SUBMISSION TO THE SENATE REGIONAL AND RURAL AFFAIRS AND TRANSPORT – REFERENCES COMMITTEE

Inquiry into the Australian Winegrape Purchases Code of Conduct

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Murray Valley Winegrowers Inc.

Murray Valley Winegrowers Inc. (MVW) is a highly regarded organisation that represents the interests of approximately 270 independent winegrape growers in the Murray-Darling and Swan Hill regions of Victoria and New South Wales. This is Australia's second-largest production zone, accounting for approximately 20 percent of the national annual winegrape crush. MVW is a member of *The Inland Wine Regions Alliance*, a triumvirate of the Murray-Darling/Swan Hill, Riverland of South Australia, and Riverina NSW, which accounts for circa 70% of Australia's annual winegrape production.

Based in the regional city of Mildura, MVW's principal functions are to provide extension services, inform growers of market and industry intelligence, advocate to protect and promote growers' interests and assist members in their commercial dealings for a sustainable future.

MVW funding is derived from access to grower levies administered under the Agricultural Industry Development Act 1990 Murray Valley Wine Grape Industry Development (Extra-Territorial) Order (the Order) – these levies are collected and supervised by the statutory body, *Murray Valley Wine Grape Industry Development Committee* (IDC) - a lesser voluntary levy is collected at the same time. Other funding opportunities are also available through Wine Australia's Regional Program to support Extension & Adoption practices.

Introduction

The Australian Wine Industry Code of Conduct, created to develop fair and transparent dealings between winegrape growers and wine producers, has unfortunately been unable to deliver meaningful measures to ensure that growers are treated equitably in the purchasing process.

However, there are both positive impacts and challenges to the Code's current implementation in the Murray Valley. This submission explores the effects of the Code on winegrape growers in the region and suggests possible areas for improvement to better support their long-term sustainability and business success.

This submission provides an insight into the issues affecting winegrape growers in the Murray Valley region. While the Code of Conduct for Australian Wine Grape Purchases has brought some improvements in transparency and fair practice, further steps are necessary to address its limitations. Strengthening the enforceability of the Code and providing growers with more bargaining power will contribute to a more equitable, sustainable, and productive wine industry.

Impacts of the Code of Conduct

Transparency and Fairness in Pricing

The Code has introduced clearer pricing announcement guidelines for signatories, encouraging more consistent and transparent contracts for those growers who are fortunate to have a supply agreement (*many growers do not have a supply agreement, and must rely on the annual spot market to sell their grapes*).

The timing of the price announcements is not particularly beneficial for growers, as many will have incurred significant costs to produce a crop during the key period of the growing season (June to January).

By the time the announcements are made in December growers have little option but to accept the price on offer to recover some portion of the production input costs (*key costs beyond December are primarily harvest and freight expenses*).

The other concern with the timing of price announcements is the proximity to the Christmas and New Year holidays. Our experience has been that once growers are advised of the forecast prices for the ensuing vintage, they generally communicate with their purchaser in the following weeks. By the time they could/should lodge a dispute under the Code, the key decision-makers are off on their holiday break, and nothing can be sorted until mid-January.

The timing of price offers is a critical issue for Murray Valley growers who rely on a consistent chain of communication in determining whether they should incur the cost of producing a crop for the following year, but preferably this decision should be made in May-June (*December is too late*) to support the financial planning required to maintain their vineyards.

MVW argues that every winery would have forecast its financial budgets for the coming year in May-June, and therefore they have an idea of what they intend to pay – this should be communicated to growers in June, with periodical and simple updates provided as and when required, when market forces necessitate a price offer review (*any review would be clearly measurable, as the key issues would be transparent for all to observe*).

It seems the current timing of price announcements is not working as intended; invariably one major winery releases its price offer up to a week before the required date (*the second Wednesday in December*), and then most other wineries follow the offer that has already been signalled to the market - this is not a fair or competitive process (*a better option would be to have all wineries announce their prices at an industry forum at the same time, or to have them provided to an independent body for a simultaneous release*).

Clearer Dispute Resolution Mechanisms

The Code's structured dispute resolution process allows growers to address grievances without necessarily incurring high legal fees, which is particularly beneficial for smaller vineyard owners. This can empower growers to seek mediation for contract disagreements and allow both parties to arrive at fair resolutions without the need for lengthy litigation.

However, we note the Code provides costs for the dispute resolution process to be borne equally between the parties, therefore being advantageous for wineries who have a much greater capacity to absorb these costs.

Improved Payment Terms and Pricing Transparency

Under the current Code, it is a requirement that the terms of payment should be no less than one-third being paid within thirty days from the end of the month of delivery, one-third by 30th June, and the final one-third no later than 30th September in the year of production.

It is interesting to note that during better times in the wine industry (i.e. v*intages 2020 & 2021*), there was more competition amongst buyers for the fruit and it was not uncommon for growers to receive full payment within thirty days from the end of the month of delivery, on prices that were $600-$700 per tonne. Conversely, in the current environment, many wineries have reverted to the three-tier payment system concluding on 30 September for grape prices as low as $150 per tonne.

Some growers have indicated they would be more understanding of the delayed payment schedule if ALL others in the supply chain were on the same terms as growers.

It is noted the Australian Competition & Consumer Commission (ACCC) Wine Grape Market Study 2019 recommended that long-term payment periods should be phased out and that thirty-day payment terms be implemented across all wineries, including subsidiaries, of over 10,000 tonnes.

