



Winemakers' Federation of Australia

For the Industry by the Industry

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Winemakers' Federation of Australia
Submission to the Review of Non-Forestry Managed
Investment Schemes

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Background

The Winemakers' Federation of Australia (WFA) is the peak national body representing wine enterprises of all sizes across Australia. Our membership represents in excess of 90% of wine production in Australia and, together with our State Wine Industry Associations, more than 80% of wine businesses.

Unlike other alcohol beverages, wine is a regionally-based, value-added agricultural product. Employing almost 30,000 people directly and with a further 30,000 indirect jobs, the wine industry provides a substantial basis for many rural economies.

The Australian wine sector is an Australian success story and has undergone unprecedented growth over the last ten years. In 1990, there were 620 wineries in Australia. In the space of a decade this had almost doubled to 1,197 in 2000 and has now almost doubled again with 2,299 wineries listed in the 2008 *Australian and New Zealand Wine Directory*. The vast majority of wineries are small with around 70% having an annual crush of less than 100 tonnes.

In 2006-07 the value of domestic sales of wine reached \$1.9 billion and the value of wine exports \$3.0 billion. In 2005 Australia was the third largest wine exporter in the world by value and the fourth largest wine exporter by volume.

Despite its success, the wine sector faces a number of challenges that it will need to overcome if it is to maintain sustainable growth.

A continuation of drought conditions, climate change influences, increasing competition for Australian wine both domestically and internationally, the impact of the strong Australian dollar on wine exports, retail consolidation and the trend to retail discounting is hitting wine producers and grapegrowers hard.

In May 2007, the Australian wine sector launched *Wine Australia: Directions to 2025*, an industry strategy for sustainable success. *Directions* identified the potential for the Australian wine sector to sell an extra \$4 billion worth of wine over the next five years. The gains will come through an increased emphasis on regional and fine wines, aimed at revenue increases through quality enhancements and positioning rather than volume growth.

These potential gains will only be realised through the continued industry-government partnership approach. The industry relies on government to provide and maintain a competitive business environment, free from excessive regulation and government inspired costs. The industry, for its part, must continue to enhance economic, social and environmental sustainability through efficient and responsible production, promotion and sale of wine within acceptable community standards.

Viticulture Managed Investment Schemes

There are broadly two types of vineyard schemes promoted at this time. Firstly, schemes where Grower money (called fees) is taken over time, typically 3 or 4 years or alternatively, schemes where all your money is invested upfront in one payment. The later is often tax deductible to nearly 100% in that year of investment.

The first type of investment appears to offer similar investment profiles to an ordinary grower, whether a family or a corporate grower. While the first payment may be larger than an individual's cost due to the additional cost of the legal, marketing and advisory costs for the PDS, it otherwise reflects the tax profile and cash flow that would be similar to any other investor in the market. Many of these types of schemes also allow for a significant ownership in the long term success of the vineyard, most importantly access to the land, water and infrastructure.

By contrast, the second type of investment appears to change the pattern of investment that an ordinary grower would make over 3 to 4 years. The payments have been seen to be higher than the ordinary grower would spend, even after including the upfront PDS costs, etc. Further, most of these schemes do not give the grower access to the land, water and infrastructure. This type of scheme appears to be tax effective but does not give the grower any long term benefit (or cost) in being involved in the wine industry. At the end of the project, whether successful or not, the grower retains neither any assets nor income stream.

From the perspective of the WFA the debate about the legitimate role of Managed Investment Schemes (MISs) essentially revolves around the tax provisions of MIS's, and the disclosure, presentation and uptake of accurate product and industry information.

Under current ASIC rules it is almost impossible to present financial forecasts in PDS's. Therefore most promoters have not provided forecasts over the life of the project. While background information is provided, they are not tied together in financial forecasts. This does not provide potential Growers with enough financial information to make informed investment decisions about the likely returns from their investments.

Accordingly, there is a case for a model that gives greater surety to investors based on the compulsory disclosure of more appropriate information.

