



ACCC submission

Submission in response to Senate Rural and Regional Affairs and Transport References Committee inquiry into the Australian winegrape purchases code of conduct

November 2024

Acknowledgement of country

The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

Australian Competition and Consumer Commission

Land of the Ngunnawal people

23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

© Commonwealth of Australia 2023

This work is copyright. In addition to any use permitted under the *Copyright Act 1968*, all material contained within this work is provided under a Creative Commons Attribution 4.0 Australia licence, with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration, diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright, but which may be part of or contained within this publication.

The details of the relevant licence conditions are available on the Creative Commons website, as is the full legal code for the CC BY 4.0 AU licence.

Requests and inquiries concerning reproduction and rights should be addressed to the General Manager, Strategic Communications, ACCC, GPO Box 3131, Canberra ACT 2601.

Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

The ACCC has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

Parties who wish to re-publish or otherwise use the information in this publication must check this information for currency and accuracy prior to publication. This should be done prior to each publication edition, as ACCC guidance and relevant transitional legislation frequently change. Any queries parties have should be addressed to the General Manager, Strategic Communications, ACCC, GPO Box 3131, Canberra ACT 2601.

ACCC 11/24

www.accc.gov.au

Contents

Executive summary	3
1. Introduction.....	3
ACCC engagement with the wine grape sector	4
Changing market conditions	6
Warm and cool climate grape regions.....	7
2. Key areas of concern	8
Quality assessment.....	8
Price transparency	9
Contracting practices: Payment timeframes and unfair contract terms	10
3. Regulation of the wine grape sector	12
The voluntary Wine Code	12
Prescribed mandatory codes under the CCA.....	13

Executive summary

The ACCC has previously undertaken a substantial body of work in relation to the Australian wine grape sector. This submission provides an overview of this work and highlights some key subsequent developments which may be relevant to the current inquiry.

The ACCC's Wine Grape Market Study (2018-19) involved extensive consultation with wine grape growers and winemakers. The Market Study identified a broad range of concerns relating to quality assessments, price transparency, payment periods, dispute resolution, and unfair contract terms. The Market Study also raised concerns about the strength of, and number of signatories to, the voluntary Code of Conduct for Australian Winegrape Purchases (the Wine Code).

In 2021 the ACCC reviewed the industry's progress on implementing the Market Study's recommendations. The Follow-up Review highlighted ongoing concerns around issues including price transparency, lengthy payment periods under grape supply agreements and the relatively small number of signatories to the Wine Code.

There have been several developments since 2021 which could be relevant to an assessment of the market and which policy and regulatory options are appropriate for addressing industry issues. These include a global oversupply of red wine grapes which has created major issues for both growers and winemakers, and further industry progress on implementing the recommendations from the Market Study.

Both the Market Study and Follow-up Review recommended improvements to the Wine Code and did not conclude that a mandatory code was necessary to remedy market failures at those times. The ACCC considers that mandatory industry codes should only be prescribed in response to evidence of market failure, where the code is necessary to support the efficient operation of markets or for the welfare of consumers. There must also be evidence indicating self-regulation has failed to address the problems in the industry.

Any prescribed mandatory code for the wine grape industry would need to be tailored to the unique conditions of the industry and would require the allocation of significant additional resources to ensure the ACCC is able to undertake compliance and enforcement activities.

In addition, it is important to note that the ACCC's work on wine grapes has primarily focused on the 'warm climate' grape growing regions of the Riverland, Murray Valley and Riverina. The ACCC is mindful of the potential for unintended consequences of additional regulation on other market segments.

1. Introduction

- 1.1. The ACCC welcomes the opportunity to respond to the Senate Rural and Regional Affairs and Transport References Committee inquiry into the Australian winegrape purchases code of conduct.
- 1.2. The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The ACCC's primary responsibilities are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010* (Cth) (CCA) and

Australian Consumer Law (ACL), regulate national infrastructure, and undertake market studies and inquiries.

