



Murray Valley
Winegrowers' Inc

SUBMISSION

Senate Rural and Regional Affairs and Transport
References Committee

Inquiry into the Australian Grape and Wine Industry

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1 Introduction to Murray Valley Winegrowers (MVW)

Murray Valley Winegrowers (MVW) is the peak regional wine grape growers' body representing more than 400 growers in the Murray-Darling and Swan Hill wine regions of Victoria and NSW. This is Australia's second-largest production zone, accounting for around 20 per cent of the national annual winegrape crush. The triumvirate of Murray-Darling/Swan Hill, Riverland South Australia and NSW Riverina account for around 60 per cent of Australia's wine grape production – equating to around one million tonnes (subject to seasonal variation).

Headquartered in the regional city of Mildura in NW Victoria near the junction of the Murray and Darling rivers, 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.

Funding is derived from access to grower levies administered under the Victorian Agricultural Industry Development Act, which are collected and supervised by the statutory Murray Valley Wine Grape Industry Development Committee (IDC). A lesser voluntary levy is collected at the same time. MVW applies to the IDC for project funding through a process that engages growers in an annual poll.

The board of MVW comprises delegates from each of the Mildura Region Winegrowers' Association, Robinvale & District Wine Grape Growers' Association and the Swan Hill Wine Region Grape Growers' Association.

2 Operating environment

Over the past decade, many wine grape growers have been under intolerable pressure, coping with drought, water restrictions, spiralling costs, global grape over-supply and cascading prices. Farm-gate profitability has been eroded to zero for many growers, leading to a landscape of abandoned properties in the area of the Murray Darling catchment in North West Victoria and South West NSW. During this period, growers have complained of exploitation by winegrape buyers.

In growing a perishable product that must be harvested at optimal quality standards, winegrape growers are rarely in a position to quibble prices. This is particularly so when the supply/demand ratio is leaning towards over supply.

MVW has a long history of campaigning for more fairness in winegrape sale agreements, exemplified by its involvement in developing the Australian Wine Industry Code of Conduct over a five-year period, culminating in its signing by the national industry bodies in 2008.

2.1 Code of Conduct

This voluntary code, which came into effect in January, 2009, now applies to about 40 per cent of Australia's annual winegrape production, but of more than 2000 wine producers only 40 have signed up.

This means, of course, that more than half of all wine grape production is subject to varying contractual arrangements, many of which leave growers with little or no recourse should disputes arise.

The code had a target of achieving sign-up of 50 of the top 100 wine processors by size of wine grape crush by December 31, 2013. Obviously this wasn't achieved, and remains elusive due to the reluctance of a number of large-volume wine processors to sign the code. Of the 20 largest wine companies (by wine grape intake, 2014), only six are code signatories, leaving more than 600,000 tonnes beyond the reach of code provisions. As noted by the Australian Small Business Commissioner, reporting on the outcomes of a Wine Industry Roundtable held in Adelaide on May 5, 2015...***This is a poor uptake of the voluntary code and has left the industry in a high level of uncertainty, confusion and fragmentation.***

The code has been described as a framework for fairness, with signatories agreeing to abide by minimum standards in their commercial dealings with growers. These standards include terms of contract, pricing methods and notification, payment terms, and a formal process of dispute resolution.

The future of the code is at a crossroads. After six years', its coverage of the Australian wine industry remains well short of accepted targets. Not only does this failing expose growers to unethical and unregulated treatment, it imposes certain standards on signatories that non-signatories are able to ignore. For example, the requirement on signatories to publicise indicative prices leaves others able to "piggyback" on those, and to experiment with their own brand of dispute resolution.