Some growers have a clause in their Grape Supply Agreement that provides for an upward adjustment to reflect the Weighted District Average (WDA) as detailed in the annual Wine Grape Crush Report for the Murray Darling & Swan Hill Regions (*produced independently by Wine Australia*) if the vintage offer price is below the WDA.

There have been occasions where a winery's vintage price has been "low-balled" and this has materially affected the WDA calculation – in these circumstances, the purchasing winery's values should be excluded from the WDA.

For clarity, it should be noted that Grape Supply Agreements rarely have a fixed price. In some instances, growers may be fortunate to have a fixed minimum price, although they still receive an annual price offer subject to market conditions. Otherwise, most Grape Supply Agreements have an annual pricing mechanism.

Market Power Imbalance

The Code's framework does not address the significant power imbalance between wine companies and small-to-medium vineyard owners. In many cases, growers in the Murray Valley feel pressured to accept terms that favour larger buyers, as they have few other options for selling their produce. This disparity may undermine the Code's effectiveness in protecting growers from coercive purchasing practices. Growers have an ongoing fear of retribution if they speak out or have any disagreement with a winery regarding pricing, fruit quality, and general winery practices.

Interestingly, in the Code's Annual Report, there are very few Notices of Dispute recorded each year. This is not a true reflection of what actually occurs, with regional organisations often intervening to broker a resolution with growers not wanting to go through the formal dispute process and/or making "too much noise" for fear of reprisal.

Lack of Enforcement Mechanisms

While the Code encourages fair practices, it remains a voluntary instrument, limiting its power to enforce compliance. As a result, growers who encounter non-compliant buyers often have limited recourse, as enforcement largely depends on voluntary participation. This lack of enforceability can disadvantage growers when buyers fail to follow the Code, especially those less able to afford the cost of dispute resolution.

Limitations in Addressing Contract Uncertainty

For many growers, contract uncertainty remains a concern, especially when terms and conditions are subject to change after agreements are made (*i.e. uptake of Sustainable Winegrowing Australia accreditation, caps/limits on production/yields*). While the Code stipulates timely contracting and fair dealings, there is insufficient guidance on how buyers should handle changes in contract terms, which can be detrimental to growers relying on consistent arrangements.

Administration of the Code

The administration of the Code is seemingly reasonable. However, there has not been much traction relating to key issues (*i.e. price announcements and payment terms*) for fear of discouraging potential new signatories.

With all due respect to the Winemaker representatives on the Code Management Committee, it is interesting that three of the four representatives are their company's legal counsel. Winemaker representatives with experience in grower relationships and operational matters may be beneficial for the Committee and would also improve its external perception.

The penalties for a breach of the Code are barely a deterrent (*removal as a Code signatory*).

It is noted within the ACCC Wine Grape Market Study 2019 that the ACCC recommended that the Code should be substantially strengthened and that <u>ALL</u> winemakers that purchase grapes from growers become signatories to the Code.

MVW notes the improvement in the number of Signatories to the Code; however, it is important to state that many of the signatories do not operate within the key inland regions where the vast majority of wine grapes are produced (*circa seventy percent of the national production*).

Future Options for the Code

Introduce a Mandatory Code of Compliance

To strengthen the Code, it may be beneficial to introduce a tiered mandatory compliance system, where non-compliant buyers face penalties or loss of market reputation. This would encourage adherence and provide growers with greater confidence in the Code's effectiveness.

Implement a Regulatory Body or Independent Review Board

Establishing a regulatory body dedicated to monitoring Code compliance could provide grape growers with additional support and ensure more objective oversight. This body could offer mandatory audits and manage a review board that would oversee disputes and enforce Code provisions.

Incentivise Long-Term Contracting

Implementing incentives for buyers to enter multi-year contracts could provide growers with more financial stability. These contracts should offer protections against sudden term changes, giving both growers and buyers the security to plan their operations without unexpected financial disruptions – this will provide not just a financial benefit, but also assistance with longer-term planning and surety.

Conversely, when the industry finally recovers from its current dilemmas (*and it will*), there needs to be some disincentive for the corporate playmakers who see an opportunity to enter the grape production arena (*using "Other People's Money"*) and achieve solid earnings when better prices return, thus bringing the industry back into an oversupply situation to the detriment of those that have fought through the battles of the past two decades of uncertainty and challenge.

Prohibit Verbal Agreements

There have been instances in the Murray Valley where verbal agreements have led to disputes between wineries and growers, where a grower believes that they have not been paid for the fruit they delivered, and the winery insists they informed the grower that payment would be made when/if they sold the wine produced from the grower's fruit.

There should be a mechanism similar to the Horticulture Code whereby terms and conditions of sale are a prerequisite of the transaction. This would protect both parties in the instance detailed above.

Support for Education and Resources

Many growers would benefit from additional resources and educational materials on their rights under the Code. By providing training programs and accessible resources, Murray Valley Winegrowers can empower their members to make informed business decisions and advocate for fairer terms.

Conclusion

The Code of Conduct for Australian Wine Grape Purchases has led to improvements in transparency and fair practices, but further measures are needed to address its current limitations. Enhancing the enforceability of the Code and empowering growers with greater bargaining power will foster a more equitable, sustainable, and productive wine industry. Murray Valley Winegrowers supports reforms that emphasize buyer accountability and grower protection, helping to ensure the long-term viability of winegrape growers in the Murray Valley. By advocating for these changes, Murray Valley Winegrowers can contribute to a fairer, more resilient industry for its members.