- 1.3. One of the ACCC's enduring priorities is ensuring the protections of competition and consumer laws and small business industry codes of conduct are applied to small businesses and the agriculture sector.

ACCC engagement with the wine grape sector

- 1.4. In 2018-19, the ACCC conducted a self-initiated market study into the Australian wine grape industry to examine competition, contracting practices, transparency and risk allocation in wine grape supply chains. The market study was initiated in response to concerns from grape growers located in warm climate grape growing regions that winemakers were inefficiently shifting risks onto growers and that there was a lack of competition between winemakers for grapes. The market study relied on information provided voluntarily by industry participants and other relevant stakeholders.
- 1.5. In September 2019, the ACCC published the Wine Grape Market Study Final Report. The Market Study observed that the features of the wine and grape industries are unique when compared to many other agricultural sectors:
 - Across Australia's 65 grape growing regions there is considerable variation in the quality of, and prices for, wine grapes.
 - There are over 2000 winemaking businesses in Australia, comprising a diverse range of business models and sizes, from family-owned boutique winemakers to publicly listed multinational companies.
 - The long lead times associated with grape and wine production can limit producers' capacity to quickly respond to changing market signals.
- 1.6. The Market Study identified that the Australian grape and wine sectors have tended to fluctuate between prolonged periods of growth and oversupply. A report by the Winemakers' Federation of Australia (now Australian Grape and Wine) found that up to 92% of growers in warm climate regions were unprofitable in 2015.¹ The Market Study found that lengthy oversupply conditions had weakened the bargaining position of growers, reducing their ability to negotiate better supply agreement terms or engage in effective dispute resolution because growers prioritised securing a buyer for their grapes over the medium to long term.
- 1.7. The Market Study identified five key areas of concern in the warm climate grape growing regions:
 - **Quality assessment:** Growers had limited visibility over and insight into the wine grape quality assessment process and lacked trust in the efficacy of the process. Growers were concerned that winemakers had the ability to take advantage of quality assessment processes to reduce the prices of their grapes or reject unwanted produce.
 - **Price transparency:** Growers lacked access to timely, reliable and usable price information. The lack of price transparency, particularly in warm climate

¹ Winemakers Federation of Australia, [Vintage Report \(July 2015\)](#), accessed 7 October 2024.

regions, undermined the ability of growers to make informed production decisions and respond to market conditions.

- **Contracting practices:** There was a significant imbalance of bargaining power between growers and winemakers because:
 - most growers are small businesses,
 - grapes from warm climate regions are largely viewed as homogeneous,
 - wine grapes are highly perishable, and
 - the prevalence of variable price agreements meant growers lacked price certainty.

This had led to contracting practices favouring winemakers, and in some instances contract terms the ACCC considered were likely to be unfair under the Australian Consumer Law.

- **Competition:** There is a high degree of market concentration in each of the warm climate regions and only limited competition for grapes between different regions.
- **Voluntary code:** While the industry-led Wine Code had increased access to dispute resolution in some instances, it had not been widely adopted by winemakers. Further, the ACCC considered the Wine Code was not working as intended to balance the interests of growers and winemakers.

- 1.8. Following the conclusion of the Market Study, the ACCC engaged with a number of large winemakers to seek to address a range of potential unfair contract terms identified during the market study. In June 2020, the ACCC announced several winemakers had agreed to amend contract terms relating to grape quality assessments, terms permitting winemakers to unilaterally vary agreements, one-sided termination clauses, and lengthy payment timeframes.²
- 1.9. In December 2021, the ACCC released a Follow-up Review of the Wine Grape Market Study assessing the sector's progress in implementing the Market Study's recommendations. The Follow-up Review requested feedback from a range of key industry stakeholders regarding the implementation of the Market Study recommendations.
- 1.10. The Follow-up Review identified the industry had made progress on a number of the ACCC's recommendations. However, the Follow-up Review concluded the industry had so far failed to address the ACCC's concerns about long payment timeframes and the lack of price transparency in warm climate regions.
- 1.11. These issues are discussed in detail in both the Market Study Final Report and the Follow-up Report.

