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SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT
REFERENCES COMMITTEE

Reference: Operation of the wine-making industry

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SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE

Wednesday, 10 August 2005

Members: Senator Murray (*Chair*), Senator Heffernan (*Deputy Chair*), Senators McEwen, McGauran, O'Brien and Sterle

Participating members: Senators Abetz, Allison, Bartlett, Boswell, Brown, George Campbell, Carr, Chapman, Colbeck, Coonan, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Hutchins, Ludwig, Lightfoot, Lundy, Sandy Macdonald, Mason, McLucas, Nettle, Payne, Robert Ray, Santoro, Stephens, Watson and Webber

Senators in attendance: Senators Ferris, Heffernan, McEwen, Murray, O'Brien and Sterle

Terms of reference for the inquiry:

To inquire into and report on:

The Australian wine making industry with particular reference to the supply and purchase of grapes and the relationships between independent growers and wine makers in the current market.

Specifically, the Committee will be focussing its inquiry on the following key areas of the wine industry:

- a) The size and nature of the winegrape glut, and the producers' inventory levels;
- b) The structure of the industry and how this impacts on the relationship between growers and producers; the nature of the contractual agreements between them; the implementation of quality benchmarks and whether these can be standardised in an industry-wide code of conduct;
- c) The adequacy of the terms and implementation of the *Trade Practices Act 1974* in relation to winegrape growers; and
- d) The need for a national grape growers' representative body, the powers that it might have, and the means by which it might be funded, including any possible role for Government in overseeing a industry levy.

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Committee met at 4.55 pm

DICKSON, Mr Andrew, Manager, Commodity Outlook Branch, Australian Bureau of Agricultural and Resource Economics

MORTIMER, Mr David Kenneth, Executive Manager, Food and Agriculture Division, Department of Agriculture, Fisheries and Forestry

RYAN, Mr Michael William, Manager, Wine Policy, Department of Agriculture, Fisheries and Forestry

CHAIR (Senator Murray)—Welcome. I point out that you are protected by parliamentary privilege with respect to submissions made to the committee and evidence given. I remind witnesses that parliamentary privilege does not extend to statements repeated outside the committee's proceedings. Any act by any person which may disadvantage a witness on account of evidence given by him or her before the Senate or a Senate committee is a breach of privilege. While the committee prefers to hear all evidence in public, the committee may agree to take evidence confidentially. If the committee takes confidential evidence, it may still publish or present all or part of that evidence to the Senate at a later date. The Senate also has the power to order production and/or publication of confidential evidence. The committee would consult the person whose evidence the committee is considering publishing before taking such action.

I also draw your attention to the continuing resolution relating to claims of commercial confidentiality. Under the resolution, a claim to withhold information on the basis that it is commercial-in-confidence can only be made by a minister and must include a statement setting out the basis for the claim, including a statement of any commercial harm that may result from the disclosure of the information. Do you wish to make an opening statement?

Mr Mortimer—I will just make a few comments. You have a submission that the department has provided. The submission shows that the wine industry has been a very successful industry and that success has been shared between the wine industry and the grape industry. I acknowledge that the industry is going through a period of tough competition at the moment for a number of reasons that are set out in that submission. I would also comment that a number of actions are being taken by both government and industry to help deal with that situation and they are listed in the submission. Indeed, there are reasons to think that the industry and the market will be able to work through these matters over the period ahead. I will leave it at that in the interests of brevity. We are happy to take questions. Mr Dickson is from ABARE and can comment on the analysis in the submission and Mr Ryan and I can also answer your questions.

CHAIR—Mr Dickson and Mr Ryan, do either of you wish to make an opening statement?

Mr Dickson—I think the main point that we would like to stress, which I am sure you already appreciate, is that the Australian wine industry is strongly enmeshed in a global wine market and hence developments in demand and supply on world markets are critical to outcomes for wine producers and grape growers here in Australia. Having said that, we believe it is important to note that wine is not a commodity and we have not yet seen the commoditisation of the world wine market. By that I mean it is not a generic product traded on world markets like wheat or computer chips. The market is strongly divided into quality segments and brand variety; regional

loyalties, image and perceptions of quality all remain very important to outcomes for Australian exporters. Finally, almost 60 per cent of all Australian wine is exported and 66 per cent of this trade is directed to just two markets: the United Kingdom and the United States. While developments globally are important, in many respects demand growth in the United Kingdom and the United States is the most critical driver of outcomes for Australian producers and growers.

CHAIR—Thank you.

Senator FERRIS—There has been a suggestion that the amount of wine that is being held in storage now is, in fact, less than in the past and, therefore, that this is not as bad as the previous year when there was excess production and a shortfall in sales. Other people in previous hearings have suggested that the answer to the problem might be a vine pull. Can you tell me whether the department has looked at any figuring that might lead to a vine pull being considered?

Mr Mortimer—At this stage the department has not given consideration to a vine pull scheme. As the submission says, there are a number of factors in operation in the industry and while the situation is clearly tough for a number of growers, at this stage the prices do not appear to be below the prices at which wine producers, in broad terms, can make money. As well, the industry is looking to marketing initiatives through their industry bodies and it is not entirely clear at this stage that an industry pull scheme is warranted. So for those reasons we have not given examination to such an option in a formal sense.

Senator FERRIS—How long is it since Australia had a vine pull?

Mr Mortimer—I think it was in the eighties. It was some time in the mid-eighties, from memory, but I do not have the exact date.

Senator FERRIS—Can you recall what the government spent on that at the time?

Mr Mortimer—No, I would have to take that on notice. I was around in the department then but it was a while ago.

Senator HEFFERNAN—You would only have been in nappies!

Mr Mortimer—Thank you, Senator!

Senator FERRIS—It is interesting to speculate that as soon as there is an increase in production to the extent that market difficulties arise, some people believe the answer is to destroy some of the crop. I would be interested to know what the Australian government spent on that vine pull back then. I am not sure whether you can answer this, but to what extent do you think the currency—the value of the Australian dollar—is a factor in the difficulties facing the industry at present?

Mr Dickson—The competitiveness of Australian exports on world markets is significantly determined by exchange rates. There is no doubt about that. So the appreciation of the Australian currency over the last three or four years has certainly impacted. I could not allocate the amount by which our competitiveness has been compromised by the exchange rate as opposed to other

factors but it is significant. But I think it is important to say that the growth in production of other New World producers such as Chile, California and South Africa, is probably more important to the outcomes for Australian growers than simply our exchange rate.

Senator FERRIS—That, together with the increase in domestic plantings in Australia?

Mr Dickson—The increase in domestic plantings in Australia has coincided with a significant increase in plantings world wide. The situation we find ourselves in now, with significant stockholding of wine in Australia, is mirrored world wide so there is significant downward pressure on prices world wide.