Contracts that are not subject to the code can vary greatly, often lacking even cursory references to dispute resolution provisions. Some agreements may not be in writing, and even if they are may be vague on trading terms. In times of ample fruit supply, such as now, dispute resolution procedures among non-signatories can leave growers exposed to little or no recourse in the event of conflict over price and/or fruit condition. There have been instances of fruit being rejected for spurious reasons while still on the vine. Under the code, a grower could ask for a qualified, independent assessment of fruit condition, an avenue of appeal that's not necessarily available through non-signatories. The same applies to disputes over price; a grower selling grapes to a code signatory is able to utilise a formal, independent process of questioning the appropriateness of price, which cannot be assured if the transaction involves a non-signatory.

An important provision in the code stipulates minimum terms of payment of one-third at the end of the month following delivery, one-third in June and the final instalment by the end of September. However, non-signatories are free to impose their own payment terms, which can extend over eight months.

This is unacceptable, particularly when payment is not sufficient to cover production costs. In relation to this, the Australian Small Business Commissioner said... ***A lack of industry standard payment terms has resulted in a significant number of winegrape growers to not receive payment well into the next production cycle.***

Any independent assessment of code provisions would conclude that they were not an onerous burden on wineries; that they simply reinforced desirable commercial behaviours. Despite this, the Australian Wine Industry Code of Conduct has not been widely accepted or adopted by wine companies, and as a consequence it is failing in its objectives.

2.2 Commercial arrangements

Agreements for the sale of wine grapes are, in effect, contracts to supply. Supply contracts could be of several years' duration, but prices are determined annually, and in the large inland regions, particularly when grape demand is subdued, are rarely conducted as exercises in negotiation.

Provisions governing the delivery and payment of wine grapes may also vary from year to year in line with a growers' schedule, guide or manual that can be altered at the winery's "sole discretion". This document can be crucial to price determination, extending to instructions on delivery, fruit maturity and penalties.

Rejection or downgrading of wine grapes in the vineyard, prior to harvest, or at the time of delivery, can be based on the subjective judgement of winery staff, particularly if the winery operates outside the provisions of the code of conduct.

There is no standardised, objective system of grading fruit within the Australian wine industry. Instruments of trade are not exposed to third-party scrutiny, and growers have to accept buyer assessments on whether the wine grapes supplied are within specification. The lack of standardised, objective measures drew this comment from the Australian Small Business Commissioner... ***Establishment of objective measures could have a positive impact on the overall business environment, as it would assist winegrape growers to better understand what best practice wine grapes are, and (lead to) a decrease in the number of winegrape price disputes.***

Growers are notoriously reluctant to take the step of formally disputing a winery policy or decision for fear of being branded a trouble-maker. The practise of not renewing contracts with growers thought to be "difficult" was formally noted in reports by the 2005 Senate Rural and Regional Affairs and Transport References Committee inquiry *Operation of the wine-making industry* and the 2010 NSW Legislative Council inquiry into *Wine Grape Market and Prices*.

2.3 Industry information

Disturbingly, over the past six years the Australian wine industry has been functioning without crucial information on wine grape supply and wine market demand trends. In 2009, the ABS told industry that production of the annual Vineyard Survey would cease. A cut-down version was negotiated, which the then Grape and Wine Research & Development Corporation (GWRDC) agreed to fund biennially, on ABS terms.

The merger on July 1, 2014, of the GWRDC and Wine Australia to establish the Australian Grape and Wine Authority (AGWA) has brought a more enlightened view to information collection. AGWA is committed to funding an annual national Vineyard Survey, which the ABS will be doing on its behalf this year. In its discussion paper for development of a 2015-2020 strategic plan, AGWA asserts that it will “invest in data sets throughout the supply chain...and obtain better information about the supply side so that we can understand what grapes are grown where and have more reliable information about expected crop size”.

The national industry bodies Wine Grape Growers Australia and Winemakers Federation of Australia have jointly petitioned Agriculture Minister Barnaby Joyce for legislation to give AGWA mandatory powers for collecting wine sector foundation data. This would include statistics on Viticulture production capacity, wine production, and wine sales and wine inventory.