² <https://www.accc.gov.au/media-release/fairer-terms-for-wine-grape-growers-but-concerns-remain-about-payment-periods>

Changing market conditions

1.12. The Market Study and Follow-up Review were published in 2019 and 2021 respectively. Several industry developments have occurred since that time, including the following:

- The imposition of anti-dumping duties on Australian wines by China's Ministry of Commerce in March 2021 caused a major and immediate shock to the Australian wine industry, effectively closing access to the Chinese market. Prior to the imposition of these duties, China was Australia's most valuable wine export market. These duties were removed in March 2024 and while exports to China are resuming they remain a small fraction of historical exports to China.³
- There has been a return to oversupply conditions, particularly in markets for red wine grapes. This has led to a significant decrease in red grape prices with growers in certain regions receiving less than their costs of production. In response, the red grape crush has decreased in both the warm and cool climate regions.⁴ A report commissioned from Charles Sturt University for Wine Australia identified that currently, the production of wine grapes is not a viable business for many growers in the warm climate grape growing regions such as the Riverina.⁵
- Global wine consumption trends have shifted, with consumers drinking less wine overall while also moving away from 'commercial' wines in favour of more premium wines.⁶
- Several large winemakers in Australia are looking to consolidate or divest their portfolios, for example:
 - On 6 August 2024, Treasury Wine Estates (Australia's third largest winemaker by grape intake) announced its intention to divest its commercial wine brands.⁷
 - On 4 September 2024, the ACCC commenced an informal review of Accolade's proposed acquisition of Pernod Ricard's Australian wine businesses.⁸
- In April 2024, Accolade Wines engaged in negotiations with the CCW Co-operative (a large grower co-operative based in the Riverland), offering a voluntary buyout to CCW members wishing to exit the industry.⁹ This offer was rejected by the vast majority of CCW members.¹⁰

³ Wine Australia, [Export Report: 12 months to 30 June 2024](#), 26 July 2024, accessed 7 October 2024.

⁴ Wine Australia, [State of the Wine Market: August 2024](#), 13 August 2024, accessed 7 October 2024.

⁵ Charles Sturt University, [Profitability Project report to Wine Australia](#), 31 March 2024, accessed 7 October 2024.

⁶ Wine Australia, [State of the Wine Market: August 2024](#), 13 August 2024, accessed 7 October 2024.

⁷ Treasury Wine Estates, [ASX Announcement: Treasury Premium Brands impairment, intention to divest Commercial brand portfolio and F24 Group EBITs](#), 6 August 2024, accessed 7 October 2024.

⁸ ACCC, [Public informal merger reviews register – Australian Wine HoldCo Limited – Pernod Ricard Winemakers Pty Ltd](#), accessed 7 October 2024.

⁹ Accolade Wines, <https://sustainableriverlandwine.com.au/>, accessed 7 October 2024.

¹⁰ ABC Rural, [Riverland wine growers united in rejecting contract buy-out amid industry uncertainty](#), 23 May 2024, accessed 7 October 2024.

- In October 2023, Wine Australia released its Grape Price Indicators dashboard.¹¹ The Dashboard is intended to improve price transparency by providing information on key indicators affecting wine grape prices in the warm climate regions.

1.13. In addition, on 16 October 2024, the Government announced it would seek to amend the Australian Consumer Law to ban unfair trading practices impacting both consumers and suppliers. The Treasury will undertake further consultation on the design before seeking to legislate a general prohibition on unfair trading practices.¹² Depending on how the prohibition on unfair trading practices is ultimately framed, these reforms may also provide an avenue to address certain practices that are prevalent in the wine and grape sectors which may be unfair.