Position Statement

The WFA has developed the following position statement in relation to viticulture managed investment schemes:

- MISs have played a role in the development of the Australian wine sector and have the potential to play a role in the future.
- Australia's tax structure should not advantage MIS vineyards compared to traditional grapegrowing.
- It is essential that all financial benefits to all parties involved in the selling and marketing of MISs including the beneficiaries are fully disclosed.
- That the MIS industry be obliged to establish and maintain a co-regulatory system with the Commonwealth that enforces compliance with minimum product disclosure provisions as summarised below.
- Any MIS Product Disclosure Statement and prospectus must provide the following information:
 - Accurate, current information relating to the expected production and consumption of Australian wine and winegrapes. This information should be provided by a single independent, reputable organisation and nominated in the co-regulatory model. Examples of potential providers would include AWBC, ABARE or Rabobank.
 - evidence of a long term contract with an established major wine company
 - a breakdown of the vineyard establishment costs and the size and structure of the management fees that has been verified by an independent third party and compared to established industry benchmarks. The third party process must be developed as part of the co-regulatory model, and must be genuinely at arms length from the proponents of the scheme.
 - Should provide information on each of the following criteria as specified in the MIS Investment checklist developed by WFA and provided as **Attachment 1**.
 - .. Formal requirements
 - .. Company profile
 - .. Description of the Scheme
 - .. Viticulture Operations
 - .. Independent Viticulturalist's Report
 - .. Products and Markets
 - .. Corporate Governance
 - .. Risk Factors
 - .. Independent Accountant's Report
- That the co-regulatory model should be open to public review two years after initiation and demonstration of non-compliance should precipitate a formal regulatory model.
- The MIS should have a minimum level of investment of \$50,000 per investor. This minimum investment will ensure proper due diligence is carried out by the investor.
- There needs to be strong penalties for incorrect or misleading information given by proponents selling the scheme.

Conclusion

The WFA acknowledges that viticulture managed investment schemes have played a role in the development of Australia's wine sector, and have the potential to play a role in the future.

However, the WFA firmly believes that Australia's taxation structure should not advantage MIS vineyards compared to traditional grapegrowing.

In addition, the WFA considers that there is a need for the compulsory disclosure of more appropriate information which will ensure greater surety for investors.

The WFA position in relation to MIS's is based on sound economic and business principles that support the ongoing sustainable development of the Australian wine sector.

WFA VITICULTURE MIS INVESTMENT CHECKLIST

FORMAL REQUIREMENTS

Managed Investment Companies must comply with the Corporations Act 2001. They should also comply with non-regulatory requirements if they are to meet their responsibilities with respect to due diligence. Answering the following questions will help to determine whether a company is meeting its legal responsibilities.

- Has the managed investment scheme been set up by a public company that is registered with ASIC on their public database?
- Does the scheme have an Australian Registered Scheme Number (ARSN)? Does the responsible Entity (RE) hold a current Australian Financial Services Licence (AFSL)? Does the Product Disclosure Statement (PDS) contain a summary of the Scheme Constitution and Compliance Plan?
- Does the PDS indicate that the scheme satisfies or will satisfy all the relevant statutory requirements of Australian corporation's law and tax law and applicable State codes of viticultural practice?
- Has the company received certification under any non statutory national or international standards (eg: ISO, AWIS)?

COMPANY PROFILE

The managed investment company must have the capacity to competently manage the project for the duration of your investment. Answering the following questions will help you establish the management company's credentials.

Is the project manager a public company? Is it also the recognised Responsible Entity (RE), or has it engaged a separate RE (not common)? Who are the key personnel responsible for establishing and managing the project, and what are their qualifications?

- Does the RE have adequate levels of expertise and experience available to manage a managed investment scheme? Does the RE have ready access to relevant professional consultants and research organisations? How has the company performed in managing existing or previous projects? Has the company satisfactorily demonstrated its commitment to the vineyard investment industry?
- Does the managed investment company have sufficient financial backing to support the scheme?
Is this demonstrated in the most recent audited accounts presenting company assets and liabilities?

DESCRIPTION OF THE MANAGED INVESTMENT SCHEME

A vineyard managed investment scheme is an investment activity that has particular defining features. Investors become vineyard “Growers” engaged in a managed primary production business by entering management contracts via a product disclosure statement. The Grower pays tax on assessable income derived from harvest proceeds, and is also entitled to deduct the non-capital business expenses incurred in establishing and managing the vineyards. It is essential that potential investors understand this type of investment activity.

How the scheme works

- Does the PDS clearly explain the actions the RE must take to operate and manage the vineyard scheme? (For example: identifying and securing suitable land; preparing the sites; accepting Grower applications; planting, tending and harvesting the vines, and marketing their products).