The Australian wine industry needs more information, particularly as it manoeuvres to face up to increasing competition from the likes of South Africa, Chile and Argentina, and the resurgent “old world” producers such as France, Italy and Spain.

As Wine Grape Growers Australia (WGGA) informed the National Agricultural Statistics Review in February 2014, the priority areas for information are:

- An accurate picture of the location, number and size of grape growing businesses in Australia;
- Accurate foundation statistical data for the sector’s supply chain, i.e. area of vines, grape tonnages, wine processing and storage capacity, sales and disaggregated wine inventory, i.e. volume and value, region, variety, style, container type and price;
- Socio-economic data, e.g. employment, education, age demographics, and financial benchmarking data on the performance of grape growers, across regions.

A national vineyard database and wine foundation data is essential for industry planning and decision-making, government policy development and biosecurity management.

At the regional level, MVW receives IDC project funding to produce an annual winegrape crush survey report. This provides data on tonnes harvested from both grower and winery-owned vineyards, winegrape varieties, average prices and historical records. IDC funding

received by MVW also finances the collection and dissemination of other industry-related data such as quarterly Wine Export Approval Reports produced by AGWA, which provides an invaluable record of the global performance of Australian wine. With funding support, MVW also engages growers in surveys that provide the data necessary for cost-of-production benchmarking. While useful in giving growers understanding of their industry's performance, it's insufficient in terms of being relied upon for decisions regarding further vineyard investment and vineyard restructuring.

For that, growers need an accurate profile of the Australian vineyard landscape, supply/demand data, global market conditions and reliable projections.

2.4 Market signals

Investment in the following year's crop starts soon after the end of harvest, with 80 per cent of input costs incurred between June and January. But generally growers won't be informed of prices until mid-December or even just prior to or after harvest has started. In the inland regions, it's common for harvesting of Chardonnay for sparkling wine to start in early January. It's also common for sparkling Chardonnay prices not to have been disclosed at that point.

With their crop fast maturing, and 80 per cent of costs already invested, the grower is committed to supply. The lack of information on prices and market signals until so late in the growing season prevents growers from making sound commercial decisions. Under the Code of Conduct, signatories in the inland regions release indicative prices in mid-December. Non-signatories can please themselves.

MVW is advised that grape prices for the coming season are factored into wineries' budget preparations. Given that work on budgets would start several months' before commencement of the new financial year, costs associated with buying and processing grapes for the vintage occurring in the second half of the financial year clearly would have been taken into account. Yet growers are told that earlier advice of grape prices is impossible! This places an unfair risk burden on growers; 80 per cent of their costs are committed before they learn of grape prices.

If growers were given credible information on next season's price prospects in, say, June/July they might well adjust vineyard inputs accordingly, e.g. if prices were viewed as being below average the inputs normally associated with pruning, and application rates of fertiliser and water could be reduced.

2.5 Anxiety over taxation measures

Against the backdrop of poor prices and sometimes questionable commercial practices, this region's winegrape growers are also fearful of taxation changes that could place them in an even more precarious financial position.

There's concern that the Federal Government's wide-ranging tax review could result in recommendations for changes in the way that wine is taxed, as suggested in 2009 by the

Henry tax review. The Henry report recommended switching from the current system of taxing wine according to its value to one based on alcohol per volume. A report in January 2012 by Deloitte Access Economics suggested that a volumetric tax would more than double the price of cask wine and add around 30 per cent to the cost of popular premium wine. These are the wines that the Murray-Darling and Swan Hill regions produce, in tandem with the Riverland SA and Riverina NSW. These are the wines of choice for 80 per cent of Australians. The Deloitte study estimated that under a volumetric tax the demand for cask wine would drop by around 40 per cent, and demand for popular premium wines, i.e. affordable wines, would fall by a third.

The wine industry has been a long-time supporter of the campaign to drink in moderation and acknowledges that a small percentage of drinkers consume alcohol irresponsibly, but hitting all wine drinkers with a massive price hike would be grossly unfair.

