

Summary and recommendations

CHAPTER 1 - Background

Australia's wine industry has expanded enormously in the last ten years, driven by strong growth in exports. Plantings of vines increased greatly in the late 1990s, peaking at 16,224 hectares in 1998. As the new plantings of the late 1990s have come on stream in the early 2000s, grape prices have fallen, wine production has increased faster than sales, wine prices have fallen, and the stock to sales ratio has increased.

The focus of this inquiry is the problems this situation has created for the viability of grape growers. As well, the report discusses the complaints growers make about their business relations with winemakers.

CHAPTER 2 - Issues to do with the supply and demand for grapes

Average grape prices have fallen from \$1049 per tonne in 1999 to \$755 per tonne in 2004. Since the peak, weighted average warm climate prices have fallen from \$857 to \$600 (white) and from \$1378 to \$419 (red). White grape prices are expected to continue falling to 2009-10. Red grape prices are expected to fall until 2006-07, then recover. Wine exports are expected to continue growing strongly, but the unit value of exports is expected to continue to fall.

For many growers grape prices are below the cost of production. Growers without contracts are being offered extremely low prices (\$100-\$200 per tonne) on the spot market. Winemakers are also under pressure: profit has trended down since 2002 and almost half surveyed wineries reported a loss in 2004.

Grapegrowing suffers the boom-bust cycle more than many agricultural industries because of the long lead time before vines come into production. This makes it more difficult to predict the market and to respond quickly to market signals. It is, therefore, all the more important to do as much as possible to make the industry more stable and to reduce the peaks and troughs of the market cycle.

The committee agrees that, given the underlying policy of allowing free enterprise in agriculture, there should not be government intervention in the market by controlling price or supply.

Other possible initiatives to stabilise the industry include:

- better market information and business planning advice to growers; and
- improving productivity and economies of scale.

A national register of vines appears worthwhile to improve market information and guide business decisions. The committee suggests that to be practical it would have to be based on compulsory reporting by growers. To base it on voluntary information-gathering, for example by a national growers' body, would be troublesome and unlikely to yield full information.

Recommendation 1 (paragraph 2.89)

The committee recommends that the Department of Agriculture, Fisheries and Forestry should consult with state authorities and peak bodies with a view to establishing a national register of vines.

CHAPTER 3 - Problems in relations between grapegrowers and winemakers

During the inquiry the committee received evidence of exploitative business relations between winegrape growers and winemakers, with winemakers taking advantage of their stronger bargaining power in the present oversupply of grapes. The main concerns were:

- contracts offered on a 'take it or leave it' basis, with no genuine negotiation;
- contracts not being renewed, often after growers have been encouraged by winemakers to invest in improvements;
- prices notified late in the season, leaving growers little chance of negotiating alternative buyers;
- lack of objective, transparent standards for assessing the quality of grapes; and
- contracts are often unclear about how disputes over price or fruit quality should be resolved.

The ACCC has investigated complaints by winegrape growers, but found that they fall short of being unconscionable conduct within the meaning of the Trade Practices Act.

In the committee's view the behaviour described, whether or not it is 'unconscionable conduct' within the meaning of the Trade Practices Act, should be a cause for concern.

CHAPTER 4 - Improving the position of growers

The question arises whether there should be some regulation of the business relationships between grape growers and buyers. This could be by direct regulation of terms and conditions of trade, or by establishing a code of conduct, whether voluntary or mandatory.

The committee does not think there should be direct regulation by way of mandatory terms of trade. Freedom of contract is a fundamental principle of the free enterprise

economy. In the committee's view we should be extremely cautious of interfering with it.

However, the committee agrees with a previous inquiry by the Senate Economics References Committee (March 2004) that clauses in contracts which allow one party to vary the contract unilaterally risk being exploited by the stronger party. The committee agrees that the Trade Practices Act should be amended so that the presence of a 'unilateral variation' clause is one of the matters that a court may consider in deciding whether conduct is unconscionable.

Recommendation 2 (paragraph 4.13)

The committee recommends that the Government should give priority to amending the *Trade Practices Act 1974* to add 'unilateral variation' clauses in contracts to the list of matters which a court may have regard to in deciding whether conduct is unconscionable.

The bargaining position of growers may be improved by collective bargaining. The committee supports amendments to the Trade Practices Act currently before Parliament to make this easier.¹

There are similarities between the problems of winegrape growers and the problems of fruit and vegetable growers which have given rise to the draft mandatory Horticulture Code of Conduct now under discussion.

The committee supports a mandatory code of conduct under the Trade Practices Act to regulate the sale of winegrapes. In view of the seriously poor relations between growers and some winemakers, as noted in Chapter 3, the committee does not think that a voluntary code would be sufficient to protect growers with weak bargaining power.

Recommendation 3 (paragraph 4.67)

The committee recommends 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 to regulate sale of winegrapes.

The committee supports current moves to establish a national winegrape growers' body.

1 The Senate passed the Trade Practices Legislation Amendment Bill (No. 1) 2005 on 11 October 2005, between the adoption and the publication of this report.

The committee also supports moves to establish a national wine industry body, with both growers and winemakers, to progress matters where they have shared interests. However, it appears to be assumed that the wine industry body would simultaneously be the winemakers' peak representative body. This invites the suspicion that winemakers would have favoured status within the wine industry body. It could lead to conflicts of interest.

Recommendation 4 (paragraph 4.94)

The committee recommends that any national wine industry body should be separate from a winemakers' representative body.