

# Review of regulatory options for the wine and grape sector



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## Acknowledgements

Conducting this Review has been a complex and challenging task. It has involved interviewing numerous winegrape growers and winemakers, many of whom were in difficult financial circumstances, and analysing the policy options to ensure any policy interventions are efficient and effective without unintended consequences.

Completing the review would not have been possible without the support and detailed impact analysis of Mike Thomas from Treasury and Ben Emerson from Klara Analytics Pty Ltd, together with the knowledge and assistance of: Sean Macintyre and his colleagues Thomas McKernan, Hanna Adamthwaite and Timothy Ruben at the Department of Agriculture, Fisheries and Forestry (DAFF); Liz Waters, Sandy Hathaway and Ned Hewitson at Wine Australia; Mick Keogh and his colleagues at the Australian Competition and Consumer Commission (ACCC); and Tony McDonald and his colleagues at Treasury.

This work was funded by DAFF in response to the recommendations of the Viticulture and Wine Sector Working Groups.

A handwritten signature in blue ink that reads "Craig Emerson". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Dr Craig Emerson**

# Executive summary

## Winegrape growers with weak bargaining power

Heavy imbalances in bargaining power between large businesses and their small suppliers can result in unfair trading practices that are detrimental to small suppliers and to consumers. This can warrant government intervention through the application of competition and consumer laws and codes of conduct.

In this Review, I have found that such circumstances exist in the warm inland grape growing regions of Australia – the Riverland, the Murray Darling and Swan Hill regions and the Riverina – which produce commercial wine that retails for less than \$10 per bottle. Uneven bargaining power is less prevalent in the cooler regions, but harmful commercial conduct by winemakers in these regions, such as protracted payment terms for their grape suppliers, can similarly shift risk inordinately from winemakers onto their grape suppliers.

While it is true that commercial wine is in chronic oversupply globally, resulting in unsustainably low prices for Australian winegrape growers and winemakers, I have formed the view that this oversupply has exacerbated underlying imbalances in bargaining power, rather than being their root cause.

However, I am conscious that unnecessarily onerous obligations on winemakers who are struggling for survival could drive them to the wall, which would not be in their interests or in the interests of their grape suppliers. Accordingly, my recommendations are intended not as heavy-handed intervention but as requiring winemakers to behave reasonably and act in good faith towards their grape suppliers and not exploitatively.





## Independent winemakers with weak bargaining power

Almost 60 per cent of Australian wine production is exported. However, wine retailing in Australia is dominated by oligopolistic liquor retailers: Endeavour Group, Coles Group, Metcash Limited and ALDI comprise around 80 per cent of the domestic retail market, with Endeavour Group and Coles Group having a combined market share of around 60 per cent.

Power imbalances exist between many independent winemakers and these large, oligopolistic retailers. In more extreme cases, the exploiters of grape suppliers are at the same time being exploited by oligopolistic retailers.

In retail outlets owned by Endeavour Group and Coles Group, independent winemakers are required to compete for shelf space with these retailers' own-brand rivals. In the case of Endeavour Group, it owns vineyards, winemaking facilities and bottling facilities. While these ownership structures provide efficiencies and associated cost advantages over independent winemakers, they can reinforce oligopolistic market structures and, potentially, drive independent winemakers out of business.

It is common practice for Endeavour Group and Coles Group to apply labelling on their own brands that does not identify the wine as an own-brand product, making it difficult for consumers to distinguish them from the independent winemakers' labels. Consumers can be given the impression that the wine is being produced by a small, independent winemaker when, in fact, it is the product of an oligopolistic retailer.

Ultimately, it is for consumers to choose between an own-brand wine and that of an independent winemaker, but consumers' choices are better informed when they are given accurate and easily accessible information about the producer of the wine.

This advantage enjoyed by oligopolistic liquor retailers appears to be compounded by the retailers' own-brands benefiting from access to their independent competitors' sales data by virtue of their independent competitors effectively being forced to sell to them in a highly concentrated market. Retailers vertically integrated into own brands can stay ahead of their independent rivals by using this information advantage to detect early changes in consumers' tastes and respond quickly with changes in their own-brand product offerings.

## The voluntary Code of Conduct is unenforceable

While the provisions of the industry-led voluntary Code of Conduct for Winegrape Purchases (the Code) are mostly well designed and have been improved over time in response to Australian Competition and Consumer Commission (ACCC) reports in 2019 and 2021, almost half of the largest 30 or so wine producers have refused to join it and, because the voluntary Code is not prescribed under the *Competition and Consumer Act 2010*, the ACCC cannot enforce it.

In 2021, the ACCC warned the winemaking industry in the warm inland regions that it was "fast approaching its last chance" to avoid stronger regulatory measures. I have found that the situation has not improved materially since then.

I have considered the option of prescribing the voluntary Code under the *Competition and Consumer Act 2010*, which would mean that breaches of the Code would carry penalties. But membership would remain voluntary, enabling a winemaker to withdraw from it at any



time. If penalties were introduced, there would be no reason to expect those winemakers who have not joined the voluntary Code to change their minds and join the prescribed voluntary Code. If anything, current signatories who are already facing economic hardship might conclude that remaining in a voluntary Code with penalties was an unnecessary financial risk and therefore would choose to leave it.

## **A mandatory Code is the only viable option**

I have concluded that the only viable option is a mandatory Code of Conduct for Winegrape Purchases. The mandatory Code would be enforceable by the ACCC and would apply to large and medium-sized wineries buying winegrapes from external providers – those with annual grape purchases exceeding 2,000 tonnes (calculated on a 3-year rolling average basis).

Setting the threshold at this level achieves the right balance between minimising the regulatory burden while ensuring winemakers of reasonable size and with market power are brought into the Code.

Penalties for breaches of the Code should be set to the maximum level allowable under the *Competition and Consumer Act 2010* in order to achieve the intended effect of deterring breaches of the Code.

## **The Code should require early notification of offer prices for grapes**

When making decisions through the season about what costs to incur to produce their grapes, most winegrape growers in the warm inland regions do so without knowing the price they will receive for their grapes. It is common for growers in these regions to make a loss on their grapes after being notified of the price in December or later, having already incurred the bulk of their costs.

To help rebalance risk between winegrape growers and winemakers in these warm inland regions, I recommend that winemakers purchasing grapes from the warm inland regions be required to provide Wine Australia with their offer prices for simultaneous publication on the first Wednesday in October each year for grapes purchased under contract for each grape variety they seek to buy. This would enable growers to make better-informed decisions through the growing season about how much, if any, irrigating, spraying and fertilising to undertake.

Of course, parties would still be free to buy and sell grapes on the spot market. However, any decision of a winemaker in an oversupplied market to avoid the offer price notification requirement of the mandatory Code by shifting totally or predominantly to spot purchases could risk contravening the good-faith provisions of the mandatory Code.

I am also recommending that participation in two surveys run annually by Wine Australia be a requirement of the mandatory Code. Changing these surveys from voluntary to mandatory for winemakers in the Code would enhance the accuracy of Wine Australia's grape price indicator dashboard, improving the price signals available to growers before making one of their earliest and largest cost decisions each winter; whether and how much to prune their grapevines.

## **The Code should make quality assessment processes more objective**

Around harvest time, contracted grape growers are usually visited by winemakers to assess the quality of their grapes. This Review has heard evidence that the quality assessment can be an arbitrary process, especially when grapes are in oversupply, as has been the case in recent years, with winemakers disingenuously using grape assessments as a guise for offering lower prices for grapes.

I recommend that, in place of arbitrary assessments, objective standards for assessing maturity, purity, condition and other grape parameters – as provided for in the current voluntary Code – be a requirement of the mandatory Code. I recommend that any price deduction or other adverse decision, such as rejection, should be made only with reference to at least one objective characteristic of the grapes, so that winemakers cannot use purely subjective grape assessments as a means of buying grapes at prices below their offer prices.



## **The Code should protect against retribution**

A strong finding of the Review is that winegrape growers in a weak bargaining position with winemakers fear retribution if they complain about their treatment. I recommend including protection against retribution in the purpose of the Code and the establishment of an anonymous complaints mechanism for growers to report issues to the ACCC. To help resolve disputes, I am further recommending that the Code provide parties with avenues for mediation and arbitration.

Winemakers should be able to confidentially report possible breaches of the *Competition and Consumer Act 2010* to the ACCC in relation to concerns about the retailers they supply.

## **The Code should require grape supply agreements and purchase orders to be in writing**

The Review has heard evidence in some cases of grape supply agreements being purely verbal. Under the Code, I recommend that all grape supply agreements and purchase orders must be in writing and not subject to unilateral variation by a winemaker.

Under the recommended mandatory Code, grape supply agreements and purchase orders must not provide a winemaker with a first right of refusal that obliges growers to sell excess grapes to the winemaker without it being required to match the offers of competitors. I am also recommending that the Code prohibit the practice of winemakers being able to terminate agreements with growers when grapes become surplus to requirements, for any reason and at short notice.

## **The Code should improve payment terms between winemakers and grape growers**

Grape growers often endure inordinate delays in payment by winemakers. In effect, many winemakers are using struggling grape growers as a bank providing interest-free loans.

An Order made by the South Australian Minister for Agriculture, Food and Fisheries under Section 6 of the *Wine Grapes Industry Act 1991* requires most winegrape payments to be made in three equal instalments, with final payment required by no later than 30 September. The ACCC's Market Study found that these lengthy payment periods had been adopted widely by winemakers operating in South Australia and other regions across Australia and might constitute unfair contract terms.

The Review considers minimum payment terms should be fair across all Australian jurisdictions, and that the Australian government should engage with the South Australian Minister for Agriculture, Food and Fisheries to achieve consistency.

I recommend that all winemakers covered by the mandatory Code be required to notify Wine Australia of their payment terms, which Wine Australia would publish on the first Wednesday in October each year. If, after two years, payment terms and associated payment times have not improved materially, I recommend that all winemakers subject to the mandatory Code be required to pay growers in full within 30 to 60 days of the end of the month of grape delivery.

## **Informed choice for wine consumers**

Some wine consumers will choose a retailer's own-brand wine over an independent winemaker's product based on taste and relative prices. Others might want to know whether the wine in question is produced by the parent company of the retail outlet where they are buying their wine, or by an independent winemaker. They might prefer to buy the independent's product for reasons other than price, such as supporting small winemakers and family businesses, despite their prices being higher but broadly comparable to those of the own-brand variety.

To provide better information for consumers, I have obtained the agreement of Endeavour Group (Dan Murphy's and BWS) and Coles Group (Liquorland, First Choice and Vintage Cellars; to be merged under Liquorland by end of 2025) to make a transition over the next two years to publishing on the back labels of their wines the ultimate owner of the winery and the owner's address.

If, after two years, no discernible improvement in own-brand labelling has been made, I recommend that consideration be given to the development and application by the relevant federal minister of a compulsory Information Standard for Wine Labelling along the lines of the existing standard for free-range eggs.

## **Data to support winemaker innovation**

To give small, independent winemakers timely access to sales data for their wine sales through vertically integrated, oligopolistic liquor retailers, I recommend that major liquor retailers collaborate with data companies such as Circana and Quantum to ensure small independent winemakers receive their own sales data and market insights free of charge. I further recommend that, for larger winemakers, the market data be made available at a reasonable price and at the same level of granularity as that for retailers' own-brand wine labels.

The same data should be made available to larger winemakers at reasonable prices to help ensure vertically integrated retailers do not have an unfair advantage over independent winemakers in identifying market trends. Since this data advantage of major retailers over small suppliers is prevalent in most industries, I am proposing that the ACCC includes small wine retailers in its broader consideration of this data-availability problem.

I have obtained the agreement of Endeavour Group and Coles Group to collaborate with data companies such as Circana and Quantum to ensure independent winemakers receive their own sales and market data free of charge and, for larger winemakers, at a reasonable price, with the sales and market data being provided at the same level of granularity as is provided to retailers for their own-brand wine labels.

## **Wine Equalisation Tax (WET) and vertical integration**

The Review has heard concerns that the Wine Equalisation Tax (WET) and WET rebate might inadvertently provide a tax advantage to vertically integrated retailers that produce their own wines. I recommend that the WET be reviewed by the relevant Australian government agencies to ensure it is still meeting its policy objectives without unintentionally providing advantages for vertically integrated winegrape production, winemaking and wine retailing.

## Application of general competition and consumer laws

As the ACCC has pointed out to the Review, it is not ideal to address anti-competitive and unfair behaviour primarily through codes of conduct. Rather, codes of conduct can deal with industry-specific behaviour while the general competition and consumer laws are the best means of dealing with behaviour that occurs across the economy and the community.