Economically, the Murray-Darling/Swan Hill winegrape industry is on a knife-edge – prices for major grape varieties are the lowest they've been in 10 years and losing up to 40 per cent of customers at this time would be catastrophic. As it is, the Australian wine industry is already taxed higher than all its major competitors.

Adding to the concern swirling around alcohol taxes is the continuing debate on whether the GST rate should be increased from 10 per cent to 15 per cent, and whether it should be applied to fresh food. Such a move would increase the average family food bill, and reduce people's discretionary spend on such items as wine. Increasing the GST and broadening its coverage cannot be labelled tax reform; it's simply a means of increasing taxation income.

The majority of the Australian wine industry has sought reform by way of amendments to the Wine Equalisation Tax (WET) rebate system. Rarely has the industry responded in such a united fashion as when, pre-budget, the two national industry bodies Wine Grape Growers Australia (WGGGA) and Winemakers Federation of Australia (WFA), state wine industry associations and the three major inland regions presented the case for change. On May 6, Assistant Treasurer Josh Frydenberg confirmed that the matters raised would be referred to Treasury for investigation and development of a discussion paper.

The WET was introduced when the GST replaced wholesale sales taxes. Wine was taxed at the rate of 29 per cent, plus GST, and the industry negotiated a rebate to be applied at the last wholesale sale (typically to a retailer), to a limit of \$290,000 pa. The scheme was intended to assist mainly small to medium winemakers, and local economies as most were embedded in regional communities. However, over time the limit of the rebate was increased to \$500,000, and over the past five years or so has blown out to be worth more than \$300 million pa, paid to almost 2000 claimants. In the period 2007-08 to 2012-13 the number of rebate claimants increased by 21 per cent (338), jumping from \$220 million to \$308 million.

In recent years controversy over the WET rebate has intensified, with many in the industry blaming it for distorting the marketplace and suppressing grape prices. In effect, the rebate has been treated as a subsidy; some recipients haven't paid the tax in the first place yet have had claims for the rebate accepted. It has been argued that a significant volume of bulk and

unbranded wine is purchased cheaply, as the seller is able to add to the sale price by claiming the 29 per cent rebate. Much of this wine ends up in “private label” bottles on supermarket shelves. Additionally, NZ wine producers have been able to claim the rebate, receiving \$25 million in 2014, rising from \$6 million in 2007. Unlike wine imports from other countries, NZ producers are not required to be registered for Australian GST, and do not need to lodge an Australian tax return. It’s argued that NZ producers should be subject to the same tax compliance measures and associated costs as Australian and other foreign producers.

Abuses have been alleged, including claiming the rebate on bulk wine that’s been declared as domestic product but which is then exported, and multiple claims on the same bulk wine consignment. The ATO has been clamping down, with audits leading to fines and adjustments of almost \$50 million in 2013-14.

From savings delivered by reform of the WET rebate scheme, industry has suggested to government that another \$25 million be diverted to the Australian Grape and Wine Authority (AGWA) for marketing purposes to grow the demand for Australian wine.

The policy agreed by the major elements of the wine industry, and which now are being subjected to Treasury analysis, urged the Federal Government to:

- Phase out over four years rebate eligibility applicable to bulk, unbranded and private label wine;
- Abolish the separate NZ producers’ WET rebate scheme, and create a level playing field for all WET rebate claimants;
- Restrict the rebate to businesses that maintain business premises in Australia and hold an Australian liquor license;
- Maintain the current ad valorem method of taxing wine and hold the rate of taxation;
- Remove uncommercial practices that have the sole purpose of accessing the rebate