Having said that, the outlook that ABARE presented in March this year is for red wine grape prices to bottom out in a couple of years and then to start to recover as world demand for wine starts to catch up with supply. New plantings have declined significantly already and we expect growth in new plantings to be reasonably modest. So if we just go back to the point about vine pulling, I think it is premature to talk about that when this is pretty cyclical. This is probably a situation of what we would call ‘overshooting’ where the increase in planting world wide has really overshot and it will take some time for prices to recover and start to rise.

Senator HEFFERNAN—We took some evidence, and I have forgotten where, that the ACCC had been approached. Have you had complaints from grape growers with respect to their treatment by the wineries? I will give you a bit of colour and movement for that. We took some evidence somewhere down there along that river that someone who had contacted Tandou—that is the crowd at Menindee—had bought a winery in South Australia and they found themselves in a pretty desperate situation because they were not told of the price they would get for their grapes until the wine was sold. I think that was the story. Is that right?

Senator FERRIS—Yes.

Senator HEFFERNAN—That seems to me to be a pretty raw deal. I rang Tandou and they said, ‘Well, we do that because we are a late entrant into the business and we are trying to protect our downside.’ That is what market forces are all about—supply and demand. Do you have a history of dealing with people complaining about that?

Mr Ryan—The department does not deal specifically with those sorts of complaints. We have a good relationship with the industry body and we certainly hear their views about concerns, particularly about the low price that has been received this last year. In talking about that, they have also expressed some concerns about transparency in pricing in a generic way, but they do not actually discuss those sorts of specific issues with us, because we do not really have any sort of mechanism to resolve that sort of thing.

Mr Mortimer—I think you will be speaking to the ACCC later. It might be worth raising the question with them as to whether they receive a considerable level of complaint. Our intelligence is that there has not been a significant level of complaint to the ACCC. Is that the case?

Mr Ryan—That is right.

Senator HEFFERNAN—We took reasonable evidence that people see it. I have to predict that this year there is going to be a bit of a pain in the guts in the lamb market too, because there are a lot of lambs going to be born later on. As far as the department is concerned, in terms of looking at the industry, the bottom line in this inquiry really is that there was an industry plan that was called 2025 and they have hit the target in 2005. Was that because of the tax driven thing? A lot of people can sell grapes at a loss because of a tax advantage getting into the thing and all those sorts of vague reasons. It might be hoochie-cooch money going into the industry—you wouldn't know. Were there signals given by the department or the industry to new players that the 2025 target was coming up in 2005? Were there warning signs but, regardless of the warning signs, people just went on with it?

Mr Mortimer—I will make a comment in broad terms, and perhaps Mr Dickson might come in behind that. The industry sets its marketing plan, and that is built around its global positioning and its global marketing. I think you have picked up on that already. It was a big effort in the UK and the US, and that has been very lucrative and it has worked very well. In terms of government signals, the government does not actually give the signals there. The industry does hold an outlook conference every year. ABARE presents to that conference in terms of its expectations for the industry, but I believe there are other private sector specialists who also operate. I think the Wine and Brandy Corporation also does some market intelligence. So we in the department do not lead in terms of saying, 'Guys, you should be going for that.'

In terms of signals, in a broad sense there has been discussion about the impact of accelerated depreciation arrangements for the planting of vines. Those arrangements have been in place but they now have been removed and the depreciation arrangements for planting vines are now more consistent with the economic life of the vine. So, to the extent that that provided a signal and encouragement, that has been removed. In terms of the actual outlook conferences, Mr Dickson, do you want to make any comment about ABARE?

Mr Dickson—Only to say that ABARE do analysis of the short- and medium-term outlook for the wine industry on an annual basis and we present that analysis at our outlook conference in February-March of each year. We have been doing that for as long as I can remember. We also do two other analyses annually. One is a more detailed analysis of farm performance. Typically we survey two winegrowing regions each year and then document that analysis in a report. We also do another analysis—which is partly funded by the grape growers association, I think—on wine grape projections. I actually had planned to look at ABARE's projections for the last 10 years for this industry before I came here, but I did not have time, so I do not know if we are being guilty of being optimistic. We may or may not have been—I do not know—but certainly ABARE provide independent information of as high a quality as we can make it about this industry and about the outlook for the industry and we have been doing that for many years.

Senator HEFFERNAN—The bloke next door put in 1,200 acres. It is a reasonable market signal if you are a farmer, I can tell you.

Senator FERRIS—If you could do that and supply it to us, that would be useful.

Mr Dickson—The history of ABARE's outlook?

Senator FERRIS—Yes, I think that would be very useful.

Mr Mortimer—To follow up on that, in the submission on page 7 there is a reference to ABARE's comments at the 1999 wine outlook conference. It is about the fourth paragraph down. It is quoting what ABARE said then. The last sentence says:

However, increases in world supply are expected to be greater than any increase in world demand, which is likely to result in lower Australian wine grape prices.

Mr Dickson might be being a bit modest in terms of ABARE's accuracy. Essentially that sort of signal was being given then.

Senator FERRIS—I am interested in it from the position that there are some in the industry who believe that the overplantings are related to the depreciation opportunities that were provided.

Senator HEFFERNAN—Does ABARE rely on information from state authorities or industry groups?

Mr Dickson—I am not exactly sure. We rely on a variety of sources. I could not tell you exactly which ones specifically.

Senator HEFFERNAN—Could you take it on notice to tell us how you gather your information—whether you sneak around in a ute?

Mr Mortimer—I do not think ABARE ever does that.

Senator FERRIS—It is part of a national survey, isn't it?

Senator HEFFERNAN—Please provide us with details on how you gather your information to make a judgment on it all.

Mr Dickson—I am happy to provide more accurate information about that. The general answer to the question is that we as much as possible will apply economic principles, which was the point of my opening remarks. The wine industry exists within a worldwide market. We come at the analysis in the first instance from an analysis of world demand and supply. When we burrow down to trends in Australia it will be a combination of time series analysis and detailed information that we gather.

Senator HEFFERNAN—I guess you and anyone else who buys a bottle of wine—not assuming you do, of course, but meaning the community generally—would be aware of the massive growth in the industry. That is now documented. Do you think the Commonwealth should be more active in seeking information on the industry, or are you satisfied with the level of data we receive? Blind Freddy could see what was going to happen.

Mr Dickson—ABARE have a very close association with the wine industry bodies, such as the Wine and Brandy Corporation. The analysis that we do on farm performance in the wine industry we present at the annual wine industry conference, which is down there are on the Murray somewhere—Mildura, I think.

Senator HEFFERNAN—So generally in the last year or two, given the information you have received and the predictions you have made, did you get any surprises in the information received, the predictions you made and the real outcome? Did you blokes predict that we would hit this now?

Mr Dickson—We are not very surprised at the current situation.