Accordingly, in addition to the recommended measures specific to the wine industry, a range of strengthened competition and consumer law amendments that have already been enacted, together with announced and foreshadowed reforms, should be applied to deal with anti-competitive behaviour and unfair practices. These include:

- The *Competition and Consumer Act 2010*;
- The Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024, which was introduced to deal with serial acquisitions and resulted in amendments to the *Competition and Consumer Act 2010* when it passed the Senate in November 2024;
- New laws that came into effect on 9 November 2023 prohibiting businesses from including or relying on unfair contract terms in standard-form small business and consumer contracts, which the ACCC's submission to this Review states are likely to have broad application in the wine sector, especially in warm inland areas; and
- An Australian government announcement on 16 October 2024 that it would seek to amend the Australian Consumer Law to ban unfair trading practices affecting consumers.

## Impact analysis shows that the benefits of these recommendations outweigh the costs

During the Review, the diversity and complexity of the winegrape growing and winemaking industries have been apparent. Production of commercial wine in warm inland regions is suffering from a glutted global market. Winemakers in these regions have no bargaining power with their international buyers, and in turn, grape suppliers have little to no bargaining power with the winemakers. At the premium end of the market, grape growers have greater bargaining power with winemakers and winemakers have greater bargaining power with retailers, but I have received evidence that poor conduct by winemakers also exists at the premium end of the market.

In the light of this complexity, I have carefully considered the costs and benefits of my recommended regulatory measures with a view to identifying any unintended consequences that intervention designed to fix a problem in one segment of the market might have in other segments. The extensive consultation and impact analysis I have overseen give me confidence that the recommended regulatory measures will be at low total cost to industry and achieve substantial benefits that clearly outweigh these costs.

At the same time, I have ruled out other, popular proposals where the costs would clearly outweigh the benefits, such as guaranteeing a minimum price to grape suppliers and an outright prohibition on liquor retailers producing and selling own-brand wines.

## **More resources for the ACCC to enforce the mandatory Code**

If the recommended mandatory Code is to be effective it will need to be enforceable by the ACCC. This cannot be achieved out of the ACCC's existing budget, since it would be a new responsibility. I therefore recommend that the ACCC be given adequate resources to enforce the Code and the other recommendations of this review.

## **A working group to implement the accepted recommendations**

Following receipt of this report and consideration by the Australian government, I recommend that a working group be established to implement the accepted recommendations. The working group would comprise federal government officials from relevant agencies including the Department of Agriculture, Fisheries and Forestry (DAFF), the ACCC and Treasury, along with representatives of Wine Australia.

I further recommend that the working group consult with relevant state government agencies and with key stakeholder groups as it considers necessary, but that the working group would not invite the re-prosecution of arguments and policy proposals that had not been accepted by the Australian government in its response to this Review.

## **My thanks to winegrape growers, winemakers and retailers**

On behalf of the Review Team, I thank all those who participated in numerous group meetings and for their cooperation in providing responses and data for the subsequent impact analysis presented in this report. All meetings were conducted in a civil and purposeful manner. They have been invaluable in informing my recommendations.

# Recommendations

## **Recommendation 1 – make the voluntary code of conduct mandatory**

The voluntary Code of Conduct for Winegrape Purchases should be replaced with a mandatory Code of Conduct for Winegrape Purchases (mandatory Code). All winemakers whose purchases of grapes exceed a three-year moving average of 2,000 tonnes per annum should be subject to the Code. Except where a recommendation expressly requires a change in the terms of the current voluntary Code of Conduct, these terms should be carried across to the mandatory Code of Conduct.

## **Recommendation 2 – earlier price offers for inland grapes**

The mandatory Code should require winemakers to decide on an offer price for each grape variety they seek under contract from the warm inland regions of the Riverland, the Murray Darling and Swan Hill regions and the Riverina. All offer prices should be notified to Wine Australia, which would collate these prices and publish them simultaneously on the first Wednesday of October each year.

## **Recommendation 3 – mandatory survey participation to inform Grape Price Indicators dashboard**

Participation in the National Vintage Survey and the Production Sales and Inventory Surveys should be compulsory for all winemakers subject to the mandatory Code, to improve the accuracy of the Grape Price Indicators dashboard and to further increase price transparency and assist growers and winemakers in making informed business decisions.

## **Recommendation 4 – publication of payment terms**

All winemakers covered by the mandatory Code should be required to notify Wine Australia of their payment terms, which Wine Australia would publish on the first Wednesday in October each year. If, after two years of operation of the mandatory Code, payment terms and associated payment times have not improved materially, all winemakers subject to the Code should be required to pay growers in full within 30 to 60 days of the end of the month of the final delivery of grapes.



#### **Recommendation 5 – price deductions must refer to an objective parameter**

Objective standards for grape assessment of maturity, purity, condition and other grape parameters relating to quality – as contained in the existing voluntary Code – should be specified by winemakers subject to the mandatory Code in their contracts with grape growers. For grapes purchased by winemakers subject to the mandatory Code, any deductions from the offer price, or any other adverse decisions such as rejection of the grapes, must be done with reference to at least one objective assessment parameter.

#### **Recommendation 6 – greater protections against retribution**

The mandatory Code should place greater emphasis on addressing the fear of retribution by including protection against retribution in the purpose of the Code and ensuring that retribution captured under the obligation to act in good faith includes action taken against suppliers for exercising their rights under the Code.

#### **Recommendation 7 – an anonymous complaints channel to the ACCC**

An anonymous complaints mechanism should be established to enable suppliers and any other market participants, including winemakers supplying to retailers, to raise issues directly and confidentially with the ACCC.

#### **Recommendation 8 – mediation and arbitration built into the Code**

The mandatory Code should provide parties with avenues for mediation and arbitration to resolve disputes.

- Parties can agree on an independent mediator or arbitrator.
- Winemakers must attend independent mediation if requested by a grower.
- Where mediation has not settled a dispute, independent arbitration can be used to settle disputes as agreed between the winemaker and the grower.

The working group referred to in Recommendation 14 should identify a suitable entity to take on the function of receiving notifications of disputes.

#### **Recommendation 9 – no anti-competitive terms in contracts**

The mandatory Code should include a requirement that all supply agreements and purchase orders:

- Be in writing and not subject to unilateral variation by a winemaker;
- Not include for the winemaker a first right of refusal for when the grower produces more grapes than is required by the supply agreement; and
- Not give winemakers the right to terminate agreements with growers when grapes become surplus to requirements, for any reason and at short notice.



#### **Recommendation 10 – transparent labelling practices**

The large liquor retailers that sell own-brand wine – Endeavour Group and Coles Group – should indicate on the back of their wine labels their ownership of the wine, to enable customers to readily identify the wine as an own-brand product. If satisfactory compliance has not been achieved after two years, consideration should be given to the development and application of an Information Standard to enforce compliance.

#### **Recommendation 11 – accessible sales data and market reads**

Coles Group and Endeavour Group should collaborate with appropriate companies, such as Circana and Quantum, to ensure smaller independent winemakers receive their own sales data and market insights free of charge and, for larger winemakers, at a reasonable price. Coles Group and Endeavour Group should ensure such data is obtainable at the same level of granularity as the granularity of data provided to them for their own-brand wine labels.

#### **Recommendation 12 – review the WET**

A review of the Wine Equalisation Tax (WET) and WET rebate should be undertaken by relevant Australian government agencies to ensure they are still meeting policy objectives without unintentionally providing advantages for vertically integrated grape producers, winemakers and wine retailers.

#### **Recommendation 13 – ACCC should be adequately resourced**

The ACCC should be given adequate resources to enforce the Code and the other recommendations of this Review (without the Department of Agriculture, Fisheries and Forestry being expected to provide those resources from within its existing budget).

#### **Recommendation 14 – a working group should guide implementation**

A working group should be established to implement the recommendations of this Review that are accepted by the Australian government, led by the Department of Agriculture, Fisheries and Forestry and including representatives of the ACCC and Treasury and relevant state government agencies, along with representatives of Wine Australia.

# Terms of reference

The terms of reference stipulate that the Review:

- Include a rigorous evidence base of whether there is market failure in the grape and wine sector that should be addressed with regulatory or other interventions;
- Establish, through analysis, with a view to improvement in the sector, the costs, benefits and impacts of potential regulatory options, including:
  - Application of existing economy-wide protections under the *Competition and Consumer Act 2010*;
  - Non-regulatory options, such as improvements to the Voluntary Code of Conduct for Australian Winegrape Purchases;
  - A mandatory Code of Conduct for the Australian wine and grape sector;
  - Other legislative options such as amendments to the *South Australia Wine Grapes Industry Act 1991*, and introduction of similar legislation in other states; and
- Include considerations and recommendations of the above options, based on the analysis.

In preparing the impact analysis, the report must examine and draw upon previous studies into the grape and wine sector, including by the ACCC, the Senate Rural and Regional Affairs and Transport References Committee, Wine Australia, the Viticulture and Wine Sector Working Group and academic studies into the sector.

The impact analysis must incorporate and critically evaluate evidence and perspectives from key stakeholders, including grape growers and winemakers, industry associations, major retailers, the ACCC and state and territory governments.

The impact analysis should be undertaken by an independent expert in competition policy, law and/or economics.







## Consultation

Dr Emerson and the Review team met with more than 20 different key stakeholder groups, including growers and winemakers from the Riverland, the Murray Darling and Swan Hill regions and the Riverina, Tasmania, the Margaret River region and the Yarra Valley. Dr Emerson also consulted with the board of Australian Grape and Wine (AGW), the AGW Code Management Committee, Endeavour Group, Coles Group, Metcash and Naked Wines Australia. The group meetings included large and small winemakers. Separate meetings were arranged with small winemakers that wished to remain anonymous. Dr Emerson and the Review team also consulted with the Viticulture and Wine Working Group and Treasury, the ACCC and the Department of Agriculture, Fisheries and Forestry.

A consultation paper was released on 18 September 2024. The consultation paper and public submissions can be viewed at: <https://haveyoursay.agriculture.gov.au/grape-wine-regulation>.

The Review surveyed winegrape growers from the Riverland, the Murray Darling and Swan Hill regions and the Riverina, receiving 52 responses. The Review has also utilised results from 264 winegrape grower responses to a survey conducted by the Wine Grape Council of South Australia.

# Introduction

On 23 August 2024, the Hon Julie Collins MP, Minister for Agriculture, Fisheries and Forestry, announced that Dr Craig Emerson had been selected to examine whether there was market failure in the grape and wine sector and provide advice about regulatory or other interventions.

Dr Emerson was also given the task of leading an independent impact analysis of regulatory options for the Australian grape and wine sector concerning fair trading, competitive relationships, contracting practices and risk allocation.

## Overview of the sector

The Australian winegrape and winemaking sector comprises more than 2,000 wineries and 6,000 grape growers across 65 grape growing regions ([Wine Australia, Australian Wine Sector at a Glance, December 2024](#)). Grapes are grown across the continent – from Margaret River in Western Australia to Hastings River in New South Wales, and from Tasmania to the South Burnett region in Queensland.

Australia has more than 200 years of viticulture history and grows more than 100 different varieties. Almost 150,000 hectares are under vine, producing around 1.8 million tonnes of grapes a year. From this tonnage, on average 1.25 billion litres of wine is produced each year, making Australia the fifth-largest wine producer in the world by volume and sixth-largest by value.

Almost 60 per cent of Australian wine production is exported, valued at \$2.5 billion in 2024 and \$2.9 billion in 2020 prior to the imposition of China's import duties in 2021 ([Wine Australia, Australia Wine Export Report, December 2024](#)). Since the removal of China's tariffs on Australian wine in March 2024, Australia's wine exports to China have rebounded, exceeding \$900 million by the end of 2024. While the reopening of China's market has improved export values, long-term growth in that market remains uncertain and demand for wine globally is in decline.

Conditions influencing this global downward trend include: cost-of-living pressures reducing consumer spending in Europe; changes in consumer tastes in China; and domestic changes in consumer tastes towards less alcoholic beverages marketed as a 'healthier' alternative based on alcohol content ([KPMG 2024](#), p. 3).

The remaining 40 per cent of Australian wine is sold domestically. By volume, around three-quarters of domestic sales are made through the highly concentrated retail sector, 15-20 per cent are made through 'on-trade' sales to businesses such as restaurants, bars, hotels, cafés and clubs, and around 10 per cent are made directly to consumers through channels such as cellar doors and winery websites ([Wine Australia, Direct to Consumer Survey Report 2021](#)).