Warm and cool climate grape regions

- 1.14. There are 65 wine grape growing regions in Australia.¹³ The ACCC's analysis of the wine grape sector has focused primarily on the 'warm climate' grape regions of the Riverland, the Murray Valley and the Riverina. The remainder of Australia's growing regions are collectively referred to as the 'cool climate' regions.
- 1.15. Parts of the ACCC's Market Study were focused on addressing issues in the warm climate regions, and certain recommendations were only intended to apply to the purchase of wine grapes from those regions.
- 1.16. Complaints and concerns raised with the ACCC have generally related to issues in the warm climate regions, and there are various features of the warm climate regions that the ACCC considers makes bargaining power imbalances between growers and winemakers more likely to arise. Markets for warm climate wine grapes are highly concentrated, and there appears to be limited competition for grapes. Warm climate wine grapes are generally viewed as homogeneous and used for bulk wine products destined for export markets. In contrast, cool climate growers may be better able to compete on the differentiated characteristics of their grapes, and generally receive higher prices.
- 1.17. When considering options to improve market competition and address inequities, it is important to consider the possibility of unintended consequences in distinct markets for wine grapes, particularly on small winemakers operating in cool climate regions.

¹¹ Wine Australia, [Grape Price Indicators Dashboard](#), accessed 7 October 2024.

¹² The Hon Anthony Albanese MP, Prime Minister of Australia, [Albanese Government to stop the rip offs from unfair trading practices](#), 16 October 2024.

¹³ Wine Australia, [Australian wine regions and varieties](#), accessed 7 October 2024.

2. Key areas of concern

- 2.1. The following paragraphs provide further detail about key concerns identified in the Market Study about quality assessment, price transparency and contracting practices in the warm climate grape growing regions.

Quality assessment

- 2.2. The Market Study identified a range of issues associated with quality assessment processes for wine grapes:
- While most grape supply agreements clearly set out quality requirements and bonuses or penalties for meeting (or failing to meet) quality specifications, there was a lack of clarity and certainty around the methods winemakers used for quality assessments. This could make it difficult for growers to dispute winemaker decisions about quality.
 - Some grape supply agreements gave winemakers broad discretion to vary quality specifications in grape supply agreements, or grower manuals, either within or between seasons.
 - Growers had limited visibility over the quality testing process, with samples taken at the vineyard or the weighbridge needing to be tested at the winery.
 - Some quality assessment processes (such as colour, aroma, flavour, taste and mouthfeel) may rely on subjective sensory assessments rather than objective testing and sampling methods where they are available.
- 2.3. These issues created a lack of confidence among growers in the quality assessment process, and there were allegations that winemakers could use the quality assessment process to their advantage by reducing prices for grapes or rejecting grapes entirely. Winemakers denied they were taking advantage of quality requirements in this way.
- 2.4. The Market Study made four recommendations to address the concerns around quality assessment practices, including:
- encouraging the industry to work towards developing uniform national standards for testing and measurement of various quality requirements,
 - adopting objective testing and sampling methods where available,
 - updating industry guidance to reflect current best practice, and
 - ensuring grape supply agreements clearly specifying the testing and sampling methods winemakers will use to assess grape quality.
- 2.5. The Follow-up Review observed that the Australian Wine Research Institute has since created Industry Endorsed Standard Procedures (IESPs) for sugar and colour assessments, which represent the current best practice measurements for each. Australian Grape and Wine and the Australian Wine Research Institute have also

updated their guidance on *Winegrape Assessment in the Vineyard and at the Winery*,¹⁴ which provides guidance on best practice for quality assessments. The Wine Code has also been updated to require all grape supply agreements to clearly outline any standards the grapes will be assessed against and requires winemakers to adopt objective quality assessment measures or Industry Endorsed Standard Procedures where available.¹⁵