Nature of the Grower’s interest

- What is the nature of a Grower’s investment in the scheme? (For example: allotment size, duration of project, agreed rights and obligations of the Grower and manager; what the Grower owns or has an interest in; what can be sold or transferred etc).

Land tenure

- What steps have been or will be taken to acquire and secure the land? Who owns the land? What is the relationship between the landholder, the RE and the Grower? Does the investor have a lease, a licence or a right?
- How does the scheme ensure the Grower has security in the land for the duration of the project? How is the investor protected in the event of the landowner selling the land?

Risk and risk management

- What are the significant known anticipated risks associated with the project? Is there a discussion of the likelihood and consequences of the risks occurring? How will the RE prevent, minimise and manage risks that are within its control?

Financial structure

- Does the PDS clearly explain what fees the Grower will be charged over the full life of the project for what purpose – establishment, management and maintenance, harvesting, marketing and unexpected costs? How is GST applied? Are the fees expressed in consistent terms? Are they sufficient to cover the costs of the project? Do Grower fees match the expected outcomes of the project?
- How does the PDS indicate potential returns to Growers? Is there a commentary about the factors and variables affecting potential returns? Does the company offer a mechanism for Growers and their advisers to do their own estimation of potential returns?

Fees and benefits

- Does the PDS disclose the commissions, fees and benefits the RE has agreed to pay others to help develop and promote the scheme? Have these been included in any guidance about potential returns from the project?

VINEYARD OPERATIONS

The Grower must be confident that the managed investment company is competent to conduct the vineyard operations that are integral to the project. Answering the following questions should increase your confidence in the operation of the project.

Does the PDS provide a comprehensive description of the whole chain of vineyard operations – establishment, maintenance and management, harvesting and marketing – that are the purpose of the project?

Does this description include an explanation of the physical attributes of the scheme – intended location, site quality and selection, grape varieties, growth rates, products etc – and the science on which these are based?

Does this PDS provide a report by a qualified Independent Viticulturist? Does the PDS also provide report(s) by independent experts who are specialists in other parts of the wine production chain (eg: harvesting, marketing, product potential)?

INDEPENDENT VITICULTURALIST'S REPORT

A report from an Independent Viticulturist should provide a comprehensive briefing on the vineyard project to potential investors. Some of the broader issues, such as processing and logistics, market outlook and product potential, may be addressed by other independent experts.

Does the Independent Report contain information about the following?

- a) Verification on the Viticulturist's qualifications and relevant experience, and an explanation of the relationship with the management company.
- b) Suitability of the selected grape varieties with respect to region, site, products and markets, and estimated growth rate.
- c) Land selection criteria (eg: slope, soil quality, rainfall, previous land use, distance to markets, etc) and the means of verifying that these have been complied with.
- d) Vineyard establishment and management operations (in detail) required to achieve the nominated growth rate over the proposed period and the proposed maintenance and monitoring program.
- e) Domestic and export market outlook and product potential for all the vineyard produce; growing period with respect to markets; and project estimates of vineyard yields, product prices and potential grower returns.
- f) The managerial capability and technical competence of the RE and project manager, and the infrastructure, technology and systems they employ, to carry out all project operations and successfully complete the project.
- g) Manager's long-term establishment program/plans in the region.
- h) The ongoing role, if any, of the Independent Viticulturist.

PRODUCTS AND MARKETS

Because of the long term nature of vineyard projects, it is essential for the potential investor to be confident that there will be a market for the products. Answers to the following questions may be covered in the main body of the PDS or in a report from an independent expert.

Does the PDS contain details about a grape supply agreement with a significant, long term wine making entity?

CORPORATE GOVERNANCE

The vineyard managed investment company is accountable to Growers with respect to the project. This includes performance reporting and provision for dealing with Grower dissatisfaction. The management company is also accountable to the community at large for the impacts of the vineyard operations. Answering the following questions will increase your confidence in the management company's commitment to good corporate governance.

- Does the PDS explain how the company monitors and ensures its compliance with internal policies and standards and with external mandatory and voluntary standards, including the ATO Product Ruling? Does it explain company policy on social and environmental governance, how it engages with stakeholders and the community, and how it minimises and manages potentially adverse social and environmental impacts?
- Does the PDS provide information about: the auditors of the scheme and compliance plans, and timing of inspections; monitoring of the growth, health and management of the plantation, quality assurance and certification; and mediation and dispute resolution?
- What means will the company employ to report to Growers on all the relevant matters they need to know about in order to effectively monitor their investments?