Australia's domestic market is also contracting. According to analysis from Wine Australia and the International Wine and Spirits Record (IWSR), between 2018 and 2022, wine consumption in Australia declined by a compound annual average rate of 3 per cent per annum, and is forecast to decline by a further average 2 per cent per annum between 2023 and 2027 ([Wine Australia, Australian Market Insights Report, 2024](#) p. 13). These declines also represent a downturn in Australia's demand for commercial wine. However, annual sales of premium wines retailing for \$15 per bottle and more are set to rise on average 2 per cent over that same period, offering new opportunities for winemakers and growers.

## Winegrape growing

Australia's winegrape growing regions are often classified into two categories: the warm inland regions of the Riverland, the Murray Darling and Swan Hill regions and the Riverina, and other regions of Australia, commonly described as cool climate regions. Grape growers in the warm inland regions produce around two-thirds of Australian winegrapes, used primarily for commercial wine retailing for \$10 per bottle or less, and destined mainly for export markets. Growers in the cool climate regions generally grow grapes for higher value wines including premium and boutique wines.

Grape growers are exposed to greater risk than winemakers and retailers, since they cannot adapt as readily to sudden shifts in demand. As noted by the Wine Industry Inland Profitability Project (WIPP), "managing productive yield in grape vines in response to short- and medium-term climate or market forces is very difficult" (Schmidtke *et al* 2023, p. 6). The WIPP also contrasted viticulture's high degree of inflexibility with other more flexible forms of agriculture, such as broad-acre cropping, and meat and fibre production, which allow for a more flexible management of planting and stock management (Schmidtke *et al*).



It takes at least three years from planting for grapevines to produce a sufficient crop to return a profit. Resting a vineyard in times of low demand still costs around 60 per cent of the total cost of production and switching to a more in-demand variety can take 10 years to recoup the costs of doing so (Dixon 2023, p. 38). Furthermore, winegrape growing follows an annual cycle. Most investment occurs well before harvest in summer or autumn.

Many winegrape growers are small, family-run operations, with farms of less than 25 hectares producing up to 500 tonnes of grapes per annum and employing no more than one or two people.

## Winemaking

The next point along the supply chain is when the grapes undergo a complex process of crushing, clarification, fermentation and filtration to be transformed into wine. This process usually takes at least six months from when the grapes are provided to when they can be delivered to retailers or consumers as wine. There is, therefore, a long lag between when the grapes are provided to the winemakers and when the winemakers receive payment for the final product.

Australian winemakers vary greatly in business size and operational model. Most winemakers are small operations who crush less than 100 tonnes of grapes per annum. However, most wine is made and sold by large winemakers who crush more than 10,000 tonnes per annum, with the four largest wineries holding a 41 per cent market share by value: Treasury Wine Estates (18.5 per cent); Pernod Ricard Australia (9.0 per cent); Casella Family Brands (6.9 per cent); and Accolade Wines (6.6 per cent) (IBISWorld, 2024). The pending merger of Accolade and Pernod Ricard Australia in 2025 will further concentrate the market.

Winemakers generally have more flexibility than grape growers to change their business operations to adapt to changing conditions or respond to emerging opportunities. Winemakers also have greater flexibility to sell their wines either through the retail sector, via the on-premises model (directly to restaurants, bars, hotels, pubs and clubs), or directly to consumers via websites, wine clubs and cellar doors. Furthermore, if wine cannot be offloaded, it can be stored much longer than grapes.

## Wine retailing

Around 30 per cent of Australian wine production is sold through domestic retailers, a market dominated by the four largest retailers (Endeavour Group, Coles Group, Metcash Limited and ALDI) which comprise around 80 per cent of the domestic retail market.

According to Schmidtke *et al* (2023), the Australian wine retail market is a challenging environment where an “unswerving focus on efficiency” is “essential for survival”. The authors note that retail profit margins “are driven lower and competitive advantage tends to accrue to firms with significant efficiencies of scale” (p. 38).

In its public submission to this Review, Coles Group also noted that other features of the Australian liquor market present challenges for competition:

*“Complying with the various liquor laws and the licensing regimes in Australia poses significant challenges. These requirements vary across each state and territory and create a complex regulatory landscape. This complexity extends from formal matters such as the licence application process to operational requirements such as every Team Member obtaining acceptable responsible service of alcohol qualifications. This complexity and inconsistency not only create a significant compliance cost but also increase the barriers of entry into the market. As a result, the opportunity for growth, innovation or competition in the industry may be hindered” (Coles 2024, p. 2).*

Packaged wine is less perishable than bulk wine or winegrapes and consequently retailers can hold a larger inventory than winemakers and grape growers. Retailers also have greater flexibility to obtain wine from a range of sources. In addition to sourcing directly from Australian winemakers, retailers can import wine or contract winemakers to produce wine for their own-brand labels, creating extra competition for winemakers.

Sales of retailer-owned brands are estimated to account for approximately 40 per cent of all retail wine sales in Australia (Circana, 2024). Endeavour Group owns a portfolio of wine brands, with a combined strategy of direct acquisition of premium wineries with known brands, brand stories and a regional presence, and large-scale production in its processing facility in the Barossa Valley, for which it purchases grapes from independent growers in direct competition with other wineries. Endeavour Group is one of the top 10 wine producers in Australia based on size of crush, as well as being the largest wine retailer.

As a result, non-premium winemakers are price takers when selling wine to domestic retailers. This constrains winemakers, and as noted by Anderson (2024, p. 66), can in turn create downward price pressure on grape growers.

# Rationale for regulatory intervention

## What is market failure?

Open, competitive markets produce better outcomes for consumers. Departures from competitive markets cause a loss of economic value. Market failure can take the form of monopolies and oligopolies, which stifle competition and enable businesses to earn profits in excess of a competitive rate of return. Imperfect information is another form of market failure, preventing consumers from making well-informed decisions. Government regulations can constitute market failure where they have the effect of protecting businesses from competition.

Where market failure exists, there can be a role for government in preventing monopolies and oligopolies and, where a market tends naturally towards monopoly or oligopoly, in regulating to reduce harm caused by monopolistic or oligopolistic behaviour. Such harmful behaviours can include maintaining artificially high prices for their products, depressing prices for small suppliers below a normal, competitive return and preventing the entry of rivals.

As noted by the ACCC in its Perishable Agricultural Goods Inquiry of 2020 ([ACCC 2020](#)), before recommending regulation of a market, it must first be established that:

- Market failures or other harms exist;
- Such failures or harms can be remedied through intervention; and
- The costs of such intervention would be outweighed by the benefits.
- This approach is consistent with the [Industry Codes of Conduct Policy Framework](#).

## Efficient and effective regulation – avoiding unintended consequences

Where market failures have been identified, the Review has sought to recommend regulatory interventions that are efficient and effective, rather than heavy-handed interventions that have unintended consequences. The Review has resisted simplistic, populist policy responses such as guaranteeing minimum prices for suppliers designed to keep them in business regardless of their cost structures and imposing regulations on businesses that are so onerous as to drive them out of the market altogether.

This Review has followed the guidelines set out by [the Office of Impact Analysis](#), which requires that an impact analysis be undertaken for any proposed changes to policy. Throughout this report, the impact of recommendations entailing regulatory intervention has been assessed both quantitatively and qualitatively.





Quantitative impacts of recommended regulatory interventions have been assessed for stakeholder groups across these categories: business, community organisations and individuals. In the case of this Review, the impact of the recommended changes relates to the business category; namely, winegrape growers and winemakers.

Qualitative impacts are presented in this report in the following format:

### Quantitative impact format

#### Option. Average annual regulatory costs (from business as usual)

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector				

Impacts have also been assessed using a 7-point scale that indicates the anticipated impact of the changes on the relevant stakeholder group.

### Qualitative impact scale

-3	-2	-1	0	+1	+2	+3
Large adverse	Moderate adverse	Slight adverse	Neutral	Slight beneficial	Moderate beneficial	Large beneficial



## Identifying market failure

Based on the above tests, this Review has concluded there exists a failure in the market for winegrapes, predominantly in the warm inland regions of the Riverland, the Murray Darling and Swan Hill regions and the Riverina. Similar conclusions were reached by the ACCC in its review of the winegrape industry (ACCC 2019) and in its follow-up review (ACCC 2021). The situation has not improved materially since 2021 and in some respects is now worse.

Market failure is also evident in Australia's winemaking and wine retailing industries. Vertical integration of winegrape growing, winemaking and wine retailing has occurred on a large scale. A practice of liquor retailers labelling their own wines in ways that resemble those of independent winemakers has placed consumers at a disadvantage in determining the origins of the wine they are seeking to buy. Large, oligopolistic retailers also have superior information to that of small, independent winemakers through the sales data-collecting advantage they enjoy.

## Instruments of intervention

As required by the guidelines of the Office of Impact Analysis, the suitability of existing regulations and laws must be considered before new regulations or laws are proposed. The Review has identified the following as existing regulations and laws that are relevant to the wine and grape sector.

### The voluntary Code of Conduct for Winegrape Purchases

The Code of Conduct for Australian Winegrape Purchases (the Code) is a non-prescribed voluntary industry code developed by Australian Grape and Wine (AGW) and its Code Management Committee, which has equal representation of winemakers and grape growers. Winemakers who elect to become signatories are governed by the Code in their commercial dealings with growers.

The stated purpose of the voluntary Code is to:

- Provide a framework to support fair and equitable dealings between buyers and sellers of grapes;
- Provide an effective, practical and equitable dispute resolution process for raising complaints and resolving disputes arising between winemakers and growers; and
- Improve grower-winemaker relations in a manner consistent with commentary of the ACCC in its 2019 Wine Grape Market Study Final Report.

The Code sets specific standards for:

- Grape supply agreements;
- Grape prices and payment terms;
- Grape assessment, including industry-endorsed standards and grounds for grape price reductions and rejection; and
- Dispute resolution.

The standards require supply agreements to be in writing and signatories to deal with growers in good faith.

A winemaker who has become a signatory to the Code can leave it by giving written notice. There are no penalties for breaches of the Code and the ACCC has no formal

mechanisms to conduct audits or seek information from winemakers. Signatories who have breached the Code can be removed from it but, apart from reputational risk and legal action taken independently by growers relating to a breach of contract, there are no consequences of breaching the Code.

### **South Australian Wine Grapes Industry Act 1991**

The *South Australian Wine Grapes Industry Act 1991* deals with the payment for all winegrapes sold in South Australia.<sup>1</sup> This legislation is not mirrored in the other states. The Act allows the responsible South Australian minister to set timeframes for grape payments by winemakers. An Order by the minister currently in place states that grape payments must be made in specified instalments. Such orders can be made without change to the South Australian legislation.

The first one-third instalment must be paid before the end of the month following the month of delivery of grapes if delivered prior to 1 May in that year, the second one-third instalment must be paid before 30 June in that year, and the third one-third instalment must be paid before 30 September in that year. If delivered on or after 1 May, the two-thirds payment is required before 30 June in that year, with the remainder before 30 September in that year. The Act also requires that a winemaker cannot accept delivery of grapes for processing unless it has made all outstanding payments to growers from the previous vintage.

### **Payment Times Reporting Scheme**

An independent review of the Commonwealth *Payment Times Reporting Act 2020* conducted in 2023 made a set of recommendations that have been adopted by the Australian Parliament. Essentially, the revised scheme involves improved data collection and analysis, enabling large businesses that have long payment times of invoices issued by small-business suppliers to be named and shamed, and those with short payment times named and praised.

### **Relevant provisions in the Competition and Consumer Act 2010**

The *Competition and Consumer Act 2010* contains several provisions relevant to the Australian wine industry, including:

- Unfair contract terms; and
- Prohibitions on misleading, deceptive and unconscionable conduct.

The unfair contract provisions of the *Competition and Consumer Act 2010* were strengthened in November 2023, with each unfair term of standard-form contracts being illegal and therefore constituting a separate contravention. A contract is unfair if it:

- Causes a significant imbalance in the parties' rights and obligations;
- Is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by such a term; and
- Would cause detriment to a party if the term were to be applied or relied on.

Under the *Competition and Consumer Act 2010*, small businesses can readily seek ACCC authorisation to engage in collective bargaining with large businesses to address

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<sup>1</sup> Except that, in accordance with section 4 of the Act, the Act does not apply in relation to the sale of winegrapes by a member of a registered co-operative to the co-operative.

imbalances in bargaining power. To be eligible to join a bargaining group each business must have an annual turnover of less than \$10 million. However, it appears that collective bargaining is rarely used by grape growers in their negotiations with large winemakers.

While the process for a small business to join a bargaining group is simple, requiring the completion of a one-page form, the process for a lead organisation to apply for a collective bargaining authorisation is not simple. Regional associations of winegrape growers might be able to seek and provide advice and assistance concerning these matters.