Price transparency

- 2.6. Price transparency is a key issue when considering market efficiency.
- 2.7. The Market Study found that grape supply agreements in the warm climate regions are most commonly variable price agreements. Under the Wine Code, these agreements require winemakers to pay growers a 'fair market price' for the grapes which is notified to growers prior to harvest. This means that growers commonly need to make production decisions and incur almost all annual production costs without knowing what price they are likely to receive for their grapes. The Market Study noted that some fixed price and spot market contracts are also available. Because warm climate grape prices are strongly correlated with bulk wine export prices, it is difficult for winemakers to provide price estimates or lock in prices well in advance of harvest. There is also commonly a lag time of several years between winemaking, and the subsequent sale of that wine.
- 2.8. The Market Study found that:
- wine market information was not easily useable for growers,
 - major pricing information was aggregated and retrospective, and
 - growers had limited access to information about prices paid by individual winemakers.
- 2.9. The Market Study concluded that insufficient price transparency is likely to be distorting the competitive process, and that improved transparency would be beneficial for the industry because it would:
- allow growers to make more informed production decisions,
 - encourage competition through switching and promoting efficiency, and
 - assist growers to dispute low prices.
- 2.10. To meet these objectives, pricing information made available to growers prior to selling their grapes must be forward-looking, timely and reliable.
- 2.11. To address these issues, the Market Study Final Report recommended:¹⁶
- The 'indicative pricing' scheme should be removed from the Wine Code and all grape supply agreements.

¹⁴ Australian Grape and Wine, [Winegrape Assessment in the Vineyard and at the Winery](#), February 2022, accessed 7 October 2024.

¹⁵ Australian Grape and Wine, [Code of Conduct for Australian Winegrape Purchasers](#) (version 2.4), Part 5, accessed 7 October 2024.

¹⁶ ACCC, [Wine Grapes Market Study Final Report](#), pp 10-11, accessed 7 October 2024.

- Warm climate grape grower representative organisations should deliver accessible, relevant and timely analysis of market trends to warm climate growers (**Recommendation 5**). This can be described as market intelligence.
 - For grapes purchased from warm climate regions, wine grape buyers should be required to provide information on the prices they have paid for grapes to Wine Australia. Wine Australia should aggregate and publish this information *by winemaker* for each variety in each warm climate region before the end of the year (**Recommendation 6**). This can be described as market information.
- 2.12. The Follow-up Review observed that grower industry associations had undertaken work to provide growers with more market intelligence. Further, the Wine Code was amended following the Market Study to remove the 'indicative price' announcement framework, which has been replaced by a requirement to pay a 'fair market price'. However, the industry had not implemented Recommendation 6 of the Market Study (provision of market information) and winemakers continued to strongly oppose that requirement. The Follow-up Review noted that without winemakers providing this information, very limited reliable pricing information is available to growers and growers under variable price contracts find it difficult to assess whether they are receiving a 'fair' price.
- 2.13. Since the release of the Follow-up Review, Wine Australia has developed the Grape Price Indicator dashboard, which was partially funded by the Department of Agriculture, Fisheries and Forestry under the *Improving market transparency in perishable agricultural goods industries* grant program.¹⁷ The Dashboard is intended to provide a current summary of the key drivers of inland wine grape prices in Australia and provide an indication of the forecast direction for grape prices ahead of the next vintage. ABARES has also included forecasts for wine grapes in its quarterly Agricultural Commodities Report.¹⁸ These have the potential to provide improved market intelligence to wine grape growers.
- 2.14. To date, the industry has not adopted Recommendation 6 from the Market Study, meaning there is no reliable and objective market information available to wine grape growers about the prices that winemakers have paid for wine in the previous season. Such information, in the absence of fixed price forward contracts, would provide growers with important information to guide decision-making about which winemaker to supply grapes to, and to assist in price negotiations.

Contracting practices: Payment timeframes and unfair contract terms

- 2.15. Both the Market Study and Follow-up Review highlighted the ACCC's significant concerns around the lengthy payment timeframes that were prevalent in grape supply agreements. Many growers will not receive full payment for their grapes for up to 9 months following delivery of the grapes.
- 2.16. Under the *Wine Grapes Industry Act 1991* (SA), the South Australian Minister for Agriculture has set the following mandatory payment timeframes:¹⁹

¹⁷ DAFF, [Improving market transparency in perishable agricultural goods industries](#), accessed 7 October 2024.