3 Previous inquiries

3.1 2005 Senate Committee on Rural and Regional Affairs and Transport

Some of the issues that sparked the 2005 inquiry are similar to those that provoked senators into calling for another investigation. Ten years ago there was particular reference to the supply and purchase of grapes and the relationship between growers and grape buyers. In its report to Parliament, the committee noted that it had “received evidence of exploitative business relations between winegrape growers and winemakers, with winemakers taking advantage of their stronger bargaining power in the present over-supply of grapes”. The main concerns were said to be:

- Contracts offered on a “take it or leave it” basis, with no genuine negotiation
- Contracts not being renewed, often after growers had been encouraged to invest in improvements;
- Prices notified late in the season, leaving growers little chance of negotiating with other buyers;
- Lack of objective, transparent standards for assessing grape quality, and

- Contracts were often unclear about how disputes over price or fruit quality should be resolved.

Four key recommendations resulted:

- Establish a national register of vines;
- Add unilateral variation clauses to the list of matters that a Court may have regard to in deciding whether conduct is unconscionable;
- Develop a mandatory Code of Conduct to regulate the sale of wine grapes', and
- That a national winegrape industry body should be separate from a winemakers' representative body.

Of these, the industry itself developed the voluntary Australian Wine Industry Code of Conduct which, as already highlighted, has failed to meet targets and remains off-limits to the vast majority of wine making businesses in Australia. At the time of the 2005 inquiry, the grape growing sector had restructured its national representative body – Wine Grape Growers Australia – which still functions as a stand-alone entity. That aside, Wine Grape Growers Australia and Winemakers Federation co-operate effectively on most issues. A national vineyard database, as noted under *Industry information*, remains aspirational, but the winegrape sector is hopeful of it being established by the Australian Grape and Wine Authority (AGWA).

3.2 2010 NSW Legislative Council Standing Committee on State Development

This inquiry was established to investigate factors affecting the wine grape market and prices. The committee's report *Wine Grape Market and Prices* was produced in December 2010. It contained 11 recommendations. Of particular interest to the Murray-Darling/Swan Hill regions were recommendations 4, 7, 8, 9 and 10:

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;*

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;*

Recommendation 8: *That the NSW Minister for Primary Industries pursue the introduction of a mandatory Code of Conduct...including reviewing the effectiveness of penalties for breaches of the Code;*

Recommendation 9: *That if the Wine Industry Code of Conduct is mandated, the Minister for Primary Industries asks the Ministerial Council to review its dispute resolution process to determine its effectiveness;*

Recommendation 10: *That if the Code of Conduct remains voluntary, the NSW Government investigates forming an independent dispute resolution body to monitor and investigate complaints and disputes concerning price determination and contractual disputes in the wine grape sector.*

One year later the NSW Government formalised its response to the committee's recommendations. The response was largely dismissive, leaving the winegrape sector wondering why the inquiry was even conducted.

For example, its responses to the five recommendations of particular interest to MVW ranged from indifference to irrelevance, even though the Standing Committee reported that, '*...the committee heard disturbing evidence about the conduct of some wineries in their dealings with growers...there are significant imbalances of market power between wineries and growers...the committee heard evidence of wineries making unilateral variations to contracts...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...'*

Many of the issues highlighted by MVW in submissions to the 2005 Senate Committee inquiry and 2010 NSW Legislative Council Committee inquiry remain of concern, e.g. after six years the voluntary Australian Wine Industry Code of Conduct applies to barely 40 per cent of Australian winegrape production; of the more than 2000 wineries in Australia, only 40 are signatories to the code; significant wine making businesses are committed to NOT signing the code, leaving hundreds of growers without formal recourse to dispute resolution procedures, vague pricing mechanisms, haphazard terms of payment, subjective measurements of grape standards, uncertainty over retention of title and inadequate industry data.