The *Competition and Consumer Act 2010* also prohibits the misuse of market power, collusion and anti-competitive mergers. The recent review of merger and acquisitions laws highlighted liquor retailing as an area of concern, resulting in ACCC chair, Gina Cass-Gottlieb, identifying the liquor sector as a target for ACCC attention ([AFR, 2024](#)).

### Unfair trading practices

The Australian government has been consulting on a proposal to protect consumers from [unfair trading practices](#) and for specific prohibitions to be considered on a case-by-case basis for small businesses. As noted by the ACCC in its submission to this Review, on 16 October 2024, the Australian government announced it would seek to amend the Australian Consumer Law to ban unfair trading practices affecting both consumers and suppliers. The Treasury will undertake further consultation on the design before seeking to legislate a general prohibition on unfair trading practices.

The Australian government intends that the legislation will also prohibit some specific unfair trading practices. Depending on how the prohibition on unfair trading practices is ultimately framed, these reforms might also provide an avenue to address practices that are prevalent in the wine and grape sectors that may be unfair.



# Market failure in winegrape production

Around two-thirds of Australia's annual winegrape production occurs in the warm inland regions. In these regions, growers operate mostly small-scale vineyards typically producing grapes under contract for a small number of large-scale winemakers whose wine is destined mainly for the export market.

Issues relating to power imbalances in the market for winegrapes are longstanding and have been the subject of several parliamentary inquiries. These include the Senate Rural and Regional Affairs and Transport Committee inquiry into the Australian grape and wine industry of 2016, an incomplete Senate inquiry of 2016 into anti-competitive conduct in the retail wine industry and the Senate Rural and Regional Affairs and Transport Committee inquiry into the winegrape purchases code of conduct that reported in early 2025.

The ACCC's Winegrape Market Study of 2019 affirmed that a decade of oversupply in these regions had exacerbated bargaining power imbalances that had caused growers to agree to potentially unfair contract terms, and to be reluctant to raise their concerns with the ACCC for fear of retribution (ACCC 2019, p. 2). The ACCC report concluded that this pointed very strongly to a dysfunctional market.

The ACCC's concerns were also reflected in expert analysis in the years following the market study, including by Professor Kym Anderson (2024) and Professor Leigh Schmidtke *et al* (2023) who acknowledged a role for government intervention to address the underlying power imbalance between grape growers and winemakers.

Adjustment within these regions to oversupply and correspondingly low grape prices was delayed by the emergence in the 2010s of China as a large new export market. However, Australia's exports to China came to a crashing halt in late-2020, when China imposed tariffs of up to 218 per cent on Australian still wine in containers of 2 litres or less.

These duties have since been removed, but it is unclear whether the volume and overall value of exports will return sustainably to its earlier levels owing to declining global demand for red wine, and stiff competition on export markets from Argentina, Chile, France, Italy, South Africa, Spain and the United States.

Agriculture ministers established a Viticulture and Wine Sector Working Group in March 2024, identifying the warm inland regions as where the most acute impacts of the oversupply of red wine were being felt.

The Working Group reported consistently low red grape prices in these regions, which for many growers were below the cost of production (Viticulture and Wine Sector Working Group 2024, p. 8). The Working Group report also showed that in 2024, for the third year in a row, growers in the Riverland region had been offered prices for their grapes as low as \$120 per tonne, well below the indicative cost of production of \$300 per tonne.

According to the Anderson Report, the average price of red winegrapes in the warm inland regions for those who were able to find a buyer fell in each of the three vintages to 2024 and is forecast to be even lower in 2025 (Anderson, 2024, p. 1).

The Anderson Report anticipated that the largest surpluses would remain in packaged red wines selling for less than \$5 per litre pre-tax wholesale (p. 9). It further noted that numerous other countries were also facing an oversupply of red wine and that Australia's share of global wine production has fallen (pp. 14-15).

In 2020, the ACCC conducted an [inquiry](#) into markets involving the supply of perishable agricultural goods, including the dairy and wine industries. The inquiry's aim was to identify where bargaining power imbalances between suppliers and producers in these markets created market inefficiencies, and to recommend remedies where required.

The ACCC noted that all markets it analysed were vulnerable to market failure stemming from "a lack of competition through the supply chain, information asymmetry and inefficient allocation of risk." Further, the ACCC found generally that:

*"... the more perishable a product, the weaker the producer's position from which to negotiate favourable terms of supply with the buyers of their goods, and the more vulnerable they are to take-it-or-leave-it terms from buyers or exploitative conduct (p. ix)."*

The small window of time to sell such goods before they perish puts the producers in a position of selling now or never, leaving them with no option to negotiate better terms with the buyer.

## Main issues for winegrape growers

Based on consultation and evidence collected through this Review, the main potential harms to which winegrape growers are subjected are:

- Prices below the cost of production;
- Lack of price transparency;
- The grape assessment processes used by winemakers;
- Unilateral variation of supply agreements by winemakers; and
- Long payment times or no payment.

## Low prices and a lack of price transparency

In responding to the risk of low export prices following vinification, winemakers can insert price-setting mechanisms into supply agreements that transfer most of this risk to growers, including setting the price close to the time of harvesting. This puts growers in a position of having to make decisions about inputs before they know what the price will be, since most of the major costs are incurred early in the season. Consequently, by the time the price is offered, all costs other than harvesting have already been incurred. This can allow wineries to pay very low prices:

*"Growers need clear and predictable pricing mechanisms when selling their grapes, while winemakers and retailers benefit from greater certainty regarding the cost structures involved in the producing and selling wine" (Riverina Winegrape Growers' Association representative).*



Price transparency is clearly a top priority issue for warm inland growers. This is visually outlined in Figure 1, where a majority of contributors to the Wine Grape Council of South Australia’s Winegrape Purchasing Code of Conduct Member Survey (the WGCSA Survey) described this issue in the Code as “very important”

Growers also reported to the Viticulture and Wine Sector Working Group that communicating an indicative price and supply amount in June–July (before the growing season commences) would help them make better business decisions.

**Importance of the Code for Price Transparency**

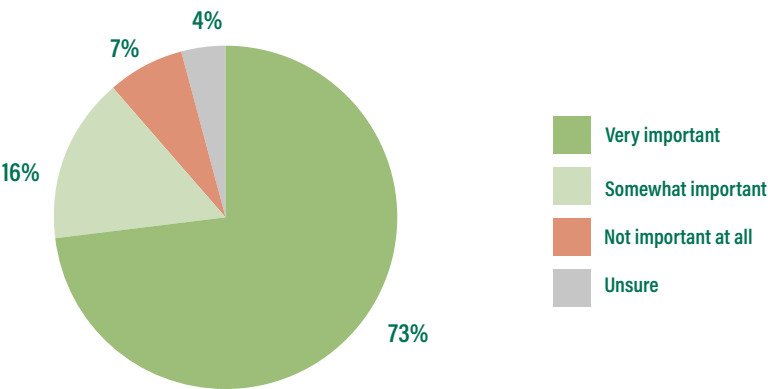


Figure 1: How important is it for the code to influence grape price transparency? (WGCSA survey of 264 growers)

**Grape assessment processes**

Winemakers can use their superior bargaining power to make assessments that inaccurately produce readings of low quality, resulting in lower prices or rejection of grapes. Supply agreements that provide a unilateral right of a winemaker to change quality specifications during the season place growers at a heavy disadvantage.

The WGCSA survey indicated the current voluntary Code was viewed by almost half the respondents as ineffective for providing protections for growers in the grape assessment process.

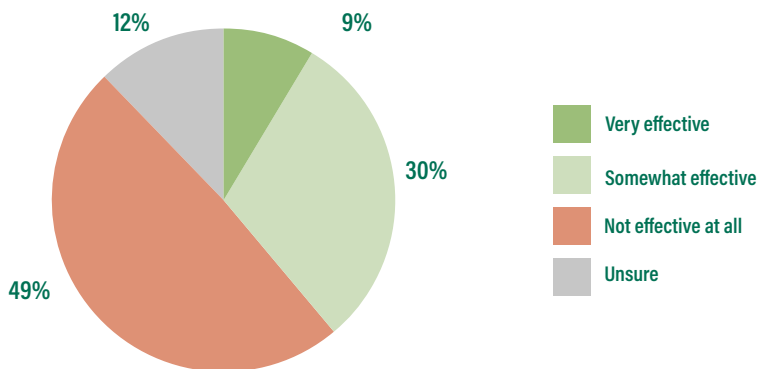


Figure 2: How effectively does the voluntary Code influence grape quality assessment with respect to objective testing and standardised sampling methods both in vineyards and wineries? (WGCSA survey of 264 growers)



## Long payment terms

Large winemakers typically have greater capacity to manage cash flows than small winegrape growers, yet large winemakers can use their superior bargaining power to insist on protracted payment terms. Winemakers in South Australia, where special payment times legislation applies, are constrained from delaying payment to grape suppliers, but some growers argue that even these legislated payment terms are inordinately long and have become the industry standard across Australia.

This Review surveyed grape growers from the Riverina and Murray Valley. In relation to questions about payment terms (52 responses) the Review heard that:

- Payment terms based on the South Australian model – payments in thirds across three instalments – were in use for 53 per cent Riverina growers and 70 per cent of Murray Valley growers;
- Faster payments applied for 22 per cent of Riverina growers and 30 per cent of Murray Valley growers, although 71 per cent of Riverina and 17 per cent Murray Valley growers who were given faster payment terms were only done so in exchange for a lower price; and
- Slower payments occurred for 25 per cent of Riverina growers, and for none of the Murray Valley growers.

In the ACCC's 2021 follow-up review to its 2019 Wine Grape Market Study, it concluded that long payment terms and a lack of price transparency remained its key concerns (ACCC 2021, pp. 3-4). At that time, it did not recommend a mandatory code of conduct but warned that winemakers were "fast approaching their last chance" to improve price transparency and to shorten payment terms. It added that unless significant progress was made the ACCC would take further action, including recommending a mandatory code or additional legislation (p. 23). The ACCC's submission to this review reiterated these concerns (p. 12).

Throughout the Review, many growers expressed concerns that the legislated payment terms are overly long and that they have become the industry standard.

In a submission to this Review’s consultation paper, an anonymous grape grower said:

*“The long payment terms are an unfair impost on my business. None of my suppliers afford me the same payment terms. It has long been a structure that is abused by mainly smaller wineries that extend out their payment terms to growers basically using us a bank. The medium to large wineries tend to stick to legislation but this causes a cash flow issue for our business.”*

Others have told the Review that the legislated payment terms are reasonable.

Australian Grape and Wine’s submission argued that:

*“With grapes being one of the most significant costs in a bottle of wine, many small and medium sized winemakers claim that they simply would not have the means to withstand the significant cash flow impact that shortening payment terms would impose on them.”*

**Importance of the Code for Payment Terms**

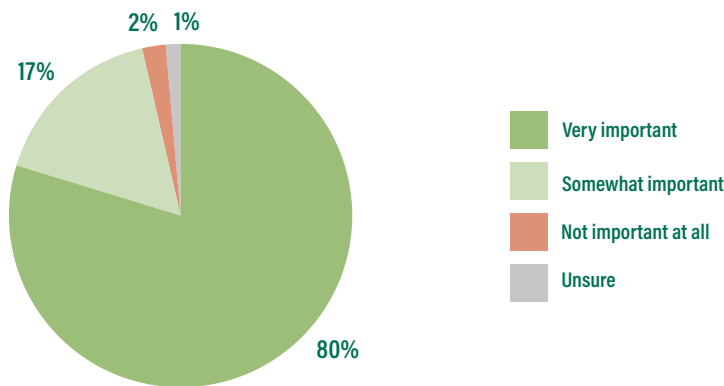


Figure 3: How important is it for a code to influence payment terms? (WGCSA survey of 264 growers)

# The voluntary code should be made mandatory

## Three types of codes of conduct

Industry codes are a set of rules or standards of conduct for an industry. They can be broken into the following three categories.

- Voluntary codes developed and maintained by industry bodies (self-regulation).
- Voluntary prescribed codes, where a code is prescribed under the *Competition and Consumer Act 2010* and binding when an industry participant signs up to it. Participants can remove themselves as a signatory, but the code can still be enforced for conduct during the time the participant was a signatory.
- Mandatory prescribed codes of conduct that are prescribed under the *Competition and Consumer Act 2010* and are automatically binding on industry participants.

The ACCC is responsible for enforcing voluntary prescribed codes and mandatory prescribed codes. Enforcement action can be taken by the ACCC or through private legal action.





### Effectiveness of the existing voluntary Code of Conduct

The WGSCA survey, as shown in Figure 4, reports that of 264 respondents, almost half consider that the voluntary Code of Conduct is not effective at all. This indicates that the Code in its current form is not achieving its aims.