¹⁸ ABARES, [Agricultural Commodities Reports](#), accessed 8 October 2024.

¹⁹ Wine Grape Industry Act 1991 (SA), s. 6(1); South Australian Government, [Wine Grapes Industry Act 1991 order by](#)

For grapes delivered	First payment	Second payment	Third payment
Before 1 April	1/3 rd by the end of the month following the month of delivery	1/3 rd by 30 June	1/3 rd by 30 September
1 April to 1 May	1/3 rd by 31 May	1/3 rd by 30 June	1/3 rd by 30 September
After 1 May	2/3 rd s by 30 June	1/3 rd by 30 September	

- 2.17. The Wine Code has adopted the South Australian requirements as a minimum payment timeframe, but signatories are free to enter into agreements containing shorter payment timeframes.²⁰ In response to the Follow-up Review, Australian Grape and Wine advised it is encouraging winemakers to revise their payment practices and the Wine Code Committee has encouraged winemakers to adopt shorter payment times.
- 2.18. The Follow-up Review also noted there is some evidence that large winemakers are adopting shorter payment timeframes in contracts with growers, notwithstanding the longer payment timeframes set out in the Wine Code.
- 2.19. The ACCC maintains that, outside of South Australia, such lengthy payment terms may constitute unfair contract terms under the ACL. The Market Study identified a range of terms in grape supply agreements that may constitute unfair contract terms (UCTs) under the Australian Consumer Law. Some winemakers agreed to amend their grape supply agreements following engagement with the ACCC. However, winemakers were generally unwilling to reduce lengthy payment periods.
- 2.20. The ACCC strongly supports reducing the payment timeframes for wine grape supply agreements under the *Wine Grapes Industry Act 1991* (SA) and the Wine Code. The ACCC maintains that all large winemakers should be required to pay for grapes in full within 30 to 60 days of the final delivery of grapes, as set out in Recommendations 7 and 8 from the Market Study.

[Minister](#), The South Australian Government Gazette, 18 March 2004, p. 819, cls. (1)(a)–(c), accessed 7 October 2024.

²⁰ Australian Grape and Wine, Code of Conduct for Australian Winegrape Purchasers (version 2.4), section 4.2.

3. Regulation of the wine grape sector

- 3.1. At the time of the Market Study in 2019 and the Follow-up Review in 2021, the ACCC did not find that a mandatory code was necessary to address market failures in the wine grape sector but recommended several changes to the voluntary Wine Code. As noted above in Section 1, there have been developments affecting the industry since that time which may ameliorate or exacerbate previously identified issues.

The voluntary Wine Code

- 3.2. The Market Study recommended the Wine Code be substantially strengthened, and that all winemakers that purchase grapes from growers become signatories. The true impact of the Wine Code is difficult to assess due to the lack of visibility over terms in grape supply agreements. While the Code sets minimum standards, winemakers are free to and in fact do adopt terms that are more favourable to growers. In addition, while non-signatories are not bound to implement the Code, they may still be acting in a manner that is broadly consistent with the Code.
- 3.3. The number of Wine Code signatories has increased from 43 (in 2019) to 84 (currently). While the number of signatories represents a small proportion of the estimated 2150 winemakers in Australia,²¹ it includes around twelve of Australia's 20 largest winemakers.²² Therefore, the Code is likely to apply to a significant proportion of Australia's overall grape crush. However, coverage of the Wine Code is likely to vary considerably by region.

²¹ Wine Australia, [Australian Wine Sector at a glance](#), 23 January 2024, accessed 8 October 2024.

²² Winetitles, [Table 18: Australia's largest wine companies by winegrape intake](#), accessed 8 October 2024.