CHAIR—I want to ask you about wine retailing. You have rightly made the remark that the concentration of market power in the hands of major wine retailers is a worldwide phenomenon, and it has been repeated here. One of the consequences of that is a shift in supply patterns. You will recall the ‘just in time’ phenomenon in manufacturing where the suppliers were required to provide inventory and the manufacturers did not carry it. When you introduce professional retailers into a sector which was formerly dominated by independents, what happens is that the stock turn increases quite rapidly. The consequence of that, of course, is that effectively there is a back-up upstream to the wine supplier, manufacturer and grower. I am wondering whether that phenomenon, given what has been happening in this country with Coles and Woolworths, has in fact accelerated the stock holdings by wine growers and wine manufacturers, because the stock turn has increased at the retailing side and therefore they are carrying less stock. They are moving what stock they have far more quickly.

Mr Dickson—That is a good question. We do not have any evidence that the change in the nature of the retailing of wine either here in Australia or worldwide has had this effect, but we have not done any detailed analysis of that either.

CHAIR—It might be useful. I think it is possible to get the statistics in a generic sense for the independent sector and for what I would call the professional retailing sector. I would assume that, if you have large-scale shifts in where market power lies, it might have a market effect. I just wondered whether you had looked at that and, if you have not, whether you might look at it.

Mr Dickson—We have not had a look at that. We are doing an analysis of the food industry more generally where we are coming across very similar issues in the way the food industry is changing. I am happy to take that on notice and go back to ABARE and look at this issue more closely. My sense, however, is that the significant growth in stocks which has occurred over the last few years is more related to the delayed impact of the significant increase in plantings which occurred four, five, six and seven years ago. It would be more related to the simple dynamics of that than a significant change in the nature of retailing. Particularly in the UK market, the change in the retailing arrangements whereby now 80 per cent of wine in the UK is sold through supermarkets and off-licences has been occurring for over a decade. It is not a recent phenomenon and it is not a very rapidly changing phenomenon.

CHAIR—But obviously if it has an effect it will just worsen a situation that is already there, or it could.

Mr Dickson—I would question whether or not it changes what is essentially the stock-to-sales ratio. Rather, it changes where stocks are held.

CHAIR—That is right, and it puts greater pressure on manufacturers and wine growers. What we are seeing in the press is signs of financial strain in some of those countries.

Mr Dickson—It certainly would move the cost of stock holding onto different parties in the value chain. If they adjusted and had greater stock-holding capacity then you would not expect necessarily that it would depress prices. It is the significant increase in the stock-to-sales ratio which is causing concern. The industry is saying that a ratio of about 1.6 is comfortable and the ratio is looking to be well over 2.0. So stocks worldwide are depressing prices at this stage.

CHAIR—My last question arises from the Mildura hearing, which was held on 28 June—the *Hansard* reference is page 34. Should the Commonwealth have a role in progressing national information through, for instance, a national register of vines? You might want to take that on notice.

Mr Mortimer—I am happy to give you an initial response. I would look at it as a cost-benefit equation. If you were to have a national register of vines, what would be the benefits and where would those benefits accrue? At one level you would know where vines are being grown and so on, but the question is: how much more does that tell us than what we are generally aware of already? There is a lot of reporting and a lot of information sources already available and widely published on the extent of new plantings.

The other issue is cost. While I appreciate that it looks very helpful and relatively straightforward, effectively, if such a register were to be uniformly observed, it would need regular census activities to maintain it. In the absence of some sort of compulsion—in the way that people are compelled to respond to Australia's national census every five years—that would seem a fairly significant job requiring fairly significant resources to ensure the degree of compliance that would give you a truly reliable national register. I raise those points in terms of the relative costs and benefits.

CHAIR—It seems a pretty smart response to me. That is all from us. Are there any last words you have for us?

Mr Mortimer—No. We are very happy with the hearing, thank you. We will give you a response to those questions on notice.

CHAIR—Thank you. We appreciate your attendance.

[5.23 pm]

CHESWORTH, Mr Peter, General Manager, Office of Small Business, Department of Industry, Tourism and Resources

WESTON, Ms Susan, Head of Division, Office of Small Business, Department of Industry, Tourism and Resources

CHAIR—As you have appeared at these hearings before and heard my address to the previous witnesses, I just briefly remind you of the rules of privilege and the in camera guidelines that govern committee proceedings. Do you have an opening statement?

Mr Chesworth—No.

Senator FERRIS—Have you been approached by any of the national tourism bodies to see what can be done to assist some of the small wineries that are having difficulty in the current downturn?

Mr Chesworth—The Office of Small Business has not been approached. I could take that question on notice and take it up with our tourism division to see if there has been any approach to them.

Senator FERRIS—How closely do you work with the wine industry? Is there perhaps one small-winery peak body that you work with, such as a regional winemakers forum or something like that?

Mr Chesworth—Our involvement with the industry tends to be slightly at arm's length. The Office of Small Business is a fairly small policy unit within the department of industry, and we try to spread ourselves across 1.3 million small businesses. Our interactions with the wine grape industry have usually been through peak bodies—certainly, the Murray Valley Winegrape Growers Association; I have had some interactions with Mr Mike Stone in the past—but more through the way in which the wine associations feed through national bodies like the National Farmers Federation.

Senator FERRIS—One of the difficulties that we have heard in this inquiry is the fact that the grape growers do not have a peak body, which means it has been quite difficult for them interacting with bodies such as yours at a peak level. We have had evidence from a number of small wineries that they are suffering a particular downturn in prices at present, and also from the wineries that have a combined wine industry-tourism industry public face, I suppose you would say. Does your organisation have any specific initiatives that you offer to those people in the way of advice?

Mr Chesworth—There are a range of initiatives in place that may not focus directly on the wine industry but focus on small businesses in general. For example, there is a nationwide network of small business field officers, who are there to provide information on what services for small businesses are available from the government. There are also a range of small business

programs and tourism programs. The small business field officers are quite a good conduit for getting that information across. As well as that, there are information sources such as business.gov.au, the government's web site for business. I think it is also fair to say that in the Office of Small Business we do try to engage quite actively with industry associations. Whilst we spread ourselves pretty thinly, we really do try to make an effort. It can be sporadic with some associations, but we do try to make an effort to get in touch and engage where at all possible.

Senator FERRIS—I would be interested to know whether the wine industry in particular has made any contact with you, either the wine makers or the grape growers.

Mr Chesworth—I have been in contact with the Murray Valley Winegrape Growers Association. That is the only association that I have been in direct contact with. I should mention that we have also had dealings with Horticulture Australia Council and Horticulture Australia Ltd. They are probably the key organisations.

Senator FERRIS—Thank you very much.

Senator O'BRIEN—The Produce and Grocery Industry Code of Conduct ombudsman is a matter under your area of responsibility, isn't it?

Mr Chesworth—That is correct.

Senator O'BRIEN—Could you give us a background report on how that came about and how it operates, please?