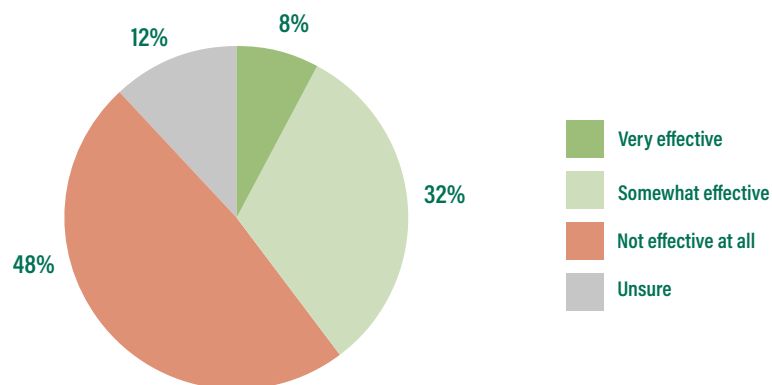


Figure 4. How effective is the voluntary Code for ensuring fair practices? (WGSCA survey of 264 growers)

Asked how important it was for a code of conduct to influence fair contracting practices, almost 80 per cent described it as “very important”.

### Importance of the Code for Contracting Practices

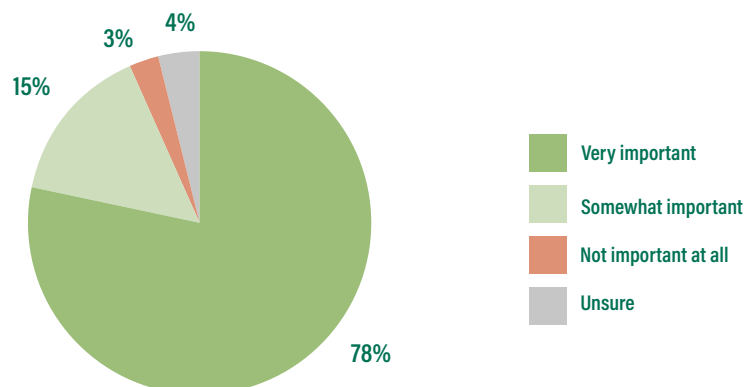


Figure 5: How important is it for a code to influence contracting practices? (WGSCA survey of 264 growers)



## Overview of reform options

This Review has assessed four options:

Option 1: Status quo	Option 2: Prescribed voluntary Code	Option 3A: Mandatory Code for all winemakers	Option 3B: Mandatory Code for winemakers purchasing more than 2,000 tonnes annually	Option 4: Mandatory Code for winemakers purchasing more than 2,000 tonnes annually, with strengthened obligations
Maintain the current voluntary Code	Maintain the current voluntary Code but enforce compliance of signatories through the ACCC	Maintain the terms of the voluntary Code but make it mandatory for all winemakers and enforceable by the ACCC	Make the voluntary Code mandatory and enforceable by the ACCC for winemakers who purchase more than 2,000 tonnes of grapes annually	Make the voluntary Code mandatory for winemakers who exceed the threshold, and strengthen the terms of the Code

### Option 1: Status quo

The review has considered the option of retaining the current voluntary Code and all its terms. While the voluntary Code contains some good provisions, its greatest weaknesses are that some of Australia's largest winemakers have chosen not to be members, and there are no penalties in the Code for breaches.

While in 2021 the ACCC warned that the industry was "fast approaching its last chance" to voluntarily improve price transparency and shorten payment terms to their grape suppliers, this Review has found that several years later the overall performance of the winemaking industry in respect of its treatment of growers has not materially improved.

While maintaining the status quo would have the advantage of not increasing costs to industry, it would not address the harms that have been identified through this Review.

#### Option 1. Average annual regulatory costs (business as usual)

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	2.002	-	-	-

The regulatory burden to winemakers who are signatories to the current voluntary Code of conduct is estimated at \$2.002 million per annum.

This option is the business-as-usual option, with the cost of subsequent options compared against the cost of this option. It assumes growth in the number of signatories follows the historical growth of 2 per cent per annum.

## Option 2: Prescribed voluntary Code

Under this option, the current Code would remain voluntary, but its provisions would become enforceable by the ACCC, such that breaches of the Code by winemakers would attract penalties.

The Review anticipates that the introduction of penalties, while likely to improve the efficacy of the Code, would almost certainly reduce the number of signatories; why would winemakers in tough financial situations decide to run the financial risk of a breach of the Code?

The impact analysis has assumed that the number of signatories would decline by 25 per cent under this option. This would have the effect of reducing the overall cost to industry of the Code – since fewer winemakers would be complying with it – but has the obvious drawback of also reducing protection for grape growers.

The Review considered the merits and shortcomings of a prescribed voluntary code. It has concluded that winemakers who have declined to join the voluntary code are even more unlikely to join a prescribed industry code. Moreover, it would remain open to a winemaker who had joined the prescribed industry code to withdraw from it if it did not wish to comply with one or more of the Code's provisions.

### Option 2. Change in average annual regulatory costs (from business as usual)

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	-0.682	-	-	-0.682

Stakeholder	Impact	
Winemakers	0	An estimated net neutral effect on winemakers: those who wished to avoid financial risk associated with penalties for breaches would leave the Code. This would be approximately offset by the financial risk of those winemakers who decided to stay in the Code. <sup>2</sup>
Growers	-2	A moderately adverse outcome for growers: those selling to winemakers who remained in the Code would benefit from it being enforceable, while those selling to winemakers who leave the Code would have less protection than under the status quo.

### Impact rating scale

-3	-2	-1	0	+1	+2	+3
Large adverse	Moderate adverse	Slight adverse	Neutral	Slight beneficial	Moderate beneficial	Large beneficial

2 Note that according to OIA guidelines, financial penalties are not counted for calculating regulatory burden.



## Option 3A: Mandatory Code for all winemakers

Under this option, the current voluntary Code would become mandatory for all winemakers and be enforceable by the ACCC. The terms of the mandatory Code would remain the same as those of the voluntary Code.

The Review estimates the total number of winemakers to be around 1,300. Most are micro or small, crushing less than 100 tonnes per annum, around 50 crush less than 1,000 tonnes per annum and qualify as medium, and about 20 large wineries crush more than 10,000 tonnes per annum ([Winetitles, 2025](#)).

Primarily by virtue of the sheer number of winemakers, inclusion of all winemakers in a mandatory Code would entail an estimated cost of \$10.455 million per annum more than the status quo.

### Option 3A. Change in average annual regulatory costs (from business as usual)

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	10.455	-	-	10.455

Stakeholder	Impact
Winemakers	<b>-3</b> All winemakers regardless of size and bargaining power would be subject to the mandatory Code, resulting in compliance costs even in parts of the sector where no harm or market failure has been identified.
Growers	<b>+2</b> This option would provide protections to all growers.

### Impact rating scale

-3	-2	-1	0	+1	+2	+3
Large adverse	Moderate adverse	Slight adverse	Neutral	Slight beneficial	Moderate beneficial	Large beneficial

## Option 3B: Prescribed mandatory Code with a threshold

Under this option, the current voluntary Code would become mandatory and be enforceable by the ACCC, but the terms of the mandatory Code would remain broadly the same as in the voluntary Code.

Winemakers purchasing less than 2,000 tonnes of winegrapes per annum would be exempt from the mandatory Code to ensure that smaller businesses are not unduly burdened by regulatory obligations and associated costs.

The Review estimates that approximately the largest 35 wineries would be captured under this threshold, a reduction from the 80 winemakers of various sizes that are signatories to the current voluntary Code. Despite the decrease in total numbers of winemakers subject to the Code, the change to inclusion of the largest wineries would mean that around 80 per cent of winegrape purchases would be governed by the Code, an increase from the current 60 per cent.

This would come at a total cost to industry of around \$87,000 per annum relative to the status quo.

### Option 3B. Change in average annual regulatory costs (from business as usual)

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	0.087	–	–	0.087

Stakeholder	Impact
Winemakers	-1 Some signatories to the current voluntary Code would not meet the 2,000 tonnes threshold and would therefore not be included in the mandatory Code. However, larger winemakers who have not signed onto the voluntary Code would be captured under the mandatory Code.
Growers	+2 A change from a voluntary Code (whether with enforceable penalties or not) to a mandatory Code with enforceable penalties would dramatically increase the level of protection for growers as a result of a number of larger winemakers becoming subject to the Code.

### Impact rating scale

-3	-2	-1	0	+1	+2	+3
Large adverse	Moderate adverse	Slight adverse	Neutral	Slight beneficial	Moderate beneficial	Large beneficial





## Option 4: Prescribed mandatory Code with strengthened obligations

Compared with the terms of the existing Code of Conduct, under this option:

- Price offers for inland grapes will be made on the first Wednesday of October, rather than the second Wednesday of December (Recommendation 2):
  - The timing of price offers in December has universally been criticised by growers as too late to allow them respond and negotiate the price, especially given that it falls close to the summer holiday period;
- Mandatory participation in two surveys administered by Wine Australia that are currently voluntary (Recommendation 3):
  - The information obtained via the surveys would improve the accuracy of Wine Australia's Grape Price Indicator dashboard, giving growers a more accurate price signal to inform their business decisions about big cost outlays early in the season;
- Transparency will be brought to payment terms of winemakers subject to the Code (Recommendation 4):
  - All winemakers subject to the Code will be required to report payment terms they are offering to their growers to Wine Australia, for synchronised publication by Wine Australia on the first Wednesday of October each year. Transparent payment terms will encourage competition among winemakers to offer better terms to secure their grapes and will provide a means to measure improvements in payment terms. If they do not improve after two years, payment terms of 30 to 60 days should be brought into the Code.
- Price deductions or rejection of grapes will need to be justified with reference to at least one objective assessment parameter (Recommendation 5):
  - This will reduce the risk of winemakers using quality assessment as a guise for price changes;
- The risk of retribution from winemakers will be addressed by requiring that winemakers act in good faith and do not punish growers seeking to protect their rights under the Code. Further, an anonymous complaints channel to the ACCC will give growers a means of anonymously reporting breaches of the Code (Recommendations 6) with the ACCC also able to check winemaker compliance with the Code;
- Growers will operate under fairer contracts that are not subject to unilateral variation by winemakers (Recommendation 9).

Under this option, a mandatory Code for winemakers purchasing more than 2,000 tonnes of winegrapes per annum would be enforceable by the ACCC. This option has the greatest net benefit of all options, by virtue of large increase in benefits to growers, with modest net costs to winemakers as a whole owing to higher compliance costs for larger winemakers partly offset by small signatories not reaching the 2,000 tonnes threshold for inclusion.

Cost to industry, and specifically winemakers, has been considered in formulating this option. The threshold of 2,000 tonnes will exclude from the mandatory Code a large number of smaller winemakers who are signatories to the voluntary Code. This will result in savings in compliance costs, which will partially offset the costs of winemakers remaining in the Code or being subject to the Code for the first time.

The Review anticipates that the greatest costs the proposed strengthened terms would impose on winemakers will be in updating their contracts to be consistent with the Code, with modest ongoing costs stemming from the new reporting requirements.

These changes to the terms of the current Code are designed to achieve a large benefit to growers while minimising costs to winemakers. These benefits and costs are explored in greater detail in the following chapters.

Winemakers who are already signatories to the voluntary Code and operating in good faith with their growers will incur only minimal additional costs to comply with the strengthened terms.

The Review estimates that, as with the previous option, approximately the largest 35 wineries would be captured under this threshold, a reduction from the 80 winemakers of various sizes that are signatories to the current voluntary Code.

This means the greater regulatory burden on the largest 35 wineries would be offset by a reduction in total number of winemakers subject to the Code. Consequently, this option is estimated to come at a total cost to industry of only around \$182,000 per annum, relative to the status quo.

The Review estimates that around 80 per cent of winegrape purchases would be made by winemakers subject to the mandatory Code, an increase in the coverage of the current voluntary Code estimated at about 60 per cent.

#### Option 4. Change in average annual regulatory costs (from business as usual)

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	0.182	-	-	0.182

Stakeholder	Impact	
Winemakers	-1	Winemakers who are already signatories to the voluntary Code and operating in good faith with their growers will incur only minimal additional costs to comply with the strengthened terms.
Growers	+3	A change from a voluntary Code, whether with enforceable penalties or not, to a mandatory Code with enforceable penalties, would dramatically increase the level of protection for growers from a number of larger winemakers being forced into the Code.

#### Impact rating scale

-3	-2	-1	0	+1	+2	+3
Large adverse	Moderate adverse	Slight adverse	Neutral	Slight beneficial	Moderate beneficial	Large beneficial

## Regulatory burden

The table below shows the annual compliance costs for industry participants of the four options considered in this Review.