- 3.4. At the time of the Follow-up Review, some progress had been made to strengthen parts of the Code, including by removing the indicative pricing regime and ensuring that winemakers and growers were represented equally on the Code Committee.
- 3.5. There were also improvements to the dispute resolution process in the Code, with the addition of a structured independent expert determination and conciliation process, and an expedited process for time sensitive disputes. However, the ACCC notes that since 2019-20, the number of disputes under the Wine Code has averaged at only around 5 per year.²³ This could be an indication that growers are hesitant to raise disputes.
- 3.6. Despite this, the Follow-up Review found that not enough action had been taken to address some key issues, such as shortening the minimum payment terms set out in the Code and improving price transparency. Since the Follow-up Review, there have only been two relatively minor amendments to the Code.²⁴
- 3.7. The ACCC considers there are likely to be significant tensions between encouraging more winemakers to sign up to the Wine Code and strengthening the terms of the Code. In general, the more onerous the Code (for example, by requiring shorter payment timeframes or more onerous quality assessment procedures), the less likely more winemakers are to become signatories.
- 3.8. The ACCC has observed that the progress in attracting new signatories to the Wine Code appears to have stalled. A challenge with all voluntary codes is that the more prescriptive they are, the more costly they are to comply with and the less likely it is that businesses sign up. This is likely to undermine further attempts to strengthen the existing voluntary Code.

Prescribed mandatory codes under the CCA

- 3.9. Unlike with voluntary industry codes, industry participants can be required to comply with a prescribed mandatory code without opting in, and this can facilitate a mandatory code containing stronger obligations than a voluntary code. However, obligations and the associated regulatory burden should only be imposed through a mandatory code where this is necessary to support the efficient operation of the market.
- 3.10. In considering whether a prescribed mandatory code is required for the winegrape sector, the ACCC recommends applying the framework set out in the Treasury's *Industry Codes of Conduct Policy Framework* (2017).²⁵ Relevantly, this Framework provides that:
 - The Government will only prescribe mandatory or voluntary codes in very limited circumstances, where it is absolutely necessary for supporting the efficient operation of markets or the welfare of consumers.
 - Prescribed codes will only be considered where there is strong evidence of market failure which is negatively affecting industry participants or

²³ Australian Grape and Wine Code Committee, [Annual Reports on the Code of Conduct for Australian Winegrape Purchases](#), accessed 8 October 2024.

²⁴ Australian Grape and Wine, [Code of Conduct for Australian Winegrape Purchasers \(version 2.4\)](#), p 3, accessed 8 October 2024.

²⁵ Treasury, [Industry Codes of Conduct Policy Framework, 2017](#), accessed 7 October 2024.

consumers, and that the market cannot or will not overcome these market failures.

- Identifying market failures does not automatically mean a prescribed code is required. A full range of policy responses must be considered to identify the appropriate response to specific issues.

3.11. The Treasury Framework defines a market failure as problems with the operation of a market that prevents it from producing optimal outcomes. This harms industry participants and consumers because resources cannot flow to their best use. An imbalance in bargaining power does not, in and of itself, constitute market failure.

3.12. For a mandatory code to be successful:

- any obligations under a mandatory code must be clearly enforceable,
- the code must include appropriate compliance and enforcement mechanisms, and
- any bodies responsible for the administration of the code must be adequately resourced to perform the associated functions.

3.13. The ACCC currently administers and enforces nine prescribed mandatory codes, each of which requires significant resourcing. The ACCC submits that any prescribed mandatory code for the wine grape sector would require significant additional resources to ensure the ACCC is able to support the implementation of the code and undertake compliance and enforcement activities.

3.14. The ACCC considers that in order to be effective, any mandatory code for the wine grape sector would need to be uniquely tailored to the industry and account for the significant diversity of wine grape and winemakers' business models, including but not limited to differences between:

- warm and cool climate regions
- small, medium and large winemakers
- domestic and export markets for wine.

3.15. Given there are more than 2000 winemakers in Australia, and the diversity of business models employed by winemakers in different segments of the market, the ACCC submits a mandatory code for wine grape purchases is likely to be significantly more complex to implement and enforce than other mandatory codes administered by the ACCC. Further, the ACCC notes the complexities inherent to grape and wine production means the introduction of a mandatory code presents a heightened risk of adverse or unintended consequences.