4 Growers' appeal

Forming part of this submission is a letter prepared by MVW and sent all 440 independent growers (ex. winery-owned vineyards), inviting them to "send a message" to committee members. **This letter is included as an attachment, along with 216 signatures. Signed responses came from 49 per cent of growers in the Murray-Darling and Swan Hill regions. Given growers' notorious reluctance to voice their concerns publicly, MVW regards this as a strong endorsement of the Senate committee inquiry.**

In signing the letter, growers are asking for Senators' backing in recommending to government that assistance is required for the Australian wine industry to take full advantage of the opportunities emerging from recently-signed Free Trade Agreements, and more favourable currency settings.

The following table illustrates the degree to which the regional industry landscape has changed in the 10 years 2004 to 2014 (key statistics for the 2015 harvest are not yet available) – particularly the collapse in growers' income.

Decade of change 2004 - 2014

	2004	2014
Murray Darling / Swan Hill wine grape production - tonnes	396,000	413,627
Grower tonnes	357,000	330,387
Winery-grown tonnes	39,000	83,240
Value total crush	\$225 million	\$129 million
Value grower fruit	\$200 million	\$97 million
Chardonnay price \$/tonne	\$881	\$216
Shiraz price \$/tonne	\$620	\$314
Cabernet Sauvignon \$/tonne	\$487	\$328
Growers on database	Approx. 1300	499
National crush	1.91 million tonnes	1.7 million tonnes

5 Conclusion

This inquiry by the Senate Rural and Regional Affairs and Transport References Committee is acknowledgment that the Australian grape and wine industry is under extreme duress. Most submissions will provide evidence of that. But senators could add to their understanding of what growers are confronting by hearing from them firsthand. Accordingly, Murray Valley Winegrowers suggests that a number of hearings are conducted across Australia in winegrape regions to give growers the chance to tell their stories.

The key issues highlighted in this submission provide the backdrop to growers' continuing anguish over the uncertainty of the future they face as inland region winegrape producers. Resolving these issues won't automatically bring about an improvement in growers' profitability, but at least growers would have a greater sense of equality and partnership in their commercial dealings with grape buyers.

Enquiries

For information on this submission, please contact:

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ATTACHMENT

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Inquiry into the Australian Grape and Wine Industry

As a wine grape producer in the Murray Valley (Murray-Darling/Swan Hill wine regions) I'm deeply concerned for the future of the Australian wine industry. Profitability has been in decline for most of the past decade, particularly in the large inland regions, which are responsible for about 60 percent of production.

A report produced last year for the Winemakers Federation of Australia suggested that more than 90 percent of inland-region vineyards were not profitable in 2014. These are the same vineyards that were the backbone of Australia's dramatic export growth in the late 1990s and early 2000s, employing thousands of people across Australia.

Once all the numbers have been crunched, they're likely to tell us that the vintage of 2015 will go down as the tipping point for many more growers. Average prices for most varieties were the lowest in 10 years.

Here, we know our cost of production through benchmarking surveys conducted by Murray Valley Winegrowers (MVW). We know that, on average, it costs around \$7000/hectare to produce wine grapes in this region. This year, there's little likelihood of that benchmark being reached.

It's not as if we haven't tried to help ourselves. Our side of the industry has led the way on trying to improve the commercial environment in which we operate, through development of the Australian Wine Industry Code of Conduct. But less than half of all production is covered by the code, which means that many commercial dealings between growers and grape buyers are sub-standard, with all power vested in the grape buyer. After six years' experimenting with the voluntary code, this inquiry should support the creation of a mandatory code to guarantee that wine grape buyers comply with a minimum set of standards.

I would like to think that the Australian government would meet with our industry leaders to thrash out a program of realistic assistance to give us a hand in taking advantage of emerging opportunities. The lower value of the Australian dollar should aid our wine export efforts, and the free trade agreements with South Korea, Japan and China should open the door to more Australian wine getting to consumers in those countries. To grab these opportunities and to grow the demand for Australian wine, our industry needs to be on a much firmer footing.

Recommendations that the committee makes following its investigation of the Australian grape and wine industry could lay the groundwork for this to happen.

Yours sincerely

Signed:

Print Name:

Wine grape grower