### Estimated changes in regulatory burden by option relative to the status quo (Option 1), \$million

Stakeholders	Option 1	Option 2	Option 3A	Option 3B	Option 4
Winemakers	0	-0.682	10.455	0.087	0.182
Winegrape growers	-	-	-	-	-
Total	0	-0.682	10.455	0.087	0.182

#### Recommendation 1 – make the voluntary code of conduct mandatory

The voluntary Code of Conduct for Winegrape Purchases should be replaced with a mandatory Code of Conduct for Winegrape Purchases (mandatory Code). All winemakers whose purchases of grapes exceed a three-year moving average of 2,000 tonnes per annum should be subject to the Code. Except where a recommendation expressly requires a change in the terms of the current voluntary Code of Conduct, these terms should be carried across to the mandatory Code of Conduct.

The recommended changes to the terms of the voluntary Code are set out in the following chapter.

# Strengthening the terms of the code

## Earlier prices for grape growers in the warm inland regions

In its 2019 Market Study and 2021 follow-up review, the ACCC observed that the industry in warm inland regions had made progress with respect to Code coverage and several other aspects of the voluntary Code, but had failed to address the ACCC's concerns about a lack of timely and transparent pricing practices. Based on consultation and evidence received by this Review, little or no further progress in these regions has been made since 2021.

Wine Australia has developed a Grape Price Indicator Dashboard that is freely available for growers and winemakers to gain a sense of anticipated price trends. But the ACCC's recommendation was not implemented that for grapes purchased from warm inland regions, winegrape buyers should be required to provide pricing information to Wine Australia, which would aggregate and publish this information by winemaker for each variety in each warm inland region before the end of the year.

Indeed, under the voluntary Code, winemakers are at liberty to provide little or no information about the prices they will pay for winegrapes until the second Wednesday of December at the earliest. Non-signatories do not have any obligations around the timing of their price offers.

This puts winemakers in an exceptionally strong bargaining position over growers, who, by that stage in the season, have already incurred most of their costs and by harvest are faced with a now-or-never proposition for the sale of their grapes, with the challenge increased by the summer holiday season. The highly perishable nature of grapes makes it impractical for those growers who are not happy with the price offered to hold onto their grapes to find a better seller. Consequently, in the prevailing circumstances of chronic oversupply, growers are often forced to sell at a price well below the cost of production, at a time in the season when those costs have already been incurred.

During the Review's many discussions with growers in the warm inland regions, proposals were made for the early publication of contractually binding offer prices.<sup>1</sup> This would provide an indication to growers as to whether and to what extent it was worth incurring the major costs of pruning, irrigating, spraying and fertilising. Under this proposed change, winemakers would be free to offer prices subsequently that exceeded their published offer prices to secure an adequate supply of winegrapes if a shortage were to occur.

The Review has heard demands from some growers in the warm inland regions for a guaranteed, nationally set minimum price for grapes that would enable them at least to cover the cost of production. While the sentiment of such a proposal is understandable,





it is unrealistic in a modern economy such as Australia's to guarantee the economic viability of specific industries. Any such proposal would exacerbate the current oversupply problem, since it would enable more businesses to remain in the industry and others to join than is consistent with its sustainability.

The Review considers that the mandatory Code should require winemakers to decide on an offer price for each grape variety they seek under contract from the warm inland regions and provide these offer prices to Wine Australia to enable synchronised publication on the first Wednesday of October each year.

Bringing forward the timing of this price signal for inland grapes from mid-December under the voluntary Code to the first Wednesday in October would give clear market signals to growers before they make their biggest expenditure decisions for the season. The intent of simultaneous publication of price offers is to increase price transparency for growers and thereby promote greater competition among winemakers.

Some concerns have been expressed that this might enable the collusive practice of price signalling among winemakers. Growers have responded to this concern by arguing that price signalling occurs already through informal channels. To the extent, if any, that price signalling already occurs, the publication by Wine Australia of all offer prices simultaneously would mitigate the risk of informal price signalling.

### **Recommendation 2 – earlier price offers for inland grapes**

The mandatory Code should require winemakers to decide on an offer price for each grape variety they seek under contract from the warm inland regions of the Riverland, the Murray Darling and Swan Hill regions and the Riverina. All offer prices should be notified to Wine Australia, which would collate these prices and publish them simultaneously on the first Wednesday of October each year.

## More accurate price signals for growers and winemakers

### National Vintage Survey

In its 2021 follow-up review of its 2019 Market Study, the ACCC observed that the industry had failed to address the ACCC's concerns about the lack of price transparency in warm inland regions. Based on consultations and evidence received by this Review, minimal further progress, if any, has been made since 2021.

If growers wish to see what the market price was for a particular variety in the previous year, they can look at the average purchase price for grapes by variety and region in the Wine Australia Vintage Survey dashboard. This dashboard is publicly available and very well known in the industry. It is updated annually in early July based on the National Vintage Survey – an annual survey of all winemakers conducted by Wine Australia to collect crush data and price by region and variety.

The survey is generally well supported by the sector, having been conducted by Wine Australia for the last 10 years. However, it is voluntary and therefore is sometimes delayed, or its accuracy reduced, by the failure of one of more large winemakers to submit its data or submit it in a timely manner. To assure an ongoing high standard of price transparency, the Review recommends that winemakers subject to the mandatory Code be required to submit their crush and price data for the National Vintage Survey by the due date each year. Failure to do so would constitute a breach of the Code.

### Production, Sales and Inventory Survey

The Grape Price Indicators dashboard draws on numerous sources of data that are relevant to understanding market conditions and the future direction of prices. One of these sources is the Production, Sales and Inventory Survey conducted annually by Wine Australia, and previously conducted by the Australian Bureau of Statistics. It is a survey of the largest 30 or so wineries that collects high-level information on total wine production and domestic wine sales and inventory levels. It is the only source of information available to the sector on wholesale wine sales and inventory levels. These figures and the derived stock-to-sales ratios are crucial to anticipating future demand for winegrapes. However, the survey is voluntary and – given its reliance on just the largest 30 or so wineries – is subject to delays and inaccuracies if even one or two wineries do not respond.

To ensure the value and timeliness of this crucial data, the Review recommends that winemakers subject to the mandatory Code be required to submit responses to the Production, Sales and Inventory Survey by the due date each year. Failure to do so would constitute a breach of the Code.

#### **Recommendation 3 – mandatory survey participation to inform Grape Price Indicators dashboard**

Participation in the National Vintage Survey and the Production Sales and Inventory Surveys should be compulsory for all winemakers subject to the mandatory Code, to improve the accuracy of the Grape Price Indicators dashboard and to further increase price transparency, and assist growers and winemakers in making informed business decisions.

## Improving payment terms for winegrape growers

Notwithstanding that makers of commercial wine retailing for less than \$10 per bottle are price takers on oversupplied international markets, the time taken to pay growers can be very long, giving these large winemakers a cash-flow benefit at the expense of their typically small grape suppliers. While winemakers assert that long payment terms are related to the time it takes for them to be paid for the wine they produce, in some cases they are effectively using their small winegrape suppliers as a source of interest-free loans.

Under South Australia's wine industry legislation, the state minister has ordered specific payment terms. It appears these have defaulted into the industry standard in that state and beyond. The South Australian government has not acted against breaches of the legislated payment terms. Other states do not have legislated payment terms.

The Review has carefully considered the ACCC's recommendation in its Market Study Final Report that, subject to a maximum two-year transition period, all winemakers should be required to pay growers in full within 30 to 60 days of final delivery of grapes.

However, the Review is concerned that some winemakers, including large makers of commercial wine, are struggling to remain solvent and that the inclusion of such a provision in the recommended mandatory Code could put them out of business, which would not be in the industry's interests. These concerns were frequently described by producers and representative organisations, with one noting that:

*"Significantly shortened terms will also present financial difficulties for many small winemakers who are faced with the same challenges with the time it takes to recover costs of grapes and wine production" (Anonymous).*

The review of the Payment Times Reporting Scheme conducted in 2023 ([Emerson 2023](#)) did not recommend mandatory payment times, in part because fast payers would likely default to the mandated payment times. Instead, it recommended a system of name and shame, name and praise, which has been used successfully in some overseas jurisdictions.



Consistent with that review's recommendations, this Review recommends that winemakers with annual grape purchases exceeding 2,000 tonnes must notify Wine Australia of the payment terms in their agreements with growers, which Wine Australia would publish annually. This information would at least inform growers of the performance of various winemakers in their districts which, to the extent that they have any flexibility, would enable growers to consider selling their grapes to faster payers.

These obligations should be included in the recommended mandatory Code, with any failure to comply constituting a breach of the Code.

The Review further recommends that these arrangements be included in a comprehensive review of the operation of the mandatory Code after two years of operation and, if payment terms have not improved materially, the ACCC's proposal that all winemakers with a total annual purchase of grapes exceeding 2,000 tonnes be required to pay growers in full within 30 to 60 days of final delivery of grapes be adopted.

#### **Recommendation 4 – Publication of payment terms**

All winemakers covered by the mandatory Code should be required to notify Wine Australia of their payment terms, which Wine Australia would publish on the first Wednesday in October each year. If, after two years of operation of the mandatory Code, payment terms and associated payment times have not improved materially, all winemakers subject to the Code should be required to pay growers in full within 30 to 60 days of the end of the month of the final delivery of grapes.

## **Better protections against arbitrary price deductions**

Assessment of the quality of winegrapes, which is conducted throughout the growing season and at harvest, is a fundamental determinant of the price paid for the grapes and can have massive financial consequences for both parties. As such, disagreement between growers and winemakers over the quality of grapes is a common cause of disputes. While objective methodologies to assess maturity, purity and condition exist, some subjective measures are still used for other aspects of quality. This creates a risk of grape assessment being a variable that can be manipulated by winemakers to secure grapes at a reduced price.

Nevertheless, there can be legitimate reasons for downgrading prices to growers relating to the actual quality of the grapes at harvest:

*"Pricing downgrades due to failure of grapes to reach maturity, purity and condition are required in certain circumstances. The right to do so must be maintained" (Australian Grape and Wine).*

Often supply agreements for winegrapes specify maturity, purity and condition and other characteristics the grapes must achieve to receive the agreed price, with price deductions should the grapes fail to meet the specifications. In some contracts, bonuses are also awarded for grapes that achieve standards or reach attributes sought by the winemaker. These are sometimes not determined until the wine is made and assigned to a particular product, and the grower usually has very little insight into this process.



The outcome of the grape assessment process can have major financial consequences for growers: if a portion of their crop is assessed as not having achieved the winemaker's desired characteristics, this could result in a loss of tens of thousands of dollars.

As yet, no fully objective, independent methodology exists to judge the quality of grapes. As scientific methods improve, objectivity will be enhanced but there will likely always remain a role for human subjectivity, especially at the premium end of the winegrape market.

The voluntary Code includes sensible obligations on signatories in relation to grape assessment. It requires that all grape supply agreements outline the maturity, purity and condition standards (MP&C standards) against which grapes will be assessed, the methods the winemaker will use in assessing the grapes against those standards, and any additional methods agreed between the winemaker and the grower. The agreements are to specify how the quality assessment process will affect the price of the grapes, including any deductions or bonuses. Agreements are also required to specify conditions under which the grapes will be rejected completely based on the assessment.

Under the voluntary Code, objective or subjective measures can be specified by the winemaker in the supply agreements, if they comply with the above requirements. Objective methodologies are those that can be clearly described and consistently reproduced. Subjective assessments rely on personal judgement and are not easily reproduced by different assessors. While both subjective and objective methodologies are permitted under the voluntary Code, it stipulates that subjective measures be avoided where there are credible objective measures of the same attribute of the grapes.

In a positive development, Industry Endorsed Standard Procedures (IESPs) have been developed by Australian Grape and Wine, the Australian Wine Research Institute and Wine Australia, and are available on the Australian Grape and Wine website. The IESPs provide for objective measurement of sugar content (Baume), colour, pH and titratable acidity. Further, the Code requires that signatories apply a standard method for sampling grapes from the vineyard to acquire a sample that is representative of the grapes as a whole (Australian Wine Research Institute 2023).

In view of the large impact that grape assessment can have on the revenue of winegrape growers, the Review recommends that the features of the voluntary Code relating to grape assessment be retained in the recommended mandatory Code. In the interests of avoiding disputes between winemakers and growers, the Review further recommends that any price deductions be linked to at least one objective measure.

#### **Recommendation 5 – price deductions must refer to an objective parameter**

Objective standards for grape assessment of maturity, purity, condition and other grape parameters relating to quality – as contained in the existing voluntary Code – should be specified by winemakers subject to the mandatory Code in their contracts with grape growers. For grapes purchased by winemakers subject to the mandatory Code, any deductions from the offer price, or any other adverse decisions such as rejection of the grapes, must be done with reference to at least one objective assessment parameter.