Mr Chesworth—Absolutely. I suppose the genesis of it was the Reid inquiry report *Fair market or market failure* in 1998. One of the recommendations of that inquiry was for a code of conduct to apply across the retail sector to promote fair trading. The government's response to that was that the submissions that had been brought forward at the time related not to the retail sector in general but more to the retail grocery sector. The government's response also said that, rather than having what was regarded as an overly regulatory response, the industry should be asked to come forward with a framework for a voluntary code of conduct.

Senator O'BRIEN—Why was it voluntary?

Mr Chesworth—I think the concern was that—note that we are talking about 1998 to 1999 here—a mandatory code might impose paperwork and compliance burdens on businesses throughout the retail grocery supply chain and that a voluntary code might be able to preserve the supply chain efficiencies without imposing unreasonable paperwork and compliance burdens. The government asked a number of parties to come together, including the major chains, the Australian Retailers Association and the National Farmers Federation. You would know the membership of the code committee. It was pretty much that sort of membership. They came together and formulated a retail grocery industry code. That membership then formed the Retail Grocery Industry Code Administration Committee, which renamed itself towards the end of last year as the Produce and Grocery Industry Code Administration Committee. That committee has met about three times a year since then to discuss issues relating to the retail grocery sector.

Senator O'BRIEN—Could that code be a precedent for a code of conduct to regulate the relations of wine grape growers and wine grape buyers?

Mr Chesworth—The definition of produce in that code is very broad. One thing I should have mentioned is an aspect of the government's response to the Reid report: the Retail Grocery Industry Ombudsman, which I know you are aware of. The ombudsman essentially provides mediation to parties in the retail grocery supply chain. The definition in the code of 'produce' is very broad and, yes, it could encompass wine grapes.

Senator O'BRIEN—Would anything need to be done to have the industry embrace the code? It is not legislated, so there would obviously have to be some agreement within the industry, wouldn't there?

Mr Chesworth—In April this year, at the meeting of the Produce and Grocery Industry Code Administration Committee, they agreed that wine grapes should be formally encompassed within the code structure. They also went a little bit further by indicating a willingness to expand the committee membership to get a greater grower representation—an additional three grower representatives, one of whom would come from the wine grape growing sector.

Senator O'BRIEN—Has that happened? Is that in place now?

Mr Chesworth—It is in the process of being put in place. I understand that the National Farmers Federation, which is already the grower representative on there, is in discussions with wine grape grower bodies and will bring forward a nomination at the next retail Retail Grocery Industry Code Administration Committee meeting.

Senator O'BRIEN—I know that the National Farmers Federation has been quite critical of the voluntary aspect of this code. What is the state of the code with regard to the participants? Have those issues been resolved or do they remain outstanding?

Mr Chesworth—I think it is somewhere between the two. The farmers have indicated for some time—a number of years, it is fair to say—that there was insufficient grower representation. On the committee we had retailer representation from Coles, Woollies and the Australian Retailers Association, and some processor representation from the Australian Food and Grocery Council. The central markets were also represented. As well as that, the independent retailers were represented through the National Association of Retail Grocers of Australia, which had two spots. The NFF felt that there should have been a greater grower representation. The committee have responded to that: firstly towards the end of last year by indicating that they would increase the number of grower representatives from one to three, and then they went a bit further earlier this year by indicating that they would be prepared to increase the number of grower representatives from one to four.

Senator O'BRIEN—Why is it that the Produce and Grocery Industry Code is the responsibility of Industry, Tourism and Resources, but the horticulture code, now open for public comment, is the responsibility of DAFF?

Mr Chesworth—I think there are two reasons for that. One is that there is a historical aspect. It was something that the Office of Small Business was involved with in the context of the Reid

inquiry. At that time, the Office of Small Business was located in the Workplace Relations portfolio. There are probably some very good synergies in moving it over to the Industry portfolio, in terms of retail grocery and the way it fits into the broader supply chain issues that can arise.

On the horticulture code, I think there is probably an acknowledgment within government that the Department of Agriculture, with a horticulture and wine division, had a particular expertise in that area. However, I would say that the two departments are keeping in contact with each other on the development of the mandatory code and the way in which the two codes might interact.

Senator O'BRIEN—So the growers would wonder what the Office of Small Business can contribute to the problem they have at the moment with contractual stability and the ability of these businesses to survive the current difficulties that they face and their argued powerlessness in the contractual relationships?

Mr Chesworth—The role of the Office of Small Business is that, firstly, we provide secretariat services to the Produce and Grocery Industry Code Administration Committee. Secondly, we keep a pretty close watching brief on what is going on in the sector. Thirdly, when issues come up, for example in relation to the bargaining power between parties and those sorts of issues that really fall into the context of the Treasury portfolio and their role in sorting out the Trade Practices Act, we consult with those officials.

Senator O'BRIEN—I am not sure if that means you can help them or you cannot.

Mr Chesworth—I should also mention that the ombudsman mediates issues that arise between parties in the vertical supply chain. That is quite a direct way of trying to sort out some of the issues in the sector.

Senator O'BRIEN—Where both parties agree.

Mr Chesworth—That is correct. I suppose that is the essence of mediation in a sense. The good thing about mediation is the low cost aspect.

Senator O'BRIEN—There are contractual provisions which obligate parties to submit to mediation in cases of dispute but obviously that is a matter for contract without some legislative requirement to do so. I understand that. Do cooperatives have a role in improving the market power of wine grape growers?

Mr Chesworth—In receiving feedback from our Produce and Grocery Industry Ombudsman one of the things that has come forward is that in the time that he has been conducting mediations—that are probably getting slightly more complex in nature—he has found himself acting on behalf of more than one supplier in relation to more than one other entity in the vertical supply chain. There are certainly bargaining efficiencies in relation to that. One example of that, not necessarily in relation to wine grapes, was an issue in relation to eggs and poultry. A couple of years ago the Victorian Farmers Federation's egg committee worked with the ombudsman and the major chains and there was quite a good outcome in relation to that. A mutually agreeable price on the supply of eggs was achieved.

Senator O'BRIEN—There are trade practices considerations that bear on the ability for cooperatives to negotiate that, aren't there?

Mr Chesworth—There can be. It is a case by case thing. My ACCC colleagues are probably well placed to answer that question.

CHAIR—Thank you very much. We appreciate your attendance and hope you do not get caught in the snowstorm.

[5.40 pm]

GREGSON, Mr Scott Peter, Acting General Manager, Adjudication Branch, Australian Competition and Consumer Commission

PEARSON, Mr Mark John, Executive General Manager, Enforcement and Compliance Division, Australian Competition and Consumer Commission

RIDGWAY, Mr Nigel Cameron, Acting General Manager, Compliance Strategies Branch, Australian Competition and Consumer Commission

WEBB, Ms Rose, General Manager, Enforcement and Coordination, Australian Competition and Consumer Commission

CHAIR—Welcome. I see some old friends—shall I call you that?—in front of us. I am not sure I need to repeat all the stuff about privilege unless you want me to. Mr Pearson, your strong voice suits your position, I think!

