 11 November 2010 – Letter from Mr Brian Cassidy, CEO of Australian Competition and Consumer Commission responding to questions submitted by the Chair on 29 October 2010
- 12 November 2010 – Answers to questions taken on notice from Mr Lawrie Stanford, Executive Director, Wine Grape Growers' Australia
- 19 November 2010 – Answers to questions on notice from Mr Mark McKenzie, Chief Executive Officer, Murray Valley Winegrowers
- 19 November 2010 – Answers to questions on notice from Mr Stewart Webster, Manager, Industry Policy, Industry and Investment, NSW

**4. Answers to Questions on Notice**

Resolved, on the motion of Mr Colless: That, according to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and Standing Order 223(1), the Committee authorise the publication of the answers to questions on notice from:

- Murray Valley Winegrowers Inc
- Industry and Investment NSW
- Wine Grape Growers Australia

**5. Consideration of draft report – Inquiry into the wine grape market and prices**

The Chair tabled his draft report of the Standing Committee on State Development Inquiry into the wine grape market and prices entitled 'Wine grape market and prices', which having been previously circulated, was taken as read.

Chapter 1 read.

Resolved, on the motion of Mr Veitch: That Chapter 1 be adopted.

Chapter 2 read.

Resolved, on the motion of Mr Colless: That Chapter 2 be adopted.

Chapter 3 read.

Resolved, on the motion of Mr Veitch: That Recommendation 1 be amended by inserting the words 'and the Wine Grapes Marketing Board' after the words 'Industry and Investment NSW'.

Resolved, on the motion of Rev Nile: That Chapter 3, as amended, be adopted.

Chapter 4 read.

Resolved, on the motion of Mr Colless: That Recommendation 2 be amended by omitting the words 'most effective method to mandate the use of analytical equipment to assess' and inserting instead the words 'the cost effectiveness of scientific methodologies for analysing'.

Resolved, on the motion of Ms Cotsis: That Chapter 4, as amended, be adopted.

Chapter 5 read.

Resolved, on the motion of Ms Cotsis: That Recommendation 3 be amended by inserting the words 'for the forthcoming season' after the words 'wine grapes'.

Resolved, on the motion of Rev Nile: That Chapter 5, as amended, be adopted.

Chapter 6 read.

Resolved, on the motion of Mr Veitch: That Recommendation 5 be amended by omitting the words 'most appropriate method to ensure' and inserting instead the words 'feasibility of requiring'.

Resolved, on the motion of Mr Veitch: That Recommendation 7 be amended by omitting the word 'method' and inserting instead the word 'methods'.

Resolved, on the motion of Mr Colless: That Chapter 6, as amended, be adopted.

Chapter 7 read.

Resolved, on the motion of Mr Veitch: That Recommendation 8 be amended by inserting the words 'including reviewing the effectiveness of penalties for breaches of the Code' after the words 'Code of Conduct'.

Resolved, on the motion of Rev Nile: That Chapter 7, as amended, be adopted.

Chapter 8 read.

Resolved, on the motion of Mr Colless: that the draft report as amended be the report of the Committee.

Resolved, on the motion of Rev Nile: That the Committee present the report to the House, together with transcripts of evidence, submissions, tabled documents, answers to questions on notice, minutes of proceedings and correspondence relating to the inquiry, except for in camera evidence and documents kept confidential by resolution of the Committee.

## **6. Other business**

The Chair thanked Committee members and the Committee Secretariat for their contribution to the work of the State Development Committee.

The Committee congratulated the Chair on his leadership of the Committee during the 54th parliament.

**7. Adjournment**

The Committee adjourned at 11:00 am.

Abigail Groves

**Clerk to the Committee**