## Addressing the fear of retribution

During the Review's consultation process, many winegrape growers and representative organisations reported a deep fear of retribution if they raised concerns with winemakers. Retribution could most blatantly take the form of winemaker terminating agreements and more subtly through less favourable terms and conditions for future supply, or capricious winemaker behaviour such as delayed decisions on quantities of winegrapes to be purchased. Some described behaviour in the sector as "bullying" and as "aggressive and unforgiving".

Regardless of whether these fears are justified in all circumstances, they act as a barrier to winegrape growers seeking fair treatment from winemakers.

This Review surveyed grape growers from the Riverina and Murray Valley. In response to questions about dispute resolution (52 responses) the Review heard that in the last five years, despite widespread dissatisfaction in their dealings with winemakers, none of the Riverina respondents and just 10 per cent of the Murray Valley growers paid a party to assist in negotiations or dispute resolution with a wine producer, and just 5 per cent of Murray Valley growers had a dispute that went to mediation. Understandably, many producers were unwilling to give this Review evidence of specific examples of retribution in case they would be recognised by their current or former grape buyers.

The Review concludes that steps need to be taken to address the fear of retribution in the mandatory Code. Under the previously voluntary Food and Grocery Code of Conduct, refraining from retributory conduct was included as a part of the obligation to act in good faith (Subclause 6B(3)(d), Food and Grocery Code), but there were no legislated penalties for breaching that obligation.

The Review of the Food and Grocery Code of Conduct recommended bringing protection against retribution into the purpose clause of the Code. This Review makes the same recommendation for the mandatory Code of Conduct for Australian Winegrape Purchases.

While the proposed clause is not an operative provision that can be enforced by the ACCC, it ensures that the other provisions of the mandatory Code are interpreted consistently with this purpose and serves as a clear signal that protections against retribution should be a basic commitment of winemakers in their dealings with growers.

The Review further recommends that retribution should be captured within the general good-faith obligation of the mandatory Code as a factor in determining whether a winemaker has acted in good faith towards a grower. Drafting of the mandatory Code of Conduct for Australian Winegrape Purchases should draw heavily on the relevant provisions of the mandatory Food and Grocery Code of Conduct.

#### **Recommendation 6 – greater protections against retribution**

The mandatory Code should place greater emphasis on addressing the fear of retribution by including protection against retribution in the purpose of the Code and ensuring that retribution captured under the obligation to act in good faith includes action taken against suppliers for exercising their rights under the Code.

#### **Recommendation 7 – an anonymous complaints channel to the ACCC**

An anonymous complaints mechanism should be established to enable suppliers and any other market participants, including winemakers supplying to retailers, to raise issues directly and confidentially with the ACCC.

## **Dispute resolution**

The existing voluntary Code sets out processes for resolving disputes. These include incorporating into written supply agreements dispute resolution processes detailed in Appendices 1 and 2 of the Code unless they choose an alternative procedure (other than court proceedings) that is at least as rigorous as the procedures set out in Appendices 1 and 2.

They also provide that the parties in an agreement may not commence court proceedings in relation to a dispute until they have exhausted the dispute resolution procedures in the agreement, unless it is required for urgent interlocutory relief.

Before commencing a formal dispute-resolution process, senior representatives of the parties must use their best endeavours to resolve the dispute by discussion and negotiation.

On the face of it, the dispute resolution processes set out in the voluntary Code look reasonable. They should be used as a starting point in drafting the relevant provisions in the recommended mandatory Code. Any improvements to these processes contained in the mandatory Food and Grocery Code of Conduct should be considered in finalising the mandatory Code of Conduct for Australian Winegrape Purchases.



Under the Constitution, arbitration cannot be imposed by parliaments, since this power is reserved for the courts. In the mandatory Food and Grocery Code of Conduct, arrangements for arbitration up to amounts of \$5 million were agreed voluntarily by the major supermarkets.

It would be impractical to seek these sorts of arrangements for the Australian winemaking industry, since it comprises numerous businesses. The existing voluntary Code provides that if a conciliation fails, then if the parties wished to avoid court proceedings they could provide in a grape-supply agreement that the dispute will be resolved by final and binding arbitration. The Review considers this to be a realistic provision in respect of arbitration.

#### **Recommendation 8 – mediation and arbitration built into the Code**

The mandatory Code should provide parties with avenues for mediation and arbitration to resolve disputes.

- Parties can agree on an independent mediator or arbitrator.
- Winemakers must attend independent mediation if requested by a grower.
- Where mediation has not settled a dispute, independent arbitration can be used to settle disputes as agreed between the winemaker and the grower.

The working group referred to in Recommendation 14 should identify a suitable entity to take on the function of receiving notifications of disputes.



## Remedying anti-competitive contracts

### Sound commercial contracting practices are needed

The Review has heard extensive evidence, especially in the warm inland regions, that contracts offered by winemakers to grape growers can be little more than a one-page document and, in some cases, might not be in writing at all. This places growers in an invidious position in seeking enforcement of the arrangements agreed with winemakers. In fact, a fear of retribution makes it highly unlikely that a grower would seek to do so at all.

*"We constantly try and keep our relationships in good order and are somewhat submissive to our wineries with their demands. Even when a supply imbalance is tipped over in favour of growers this is always on our mind to maintain a good relationship for when it turns again, and you do not want to be cut" (Grape grower – anonymous).*

The terms of the voluntary Code are a suitable basis for drafting the recommended mandatory Code.

*"If the code is followed, I believe it does address most of the problems of imbalance of power between grape growers and winemakers" (Winemaker – anonymous).*

As a basis for the recommended mandatory code, the existing Code contains relevant, sensible provisions. However, the ACCC's Market Study identified several terms of agreements that might constitute unfair contract terms:

- Right to renew clauses – the terms that require growers to enter into new agreements with winemakers, upon expiry of their existing agreements, but do not require winemakers to match competitor offers;
- Ability to vary agreements unilaterally – terms that give winemakers broad unilateral discretion to vary terms of agreements; and
- Termination clauses – terms that allow winemakers to terminate agreements merely because grapes become surplus to their requirements, at short notice.

### **Recommendation 9 – no anti-competitive terms in contracts**

The mandatory Code should include a requirement that all supply agreements and purchase orders:

- Be in writing and not subject to unilateral variation by a winemaker;
- Not include for the winemaker a first right of refusal for when the grower produces more grapes than is required by the supply agreement; and
- Not give winemakers the right to terminate agreements with growers when grapes become surplus to requirements, for any reason and at short notice.



# Market failure in wine retailing

At the other end of the domestic supply chain, heavy market concentration is prevalent in wine retailing. The Anderson Report (pp. 24-25) notes the concentration of retail sales in the two largest supermarket chains, which account for 80 per cent of off-trade sales value, with Endeavour Group's stores (Dan Murphy's and BWS) accounting for 63 per cent and Coles Group's stores accounting for 17 per cent (First Choice and Vintage Cellars will come under the Liquorland banner by end of 2025).

These retailers display the features of an oligopoly. They clearly have superior bargaining power to that of most winemakers.

Based on consultation and evidence collected through this Review, the main potential harms to which winemakers are subject when dealing with major retailers are:

- Competing with retailers' private label wines;
- Vertical integration of wine retailers; and
- Lack of market transparency.

## Private label (own-brand) wines

As with grocery products, the major retailers of wine stock many private label (own-brand) wines. Private label wines are brands developed and owned by the retailer or its subsidiaries. However, it is often not apparent to consumers that these wines are own-brand products.

*"Wines generally do not have anything on their packaging to indicate that they are owned by the retailer" (Independent winemaker - anonymous).*

In its submission to the Review of the Food and Grocery Code of Conduct, Australian Grape and Wine (2024, p. 3) claimed that own-brand wines could account for as much as 35 per cent of the domestic wine market by volume, and that Endeavour Group had 240 private label wines and Coles Group around 100.

Many independent winemakers observe that these own-brand wines can visually resemble independent wine brands and are often located nearby or next to their product on the shelf in the same price range. Independent winemakers also claim their products can be delisted at short notice, then replaced with own-brand wines.

A similar issue raised by independent winemakers during consultations was the potential for detriment to consumers from being misled by labelling. Winemaker concerns related to own-brand wines purporting to be independent wines and retailers not doing enough to disclose the true origins and owners of wines.

Other winemakers claimed these labels imitated their branding. This issue was also publicised during the Four Corners supermarkets expose, *"Super Power: The cost of living with Coles and Woolworths"*. In this program a journalist examined Two Churches Shiraz, which is described as "a tale from the Barossa Valley". However, a consumer, according to one Barossa grower, would be misled about the origins of the wine that is produced with an address indicating the Coles headquarters in Melbourne. When queried as to whether Coles was hiding its ownership of the Two Churches wine, the CEO of Coles Group noted the organisation was "very comfortable that the branding approach was one that resonates with customers" ([ABC](#), 2024).

## Vertical integration of wine retailers

The heavy concentration of the wine retail market restricts the options available to winemakers for selling their products domestically. Vertical integration of retail entities results in winemakers often competing against the same businesses they depend on to stock their wines.

As pointed out by Australian Grape and Wine (2024), wine retailers are becoming vertically integrated into the wine supply chain, from ownership of vineyards to wine production, storage and bottling.

Retailers can grow their own grapes, make wine themselves, purchase wine in bulk and bottle their own brands, or they can carry their own-brand products exclusively in their stores. Further, by growing their own grapes and making their own wine, they do not incur the same intermediary costs as other winemakers, such as wholesalers and distributors.

*"The cross-over of retailing and producing arguably provides an unfair advantage to retailers, resulting in winemakers being price takers" (Anonymous).*

Governments should not regulate against achieving market efficiencies through vertical integration and in favour of inefficiencies. However, the ability of oligopolistic wine retailers to achieve vertical integration could lead to even greater market concentration by driving some independent winemakers from the market. In its submission to this Review, the ACCC warned that it had:

*"... observed a number of acquisitions of independent liquor retailers by Endeavour, Australia's largest liquor retailer. The ACCC notes the potential competitive harm resulting from the removal of independent competitors from the market, including the loss of differentiated offerings in local areas, which can negatively impact consumer choice" (ACCC 2024, p. 3).*

The ACCC further warned about the domestic retailing industry:

*"The high degree of concentration may act as a significant constraint on the wholesale price of wine, which in turn is also likely to constrain the price winemakers offer to growers" (p. 18).*

And that the serial acquisition pattern by Endeavour:

*"... could have adverse competitive impacts on a regional or broader geographic level" (p. 18)*

It is in these sorts of situations where the Australian government's mergers and acquisition laws can come into play. As the ACCC points out in its submission to this Review, these laws have been strengthened recently, and further reforms are being contemplated.

Winemakers argue they are at a disadvantage compared with major liquor retailers, which possess extensive consumer data, such as online search tracking, customer loyalty programs and in-store point-of-sale (POS or scan) sales data. This information offers market insights and trends that assist major retailers in creating their own-brand products to sell and enables them to respond quickly to market signals.

*"[Retailers] can leverage their market insights to gain a competitive advantage for their own-brands and ultimately influence consumer choice" (Winemaker - anonymous).*

Markets perform more efficiently when more information is available. Government regulation should not prevent a business using its own data for commercial purposes, but competition is enhanced when market information collected by an entity is shared with actual and prospective competitors.

## Addressing opaque labelling of own-brand wine

For independent winemakers – those who are not ultimately owned by one of the four big retailers – selling their wine through these retailers is crucial for the success of their businesses.

Upon inclusion in the range of wine for sale in the retail stores, the products of the independent winemakers compete for sales not only with other independent winemakers' wines, but also with a retailer's own-brand and wines produced exclusively for that retailer, which are called exclusive labels.

**Endeavour Group** is the largest domestic retailer of wine, with around 40 per cent of the domestic retail market by volume. Endeavour Group operates around 1700 retail stores, including Dan Murphy's and BWS (Endeavour submission 2024, p. 1). Up to 15 per cent of the wine sold by Endeavour Group is made by its company Pinnacle Drinks (Endeavour submission 2024, p. 3). According to an online database managed by [the Real Review](#) that tracks wine ownership, Endeavour owns 227 brands. Endeavour owns and operates wineries including Dorrien Estate in the Barossa Valley as well as Josef Chromy, Shingleback, Red Knot, and Cape Mentelle.