Mr Pearson—I always thought I was nice and quiet!

CHAIR—Do you have an opening statement?

Mr Pearson—We have made reference to a lot of the issues surrounding the wine grape industry and the Trade Practices Act in our general submission and, we think, provided a fairly good overview of our experience when dealing with the issues between grape growers and processors. We tried to focus on areas that are relevant to our activities as well as some of the challenges and opportunities that face the wine industry participants. In addition, our view is that a voluntary industry code could well complement the Trade Practices Act by providing industry specific guidelines for dealings between growers and processors. This could provide increased transparency in commercial dealings between growers and processors. It depends a lot on the make-up of the particular code. That is all I have, to start with.

Senator HEFFERNAN—I will not follow the script. Down the river somewhere we came across a grape grower who had trouble with Tandou. He said that he had been to see or taken his complaint to you people.

Mr Pearson—We did read that in the transcript, and we have checked our records. We can find no information concerning a complaint about Tandou. We had a look at the complaints that have come in on the wine industry from wine grape growers, and we cannot identify one that may relate to that at all.

Senator HEFFERNAN—His complaint was about the late notification of prices. This is one of the issues; growers do not have time to shop around for a better price. Do you intend to address that issue?

Mr Pearson—The only way we can address that is if, in bringing a matter forward, we can determine that there has actually been a breach of the act. That notification of prices is actually one of three or four issues that seem to be common in complaints to do with the contractual arrangements—when contracts are made, when they are altered, the quality and pricing. Generally we have looked at those under ‘misleading and deceptive’ provisions or under the unconscionable conduct provisions. We do have one matter that is not quite along those lines. It is not too dissimilar to that. We are a long way along in our investigation. Obviously I cannot talk about the matter.

We would have to look at the particulars of that case. As you probably well understand, it is extremely difficult sometimes to demonstrate unconscionable conduct as opposed to what is just tough competition or tough business practices. Both the act and the courts have laid down some factors that we are supposed to look at but also that the judges themselves will look at.

Senator HEFFERNAN—This particular person said—which seemed a bit odd to me—that the price he received for his grapes was not determined until Tandou had sold the wine. Would you consider that to be unconscionable conduct?

Mr Pearson—I could not give a very good answer to that without seeing the rest of the issues around it.

Senator HEFFERNAN—No, I realise that.

Mr Pearson—If you have contact with him, I would welcome him calling us. He can call me personally; I have no problem with that at all.

Senator HEFFERNAN—We might tell him to chase it up.

Mr Ridgway—I would like to add something. There are some pricing practices, we understand, in this sector. Whether it is a final price or whether it is characterised as bonus payment is by reference to the quality of the end product—the wine—so that is not uncommon in this industry, we understand. The connection with the unconscionable conduct aspect of the Trade Practices Act is where there is a particular vulnerability, perhaps, of a grower in relying on a processor to act in good faith and that is abused or exploited. The ACCC has not received any substantiation or any specific complaints that indicate that such conduct has taken place.

Senator HEFFERNAN—If you were delivering grapes and the best information the bloke you are selling them to has is, ‘We’ll see how we get on after we turn it into wine and how the market is,’ and if there were a contract that affected that I would have thought it would probably be a constant contract. One of the things that came out through the hearings was that the grape growers are pretty disorganised, whereas consolidated retailing is pretty organised and consolidated winemaking is pretty organised. We have hit the 2025 target for having vines in the ground in 2005, so the market is playing its usual supply and demand exercise. One of the peculiar things I found was that, when you rock up to the bridge to sell your grapes, in a lot of instances there is really no test other than colour and one or two other vagaries as to what it is that you are delivering, so you are really in the hands of the goodwill of the winemaker as to what it is you have just delivered and if there is a premium what it is going to be. Does that need to be smartened up?

Mr Pearson—In terms of the Trade Practices Act, it is not necessarily an issue, but we think there are areas to do with transparency that probably could be addressed, and addressed better within the industry. We think there are definitely a number of issues. When we have looked at some of the complaints that have come in, we have found quite often that growers sometimes do not understand the contract, that they have not necessarily tried to use some of the mediation processes that are available or that there have not been discussions between the grower and the buyer concerning the issues. One that leaps to mind in Victoria is where we have gone in and had discussions with the parties and resolved the problem, even though, technically, it probably would not have been a trade practices issue. But I think there are some issues there with transparency, which are probably outside our bailiwick, and they could well be addressed.

Senator HEFFERNAN—Yes, I think I gave the instance that, these days, when you rock up with a load of wheat, before you tip the wheat you know exactly what you are tipping. The tests are at the bridge—protein and all the rest of it—and I just cannot see how the grape industry should not be up on it. The grape industry is probably where the wheat industry was 20 years ago.

Mr Ridgway—I refer to the work in the industry that is under way at the moment with respect to the wine grape assessment, as we indicated in our submission. The *Winegrape Assessment in the Vineyard and at the Winery* publication, which provides a framework of benchmarking for the evaluation and assessment of wine grape product, looks at identifying some of these issues and providing some greater transparency. Our understanding is that the industry is at the moment looking to address steps in that area.

Senator O'BRIEN—Can you help us with our understanding of the unconscionable conduct provision of the Trade Practices Act? That is a broad question.

Mr Pearson—There are a couple of factors that I think are misunderstood when people look at unconscionable conduct. One is the difference between unconscionable conduct and tough negotiations, or bargaining power that may be stronger on one side or the other. The act does not actually prohibit arrangements that are come to where one side is stronger than the other. There is a lot of judicial comment on what unconscionable conduct means, and a lot of it refers to this issue of having some sort of moral judgment. In other words, the unconscionability has to go further than very tough, very hard, even what may be seen as unfair, negotiations; it actually has to have something in there like bullying, thuggishness—something that, in the court's view, takes it more into a moral judgment that you have done something wrong almost deliberately or recklessly.

Senator O'BRIEN—Is there much case law?

Mr Pearson—I heard a comment recently from a senior counsel who referred to the fact that there is still a lot of work to be done in determining what unconscionable conduct is, particularly under our act. There is a fair bit to do with equity provisions going back over the years and what unconscionability refers to, but I have to say that there is probably more room for judgments on the specific unconscionable conduct provisions of our act.

Senator O'BRIEN—So the standard you described is the standard that the ACCC would use. Is that how I should understand you?

Mr Pearson—Yes. We have taken a number of unconscionable conduct cases. When I went back and looked over the last couple of days in particular, with some of our regional offices, there are quite often cases taken where we look at one, two or three different sections of the act. Whereas we may have an unconscionable conduct, or believe that it may be unconscionable, we may go with misleading and deceptive conduct, for example, because the evidence is a little better. If you look at some of the cases, we have a guideline that we put out on unconscionable conduct. There are examples there that show extremely tough negotiating and instances where I have had small businesses or others say, ‘Look, these are really unfair,’ but, in assessing them, they do not reach the unconscionability bar.