**Coles Group** operates Liquorland, First Choice and Vintage Cellars, making it the second-largest domestic wine retailer with 17 per cent of the domestic market, and sells wine via its 995 retail stores. Coles Group has announced First Choice and Vintage Cellars will come under the Liquorland banner by end of 2025. Unlike Endeavour Group, Coles Group does not own wineries or vineyards but has its own wine label called Farmland Cellars, which constitutes just over 4 per cent of the wine products in the range of Coles Group's retail stores. Wine made for Coles Group on an exclusive basis constitutes around 25 per cent of its range, with around 70 per cent of its range comprising wine supplied by independent businesses not affiliated with Coles Group. According to Four Corners investigators, "Coles owns around 260 brands of wine that don't disclose their affiliation with the supermarket chain" ([ABC](#) 2024).



**ALDI** did not provide a submission to this Review and declined to meet with the Review team. Little information is publicly available in relation to ALDI's wine interests. ALDI is known to sell primarily its own-brand products. According to [The Real Review](#), as of March 2024 ALDI owned 28 wine brands that it sells in Australia.

**Metcash** owns Australian Liquor Marketers, which in turn operates Independent Brands Australia. This includes Cellarbrations, The Bottle-O, IGA Liquor and Porters Liquor. According to its website, Metcash supplies to around 1200 retail stores across Australia and New Zealand. The proportion of own-brand wine that Australian Liquor Marketers sells in its stores is unclear.

The *Australia New Zealand Food Standards Code*, administered by Food Standards Australia New Zealand (FSANZ), requires that food (including wine) labelling include the name and address of a supplier (the vendor, manufacturer, packer or importer).

The *Wine Australia Act 2013* and *Wine Australia Regulations 2018* prescribe the minimum compositional requirements for making vintage, variety and geographical indication claims and restrict the false and misleading use of registered geographical indications.

The prohibitions concerning misleading and deceptive conduct contained in the Australian Consumer Law also apply to the labelling of wine; winemakers must not mislead consumers about the provenance of the wine and must include on the label the country from which the wine originates.

The *Wine Australia Act 2013* regulates the use of geographical indicators on wine bottles. Winemakers must not mislead consumers about the provenance of the wine and must include on the label the country from which the wine originates.

While the Food Standards Code requires that the name and address of a vendor, manufacturer, packer or importer must be included on the label, there is no requirement to indicate which company is the ultimate owner of the wine. For example, while wine produced by Endeavour Group under its Pinnacle Drinks business must identify Pinnacle Drinks as the supplier on the label. Endeavour Group has no obligation to indicate that it is the owner of Pinnacle Drinks, or the owner of other subsidiaries such as Cape Mentelle and Chapel Hill, and thereby the ultimate beneficiary of any sales of those labels.

It is therefore not obvious to a customer in a BWS or Dan Murphy's store that up to 15 per cent of the wine for sale is effectively owned by the liquor store. While Endeavour Group is the most prominent example of this opacity, owing to the size of its winemaking subsidiary, the same applies to Coles Group.

This lack of transparency results makes it difficult for customers buying wine through Endeavour Group and Coles Group to discern readily that they are purchasing an own-brand product. Based on current labelling requirements, customers are at risk of mistakenly assuming they are purchasing wine from a winemaker with no business relationship with the liquor store in which they are shopping.

This issue was raised frequently throughout consultations and was featured in several private submissions.

While customers might benefit from the lower price for which the retailer sells its own-brand wine compared with independent wine brands, some might prefer to support an independent winemaker if they had sufficient information to enable them to make that choice. Other customers might nevertheless choose an own-brand wine based on its taste and its price advantage. The Review notes that markets work better where consumers have sufficient information on which to make their choices.

Clear labelling that identifies the ultimate owner of the wine brand would help level the playing field between vertically integrated retailers and their independent competitors included in the retailers' ranges, but it would not eliminate competition on that playing field.

### Information standard as a mechanism for implementation

A potentially available regulatory instrument to require makers of own-brand wine to indicate the ultimate owner of a wine product is an Information Standard established under Section 134 of the Australian Consumer Law (which is included in Schedule 2 of the *Competition and Consumer Act 2010*). Information standards are quite broad in scope. Section 136 makes it an offence punishable by a pecuniary penalty to supply a good or service that does not comply with the Information Standard.

The [Information Standard on free range eggs](#) provides an example of the types of provisions and measures that can be applied under this section of the Act. It is relevant to this Review's consideration of how to improve the provision of consumer information about liquor retailers' own-brand wine labelling.

Section 134 states that the Commonwealth Minister may, by written notice published on the internet, make an Information Standard for goods or services of a particular kind. An Information Standard may:

- (a) make [provision](#) in relation to the content of information about [goods](#) or [services](#) of that kind; or
- (b) [require](#) the [provision](#) of specified information about [goods](#) or [services](#) of that kind; or
- (c) provide for the manner or form in which such information is to be provided; or
- (d) provide that such information is not to be provided in a specified manner or form; or
- (e) provide that information of a specified kind is not to be provided about [goods](#) or [services](#) of that kind; or
- (f) assign a meaning to specified information about goods or services.

The Review is conscious, however, of the heavy regulatory burden on the very large number of producers of own-brand wine in Australia of complying with a regulated Information Standard. The Review considered the alternative of applying an Information Standard for own-brand wines only to the major liquor retailers. But this would create incentives for those retailers to establish smaller companies whose size was beneath the threshold for the Information Standard.



At this time, therefore, the Review has concluded that an approach that is capable of achieving the desired pro-competitive outcome without an associated heavy regulatory burden and unintended consequences is to indicate to Endeavour Group and Coles Group that they are expected to identify clearly on the back labels of their own-brand wines the ultimate retailing owner of the wine and its address.

If, however, after two years, satisfactory progress has not been made in labelling own-brand wines, the Review recommends that consideration be given to the development and application of a mandatory Information Standard for own-brand wines.

In February 2025, Coles Group agreed with this Review to accelerate its implementation of improved labelling and include Liquorland and the company's address on the back of labels within two years. Similarly, Endeavour Group undertook to publish on the back labels of their own-brand wines the ultimate owner of the wine brand, namely Endeavour, and the owner's address.

### **Recommendation 10 – transparent labelling practices**

The large liquor retailers that sell own-brand wine – Endeavour Group and Coles Group – should indicate on the back of their wine labels their ownership of the wine, to enable customers to readily identify the wine as an own-brand product. If satisfactory compliance has not been achieved after two years, consideration should be given to the development and application of an Information Standard to enforce compliance.



## Data sharing

The advantage that producers of own-brand products enjoy by virtue of current Australian labelling laws is compounded by a substantial information advantage most easily illustrated through an example.

Consider a bottle of wine made by an independent winemaker for sale in a Dan Murphy's store. This store is ultimately owned by Endeavour Group, which also owns Pinnacle Drinks. Up to 15 per cent of the wine sold in the store is made by Pinnacle Drinks, which is not prevented from accessing the sales data for all wine sold in that Dan Murphy's store, including its competitors' data. This would enable Pinnacle Drinks to rapidly detect changes in customer preferences through sales trends, and then quickly position its business operations to respond. This could involve less production of one wine style and more of another. In principle, it could also enable Pinnacle Drinks to launch an entirely new brand of wine imitating an independent competitor's brand that Endeavour Group stocks.

While this example is focused on Endeavour Group, it can apply in any situation where the retailer sells both its own-brand wine and the wine of independent winemakers.

*"The data supplied about the market in general of other suppliers in their category is very minimal unless the supplier is willing to pay very high prices for that data" (Winemaker - anonymous).*

While this Review has not received clear evidence that Endeavour Group is, in fact, exploiting its information advantage to such a highly anti-competitive extent, the risk that it or other major retailers could do so warrants consideration.

In September 2024, in recognition of this problem, Endeavour Group announced a data-sharing tool called Complete Liquor. Endeavour Group has said the tool will not enable winemakers to compare their sales directly with those of their competitors but will enable them to compare the sales of their own products against anonymised and aggregated information derived from their competitors.

Circana will provide a free version of the tool that contains basic information but will also offer a range of subscription options that progressively give higher-value insights. While the Review commends Endeavour Group's and Circana's leadership in acknowledging the problem of sales data transparency and proactively developing a solution, the success of the solution will depend on whether sufficiently valuable information can be provided to winemakers at a reasonable price.

In February 2025, Endeavour agreed with this Review to the following: Small winemakers will get their own performance data free of charge (but not their competitors' data). For market reads, this will occur on a sliding scale starting at free for basic market insights, and increasing in price as the granularity of the data increases. Raw sales data from Endeavour retail stores, including raw sales data from Endeavour's Pinnacle Drinks, will be included in the pool of data that Circana uses to create its market reads.

Coles Group agreed it would continue giving winemakers their own sales data for free, and would continue to engage with Circana to ensure subscription costs for higher value market data were proportionate to the size of the winemaker, so that cost would not be a barrier for smaller suppliers.

### **Recommendation 11 – accessible sales data and market reads**

Coles Group and Endeavour Group should collaborate with appropriate companies, such as Circana and Quantum, to ensure smaller independent winemakers receive their own sales data and market insights free of charge and, for larger winemakers, at a reasonable price. Coles Group and Endeavour Group should ensure such data is obtainable at the same level of granularity as the granularity of data provided to them for their own-brand wine labels.

## **Possible unfair advantages from the WET**

The Review received claims that the Wine Equalisation Tax (WET) can provide advantages to vertically integrated retailers over independent winemakers:

*“Retailers have an incentive to lower the wholesale price between the producer of a vertically integrated brand and the retail store as WET tax is paid against this wholesale price” (Winemaker – anonymous).*

Another producer argued for a need to:

*“Adjust the structure of the WET tax to ensure that it is applied fairly across retailer owned brands” (Winemaker – anonymous).*

WET is payable by the winemaker and is calculated at a rate of 29 per cent on the last wholesale price that is paid for the wine. In the case of a retailer purchasing wine from its own subsidiary winemaker, the potential exists for the winemaker to sell the wine at a lower price to the retailer to minimise its WET liability. Since both the winemaker and retailer are owned by the same parent company, this price deduction for the winemaker would constitute a gain for the affiliated retailer, so would not actually cost anything to the ultimate owner of both the retailing store and the winemaker. The tax saving could, however, contribute to the ability of the retailer selling its wine at a lower price than that achievable for an independent winemaker, which would not be able to minimise its WET liability through the same mechanism. Australian Grape and Wine has argued that:

*“... unlike other wine producers, a vertically integrated retailer can transfer, or create an internal sale, between their own-branded wine and their retail store at a cost exclusive of marketing, distribution and storage. The implication of such an inconsistency would be inconsequential were it not for the fact that it is permissible that they then calculate Wine Equalisation Tax on that substantially deflated notional wholesale value” (Australian Grape and Wine submission, p. 14).*

### **Recommendation 12 – review the WET**

A review of the Wine Equalisation Tax (WET) and WET rebate should be undertaken by relevant Australian government agencies to ensure they are still meeting policy objectives without unintentionally providing advantages for vertically integrated grape producers, winemakers and wine retailers.

# Implementation and evaluation

In addition to the recommended measures specific to the wine industry, a range of strengthened competition and consumer law amendments and announced reforms can and should be applied to deal with anti-competitive behaviour and unfair dealings. These include:

- The *Competition and Consumer Act 2010*;
- The Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024, which resulted in changes to the *Competition and Consumer Act 2010* when it passed the Senate in November 2024;
- New laws that came into effect on 9 November 2023 prohibiting businesses from including or relying on unfair contract terms in standard-form small business and consumer contracts, which the ACCC considers are likely to have broad application in wine sector, especially in warm inland areas; and
- An Australian government announcement on 16 October 2024 that it would seek to amend the Australian Consumer Law to ban unfair trading practices affecting consumers.





These existing and new laws, together with the recommended mandatory Code of Conduct for Australian Winegrape Purchases, will give the ACCC strong powers to identify and act against anti-competitive behaviour in the industry. However, it will not be able to do so effectively out of its existing resources.

**Recommendation 13 – give ACCC adequate resources**

The ACCC should be given adequate resources to enforce the Code and the other recommendations of this Review (without the Department of Agriculture, Fisheries and Forestry being expected to provide those resources from within its existing budget).

Many of the Review's recommendations, if accepted by the Australian government, will require further, detailed work and cooperation with other jurisdictions and representative organisations before they are implemented as policy. This further work is beyond the terms of reference and timeframe for this Review and will therefore require the establishment of a working group to progress the implementation of the proposed recommendations.

The working group should not entertain the re-prosecution of arguments and positions advocated during this Review that have not been accepted by the Review. Rather, its remit should be the implementation of the recommendations accepted by the Australian government.

**Recommendation 14 – establish a working group to guide implementation**

A working group should be established to implement the recommendations of this Review that are accepted by the Australian government, led by the Department of Agriculture, Fisheries and Forestry and including representatives of the ACCC and Treasury and relevant state government agencies, along with representatives of Wine Australia.



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