Senator O’BRIEN—Can we have a copy of that document?

Mr Ridgway—We should have one here today.

Mr Pearson—Yes, we brought one that we can leave for the committee.

Senator O’BRIEN—Do you think the bar is too high in terms of the current legal interpretations of what unconscionable conduct in the legislation means?

Mr Pearson—My personal view is that it is not. We obviously have a lot of discussions about these matters when they come up. I think we would take the position that it is probably an appropriate balance between competition, involving yourself in negotiations between parties and contracts and private business, and what is unconscionable. My colleague Mr Ridgway has done a lot of work on this. He runs a lot of the rural and regional outreach programs, so he has a lot of experience in dealing with the industry bodies. He may have something more to add.

Mr Ridgway—We do quite a bit of work with a number of small business sectors in the marketplace, getting a sense of where issues become unconscionable and where issues are on the bargaining or negotiation side. My sense is that a number of the industry associations are very alert to the threshold. To the extent that they may wish to have representations about that threshold, it is really not an issue for the regulator as much as the policy people. But we do find that a large range of potential disputes and issues in the supply chain in various sectors are resolved through negotiation and mediation. Mechanisms such as codes of conduct with dispute resolution provisions tend to be quite effective. Our experience, particularly in the franchising sector, where we found a range of concerns being raised, is that a large number of those—a very large percentage—are resolved by mediation. That is despite the fact that a range of the smaller parties tend not to have a great deal of faith in the mediation process until they experience it.

Senator O’BRIEN—So, with your outreach program, do you experience widespread problems of alleged unfair conduct, whether it is unconscionable conduct as legally defined or not?

Mr Ridgway—We receive a number of issues from time to time from various sectors. Of course, we always hear when people feel they have some difficulties. It is a question of measure in relation to the broader number of transactions in the marketplace. But, once we drill down to the specifics of particular conduct, as we need to in our role, a number of the issues tend not to be substantiated. There is a range of issues, whether they are to do with late payment, for example, or other forms of perceived intimidation. When we actually sit down and identify the

specifics, they tend not to be terribly substantive. Despite this, we continue to be vigilant and responsive when these issues are raised. We are actually dealing with some at the moment in a couple of sectors.

Mr Pearson—I think it is a very good point that Mr Ridgway makes about the complaints. We went and had a look at a lot of the complaints. We have a very good reporting and recording system. We have put a lot of time into it over the last 18 months. Without naming industries, complaints have come in and when we have gone to the individuals the story they have told us is not the same as the story that has come in from a higher level. It may have come in that somebody has been intimidated or there has been unconscionable conduct or whatever. When we have gone to the individuals and asked them exactly what happened, it has not actually matched the story that has come to us. I would have to say that is not that uncommon in what we can call ‘unfair conduct’, if you like, particularly where there are smaller players. We get a lot of it in tenancy and franchise issues. There are a lot more in those sectors than anywhere else, I think.

Senator O’BRIEN—Are there cases where you have received a number of complaints about a particular winery?

Mr Pearson—Not that I am aware of. I can double-check that for you, but not that I am aware of. We ran most of the complaints that we had and there was not one winery with 20 complaints or anything—in fact, most of them were individual complaints. When we go to conferences—for example, Commissioner John Martin has been to wine industry conferences and spoken, and Nigel and his people spend a lot of time with some of the industry groups—there is a lot of discussion about those issues of price, quality and the contracts and so on, but it is more about problems in the industry and what can be done about them rather than individual specific complaints.

Senator O’BRIEN—You say on page 5 of your submission that the ACCC has received complaints about prices notified late in the season, but these have not been found to be unconscionable conduct. Do you get many of those?

Mr Ridgway—We have not had a great number of these sorts of complaints from individual growers, although we understand that the nature of the wine grape sector is that the assessment of grape quality is necessarily fairly late in the season. It depends on sugar content and other such issues. We are aware that there is a short period of time between assessment of these components of the quality and the settling of the price. So we are alert that, broadly, there would perhaps be some concern by growers with respect to the window of opportunity that they have to seek another purchaser for their product or to renegotiate. But we have not had a number of growers coming to the ACCC specifically and urging that this is a potential concern under the Trade Practices Act, and indeed we have not had any information to suggest that it is.

Senator O’BRIEN—So there are no circumstances in which that late notification would become unconscionable conduct?

Mr Pearson—As I said, you have to look at it on a case-by-case basis. But on what we have seen, no. Generally, when we have looked at that it has been industry-wide. There may well be some management type issues or supply chain issues or logistics issues within the industry. But they are not necessarily unconscionable on an individual basis. One of the things about

unconscionability also that is not often understood is that there is generally some sense of picking out an individual and not being fair to that individual. So if it is an industry wide activity, if you like—if that is the process industry-wide and it is reasonably well-known or understood—it would be highly unlikely that that alone would be unconscionable. You would have to look at the other factors in terms of the individual concerned and how the contract was negotiated and all those things.

Senator O'BRIEN—So growers A, B and C get \$400 a tonne; they are not really happy but marginally happy. Grower D is told for a similar product: 'We are not all that keen about buying it from you. We will take it for \$50 less than the cost of production.' Is that going to be bordering on unconscionable?

Mr Pearson—I think you would probably have to go a step further. Again, we have actually had complaints similar to that, although not quite as bold, where growers have said, 'My neighbour'—or 'my cousin' or whatever—'has got this price, and we have got the same quality,' and when we have looked at it there were issues, either transportation or when they had sold it or timing, that explained it. I think it goes back to that point of transparency and sometimes a lack of it with what growers know. To be unconscionable, I think you would have to find with that grower that it would have to be more targeted. It would depend on the dynamics around it, if you like.

Ms Webb—So there might be a situation where there is some holding out to them that they would get the same price and, for unexplained reasons, they do not, and the person acted on that promise that they were going to get that price and suffered some detriment. You could conceive of a case like that.

Senator O'BRIEN—It becomes an issue of 'she said', doesn't it?

Ms Webb—Unless there is some documentation around those lines.

Senator O'BRIEN—The objective test of the quality of grapes that have already been crushed and those that were not taken or were also crushed and put into a general pool is pretty hard to prove after the event.

Mr Pearson—Ms Webb has done a lot of work on active enforcement. She has been involved with us for four years, so she has a good sense of what it actually requires at an officer level to demonstrate any sort of case and what is around the particular activity, the documentation et cetera. In some respects you are going to a frame of mind, I guess. You are going to that issue of whether it is unreasonable, whether there has been thuggery, whether there has been bullying. It is extremely difficult without looking at the actual activities. All I can say is that we have looked at similar issues and have not actually found—either ourselves or council—that it has been unconscionable.

Senator O'BRIEN—So if growers want to collectively bargain, how do they go about that? What are the impediments?

Mr Pearson—There are some.

Mr Gregson—Collective bargaining can raise concerns under the Trade Practices Act. It is seen as competitors discussing and agreeing prices. There are various mechanisms under the Trade Practices Act to provide immunity. You may be familiar with them. Currently the process would be the authorisation process, which involves applications and a transparent and public consultation process and decisions. You would also perhaps be familiar with the bill that is currently before the Senate in relation to a collective bargaining notification procedure, which should provide a more streamlined process for small business.

Senator O'BRIEN—There seems to be damn little protection under other provisions of the Trade Practices Act for these growers because of the variability. It does not seem that they have any easy solution for some certainty in the collective bargaining arrangements. Do I understand that correctly?

Mr Gregson—The collective bargaining arrangement under the Trade Practices Act, whether it be authorisation or the proposed new process, provides mechanisms whereby they can avoid any complications from the competition provisions of the act. We have seen that across a broad range of industries, including relevant industries such as chicken growing and vegetable growing, which have similarities to some extent with the wine growing area. They have certainly proved to be useful mechanisms for avoiding the complications of the Trade Practices Act, allowing small businesses, or in this case growers, to get together and have a voice to be heard with in their dealings with processors.

Senator O'BRIEN—Where has that happened?

Mr Gregson—In a number of areas, including vegetable growing, chicken growing and dairy.

Mr Pearson—We could give you some examples of those.

Senator O'BRIEN—Perhaps you could explain how wine grape growers growing similar or the same varieties would go about seeking an approval to collectively bargain and what criteria you would use to judge that application against.

Mr Gregson—As with most things, it would be on a case-by-case basis. But I could give you some indication of what we currently consider in relation to an authorisation application. First of all the businesses, or in this case the growers, need to decide what arrangements they might want to put in place. Where they raise concerns under the act they can talk to the commission about how to go through the authorisation process or, in time, the notification process. We would look at the features of those arrangements which ensured that the anticompetitive effects were not strong. We would also be looking to see what public benefits could be demonstrated from the arrangements. We have some track record of setting out what we see as public benefits that do flow. Very much we are looking at opportunities for small businesses to have input into their contracts and to be heard.

Senator O'BRIEN—What is the importance of the relative power of the individual entities versus the purchaser of their product—in this case wine grapes?

Mr Gregson—It would often be claimed that where there is an imbalance in bargaining power those small businesses have difficulty in participating in negotiations. That is entirely relevant

for us when we look at it not only from the competitive detriment point of view—it may actually be a good thing to allow input into contracts—but also from the benefit point of view: the benefits that come from collective bargaining in that context.

Senator O'BRIEN—The benefit to whom?

Mr Gregson—The accent is very much on the benefit to the public, which can include a number of areas, including benefits to growers and benefits to the public from having input into contracts.

Senator O'BRIEN—So how relevant is the viability of businesses?

Mr Gregson—The viability of businesses needs to be considered in the context of public benefit.

Senator O'BRIEN—Is a thousand growers in the Riverina going bust an issue for public benefit consideration?

Mr Gregson—Certainly in the past we have suggested that the viability of efficient businesses is a relevant consideration.

Senator O'BRIEN—Efficient businesses?

Mr Gregson—Certainly.

Senator O'BRIEN—How do you know if they are efficient or not?

Mr Gregson—We look at information that is provided to the commission. At times the commission has to make judgment calls as to whether they have demonstrated that that is the case. You look at all the information available to you at the time.

Senator O'BRIEN—How do you get that information? Presumably the winery are going to tell you what they think is a reasonable price and what the cost of production is, and the growers are going to tell you something different. How do you assess that?

Mr Gregson—The benefit of the current authorisation process—and, I would expect, the notification process—is that it is public and transparent. We get large amounts of information from industry, both for and against arrangements. We are relatively confident that the commission has had a degree of practice in determining the decision that it should make.

Senator O'BRIEN—In all of the potential agricultural and horticultural sectors, the ACCC has the necessary experience to make that judgment?

Mr Gregson—With the benefit of industry and public consultation. That is certainly very much of assistance. I should say that our track record of granting authorisations for collective bargaining is reasonably strong. There are a few that we have denied and some on which we have put some limitations, in terms of there not being unrestrained collective bargaining, but the vast majority we have allowed.

Mr Pearson—We also go to experts. We go to the industry departments. I noticed you talked about ABARE earlier. We go to organisations like that as well. We go out as broadly as possible to try to get information to balance it.

Senator McEWEN—I would like to ask a question about codes of conduct. You say that the ACCC has been a major player in developing voluntary codes of conduct through its authorisation process. Can you explain what you mean by that?

Mr Ridgway—Perhaps I could respond. The ACCC engages with voluntary codes of conduct in some different capacities. The work that we do with industry to assist in the development of these codes is not so much on the authorisation side but more in the provision of advice and information on some of the indicators we see as prerequisites to effective codes of conduct—and we issued a guideline to that effect recently—and on identifying the potential competition issues that might arise in the development of those codes of conduct. We also facilitate discussion from time to time between smaller and larger parties in various supply chains. The process with respect to authorisation occurs when perhaps there are competition concerns arising from agreements within a code of conduct in an industry. The work of the commission is to assess the public benefit and anticompetitive detriment balance, as identified by my colleague.

Senator McEWEN—So how many codes of conduct are there in place?

Mr Ridgway—Voluntary industry codes of conduct?

Senator McEWEN—Yes.

Mr Ridgway—We would not have a figure, because a lot of the industry associations that develop these do not necessarily contact the ACCC. We are aware of a number of them, of course, which we would have to identify, but it tends to be a fairly fluid process. Sometimes codes of conduct will be developed and will operate for a number of years, and then their purpose may or may not continue or their administration may or may not continue. It is a bit of a moving feast.

Senator McEWEN—Would the groups that want to develop those voluntary codes of conduct come and see you as a matter of course?

Mr Ridgway—From time to time they do. We have some staff who have a particular role in working with industry to assist when called upon, and we are currently engaged with three or four industry associations that are looking to develop codes of conduct.

Senator STERLE—I apologise for being late. I have a couple of questions, as I came in on the end of a couple of comments made by Mr Gregson. You said that the ACCC had assisted some industries with collective bargaining. I think I picked that up.

Mr Gregson—The situation is that collective bargaining can raise concerns under the Trade Practices Act, and there are mechanisms to obtain protection from those provisions where that can be shown to be in the public interest. We have considered a number of applications and, indeed, granted authorisation or protection for a number of collective bargaining arrangements in the past.

Senator STERLE—Can you give us some examples? Which industries?

Mr Gregson—Certainly. We have had a long history. Some of the prevalent ones are the chicken growing industry and the Tasmanian vegetable growing industry. There are national arrangements for dairy milk producers and processors. We have a number of those that are ongoing. It seems to be an area where we have had a lot of attention in recent times.

Senator STERLE—Is there a lot of difference in what you provided the chicken growers or the dairy industry and what the grape industry or the growers are requesting?

Mr Gregson—The arrangements which may come in for authorisation are very much up to the applicant—what they want to put forward for approval or at least authorisation. It will be very much up to the individuals. I am not specifically aware of arrangements that have been prepared or put forward by the grape growing industry. It would be up to them how they wish to design those. The only rider to that is that we need to assess public benefits versus anticompetitive detriments. We have certainly given some guidance in the past as to where we see that those issues can be addressed.

Mr Pearson—We always encourage people to come in and talk to us. Scott and his group will often talk with individuals first. Under codes they will often come in and talk to Nigel. Sometimes they do not carry through with them, but we do try and encourage groups to come in and talk to us so that they are aware of the process, the pitfalls and the issues that they need to address. At this stage, I am not aware of the wine industry coming in to talk about that, although I think it has been raised in some of the general discussions when we have met at conferences.

Senator STERLE—Would it be possible to have hard copies of what you have provided for other industries?

Mr Gregson—Certainly. It is an open and transparent process. Our decisions are in the public forum and I would be happy to provide some relevant determinations.

Senator STERLE—That would certainly assist us in where the grape growers are coming from. You must forgive my line of questioning. In my previous life with the ACCC it was always very interesting when truck drivers were requesting safe, sustainable rates. Thank you.

Senator McEWEN—Is it correct that in 2001 there was a proposed industry code for the winegrowing industry and it went nowhere? That is my understanding.

Mr Ridgway—About that time, or shortly thereafter, we were alerted to some issues in the industry. We were informed in a general sense that there had been some attempts by some growers and processors to develop an industry code of conduct to address a number of issues. My recollection is that some of those issues were not reconciled in the process and they decided not to proceed.

Senator McEWEN—Which grape growing area was that in? Which collection of growers?

Mr Pearson—I will see if I can find that out for you. I recall it, but I am not sure what area it was.

Senator McEWEN—That is fine. Do you recall if it was the winegrowers or the winemakers who sank it?

Mr Pearson—No. We were not involved in it so I could not tell you.

Mr Ridgway—We were not involved. We were informed after the event. I can identify that it was in the Murray Valley winegrowing area.

Senator McEWEN—Do you think that there should be a code of conduct regulating relations between growers and buyers?

Mr Pearson—We have gone on the public record. Commissioner John Martin has said that we would be supportive of a code of conduct. Earlier a couple of senators mentioned the difference between voluntary and mandatory. One of the issues that we have with mandatory is that it really can be a huge compliance burden on businesses, not to mention a burden on my resources. It can be a really big compliance burden on businesses.

It is basically up to the industry to see whether this is something that will take them forward. We support the voluntary codes, but only insofar as they are actually codes that work. We have seen codes that have fallen apart because they are not specific, because of the rules they operate under or because there is no mediation in them. Nigel and his group have a fairly good handle on what types of things they would like to see in a code. That is from our experience, experience overseas and experience with other regulators. I am sure that Nigel could run them off from the top of his head if you are interested, but we can also get you—

Mr Ridgway—We have a copy of the guideline here.

Mr Pearson—We can get you that as well.

Senator McEWEN—That would be useful.

CHAIR—ASIC has a practice and has developed a process and a system whereby it develops guidelines, guidance notes, practice notes, standards and various criteria, particularly with professional associations and bodies, which are then developed as aids, if you like. Sometimes there is compliance attached to them, but they are often just aids for the better working of the market or the better supervision of a particular area. Has the ACCC moved in that direction by being proactive and sitting down with, say, the four or five wine associations, and saying, ‘This is what is coming up to us; these are the sorts of template ideas we ought to discuss about the way in which contract advice is given by the associations or the way in which criteria are established’? Do you do that sort of work?

Mr Pearson—We have done similar things in other industries, at a broader level than a lot of our guidelines from our mergers guidelines, authorisation guidelines—a lot of those. That is what they are meant to be. We recently put one out on the jewellery industry, for example, because there are a lot of complaints about jewellery and valuations—two or three prices. We worked with the associations and compliance professionals on that. We do that, but again I think the discussions with the wine industry have not gone to that stage. Nigel may have something to add.

Mr Ridgway—We are certainly aware that at an industry level there has been quite some active development of some transparency and a framework of dealing in this sector. Some of our staff in the relevant area—in our Adelaide office—are aware of and in touch with the various individuals in that process. We make ourselves available, but we have not chosen to intrude in this particular sector further to say, ‘We think that, rather than you working things out in a sensible way, we’ll come and tell you what to do.’

CHAIR—That is not what ASIC does. It does not go and tell people what to do, except where it is required to do so under the act. But it seems to me that a lot of the problems we are discussing here, and have discussed generally in the wine industry, are contractual problems. Many of those contractual problems relate to the way in which contracts are framed—not from the legal perspective but from the perspective of covering the needs of all parties. It seems to me that you often get people who are awfully good at growing things or fixing things but who are not too good at ‘lawyering’ and who can be stood over fairly easily. The association is there to provide that, but if the association is not alert to the sorts of complaints you are receiving and dealing with, and does not translate it into advice, you get a problem. That is why I asked that question.

Mr Pearson—In a general sense—for example, with our unconscionable conduct guideline—we have some very simple, basic things in the back that say to read your contract and talk to somebody if you do not know. There are some of those very basic, simple things about how you should go about your business. But that is not geared specifically to the wine industry.

CHAIR—This is no criticism, but the ACCC comes from a different mentality and culture to that of ASIC. ASIC in many respects is consumer oriented: it is trying to provide consumer advice in an intelligible manner for consumers. The ACCC, as you know, comes from a competition perspective and so has a different culture and perspective. Again, that is no criticism. But it seems to me that in this field you are almost providing consumer advice. Your consumers are grape growers who have problems in their relationships with those who provide them with goods and services, just as consumers do. That is why I put the question to you in the way I have.

Mr Ridgway—Perhaps I could clarify my previous response by noting that we do work fairly closely with a number of the industry associations in the sector, such as the Murray Valley wine grape growers and so forth. On the one hand, we provide immediate responses when issues arise, say, with respect to negotiation processes. On the other hand, we also provide particular information and articles for inclusion in the industry association’s newsletter, which gets to the many growers that are members. So we have a process that is all-focused on delivering that kind of information to assist small traders to better understand their rights and responsibilities under the act. We also give practical advice on the kinds of issues they might focus on when they are looking to negotiate contracts and so forth. We have a range of officers throughout the country whose main role it is to go out and about and work with industry to give them that kind of helpful information.

CHAIR—That concludes today’s hearing. Thank you very much for turning up on such a cold Canberra night. The committee would also like to say thank you very much to Hansard.

Committee adjourned at 6.27 pm

